

FEDERAL COURT
(Before the Honourable Mr. Justice Phelan)

Vancouver, B.C.
February 23, 2015

T-2030-13

BETWEEN:

NEIL ALLARD, TANYA BEEMISH, DAVID HEBERT
and SHAWN DAVEY,

PLAINTIFFS;

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,

DEFENDANT.

MR. J. CONROY, Q.C.,
MR. K. TOUSAW,
MS. T. GRACE,
MR. B. VAZE
MR. M. JACKSON,

Appearing for the Plaintiffs;

MR. J. BRONGERS,
MS. BJ. WRAY,
MR. C. JANUSZCZAK,
MR. P. ALMA
MS. M. NICOLLS,

Appearing for the Respondent.

1 (PROCEEDINGS COMMENCED AT 9:45 A.M.)

2 THE REGISTRAR: This special sitting
3 of the Federal Court in Vancouver is now open; The
4 Honourable Mr. Justice Phelan presiding.

5 The court calls docket T-2030-13 between
6 Neil Allard, Tanya Beemish, David Hebert and Shawn
7 Davey, and Her Majesty the Queen in right of Canada.

8 Appearing on behalf of the plaintiffs,
9 Mr. John Conroy, Q.C., Mr. Kirk Tousaw, Ms. Tonia Grace,
10 Mr. Bibhas Vaze, and Mr. Matthew Jackson. And on behalf
11 of the defendant, Mr. Jan Brongers, Mr. Carl Januszczak,
12 Ms. B.J. Wray, Ms. Melissa Nicolls, Mr. Philippe Alma.

13 JUSTICE: Thank you. Sit down,
14 please. Good morning.

15 I appreciate that this case has some
16 degree of notoriety or attention, and while we
17 appreciate the interest that people have, and I
18 appreciate also that there are some strongly-held views,
19 I want to make it clear to the audience that this is a
20 trial and not a meeting or a debate. And despite the
21 very personal and emotional nature of the case, there
22 will be no cheering or indications of support or comment
23 or interruptions.

24 At all times there will be courtesy shown
25 to the court, its officials, to counsel, whether you
26 agree with the counsel's position or not. And the same
27 applies for witnesses. That requirement for respect and
28 civility extends not only in this court but outside this

1 court as well. We just can't have any distractions or
2 interference with this important matter. So I know that
3 you share with me the desire to have a fair and proper
4 trial, and that's what we will have. I know that you
5 will govern yourselves accordingly. I look forward to
6 the case.

7 So. let's start.

8 MR. CONROY: My Lord, if I may, Ms.
9 Grace is sitting in the middle and she is here today but
10 won't be back until the third week.

11 JUSTICE: Okay.

12 MR. CONROY: Mr. Tousaw and Mr.
13 Jackson are going to -- well, Mr. Tousaw will be here
14 for the first two weeks and not the third week. Mr.
15 Jackson will be here throughout. And Mr. Vaze is going
16 to be in and out, but he'll be here particularly next
17 week, just so you know, with people coming and going.

18 JUSTICE: Thank you.

19 MR. CONROY: The other thing is, we
20 have Mr. Davey and Mr. Alexander. Mr. Davey is the
21 first witness, as you know, and a plaintiff, and Mr.
22 Alexander is his caregiver. We have them both, with
23 your permission, sitting up there so that they're easily
24 accessible to the box. My friend and I have discussed
25 Mr. Alexander being present, and he has no difficulty
26 with him being present during the cross-examination; nor
27 do I.

28 JUSTICE: Okay. Perfect. All right.

1 MR. CONROY: So just -- there's some
2 other housekeeping matters.

3 JUSTICE: Yes.

4 MR. CONROY: But I don't know if you
5 want to deal with them --

6 JUSTICE: Why don't we get them all at
7 least out on the table, and deal with everything we can?

8 MR. CONROY: I think the only other
9 ones that I had were to do with the books, and the book,
10 *Killer Weed*, was marked as an exhibit, I believe, in the
11 injunction proceeding. Certainly a copy was also given
12 to Judge Manson. So I don't know if that -- those two,
13 or at least one, exists somewhere still in the court's
14 book, so that we have that as an exhibit. And then I
15 can hand this up, if the Court wants to have its own --

16 JUSTICE: Well, I'm told that we have
17 it in the evidence, but --

18 MR. CONROY: Oh, so you've got one or
19 two? You've got one. So if the Court wants one to mark
20 up --

21 JUSTICE: Okay.

22 MR. CONROY: The same is true of the
23 other books, if the court wants them to mark up.

24 JUSTICE: I see you have filed two
25 others.

26 MR. CONROY: Yes.

27 JUSTICE: A handbook, and I've
28 forgotten the name of the other one there.

1 MR. CONROY: Yes, the Clark
2 ethnobotany one.

3 JUSTICE: Yes. I have those.

4 MR. CONROY: And then the only other
5 hard copy that I don't think you have, but there are
6 copies as exhibits, is the *American Herbal Pharmacopeia*,
7 so that you have a copy of that.

8 JUSTICE: Okay.

9 MR. CONROY: I think that's really --
10 I'm not sure if there was some other housekeeping. We
11 have set down issues. I think the court is aware that
12 we're not calling Ms. Capler.

13 JUSTICE: That's right.

14 MR. CONROY: So that case, that
15 period.

16 JUSTICE: So that means Monday is a
17 free day.

18 MR. CONROY: Yes.

19 JUSTICE: Okay.

20 MR. CONROY: We're going to do the
21 *Brown v. Dunn* issue, I think we set for Monday.

22 JUSTICE: Yes, sorry, that's right.
23 So that means unless there's something that arises,
24 Friday is a free day, am I right?

25 MR. CONROY: Yes.

26 JUSTICE: Okay.

27 MR. CONROY: Just so -- I think that's
28 all unless my friend has some other issues, housekeeping

1 issues.

2 JUSTICE: Mr. Brongers.

3 MR. BRONGERS: I do have one
4 housekeeping issue, thank you, Mr. Conroy and Mr.
5 Justice Phelan.

6 The only thing I think that might be
7 helpful to deal with at the outset is how we mark the
8 joint book of documents as an exhibit, how we treat it,
9 because from our perspective what would be simplest is
10 to just mark the entire book as Exhibit 1. The only
11 concern is that it does currently contain a number of
12 documents that both parties, or at least our party may
13 be objecting to, in terms of the documents that are
14 being put to the other side's witnesses.

15 So what we could do is provisionally mark
16 it as Exhibit 1, and then over time remove documents if
17 they don't wind up getting properly admitted. We have
18 the documents that are attached as exhibits to the
19 affidavits and the affidavits themselves, those are
20 obviously fine. That takes us up to Volume 11, tab 16,
21 but then starting at tab 17 we have the documents that
22 are to be put to the witnesses.

23 JUSTICE: I was thinking of that, and
24 my preference would be that we mark -- we've got the
25 joint books, that's fine, but that we would mark each
26 exhibit -- each affidavit as an exhibit. The court has
27 a copy. I have the joint book that I can work with.
28 That way, when we come to a witness, if there's a

1 problem with a document, we've got a way of dealing with
2 it, we can segregate it rather than trying to find it
3 later on and it drifts somehow into the Court of Appeal
4 as inevitably it will.

5 So I think we'll keep it, unless that
6 throws counsel off, if we could just mark each one of
7 the affidavits as an exhibit. But we'll use the joint
8 book of documents as the starting point so we're all
9 playing with the same deck of cards. Is that okay?

10 MR. CONROY: So we have an actual copy
11 of, say, Mr. Davey's affidavit in the file that we'd
12 mark as the exhibit?

13 JUSTICE: Yes. The registrar has a
14 copy of the joint books, and he will stamp and put the
15 appropriate notations on.

16 MR. CONROY: Okay. All right, I'll do
17 a brief opening then if that's --

18 JUSTICE: Perfect.

19 **OPENING STATEMENT BY MR. CONROY:**

20 As you know, this is a constitutional
21 challenge to the *Marijuana for Medical Purposes*
22 *Regulations*, which are regulations pursuant to the
23 *Control of Drugs and Substances Act*, a federal statute.
24 The issues we submit arise under Section 7 of the
25 *Charter*, the right to life, liberty, and the security of
26 the person, and the right not to be deprived thereof
27 except in accordance with the principles of fundamental
28 justice. And so liberty and security of the person are

1 the two issues, rights, that we focus on. And the
2 principles of fundamental justice that we focus on are
3 arbitrariness, over-breadth, and gross
4 disproportionality.

5 And as submitted in the pre-trial
6 conference memo, we say that this is not a free-standing
7 inquiry under Section 7 in relation to public interest
8 or public good, or whether one is striking the balance
9 between what the government wants and what the
10 individuals want. It's about the manner in which the
11 right to life, liberty, and security of the person are
12 deprived, and public interest and public good issues, we
13 say, arise under Section 1, the provision of reasonable
14 limits prescribed by law that are demonstrably justified
15 in a free and democratic society.

16 So the issue, we say, is reasonably
17 narrow in terms of the ability of a medically-approved
18 patient to produce for him- or herself, or to have a
19 caregiver do so for them. And I emphasize the word
20 "caregiver" is limited. It's not as broad as the
21 current designated grower under the old *Medical*
22 *Marijuana Access Regulations*, which are the provisions
23 that were grandfathered by the injunction. We say the
24 caregiver is simply someone who stands in the shoes of
25 the patient who is unable to do it for him- or herself,
26 but wants still to have control and for various reasons,
27 including affordability, wants to do it that way.

28 So, under the *Medical Marijuana Access*

1 *Regulations* that came out in 2001, a person could
2 produce for oneself or have a designated grower do so.
3 The government in that legislation created a formula
4 that depended upon the number of grams per day that a
5 doctor and patient decided was appropriate in the
6 individual circumstances, and then the calculation
7 resulted then in what number of plants, how much
8 storage, how much you could possess on your person, that
9 sort of thing. There was no limit on location. You
10 could grow in your basement or in an outbuilding, or
11 elsewhere. You could grow indoor or outdoor, but not
12 both at the same time. It was limited to dried
13 marijuana, no extracts, like the -- what I'll call, if I
14 may, the *Marijuana for Medical Purposes Regulations*,
15 *MMPR*, the new regulations. And there was a 30-day
16 supply allowance that you could have on your person, not
17 limited to the 150 grams which is in the *MMPR* and has
18 carried forward under the injunction from Justice
19 Manson.

20 Under the *MMPR*, only licensed producers
21 can produce and supply cannabis to patients. Again,
22 still dried only. And as I mentioned, 150 gram limit.
23 And of course because it's licensed producers, it
24 doesn't involve growing in a residence. It involves
25 growing in a large commercial facility, and it's also
26 limited to indoor, no outdoor. So those are the
27 essential differences.

28 So, we will be submitting that if the

1 court accepts our submission, that as in *Parker*, the
2 patients continue to be placed in a situation, or some
3 of them, where they have to choose between their liberty
4 and their health, and you accept that that's a violation
5 of Section 7, as the courts found in *Parker* and
6 subsequently in *Merna*, then the question arises with
7 respect to Section 1. And we of course submit that
8 there is no reasonable limits. If there are any, they
9 have to be justified under Section 1, and the onus is on
10 the government to so justify.

11 So, clearly the remedy that we would seek
12 at the end of the day, if you accept our submissions, is
13 that you strike down the -- well, you don't really --
14 you exempt the parties, the medically-approved patients,
15 pending an opportunity on the part of the government to
16 try and make the *MMPR* constitutional. And we say in
17 order to do that, they have to bring back personal
18 production, or caregiver production. They have to in
19 addition, we say, undo the dried marijuana only
20 limitation, and the 150-gram possession limitation.

21 There are other issues that obviously
22 arise, but the court is not going to be involved in
23 having to create the legislation. It's for the
24 government to try and come up with legislation that is
25 constitutional in accordance with what we hope the court
26 will find on our behalf.

27 So as I mentioned, the issues under
28 Section 7: liberty, security of the person, decision by

1 a medically approved person with respect to their
2 health, a decision of fundamental personal importance.
3 The principles of fundamental justice I've identified
4 for you. I gave to you in the pre-trial memorandum a
5 citation from *Charkowi* from the Supreme Court of Canada
6 in 2007. It appears at page 14 and 15, paragraph 36. I
7 won't read it to you but it's essentially the paragraph
8 which talks about the difference between Section 7 and
9 Section 1 of the *Charter* and the issues that arrive that
10 I mentioned a moment ago. Importantly, we submit that
11 the state, the government bears the burden of justifying
12 any intrusive measures or limitations upon the
13 individual's liberty and security of the person.

14 The recent decision of the Supreme Court
15 of Canada in *Carter* and the earlier, just before that,
16 *Bedford*, expand and provide useful, helpful summaries of
17 these principles of fundamental justice that are in
18 issue in this case.

19 The plaintiffs that we have are obviously
20 representatives from the group of medically approved
21 patients. Mr. Davey, who is the first witness, is a
22 person who was damaged in a motor vehicle, motorcycle
23 accident, severely brain damaged, and so he has over
24 time participated in the *MMAR* with designated growers
25 and things of that kind, ultimately to start growing for
26 himself and has had the good fortune of meeting Mr.
27 Alexander, who's also present in the courtroom, who is a
28 neighbour who also is an approved patient but he's not a

1 plaintiff. And they produce their medicine in an
2 outbuilding on a piece of property in the District of
3 Mission, in a rural area that's in the Agricultural Land
4 Reserve. So it's not in the basement, in one's
5 residence type of a situation. And we would describe it
6 as a collective garden type of situation, where patients
7 come together to help each other to produce their
8 medicine safely and securely.

9 The other plaintiff, Beemish and Hebert,
10 Mr. Hebert is the spouse and designated grower under the
11 *MMAR* for Ms. Beemish who is the patient, and so it's an
12 example of the designated grower patient situation.
13 Again, like a caregiver but with the specific statutory
14 provision that was in the *MMAR* in that regard. Now,
15 she, Ms. Beemish, suffers particularly from stomach
16 ailments. I'm still hoping that she'll be able to make
17 it tomorrow, but I'll know later today and we'll keep
18 the court posted and --

19 JUSTICE: Then we may have to juggle
20 things around a bit.

21 MR. CONROY: Well, I've said to my
22 friend either she will be here or she won't, and he will
23 cross-examine Mr. Hebert on it rather than us have to go
24 to the hospital.

25 JUSTICE: Rather than going to her?

26 MR. CONROY: Yes.

27 JUSTICE: Okay.

28 MR. CONROY: Just so that -- so she is

1 an example where her husband is the caregiver and
2 spouse, and in their situation were unable to -- or
3 because of their financial situation had to move prior
4 to September 30th, 2013 deadline and notified Health
5 Canada accordingly, but couldn't find a place until
6 after. So they fell into the situation of people who
7 couldn't move their production site after the September
8 30th date in the legislation that was the transition
9 date.

10 Further, it turned out as a result of
11 Justice Manson picking the March 21st date of his order
12 with respect to authorizations to possess, that her
13 authorization to possess had expired in January as well.
14 So we say that they are a classic illustration of the
15 *Parker* issue of having to choose between their liberty
16 and their health, since commencement of the proceedings
17 and because they are not covered by the injunction.

18 They grew, or he grew for her, in a
19 garage with a tent-type structure, and apparently
20 without the knowledge of surrounding neighbours and so
21 on. So, a similar caregiver type situation, but using
22 the designated grower provision in the *MMAR*.

23 And then finally Mr. Allard. Mr. Allard
24 has a serious nervous condition. He has been on a
25 disability pension.

26 I should mention that Ms. Beemish, just
27 to come back to her for a moment, in contrast to Mr.
28 Davey, who has a substantial award in terms of the motor

1 vehicle matter, Ms. Beemish is on a roughly \$600 a month
2 disability pension, and her husband is employed, but has
3 significant debt. So that was their financial
4 situation.

5 Mr. Allard is a person who worked for the
6 federal government and then went on a disability pension
7 because of his health, and he's approaching 65, which
8 will cause some reduction in that, but then he'll get
9 his Canada Pension. So he is an example of an older
10 person compared to the others, who is producing in a
11 residence, in a basement, in a room that has been
12 constructed for that particular purpose. So that you
13 have a combination of the different types of situations
14 that may arise in the circumstances.

15 Now, we say that if you -- the starting
16 point is, we tendered a witness, Professor Baumann, a
17 horticulturalist from the University College of the
18 Fraser Valley, that my friend has indicated they do not
19 wish to cross-examine. I don't think there's any
20 dispute about what he has to say, which is basically
21 setting out how people can grow their own food or other
22 types of things, herbs, or medicinal plants, that are
23 all set out in the Richter's catalogue that's attached
24 to his affidavit.

25 And of course, that applies generally to
26 matters that -- or drugs, I should perhaps say, or
27 plants, that are not in the *Controlled Drugs and*
28 *Substances Act*, not prohibited by the *Controlled Drugs*

1 *and Substances Act*. And so that's the distinction. If
2 cannabis was removed from Schedule II of the *Controlled*
3 *Drugs and Substances Act*, we say, the *Natural Health*
4 *Care Product Regulations* under the *Food and Drug Act*
5 would apply.

6 And if you look at that catalogue, you'll
7 see the red crosses and so on of all the plants that are
8 held out to be for medicinal purposes. And you'll see
9 that some of them include the opium poppy, for example,
10 or foxglove, things of that kind, that are plant-type,
11 held out for medicinal purposes, or food purposes.

12 So, the *Controlled Drugs and Substances*
13 *Act* is what -- is there, unlike many of those other
14 herbs and plants, but this is where the courts over time
15 starting with *Parker* in 2001 have had the whole issue
16 litigated to the point where the courts have ruled, the
17 Ontario Court of Appeal in particular, that the
18 government had to create a viable constitutional
19 exemption, and that this exemption would have to be
20 available to all medically approved patients, and would
21 supply -- would provide a reasonable, safe, and
22 continuous access and supply.

23 So we say the critical thing is a supply
24 for all, not just some, but all medically approved
25 patients. And that includes the poor. Those that can't
26 afford the costs under the new regime, and we say it
27 includes those who wish to keep control over the
28 production of their own medicine because of either

1 particular sensitivities that they have to either
2 pesticides or other pharmaceuticals or things that could
3 be put in by someone else, and that they can do so in a
4 safe and secure manner.

5 So the starting point is Section 7,
6 liberty and the security of the person that everybody
7 has in Canada. It's not a matter of us seeking
8 permission from the government. We say the right is
9 there. The government by the *Controlled Drugs and*
10 *Substances Act* has put in this prohibition, but the
11 courts have said there has to be a viable exemption.
12 And so at the end of the day that's the issue for the
13 court, is going to be, are these patients, or at least
14 some of them, continuing to be put in a position where
15 they have to choose between their liberty and their
16 health? Does the exemption process that the government
17 has created apply and supply or provide a supply to all
18 medically approved patients and not just some?

19 So I want to make it clear that this is
20 not a contest against Licensed Producers under the *MMPR*.
21 We say that people should be able to produce for
22 themselves, have a caregiver produce for them, or, if
23 they can afford it, go to the Licensed Producers under
24 the *MMPR*. And that's essentially in a nutshell our
25 position, My Lord.

26 JUSTICE: Thank you.

27 MR. BRONGERS: Thank you, Justice
28 Phelan.

1 **OPENING STATEMENT OF MR. BRONGERS:**

2 Before setting out what the issues are in
3 this case from the defendant's perspective, it's
4 importantly to briefly confirm what this case is not
5 about. This case is not about Parliament's fundamental
6 ability to regulate marijuana. The federal government
7 has this authority and there is no constitutional right
8 to unlimited access to marijuana in any amount, in any
9 form, or from any source. And as my friend said, while
10 his clients take issue with some aspects of the new
11 Medical Marijuana Regulations, they do accept that there
12 must be a regime which necessarily imposes some limits
13 on access.

14 This case is also not about whether those
15 with a demonstrated medical need ought to have access to
16 a lawful supply of medical marijuana. As my friend
17 said, the courts have found that government regulation
18 of marijuana must allow for such access. However, the
19 courts have not expressly prescribed how exactly such
20 access should be provided, or what reasonable limits can
21 be applied, leaving those details to the government.

22 So what this case is about is whether the
23 policy choice made by the government to adopt the
24 current system for ensuring a lawful supply of medical
25 marijuana within reasonable limits is one that is
26 constitutionally acceptable.

27 The issue can further be broken down into
28 four sub-issues. Namely the specific limits within the

1 new system that the plaintiffs are challenging. First,
2 there is the transition to a supply model that limits
3 those who are entrusted with growing marijuana to
4 carefully regulated Licensed Producers as opposed to the
5 old model that relied primarily on home cultivators who
6 could not easily be supervised. Second, there is the
7 limit on the locations in which marijuana can be
8 produced to indoor non-residential sites. Third, there
9 is the limit on the volume of marijuana that can be
10 possessed at any one time. And fourth, there is the
11 limit on the form of marijuana that can be produced to
12 dry marijuana.

13 To assist the court in determining its
14 constitutionality, the defendant has already led,
15 through the affidavits already filed, evidence to
16 explain Canada's new Medical Marijuana Regime. This
17 evidence shows that Canada has adopted a new system to
18 ensure access to a safe and lawful supply of marijuana
19 for those with a demonstrated medical need, with
20 reasonable limits designed to ensure the safety of both
21 patients and the public.

22 This new system, called the *Marijuana for*
23 *Medical Purposes Regulations*, or the *MMPR*, accomplishes
24 this by fostering and regulating a licensed medical
25 marijuana industry that is subject to the same stringent
26 oversight as the one that exists for all other medicines
27 whose consumption and production entail public safety
28 risks. It replaces an old system, the *Medical Marijuana*

1 *Access Regulations*, or the *MMAR*, whose underpinning was
2 that patients should either be growing their own
3 marijuana at home or finding someone else to home-grow
4 it for them, or buying marijuana from the government in
5 the single strain that it was making available.

6 Now, this old system was designed on the
7 premise that only a very small number of Canadians would
8 ever seek access to medical marijuana. It was not
9 designed to handle the exponential growth in demand that
10 occurred in the years following its adoption. And it
11 wasn't long before the old *MMAR* system became the
12 subject of significant criticism from a wide spectrum of
13 stakeholders, including patients, law enforcement
14 officials, first responders, municipalities, and members
15 of the public. These stakeholders told the government
16 that the old system wasn't working. They told the
17 government that it was needlessly putting Canadians at
18 risk by entrusting the bulk of the task of producing
19 medical marijuana to ordinary Canadians, operating out
20 of their homes, in residential neighbourhoods. And they
21 told the government that the risks of this system are
22 multi-faceted. Include the following.

23 First, the possibility of diversion of
24 marijuana to the illicit market. Second, the
25 possibility of home invasion and violence by criminal
26 elements. Third, the possibility of fires in homes from
27 overloaded electrical circuits, and the use of dangerous
28 solvents for making marijuana extracts. Fourth, the

1 possibility of personal injury, including burns and
2 inhaling dangerous chemicals. Sixth [sic], the
3 possibility of mould developing in homes, causing
4 structural damage as well as jeopardizing health.
5 Seventh, the possibility of creating noxious odours,
6 diminishing the quality of life for neighbours in the
7 community. Eighth, the possibility of exposing children
8 to marijuana and marijuana products. And last but not
9 least, the possibility of producing poor-quality,
10 contaminated marijuana that is medically ineffective or
11 even harmful to patients.

12 These are the risks that the government
13 was informed about by stakeholders and the court will
14 hear opinion evidence that these risks are genuine. It
15 will also hear that while these risks can be managed, to
16 do so requires cultivators to have a certain level of
17 knowledge and skill, as well as the financial and
18 logistical ability to establish, obtain, and maintain
19 the infrastructure and equipment necessary to grow
20 quality marijuana safely.

21 Risk management of marijuana cultivation
22 also requires the ability for the government to
23 supervise and oversee the cultivators.

24 The court will hear that government
25 officials pondered how best to manage these public
26 health and safety risks, while still ensuring that
27 access to a lawful supply of marijuana is made available
28 to those with a demonstrated medical need. It will hear

1 that they considered continuing to permit home
2 cultivation, coupled with an enhanced system of
3 regulatory inspections. However, they concluded as a
4 matter of policy that this option was not viable. It
5 was not viable from a practical perspective, because of
6 the sheer number of inspections that would have to be
7 conducted. And it was not viable from a legal
8 perspective because homeowners have a constitutional
9 right to privacy in their own homes that is incompatible
10 with effective state inspections of home grow
11 operations.

12 So ultimately Health Canada officials
13 decided that a better method for ensuring safe access to
14 quality medical marijuana would be to set up a licensed
15 producer system very similar to the one that applies to
16 the traditional pharmaceutical industry. A system
17 whereby producers who can demonstrate that they can
18 safely and effectively grow and distribute medical
19 marijuana can be licensed to do so, so long as they are
20 willing to subject themselves to a stringent system of
21 government oversight and inspections. It was felt that
22 only in this way could Canada meet its legal obligation
23 to ensure lawful access to medical marijuana while
24 addressing the significant public safety concerns that
25 had arisen from the old system, which had allowed home
26 cultivation. And the court will hear that in so doing,
27 the government did not act capriciously, but rather in
28 accordance with its view that it should, as much as

1 possible, treat marijuana like other medicines.

2 The court will also hear evidence that
3 the program has now been functioning for almost one
4 year, although not quite in the manner that the
5 government had intended, because of the interlocutory
6 injunction that was issued by the court, which has
7 preserved for many the possibility of growing at home.

8 Nevertheless, there are a significant
9 number of Licensed Producers already that are offering a
10 variety of strains of marijuana at a variety of prices,
11 with a middle range of about \$5 to \$8 per gram, with
12 some offering compassionate discounts as low as \$1.75
13 per gram. And opinion evidence will be provided that
14 over time this trend of relatively low prices and decent
15 supply can be expected to continue into the future.

16 The government's evidence will also
17 address three secondary issues raised by the plaintiffs.
18 It will hear that the new system's limit on production
19 locations to those that are indoors and non-residential
20 reflects the heightened security concerns that arise
21 when marijuana plants are grown outdoors or in houses
22 where people live. It will hear that the possession
23 limits are designed to discourage the targeting of
24 marijuana patients by the criminal element, if it is
25 known that patients cannot possess enormous quantities
26 of marijuana. And it will hear that the limit to dried
27 marijuana reflects the particular dangers of producing
28 non-dried marijuana. Additional challenges to law

1 enforcement, in terms of preventing diversion;
2 additional harms to children and adolescents; and the
3 fact that the scientific evidence of the therapeutic
4 benefits of non-dried marijuana is particularly limited.

5 Furthermore, the court will hear that
6 Canada's approach to supplying marijuana is consistent
7 with that taken in a number of other jurisdictions in
8 the world that have medical marijuana regulatory
9 regimes. Namely The Netherlands, Israel, and the United
10 States. In these jurisdictions, the trend is towards
11 relying on large-scale commercial production to ensure a
12 safe supply of quality marijuana as opposed to relying
13 on small-time home grow operations.

14 Now, as the court has heard from my
15 learned friend, the court will also hear evidence from
16 the plaintiffs about their use of medical marijuana, how
17 they have been cultivating it at home, and their
18 financial capacity to afford marijuana. In addition to
19 the defendant's evidence regarding the risks of home
20 cultivation and the existence of a reasonable
21 alternative supply to medical marijuana through Licensed
22 Producers, the defendant will respond to the plaintiffs'
23 assertions by providing evidence about what volumes of
24 marijuana consumption are medically justifiable.

25 This will be relevant because the
26 plaintiffs' allegations of unaffordability rest in large
27 part on the enormous quantities of marijuana that they
28 have persuaded their doctors to authorize. The court

1 will ultimately have to address whether these
2 allegations are truly meritorious or they are a
3 reflection of a volume of marijuana use that is not
4 medically necessary.

5 So, to conclude, at the end of the trial,
6 the evidence of the defendant will give the court a
7 thorough understanding of the new legislative regime and
8 the manner in which it provides access to medical
9 marijuana subject to certain limits. Furthermore, the
10 evidence will show that the public safety concerns that
11 underpin these limits are genuine. Given that the
12 plaintiffs have put in issue the need for these limits,
13 the defendant will ensure that the court has evidence
14 which explains their rationale for its consideration.
15 And ultimately, based on all of this evidence, Canada
16 will ask the court to dismiss the plaintiffs' action in
17 its entirety, thereby setting aside the interlocutory
18 injunction, and permitting the new regime to provide
19 access to safe, good-quality medical marijuana as
20 intended.

21 Thank you, Justice Phelan.

22 JUSTICE: Thank you very much. Mr.
23 Conroy.

24 MR. CONROY: So the first witness,
25 Justice Phelan, is Shawn Davey.

26 Mr. Davey, if you could please take the
27 witness box. If the Registrar could provide Mr. Davey
28 with his affidavit. I'm sorry, I guess he should be

1 sworn first.

2 **SHAWN ROBERT DAVEY, Affirmed:**

3 THE REGISTRAR: Please state your name
4 and your occupation and address for the record.

5 THE WITNESS: Shawn Robert Davey. I'm
6 on disability and I live at 2459 Pauline Street,
7 Abbotsford, B.C.

8 THE REGISTRAR: Thank you.

9 MR. CONROY: Based on our earlier
10 discussion, I'm assuming we should put the affidavit to
11 him, have it marked as Exhibit 1, and then I'll --

12 JUSTICE: That's what we'll do.

13 MR. CONROY: -- turn him over to my
14 friend.

15 JUSTICE: Yes.

16 MR. CONROY: So I don't know if Mr.
17 Registrar has that handy.

18 JUSTICE: It's tab 5.

19 MR. CONROY: Oh sorry, if you want it
20 from the book.

21 JUSTICE: There we go.

22 MR. CONROY: Now, it's been produced
23 to him in the joint book of documents, but I think the
24 court wanted the original that's on the file to be
25 marked as the exhibit.

26 JUSTICE: Well, the one that he's got
27 is the court document and we'll mark that. The
28 Registrar can mark it when we take a break.

1 **(AFFIDAVIT OF SHAWN DAVEY MARKED AS EXHIBIT 1)**

2 MR. CONROY: So that we're on the same
3 page.

4 JUSTICE: We're all on the -- that
5 might be the most difficult part of this trial.

6 MR. CONROY: And given the procedure,
7 I've explained it to Mr. Davey so I turn him over to my
8 friend for cross-examination.

9 MR. BRONGERS: Thank you. Justice
10 Phelan, just as a housekeeping matter, I'm wondering
11 what time the court likes to take its morning breaks.

12 JUSTICE: Well, we got started at --
13 normally we'd break about 11:00, wherever it's
14 convenient sort of around 11:00, take 15 minutes, go
15 until 12:30, back again 1:30, take a break again around
16 3:00 and finish up 4:30.

17 MR. BRONGERS: Thank you.

18 JUSTICE: Will that work?

19 MR. BRONGERS: Thank you, Justice
20 Phelan, so we'll work towards 11:00, about half an hour.

21 JUSTICE: Yes.

22 MR. BRONGERS: From now before a break
23 can be taken.

24 Obviously, Mr. Davey, if you require a
25 break for whatever reason, please let the court know and
26 we certainly won't object to that.

27 THE WITNESS: No problem.

28 **CROSS-EXAMINATION BY MR. BRONGERS:**

1 Q Now, Mr. Davey, I'm going to be
2 asking you questions both about your own affidavit,
3 which you have in front of you, but also there are some
4 documents in one of our affidavits, the affidavit of Ms.
5 Ritchot, which contains your Health Canada file, your
6 licences, et cetera, correspondence that you had sent to
7 Health Canada. And I'm not sure which document would be
8 the easiest one to use for the court and for you.
9 Perhaps the joint book of documents, is that simplest?

10 JUSTICE: It probably is. I'll make
11 sure it's okay with the Registrar. We have to keep on
12 his good books, you know.

13 MR. BRONGERS:

14 Q The joint book of documents, well,
15 Mr. Davey's affidavit is in Volume 1 starting at page
16 226.

17 A Tab 5, yeah, correct.

18 Q And the exhibit to Ms. Ritchot's
19 affidavit, which contains Mr. Davey's file, is in Volume
20 6 starting at page 2005.

21 A Okay, well, I'll just get that
22 organized.

23 MR. BRONGERS: Mr. Conroy, I don't
24 know if you have a copy you might be able to give to Mr.
25 Davey.

26 MR. CONROY: Of Volume 6?

27 MR. BRONGERS: Yes, of his Health
28 Canada file.

1 JUSTICE: Or the Registrar could do
2 that. What page did you say?

3 MR. BRONGERS: It's page 2005. The
4 pagination is on the bottom.

5 JUSTICE: Yes, I've got it, okay,
6 thank you. And what we could do, I guess, so that we're
7 able to follow from the transcript, would be to mark
8 that page as well as Exhibit 1-A, or any other document
9 that you're going to put that's not in the witness's own
10 affidavit you'll probably have to identify it, right, so
11 that we can follow where it is. And my suggestion, or
12 maybe a better suggestion, I'm happy to take ideas,
13 would be to say for example, Exhibit 1 and now you're
14 going to put something to him that's outside his
15 affidavit, that'd be Exhibit 1-A, 1-B and so forth, so
16 that you would have the complete record of what was put
17 to each witness.

18 MR. BRONGERS: That is a possibility.
19 I'm wondering if it might be simpler --

20 JUSTICE: Okay.

21 MR. BRONGERS: -- to reference the
22 page numbers. In most cases here I will be using the
23 documents in the Health Canada affidavit to try and
24 refresh the witness's memory. There is some
25 discrepancies in terms of the dates in which licenses
26 were issued, in terms of Mr. Davey's evidence, and that
27 -- in the Health Canada affidavit. So I don't think
28 it's controversial that these documents exist.

1 JUSTICE: No.

2 MR. BRONGERS: And they've been proven
3 through the Health Canada witness. So I'm not sure they
4 need to be marked separately.

5 JUSTICE: Okay. So you're happy to
6 have it just refer to the page from the affidavit.

7 MR. BRONGERS: Yes, I am.

8 JUSTICE: Okay.

9 MR. BRONGERS: Thank you, Justice
10 Phelan.

11 JUSTICE: Is that all right with you?

12 MR. CONROY: Okay. I apologize for
13 continuing to say "My Lord". I'm just used to the
14 procedure --

15 JUSTICE: That's okay. I can't get
16 over it -- get used to it myself. But you've got so
17 used to -- it rolled off your lips.

18 MR. CONROY: That's right.

19 JUSTICE: Even when they tried to
20 correct you and train you, and remedial training, it
21 never works. So don't worry about it.

22 MR. CONROY: Especially at my age, My
23 Lord.

24 JUSTICE: It's not an insult.

25 MR. CONROY: No.

26 JUSTICE: I don't think.

27 MR. BRONGERS: I may take -- I may
28 take the same licence, Justice Phelan, My Lord.

1 Q Mr. Davey, I'm going to begin by
2 asking you some questions about your background. Just
3 to confirm, you were born on June 8th, 1976. Is that
4 correct?

5 A That is correct.

6 Q So that would make you now 38 years
7 old, is that right?

8 A That is correct.

9 Q I understand from your affidavit
10 that you are presently living alone?

11 A I am.

12 Q You do not have any dependents?

13 A I have one son, but he's 18 now, so
14 he doesn't live with me, he lives with his mom, and
15 that's no worry, so --

16 Q I understand from your first
17 affidavit that you were still paying child support
18 payments when you swore that in January.

19 A Yes. I still make child support
20 payments right now, because he's in college but he's not
21 19 yet, so -- I mean, yeah, I -- I believe that you
22 should give your son what it takes to get going, so.

23 Q I'm just trying to ascertain
24 whether you have a dependent or not. I understood from
25 your most recent affidavit that since he turned 18, you
26 no longer have to pay child support.

27 A Oh, I still pay it. I don't have
28 to pay it, but I still do pay, so, yeah. Yeah.

1 Q Now, you explained in your
2 affidavit that you are presently a disability pensioner?

3 A I am.

4 Q So you do not work --

5 A No, I don't.

6 Q -- at this time.

7 A No.

8 Q It might be easier, Mr. Davey,
9 just for the Court Reporter, if you wait until I finish
10 answering --

11 A Oh, yeah. Fair enough.

12 Q -- asking the question, and then
13 you can answer after that. Thank you.

14 I also would like you to confirm that you
15 have not worked since the year 2000. Is that correct?

16 A That's correct.

17 Q Turn now to ask you some questions
18 about your medical condition and your medical history.
19 And just to help you in terms of your reference, if you
20 could turn to your first affidavit.

21 A Yeah.

22 Q The one you swore in January of
23 last year, at paragraphs 5 and 6. That's at 258 of the
24 joint book of documents.

25 A Yeah.

26 Q If I understand correctly, you were
27 involved in a car accident on June 16th, 2000, right?

28 A That's correct.

1 Q And that accident put you in a
2 coma?

3 A Yeah. Three and a half months.

4 Q And you suffered a severe brain
5 injury from that accident, did you not?

6 A They told me I wouldn't walk or
7 talk again, so yes, I -- yeah. Yeah.

8 Q And so you are in constant major
9 pain, am I right?

10 A Oh, yes. Oh, yes, oh, yes.

11 Q You also explained in your
12 affidavit at paragraph 6 that you have memory problems.
13 Is that correct?

14 A Oh, yeah. Yeah.

15 Q The way you explained it is that it
16 impacts on your ability to cultivate marijuana because
17 you can't remember what you've done, or what you have to
18 do in relation to the cultivation. Is that right?

19 A That's correct.

20 Q Mr. Davey, do you suffer from any
21 other medical issues beyond pain and memory problems?

22 A No.

23 Q And, Mr. Davey, has there been any
24 improvement in your medical condition since the year
25 2000?

26 A Oh, yeah.

27 Q How so?

28 A Well, just in the fact of going

1 with marijuana, and not with prescription medications.
2 I feel a hundred times better. I -- yeah, it's
3 substantial. I can't compare it. I've taken so many
4 medications, I was taking \$6,000 worth of medications
5 before, and I whittled myself off all that and now it's
6 just marijuana. And I feel awesome, awesome, awesome,
7 so.

8 Q I guess what I'm trying to ask is,
9 since 2000, when you suffered this car accident and the
10 brain injury, leaving aside how the marijuana is dealing
11 with your symptoms, has the brain injury healed over
12 that time, or is it fundamentally the same --

13 A Yes.

14 Q -- but you're just handling it with
15 marijuana.

16 A It's fundamentally the same, I'm
17 handling it with marijuana, yeah. Yeah.

18 Q It hasn't gotten worse.

19 A No. No, no. No.

20 Q But it hasn't gotten better either,
21 has it?

22 A No. No, no. No.

23 Q Is it your expectation, Mr. Davey,
24 that you will suffer from pain and memory problems for
25 the rest of your life?

26 A Rest of my life. Yes.

27 Q So I'm now going to ask you some
28 questions about your marijuana use.

1 A Okay.

2 Q If you look at paragraph 6 of your
3 affidavit, on page 258 of the Joint Book of Documents,
4 you say here that you started to use medical marijuana
5 around the year 2006. Is that right?

6 A That was 2006 -- well, that was
7 when I got my prescription from -- from Dr. Goddard.
8 But before that, yeah, I mean I've tried it, but it took
9 a little bit of getting used to, so -- yeah.

10 MR. CONROY: I'm sorry. You're
11 referring to paragraph 6 of the affidavit?

12 A Was it paragraph, page, with --

13 MR. BRONGERS: Sorry, I have the wrong
14 number, don't I?

15 My apologies. I don't have the right
16 reference. It may be in another affidavit.

17 Q But what's most important is,
18 we're trying to ascertain when you started to use
19 medical marijuana.

20 A In GF Strong.

21 JUSTICE: Sorry, I missed that.

22 A That was -- I was in GF Strong when
23 I first started using marijuana, medical marijuana.
24 So --

25 MR. BRONGERS:

26 Q Do you remember what year that
27 would be?

28 A That would be 2002, I think.

1 Q And was that -- was that the first
2 time you had used marijuana at all?

3 A Yeah, that was -- well, yeah,
4 actually, that was the first time, so, yeah.

5 Q So, did you use it recreationally
6 prior to the accident?

7 A No, no. No, no. But it definitely
8 made a difference now. So --

9 Q Now, according to your affidavit in
10 terms of being approved by Health Canada to use medical
11 marijuana, you say at paragraph 7, I believe -- yes.
12 That you started using it in 2007 -- or, sorry, that you
13 were first approved by Health Canada --

14 A Yes, yeah.

15 Q -- in 2007?

16 A Yeah. Yeah. Yeah.

17 Q Okay. And here's where I'm going
18 to try and sort out the discrepancies between your
19 information and what's in Health Canada's records. And
20 I'll just set out for you first of all what Health
21 Canada's understanding of the situation is.

22 And this is all set out in the affidavit
23 of Jeannine Ritchot, My Lord. In her affidavit, page
24 2006 of the Joint Book of Documents, paragraph 26.
25 Sorry, that's the first licence.

26 JUSTICE: That's the licence itself,
27 yes.

28 MR. BRONGERS: Yeah.

1 Q Yeah. Actually it might be easier
2 if we look at Ms. Ritchot's -- the text of her affidavit
3 itself, which is at pages 1,441 to 1,443.

4 A One thousand --

5 Q Which would be in volume 4. Page
6 1441, paragraph 25. If we look at paragraph 25 to 33 --
7 the witness doesn't have it --

8 JUSTICE: The witness doesn't have it.

9 MR. CONROY: Volume 4, page --

10 MR. BRONGERS: 1441.

11 MR. CONROY: 1441. We'll have that
12 for you in just a minute.

13 A Yeah, no problem.

14 JUSTICE: Sorry, what page?

15 MR. BRONGERS: Page 1441.

16 Q If we look at paragraph 26 at the
17 bottom there. The last sentence: "He was issued an ATP
18 on July 16th, 2010 permitting him to possess 300 grams of
19 marijuana at any one time." So, from Health Canada's
20 perspective, you were first approved to possess
21 marijuana in July of 2010.

22 A Okay.

23 Q Would you agree with that?

24 A Sure. My memory sucks, so -- yeah.

25 Q So then you were using medical
26 marijuana from 2002 until 2010 without it being formally
27 authorized by --

28 A No, I wasn't using it, like -- I

1 used it -- when I was prescribed it, so, yeah.

2 Q But you were using it during that
3 period.

4 A I was using it, yeah, off and on,
5 just -- yeah.

6 Q Can you estimate how much you were
7 using in terms of grams?

8 A How much, with my prescription
9 medications I would say maybe a gram or two a day. But
10 that was having medical prescription on top of that. It
11 was not a good thing, so.

12 Q And how were you accessing that
13 marijuana?

14 A I was just getting it from friends.

15 Q How much was it costing you?

16 A About \$10 a gram. Way back when,
17 so.

18 Q I'd now like to ask you some
19 questions about the amount of marijuana you've been
20 using since 2010 when you were in fact authorized
21 formally by Health Canada to do so. Now, your affidavit
22 doesn't speak directly about the change in dosages over
23 the years, but I'll put to you the evidence from Health
24 Canada and see if you agree with it.

25 So our information is that when you were
26 first approved on July 16th, 2010, your authorized dosage
27 was 10 grams per day.

28 A 10 grams a day, yeah.

1 Q You would agree with that?

2 A Yeah.

3 Q And then the next year on July 19th,
4 2011, it was increased from 10 grams per day to 12 grams
5 per day, is that correct?

6 A Yeah, that's correct.

7 Q And then the year after that, on
8 July 19th, 2012, it was increased from 12 grams per day
9 to 14 grams per day, is that right?

10 A Yeah, that's right.

11 Q And then a year after that, on
12 September 26, 2013, it was increased from 14 grams per
13 day to 25 grams per day, is that right?

14 A Yeah, that's right, yeah.

15 Q Now, turning to your second
16 affidavit at paragraph 25, Joint Book of Documents 240,
17 do you have that?

18 A I've got number 25.

19 Q Yeah, correct.

20 A Yeah.

21 Q So you say here that you do in fact
22 use approximately 25 grams of marijuana per day in
23 various forms, sometimes a little less, sometimes a
24 little more. Is that right?

25 A That's correct.

26 Q And you also testify that you use
27 marijuana approximately every half hour. Is that right?

28 A Yeah, that's correct.

1 Q So if I understand correctly, that
2 means if you're aware for 16 hours a day, you would be
3 using marijuana 32 times a day, is that about right?

4 A Sure. That's right, yeah, yeah.

5 Q And just going by the amount of
6 marijuana you use, the 25 grams, dividing that by 32,
7 that means you're using about three-quarters of a gram
8 each time?

9 A Yeah, about that. Half to a gram,
10 it is something -- yeah, yeah. I'm not right on it
11 because I don't weight it up and find out every time,
12 but yeah, that's about right, so yeah.

13 Q So can you take us through a
14 typical day of how you manage pain with marijuana from
15 when you wake up to when you go to sleep?

16 A When I wake up I have my vaporizer
17 going pretty much all day, and I eat a lot of it, pretty
18 much 90 percent now I eat. That's when my prescription
19 was going so high, because I am not smoking -- I'm
20 smoking about one joint to the ten I used to smoke, so.
21 But I mean my cookies are between 12 and 14 grams a
22 cookie, so that puts me to bed every night, so.

23 Q Right. Now, just again trying to
24 understand why your dosages have changed so much over
25 time. You explained in your affidavit, I believe it's
26 at paragraphs 11 and 13(b) of this particular affidavit
27 here, that basically on the advice of your doctor you
28 started with a low dosage and you kept increasing it

1 based on experience, is that right?

2 A Yeah, yeah, yeah, yeah.

3 Q And I'm just curious, because while
4 this might explain the increase of 2 grams per year in
5 the first few years, you almost doubled your dosage from
6 14 grams to 25 grams in 2013. Did your doctor question
7 why you all of a sudden needed this enormous increase?

8 A He did. I told him because I eat,
9 I'm eating it and I feel a hell of a lot better, and
10 yeah, it's awesome. I can't compare. It doesn't
11 compare to smoking. So, I mean as far as it goes for
12 me, all my body pain, that is the key, so yes.

13 Q So your doctor didn't question you?

14 A Not a problem, not a problem. Dr.
15 Goddard had no problem with it.

16 Q The reason I ask is because your
17 counsel filed an expert report from a Dr. Caroline
18 Ferris. She indicated in her opinion that doses of 3 to
19 5 grams per day are adequate for most patients and that
20 she's suspicious of doses around 20 grams per day or
21 higher. So you're saying your doctor wasn't concerned
22 like she was?

23 A Not at all. Dr. Gwelling Goddard,
24 he -- all the outlines for all the laws going down, so
25 yeah, he knows what is on there and everything, so yeah,
26 that's it. No problem at all, so.

27 Q Mr. Davey, I now have some
28 questions about your methods of consuming marijuana.

1 You've explained that you now do it mostly through
2 eating, right?

3 A Yeah, yeah, 90 percent.

4 Q 90 percent you say.

5 A Yeah.

6 Q You say in your affidavit that you
7 do it largely through edibles. You mention oils and
8 butters, is that right?

9 A Oh yes, oh yes, oh yes.

10 Q But you also do smoke it from time
11 to time, right?

12 A Yeah. In the morning when I wake
13 up and when I don't have time to let it heat up and get
14 the pain relief right away, so when yeah, I need it
15 right away, so that's it.

16 Q And in terms of when you are
17 ingesting it through your lungs, you said that you use a
18 vaporizer about 90 percent of the time and you smoke it
19 about 10 percent of the time. Is that still the case?

20 A Yeah, that's for sure.

21 Q Now, your affidavit contains some
22 contradictory evidence about whether or not you juice
23 marijuana. In your first affidavit you said that you do
24 juice. In your second affidavit you said at paragraph
25 25, which we have in front of you, that you do juice it.
26 But then in the next paragraph at 26 you say that "I
27 have not tried juicing yet." That's in the second to
28 last line of paragraph 26. Can you just clarify for the

1 court whether or not you juice marijuana?

2 A Juicing I haven't -- I've tried
3 juicing once but I haven't -- it didn't do anything for
4 me as far as taking the pain away, and I mean it was --
5 it wasn't quite the way I wanted to go about it, so.

6 Q So the short answer is you do not
7 juice marijuana.

8 A No, no, no, no, no.

9 Q And finally you also say that you
10 ingested marijuana using tea, is that correct?

11 A Oh yeah, oh yeah, yeah yeah.

12 Q So just to summarize then, we have
13 oils, butter, vaporizer, smoking joints, and tea. Is
14 that right?

15 A That's it, that's it.

16 Q Now, just so I understand, you have
17 explained in the affidavit the difference between the
18 usage techniques. You've said that when you eat
19 marijuana it's for long-term relief and sleeping
20 assistance.

21 A Mm-hmm.

22 Q And when you smoke or vape it it's
23 for rapid onset relief.

24 A Yeah, yeah, yeah, that's correct.

25 Q Is that still the case?

26 A Yeah.

27 Q I'd like to turn now to the strains
28 that you've been using.

1 A Okay.

2 Q And I'm still on your second
3 affidavit, the one we've been looking at previously. At
4 paragraph 17 which starts at page 236.

5 A Okay.

6 Q The numbering is on the bottom.
7 Paragraph 17 at the bottom.

8 A Paragraph 17. I'm just trying to
9 find --

10 Q I'm looking at page 236 at the
11 bottom. Volume 1 of the Joint Book of Authorities
12 [sic].

13 A Okay.

14 Q So according to this paragraph you
15 say you currently use six strains of marijuana and I'll
16 just read them out for you.

17 A Yeah, yeah.

18 Q There is Bubba Kush.

19 A Mm-hmm.

20 Q There is Og Kush. There is Purple
21 Kush. There's Northern Lights. There's Roadkill Skunk
22 and there's Pineapple Skunk. Is that right?

23 A That's right, but I mean there's
24 over 3,000 different strains now, so every strain that
25 treats different ways about things, so that's it.

26 Q I'm just curious which ones you are
27 using. You swore this affidavit in August of last year
28 and you said that you currently use those six strains.

1 A Right now I'm using just Bubba
2 Kush.

3 Q And if I understand from your
4 explanation, Bubba Kush is one of the strains that you
5 use in edibles, in oils and butter?

6 A That's it, yeah.

7 Q And so you use that for the long-
8 term relief and sleeping assistance?

9 A Oh yeah, oh yeah. Yeah, can't go
10 to sleep without it, so.

11 Q Now, in your affidavit you
12 explained that when you need rapid onset relief and for
13 that you need to vaporize or smoke it, you were using
14 the Northern Lights or the Roadkill Skunk or the
15 Pineapple Skunk. You no longer use those?

16 A No, I use Bubba for all of it.
17 Bubba is getting, get the job done right, so yeah,
18 that's it.

19 Q So you will smoke Bubba as well as
20 eat it.

21 A Oh yeah, yeah, yeah, yeah, yeah,
22 yeah.

23 Q Okay.

24 A I haven't tried out all the 3,000
25 different strains yet, but I will over time, so.

26 Q Now, in terms of understanding its
27 effectiveness, according to your evidence the only way
28 you do that is through what you call trial and error,

1 right?

2 A Yeah.

3 Q So if I understand correctly,
4 you'll try a strain and if it works to manage your pain,
5 then you keep using it, right?

6 A Well, yeah. If it works, I mean,
7 we can -- we will -- if it works, it's got to work. Has
8 to do the job. So, that's it.

9 Q And if you try a strain that
10 doesn't work, then you stop.

11 A Then *we won't go the next time,
12 no. Yeah. It would only be like two or three plants of
13 a new one, which you try it out, so -- yeah. And if it
14 works out, sure. Then we'll go another five the next
15 time. But, I mean, yeah. There is -- it has to be --
16 it has to work right, so.

17 Q So just to be clear, some of the
18 strains that you've tried over the years haven't worked
19 for you, right?

20 A No. No.

21 Q And by "haven't worked", can you
22 described what that's like?

23 A They don't relieve pain. They
24 don't relieve the pain. That's it. Basically that's it
25 right there. Because I have a hell -- a heck of a lot
26 of pain, so, yeah. That's it.

27 Q Do using some of these strains that
28 don't help you with your pain, does that ever make you

1 feel worse?

2 A No, it doesn't make me feel worse.
3 Just doesn't take care of the pain, as bad as -- as
4 great, so, yeah.

5 Q Now, you're down to just using
6 Bubba Kush, but before you were using Og Kush and Purple
7 Kush. Did you notice any difference in the
8 effectiveness between those three types of Kush?

9 A Oh, the three types of Kush, not
10 too much difference. They're basically -- they're all
11 very good, very good strains. So, I mean, yeah. But
12 I'm going with something that's only a three-star or a
13 two-star, yeah, I've seen the difference in that, so --
14 yeah.

15 Q And what about the strains you were
16 using for vaping and smoking, the Northern Lights or
17 Roadkill Skunk, and the Pineapple strain?

18 A No, Roadkill Skunk, they're all --
19 they were all decent. I mean, they weren't bad. I'm
20 just saying they weren't as good as the Bubba, and they
21 weren't as good as the Kush. So, yeah. That's it.
22 Yeah. There might be something else coming out, you
23 never know. You've got to try them out and see what
24 happens, so --

25 Q Now, Mr. Davey, have you ever tried
26 any of the cannabinoid medicines, either Sativex or
27 Nabilone?

28 A I don't know what, what they were

1 called, but my Dr. Fernandez, my family doctor, he
2 prescribed me a pill, THC pill, or something like that.
3 And then they sucked. I couldn't stand them. Didn't do
4 anything good for me at all, so, yeah. I didn't even --
5 I had tried them once, that was it, so -- yeah.

6 Q I'll deal one by one. With
7 Sativex, you're not certain whether or not you tried it.

8 A No, I'm not certain, no.

9 Q And what about Nabilone?

10 A Not certain.

11 Q Are you certain whether or not you
12 tried it?

13 A Not certain. I mean, you know
14 what? I don't like chemicals, and I don't -- I want --
15 I want something that is plant-based, 100 percent
16 organic. I don't want crap chemicals, that's it.

17 Q Mr. Davey, I just have a few more
18 questions about the impact that marijuana use has had on
19 your medical conditions. You don't keep a journal or --

20 A No.

21 Q -- a diary to keep track of the
22 marijuana you use, and its impact on your symptoms, do
23 you?

24 A No, no.

25 Q So when you explained to the court
26 the effectiveness of your marijuana that you use, this
27 is based on your memory, right?

28 A That's it. That's it. And for

1 some -- I mean, for medical things, I have a good
2 memory. For some reason my memory works good for things
3 like that, so -- yeah.

4 Q So, your doctor never suggested to
5 you that keeping track of your use of marijuana --

6 A No, no.

7 Q -- and the impact it has on pain in
8 a journal might be helpful?

9 A No. Dr. Harbin, never. Never.

10 Q Is it your expectation that you
11 will need to use marijuana --

12 A That's how I --

13 Q -- as medicine for the rest of your
14 life?

15 A That's it. Rest of my life,
16 guaranteed. I've taken myself off so many medications
17 and I was -- man, I was not supposed to walk or talk
18 yet. This was -- I was supposed to be in 24/7 care for
19 the rest of my life. Now I drive, I own acreages. I
20 have -- I do everything I want to do. And that's all
21 thanks to marijuana. That's it right there, so --

22 Q And if your symptoms were somehow
23 to disappear, though, you would stop using marijuana,
24 wouldn't you?

25 A If my symptoms were to disappear,
26 yes. But they're not going to disappear. I already
27 know that for a fact, so, yes.

28 Q You wouldn't continue to use it for

1 recreational purposes?

2 A No, no. No.

3 Q Okay, I'd like to turn now to
4 marijuana cultivation and your experience with growing
5 and accessing marijuana.

6 This might actually be a good time for a
7 break.

8 JUSTICE: I was wondering if you were
9 going to. Why don't we take 15 minutes?

10 A Fifteen? Yeah.

11 JUSTICE: Thank you.

12 **(PROCEEDINGS ADJOURNED AT 10:56 A.M.)**

13 **(PROCEEDINGS RESUMED AT 11:19 A.M.)**

14 JUSTICE: Mr. Brongers.

15 MR. BRONGERS: Thank you, Justice
16 Phelan.

17 Q Mr. Davey, I would now like to turn
18 to marijuana cultivation and your experience with
19 growing and accessing marijuana, and I'm going to spend
20 a bit of time trying to confirm the history and extent
21 of your experience because your affidavit is not
22 entirely clear on this and there are some details that
23 are contradicted by the Health Canada files. So it's
24 just more of a housekeeping matter to get the dates
25 right for the court's benefit.

26 But let's start with the way you've
27 explained it in your first affidavit at paragraph 7,
28 which is page 258 of the Joint Book.

1 A Okay.

2 Q So you say in this paragraph that
3 you started using a designated grower in 2007 and then
4 you switched to a second grower at some unspecified time
5 after that, and then after that you decided to produce
6 on your own, right?

7 A Yeah. I had -- no one I tried to
8 get to grow for me worked out at all. I was very
9 disappointed in everyone, so.

10 Q Okay. And then at paragraph 11, if
11 we move forward, you explain that at some unspecified
12 time you met Mr. Alexander, right?

13 A He's my neighbour, yeah.

14 Q And then you two decided to grow at
15 the same production site, right?

16 A That's it. And I haven't had a
17 problem at all, ever, so.

18 Q And this site which -- is it a shed
19 or a barn? How would you describe it?

20 A It's a -- yeah, it's a barn. It's
21 big. It's a big separate building, so yeah.

22 Q And this is on property owned by
23 Mr. Alexander.

24 A By -- yeah, by Vickers. What's
25 that? By who?

26 Q This is -- the barn is located on
27 property that's owned by Mr. Alexander, right?

28 A No, no, no, no. It's not owned by

1 Mr. Alexander, it's owned by his friends, so. We rent
2 it off him, so.

3 Q You rent the property, I
4 understand.

5 A Yeah, yeah, yeah.

6 Q And at about the time you decided
7 to grow together, I understand then you decided to move
8 into a house on that -- on the property?

9 A That's on the property and
10 everything, oh yeah, yeah, yeah.

11 Q Okay. So just so I understand
12 correctly, you and Mr. Alexander are leasing the
13 property together, the entire property?

14 A That's it, that's it.

15 Q And there is a house on that
16 property that you live in?

17 A Yeah. Yeah. House and a separate
18 shop, yeah.

19 Q And you pay rent to this other
20 individual --

21 A Yeah.

22 Q -- to live on that house?

23 A Yeah, I deal with Brian but Brian
24 deals with the individuals, so yeah.

25 Q So just to clarify then, so Mr.
26 Alexander leases the property and you lease the right to
27 live in that house from Mr. Alexander.

28 A Live in it, yeah, yeah. Yeah,

1 yeah, yeah.

2 Q Now, going back to paragraph 7 of
3 your affidavit, you say that your first designated
4 grower was unreliable in terms of ensuring a continuous
5 safe supply? Is that right?

6 A Yeah, yeah, yeah.

7 Q You say the quality of marijuana
8 that person grew was very poor?

9 A Very poor, yeah.

10 Q Are you saying then it was not
11 effective in treating your pain?

12 A Not at all, not nearly, yeah, yeah,
13 I was -- I had to consume lots of it to even come close
14 to -- I didn't -- how much I needed, so it was very
15 disappointing, so.

16 Q Were you worried that it might even
17 be unsafe, contaminated perhaps?

18 A Not unsafe, no, but just not up to
19 par, so.

20 Q You also say in this paragraph that
21 you were suspicious that this person was abusing their
22 licence to grow marijuana. Do you mean by that that you
23 suspected that the person was diverting marijuana to the
24 illicit market?

25 A I suspect that it was -- he grew
26 better stuff and then came back and gave me the crap and
27 gave the other people he was growing for crap too. So
28 yeah, it was bad news, so.

1 Q But when you say he was abusing it,
2 you were also thinking he was selling it illegally.

3 A Well yeah, I didn't know where it
4 was going. I knew I didn't get any of it, so I got
5 crap, so, and that was for my medical purposes, so yeah.
6 And that did it for me as far as not wanting anyone else
7 to grow for me because I -- yeah.

8 Q Except you did in fact get someone
9 else to grow for you. You explain in your paragraph 7
10 here that you had a second grower, right?

11 A Elton, yeah, yeah, yeah and they
12 -- none of the growers worked out good so I, I --

13 Q You said that that person was also
14 problematic. That the quality wasn't up to what you
15 require in terms of strength and effectiveness?

16 A And it wasn't every month. I
17 wasn't get what I needed, so how's it? I -- I'll just
18 -- very disappointed, so.

19 Q Were you also worried that that
20 person was abusing their licence?

21 A I, I didn't know. I didn't know
22 where it went. I mean I, I honestly I talked to -- with
23 Brian, I talked to Brian and I get -- I know the gist of
24 everything. I live on the property, I know everything.
25 Everything that goes through there I see and I know
26 everything goes on. So nothing, nothing goes wrong
27 there and I get exactly what I need every time and he
28 gets exactly what he needs every time, so.

1 Q So let's, let's turn to Health
2 Canada's records, which are at Exhibit C to the Ritchot
3 affidavit. That's at page 2,005 and following in Volume
4 6?

5 A 2,005, 2,006. Yeah.

6 Q So if we start on page 2,006 --

7 A Yeah.

8 Q And 2,007.

9 A Yeah.

10 Q We see here that you were issued
11 an authorization to possess, which was paired with your
12 first designated grower on July 16th, 2010. Would you
13 agree with that?

14 A I, I don't know. Yeah. I --

15 Q You see the date of issue is in
16 the middle of the page on the right-hand side next to
17 the signature.

18 A Date of issue 2010-07-16, yeah.

19 Q So would you agree with me that in
20 fact you started using a designated grower in 2010 and
21 not 2007 as you said in your affidavit?

22 A Yeah, yeah it was 2010, yeah.

23 Q Then if you could turn to page
24 2,060, 2-0-6-0.

25 A Yeah.

26 Q If I can describe that letter, it
27 appears to be a letter that you wrote to Health Canada
28 asking that your first designated grower be revoked and

1 that you be issued a personal production licence to
2 produce for yourself. Is that what this letter --

3 A That's it. Yeah.

4 Q And I see the date on that letter
5 is May 4th, 2011. Would you agree?

6 A Mm-hmm, yeah.

7 Q Okay. Then if we could turn to
8 page 2,043. 20-43.

9 A 20-43, yeah.

10 Q This appears to be a personal use
11 production licence issued in your name and the date is
12 July 19th, 2011. So would you agree that you were issued
13 a personal use production licence on that date?

14 A Yeah, yeah.

15 Q If you could turn to page 2,069.
16 This appears to be a personal use production licence
17 issued in your name with the date of July 19th, 2012.

18 A Mm-hmm.

19 Q So it appears that your personal
20 use production licence was effectively renewed on that
21 date, would you agree with that?

22 A That's -- yeah.

23 Q Okay. And then if you could go to
24 page 2092.

25 A Okay.

26 Q This appears to be another
27 personal use production licence issued to you. The date
28 of issue is November 1st, 2012.

1 A Mm-hmm.

2 Q Would you agree that that was
3 another renewal of your licence?

4 A That's it.

5 Q Okay. Then if you could turn to
6 page 2,153.

7 A Yeah.

8 Q And look at that as well as page
9 2,154, the next page.

10 A Yeah.

11 Q If I understand correctly this is
12 an authorization to possess issued to you paired with a
13 designated personal production licence for your second
14 designated grower. I don't think there's any need to
15 say their names.

16 A Yeah.

17 Q And this was issued on February
18 18th, 2013.

19 A Yeah.

20 Q So would you agree that on
21 February 18th, 2003 you changed from being a personal
22 producer back to being someone who had a designated
23 grower --

24 A Yeah.

25 Q -- grow marijuana for you.

26 A Yeah.

27 Q Right?

28 A Yeah.

1 Q And then the final licence that we
2 have on record is at 2,171, and 2,172.

3 A Mm-hmm.

4 Q Would you agree with me that these
5 licenses show that you returned to personal use
6 production on September 26, 2013?

7 A Yeah.

8 Q Is that correct?

9 A Yeah. Yeah.

10 Q So if I understand correctly, it
11 was at this point that you started growing on -- or
12 collectively with Mr. Alexander, right?

13 A And I have not a problem since
14 then. I've been loving life, so, yes.

15 Q Okay. So again, just to try and
16 make it easy for the court, I'll just try and summarize
17 these dates, and hopefully you'll agree with them. That
18 from July 16th, 2010 when you first were authorized to
19 possess marijuana by Health Canada --

20 A Mm-hmm.

21 Q -- to July 19th, 2011, you used a
22 designated grower, right?

23 A Yes. Yes.

24 Q And then from July 19th, 2011 to
25 February 18th, 2013, you grew for yourself, using a
26 personal production licence.

27 A It didn't work out very well with
28 that, so, yeah. Yeah. I tried, but it didn't work out,

1 so -- yeah.

2 Q And then from February 18th, 2013 to
3 September 26th, 2013, you went back to using a designated
4 grower, right?

5 A Yeah. Yeah, and that didn't work
6 out either, so -- yeah.

7 Q And then on September 26th, 2013 to
8 the present, you have been growing for yourself using a
9 personal production licence with Mr. Alexander's help,
10 right?

11 A I am happy as heck. I do not have
12 a single problem with it. Everything is 110 percent
13 awesome.

14 Q So you're saying yes, that is the
15 case.

16 A Oh, yes. Yeah. Yes, yes, yes.

17 Q Now, given those dates, and
18 particularly September 26 of 2013, when you're actually
19 authorized to grow for yourself, at the same property
20 that Mr. Alexander was using to grow, can you estimate
21 when you first met Mr. Alexander and decided to produce
22 marijuana together?

23 A When I first met him, and decided
24 to grow with him, was probably about a year and a half
25 ago. But I mean, that wasn't when I first met him. I
26 met him a couple of times before that. But just because
27 it was a neighbour, right? And I own the house where we
28 lived for eight years before that. So --

1 Q But compared to September 26, 2013,
2 when you were finally authorized to grow on that
3 property, did you decide with Mr. Alexander to grow
4 together maybe six months before that?

5 A I would say maybe a month before.
6 Yeah.

7 Q Okay. Before asking you about your
8 current production facility that you operate with Mr.
9 Alexander, I'd like to ask you how you accessed medical
10 marijuana before that time. And again, going through
11 these dates, remember that we have the first period of
12 July 16th, 2010 to July 19th, 2011. That was with your
13 first designated grower that you had some issues with,
14 right?

15 A Yeah. I got -- I mean, I got -- he
16 gave me what he grew, but it wasn't -- it wasn't any
17 good. So I basically, I mean, yeah, I was getting
18 jewed. So, I was not getting a good end of the deal.
19 So --

20 Q So, just to confirm, during that
21 time, 2010 to 2011, your authorized dosage was 10 grams
22 per day, right?

23 A Yeah. Yeah. Yeah.

24 Q And how much were you paying the
25 designated grower for your marijuana during that time?

26 A I was paying him -- it was about a
27 hundred bucks an ounce.

28 Q So he didn't charge you in grams --

1 A No, no.

2 Q It was \$100 an ounce.

3 A Yeah, yeah.

4 Q And what services would he provide
5 for that? Just the growing and the trimming and the
6 packaging --

7 A Yeah, and I would get a finished
8 product that was completely done. And I wasn't -- I --
9 he didn't let me ask any questions, regarding -- I
10 wouldn't get any answers for anything. And yeah, it was
11 bunk. I wasn't impressed with it at all. I mean --

12 Q So, just so I understand, he would
13 grow the marijuana on his property. And how would he
14 deliver the marijuana to you?

15 A I would go and pick it up. I would
16 go pick it up from his house, like.

17 Q And when you would pick it up from
18 him, it was bagged for you, he would just give you --

19 A Bagged -- garbage bags, he'd give
20 me. There's a garbage bag with 12 pounds in it, and
21 that's it, so.

22 Q How often would you go to pick up
23 your supply from him?

24 A About every three months.

25 Q And how much would you buy at a
26 time?

27 A About a pound.

28 Q A pound every three months?

1 A Yeah. Back then. But it's got
2 much -- we use it much more now, so, yeah.

3 Q Yes. I was just asking you
4 about --

5 A Yeah.

6 Q -- what you were doing then, during
7 that period.

8 A Yeah, yeah.

9 Q So, one pound every three months.
10 All right, moving on to your second production period,
11 this would be July 19th, 2011 to February 18th, 2013 when
12 you decided to drop your designated grower and grow on
13 your own.

14 A Mm-hmm.

15 Q Now, during this time I understand
16 your dosage was 12 grams per day from 2011 to 2012, and
17 then 14 grams per day from 2012 to 2013.

18 A Mm-hmm.

19 Q Does that make sense?

20 A Yeah, that makes sense, yeah.

21 Q And looking at your licences it
22 said you were authorized to have up to 59 plants up to
23 July 19th, 2012, and then in the second year you went up
24 to 69 plants.

25 A Yeah, yeah.

26 Q Does that make sense?

27 A Yeah, makes sense.

28 Q Could you describe the production

1 facility you were using during that time for yourself?

2 A At Jim's place it was a separate
3 barn from his house. So it was basically the same as
4 the one I have now but it was different, so.

5 Q So you grew in somebody else's --

6 A I didn't grow. That was him
7 growing for me in his own shop. I didn't have access to
8 it at all, nothing. So this, Brian and I have total
9 access to whatever I needed, so.

10 Q Except during this period you
11 weren't authorized to use a designated grower. You were
12 only authorized to produce for yourself.

13 A Oh. Hmm.

14 Q I'm just interested in how you grew
15 for yourself during this period, or are you telling me
16 that you did not?

17 A I tried, I tried growing for
18 myself. It didn't work out, so, for when I tried that
19 was not a good thing, so.

20 Q Okay, let's focus on your efforts
21 to try and grow for yourself during this time 2011 to
22 2013.

23 A I tried to grow in my garage and it
24 was, yeah, bad news, so.

25 Q So could you explain what steps you
26 took to set up that facility in your garage? What did
27 you do?

28 A I just polyed off the garage and

1 put down some poly on the floor and got everything, the
2 lights set up to the rafters and that was it, so.

3 Q How much did it cost you to set up
4 that facility in your own garage?

5 A That was about \$2,000.

6 Q Could you repeat the answer please?

7 A About \$2,000.

8 Q How much time did it take you to
9 set it up?

10 A I'm not -- about 7 to 10 hours,
11 about that.

12 Q Do you remember approximately how
13 much it cost to run it every month?

14 A No, I don't, no, no, I don't. My
15 memory sucks so, yeah.

16 Q And what safety precautions did you
17 take with respect to that facility in terms of security?

18 A I tried the one time and I didn't
19 go up again. It was just the one time I tried it and
20 that was it, so. I took it all down after that, so
21 after I tried it once that was it, so.

22 Q So by trying it once did you mean
23 -- how long did you actually work on it? One month?
24 Two months?

25 A I worked on it, it was about two
26 months, altogether, but I knew it was coming down, it
27 wasn't any good, so.

28 Q So you tried one cycle?

1 A One cycle, yeah, yeah.

2 Q I assume you never had that

3 operation inspected by anyone?

4 A No, no, no, no, no.

5 Q Now, of course you were authorized

6 to grow up to 59 plants, but how many plants did you

7 actually try to grow?

8 A It was like 59 plants.

9 Q How many strains?

10 A One.

11 Q And were you able to grow those

12 plants successfully?

13 A No. No.

14 Q What happened to the plants?

15 A They died. There was no bud, there

16 was just -- terrible, it was terrible.

17 Q So you weren't able to use any of

18 the marijuana you had used?

19 A No, no, no, no.

20 Q Do you remember if you had any

21 issues with odour?

22 A No. No.

23 Q Do you know what a grow box is?

24 A I do, oh yeah, yeah.

25 Q Did you use a grow box?

26 A No, no, no.

27 Q Why not?

28 A I didn't have access to one at the

1 time, so I was just -- I had a separate garage in my
2 house, so.

3 Q Now, going to the third production
4 period before your current one.

5 A Yeah.

6 Q This is February 18th, 2013 to
7 September 26, 2013 when you went to a second designated
8 grower, during this time, if I understand correctly,
9 your dosage was 14 grams per day.

10 A Yeah, half ounce, yeah.

11 Q And how much were you paying this
12 designated grower for your marijuana?

13 A It was about the same, about 100
14 bucks an ounce.

15 Q And what services did she provide
16 to you? The same as the previous grower or --

17 A It was, yeah, I mean he didn't work
18 out well either. That was my other licence that got --
19 I cancelled too, so, yeah.

20 Q Just to be clear, according to
21 Health Canada's records, and again I don't think it's
22 helpful to say the name here, but it was a female
23 grower.

24 A A female. Are you sure? I don't,
25 I don't --

26 Q Let's look at the licence to see if
27 that helps your recall or your memory. If you look at
28 pages 2,153 and 2,154.

1 A Oh, that was my buddy's mom, Mike
2 Jones's mom. That was my buddy's mom. It was her house
3 it was at, so yeah.

4 Q So you recall now that she was your
5 designated grower.

6 A Yeah, yeah, yeah, yeah. I just
7 dealt with him. It was his mom who was the home owner,
8 so.

9 Q So, but she didn't actually grow
10 it.

11 A No, no, no.

12 Q No, so it was your friend.

13 A Yeah.

14 Q Okay. And so your friend, just to
15 be clear, so your friend wasn't actually authorized
16 directly. The mother was but she didn't --

17 A Mother was. Yeah. Well, the
18 mother came there and she had -- I saw her there but not
19 often, so, and I mean that was another site that I got
20 ripped off on, so.

21 Q Right. So in terms of how you
22 would get your product, how often would you go to pick
23 it up?

24 A That product I went once and I got
25 nothing. I got bad news, so.

26 Q How much did you buy that one
27 time?

28 A It was about 8 ounces, but it was

1 not -- it was all seedy and it was terrible. I mean
2 yeah. So.

3 Q So would you say it was
4 ineffective in treating your pain?

5 A Ineffective, yeah, yeah, yeah,
6 yeah, yeah. Yeah, for sure.

7 Q Now, from your description of how
8 you were able to supply marijuana through these, these
9 three sources, your first designated grower who you
10 didn't, didn't trust. You were worried about him
11 abusing the licence.

12 A Mm-hmm.

13 Q The second period when you were
14 trying to grow for yourself but you weren't able to.

15 A Yeah.

16 Q And the third period where you
17 only went once and it was also ineffective. You must
18 have been accessing marijuana from other sources during
19 the period, were you not?

20 A Oh, yeah, yeah, yeah, yeah, yeah.

21 Q And how did you access that?

22 A I would just buy it.

23 Q You were buying on the black
24 market?

25 A Yeah, yeah, yeah, yeah. Not much
26 relief, so.

27 Q Pardon me?

28 A I needed pain relief, so yeah,

1 whatever, however I can get it, so.

2 Q And how much were you buying on
3 the black market during --

4 A About an ounce at a time.

5 Q And how often would you buy one
6 ounce?

7 A About every three days.

8 Q Buy one ounce every three days?

9 A Yeah.

10 Q And what sort of prices were you
11 paying during that time?

12 A About 100 to 125 an ounce.

13 Q And how would you describe the
14 quality of the black market marijuana you were
15 purchasing?

16 A It was decent. I mean it wasn't
17 anything compared what I have -- what I grow myself now.
18 That is -- how I have it all set up now is very good,
19 very good. So I mean yeah, there's no comparison, so.

20 Q I understand, but was it, was it
21 effective in managing your pain, this black market
22 marijuana or not so good?

23 A It was, it was -- yeah it was
24 effective but it was costing me too much money, so yeah,
25 that was it.

26 Q All right, Mr. Davey, let's turn
27 to your, your current production facility. The one that
28 you and, and Mr. Alexander --

1 A Yeah.

2 Q -- have set up in this, in the
3 barn. So the questions I'm going to ask you relate to
4 the answers you gave last summer --

5 A Okay.

6 Q -- in your second affidavit. So
7 if you could turn to pages 228 to 256. That's your
8 affidavit number 2. Okay, so we'll start at pages 242
9 and 243.

10 A Okay.

11 Q Actually we'll start with
12 paragraph 32. This is where you list of all the
13 equipment that you and Mr. Alexander bought in order to
14 buy -- or sorry, in order to grow marijuana at your
15 facility. Do you see the list that you --

16 A Yeah, yeah.

17 Q -- wrote up there?

18 A Yeah.

19 Q Now, you haven't totalled up the
20 amount, but using a calculator I came up with a total of
21 \$27,040.

22 A Okay.

23 Q Would you agree with that amount?

24 A Yeah.

25 Q So it cost you and Mr. Alexander
26 \$27,040 to buy this equipment that you needed to produce
27 marijuana, right?

28 A Yeah, but -- yeah. Brian, Brian

1 had -- all, all sorts of it came into play with when he
2 took down grow show, so.

3 Q I'm sorry?

4 A When he took down grow shows. He
5 was, he was a -- he was a take apart grown operations
6 and yeah, sort of got some of the equipment, so.

7 Q So he was able to get some of the
8 equipment --

9 A Yeah.

10 Q -- more cheaply --

11 A Yeah, yeah.

12 Q -- than would have been ordinarily
13 the case.

14 A Yeah, yeah, yeah.

15 Q Paragraph 33 of your affidavit
16 here.

17 A Yeah.

18 Q You said that given the fact that
19 there was already an existing building suitable for
20 production in place, the structural work that had to be
21 done was fairly limited, right?

22 A Yeah.

23 Q You just had to put up black
24 plastic on the walls because there's no windows.

25 A Right.

26 Q A half inch plywood on the ceiling
27 to keep the insulation from falling down. Said you
28 framed one wall, you painted the floor, you installed

1 hand railings, installed two security doors. Does that
2 more or less describe what you needed to get done?

3 A Yeah, yeah.

4 Q Can you tell me approximately what
5 the size of this, this barn is? Is it sort of 30 feet
6 by 40 feet?

7 A It's about 25 by 40.

8 Q So about 1,000 square foot?

9 A Yeah.

10 Q Do you know the value of this
11 building or how much it would have cost to build it?

12 A I don't know the, I don't the
13 value. I have no idea.

14 Q I'll ask Mr. Alexander --

15 A Yeah.

16 Q -- that question. In paragraph 37
17 of the affidavit.

18 A Mm-hmm.

19 Q You explain -- you provide a list
20 of the growing supplies you need to grow medical
21 marijuana. You've got dirt, fertilizer, CO₂ gas fill
22 and natural pesticides, and you've provided some monthly
23 estimates for how much those costs. And again, you
24 haven't totaled the amount, but using a calculator I
25 came up with \$290 a month.

26 A That works. Yeah.

27 Q Would you agree with that?

28 A Yeah. Yeah. Roughly 300 bucks a

1 month, yeah.

2 Q And at paragraph 40 you say that
3 you don't insure your marijuana, or your marijuana grow
4 equipment, is that right?

5 A No. No.

6 Q Do you know if Mr. Alexander
7 insures it?

8 A No, I don't think he does, but
9 you'd have to ask him.

10 Q And do you have an arrangement with
11 him in relation to insurance should something happen to
12 your operation?

13 A No, we don't -- we're just friends,
14 that's all matters.

15 Q Okay. Paragraph 41, you estimate
16 your electricity costs for the grow is about \$1,000 for
17 the outbuilding. You say you share that with Mr.
18 Alexander. So would it be fair to say you spend about
19 \$500 a month on electricity?

20 A Yeah.

21 Q Paragraph 42, you say that you are
22 on a water well, so you have no water expenses, is that
23 right?

24 A That is it.

25 Q Yeah. Now, do you have to treat
26 the water to make it suitable for use with your plants?

27 A Oh yeah.

28 Q And how much is that?

1 A But I don't -- I don't -- I don't
2 treat any of the water, that is all Brian's -- that is
3 Brian's job, so yeah, that's it.

4 Q So there is some cost in terms of
5 treating it, but I'll ask Mr. Alexander about --

6 A Yeah, ask him, ask him, he knows
7 all that, so. Yeah.

8 Q Okay. Now, at paragraph 43 of your
9 affidavit, you describe the security system that you
10 have set up to protect the marijuana, and just
11 summarizing here, it appears there is a fence or a gate
12 that goes out that surrounds the building? Is that
13 right?

14 A Surrounds the property, and then
15 the building has some like -- it would be easier to
16 break into a bank, instead of this building. Its -- it
17 is built right, so -- oh yeah.

18 Q You say you put in there motion
19 detectors, sirens --

20 A Yeah, yeah.

21 Q Cameras.

22 A Yeah.

23 Q Steel doors.

24 A Yeah.

25 Q And if I understand correctly, you
26 say the cost of setting up that security system was
27 \$3,000, is that right?

28 A Yeah. Yeah.

1 Q And you also have it monitored,
2 right?

3 A Yeah, oh yeah, oh yeah, oh yeah.

4 Q And that costs you \$600 a year to
5 have it monitored?

6 A Yeah. Yeah. Yeah.

7 Q Now, paragraph 45 you say you don't
8 have any issues with odours, and you explain that by
9 saying that because the production site is on five
10 acres, it is a considerable distance away from --

11 A We have no neighbours.

12 Q Right.

13 A Yeah.

14 Q And you also take some steps to
15 control the odour, you use charcoal filters, right?

16 A Yeah. Yeah. Whatever we gotta do.

17 Q And do you use grow boxes here?

18 A No, no.

19 Q Why not?

20 A Because we are a big open grow
21 area. That is all set up for just that. It's just set
22 up for that. So, it's one big grow box is what it is,
23 so -- oh yeah.

24 Q Paragraph 49 of your affidavit, you
25 say that you spent about 20 to 25 hours every month on
26 cultivation?

27 A Yeah.

28 Q Is that still an accurate estimate?

1 A That is right -- accurate, yeah.

2 Q But you'd agree, though, you'd have
3 to spend much more than that if Mr. Alexander --

4 A Oh, man, I wouldn't be able to do
5 it myself. There is no way. There is no way. There is
6 no way. I -- yeah, Brian helps me out for sure, yeah.
7 But we work together, so we get it all done every time.
8 So.

9 Q At paragraph 52 --

10 A Yeah.

11 Q You explained the steps you take
12 for growing, and I won't go through it, its written
13 down, it's in evidence. But I was interested in a
14 couple of aspects of it. One is you say that you do a
15 hand count of the plants to keep track of them, right?

16 A Yeah. Yeah.

17 Q What does that mean?

18 A Well, you just -- you just count,
19 right? You just -- that's how many -- 10 across, 10
20 long, that is 100 plants, right? Finger, one, two,
21 three, four, five, that's hand count. That's it.

22 Q But you don't keep any written
23 records --

24 A No, no written records, no, no.

25 Q Okay.

26 A That's just what the space is for,
27 so that's it. That's --

28 Q And you don't keep a detailed

1 record of how each plant is doing --

2 A No.

3 Q -- in terms of its health --

4 A No. No. All -- they're all the
5 same strains, so we basically they all come out -- I
6 mean, not exactly the same, but pretty darn close, so.

7 Q Now, and we asked you a question
8 about how you deal with the risk of cross-contamination
9 between strains, or other organic matter. You explained
10 that you sealed the two rooms. Are there actually,
11 there's two rooms with --

12 A Oh, yeah. Oh, yeah, yeah. They're
13 completely sealed, yeah. Yeah, yeah.

14 Q And so does -- if I understand
15 correctly, is one room for your production and one room
16 is for Mr. Alexander's production?

17 A We might share it, but we have it
18 so it comes down every month, right? We have two rooms
19 going, so we can bring it down every month. We have our
20 prescription every month, so --

21 Q Okay. But are you not concerned
22 that there might be some cross-contamination between
23 strains, your strains and Mr. Alexander's?

24 A No. No. No.

25 Q Now, at paragraphs 53 and 54 --

26 A Mm-hmm.

27 Q -- you explain that you've never
28 suffered any damage from any sources: water, mould,

1 insects, fire --

2 A None.

3 Q -- structural. Is that right?
4 You've never had any of those type of problems?

5 A None. Yeah, never. And we do it
6 right. Everything's done right, all the time. There is
7 never any slip-ups. Never letting anything go over, or
8 not -- everything gets cleaned up and done right, every
9 time, so.

10 Q But again, you say that you don't
11 keep any logs or journals about your operation, right?

12 A No.

13 Q You don't document your operation
14 in any way.

15 A No, nothing.

16 Q No. Why didn't you bother to do
17 this?

18 A Why? Because I remember it. And
19 Brian remembers it too, so we talk, and we figure it
20 out, and get it all done that way.

21 Q Are you not concerned about the
22 possibility of an inspection by Health Canada, or the
23 police?

24 A Well, we -- we don't go over our
25 quantity. We are -- we use what we are allowed to use,
26 and there's no selling anything, there's no nothing. We
27 are honest and we're straight up. I use this for only
28 the medication, so that's all I have to say about it.

1 I mean, I felt like crap from all these
2 other medications that I get -- I was getting them from
3 pharmacies, and man, nothing's worked better than
4 organic plants. The best thing on earth, I think
5 personally, so.

6 Q Paragraph 56 of your affidavit, you
7 estimate that you were producing about 25 grams per day.

8 A Yeah.

9 Q But if I understand correctly, you
10 weren't actually weighing it.

11 A No.

12 Q You don't have scales. So how do
13 you -- how do you come up with that estimate that you're
14 producing 25 grams or so --

15 A It was using how much I need. If I
16 can get away with how much I need for a day, then I
17 don't weigh it, right? It's all -- basically we just
18 throw it in a bag or in the bucket, and we use what we
19 need. There is no need to weigh it, so -- we're not
20 selling it, so --

21 Q I mean, this might be a good time
22 for me --

23 A If you want us to weigh it, you're
24 selling it. So -- that's -- that's not what we're
25 doing, so.

26 Q This might be a good time to ask
27 you about the cookies. You say that you were -- you
28 basically use about 12 to 14 grams to make cookies --

1 A A cookie. One cookie.

2 Q -- each day. To make one single
3 cookie.

4 A I make more than one single cookie,
5 but I make -- my cookie is used -- yeah, between 12 and
6 14 grams of butter a day in marijuana. That's every
7 cookie. I need it to go to sleep. If I don't have
8 that, I can't go to sleep and it drives me nuts.

9 Q So if you're -- it's not dried
10 marijuana --

11 A It's dried marijuana. That's it.
12 Yeah.

13 Q But you said it was in a butter.

14 A That's me making it from dried
15 marijuana into a butter.

16 Q I understand. So you've -- you
17 bake one -- one big cookie every day?

18 A No, no. No, no. I make probably
19 about 40 to 50 cookies every time.

20 Q How often do you make them?

21 A About a month and a half, I make a
22 batch every month to a month and a half, a batch.

23 Q So, 12 to -- the 12 to 14 grams
24 makes enough for 40 to 50 days?

25 A That's one cookie. For one cookie.
26 12 to 14 grams is enough for one cookie.

27 Q Okay. And you make that cookie --
28 like, every 40 days?

1 A And I make -- I make -- I make 50
2 to 60 cookies in a batch. So I have 50 to 60 cookies to
3 deal with, to get me by for 60 days, right?

4 And then on top of that I use -- that's
5 just -- that's just to go to sleep. I mean, that's just
6 my getting to sleep. If you throw the pain in there in
7 the day, I use, yeah, probably another half ounce at
8 least, so, I'm using an ounce a day. So.

9 Q Paragraph 59 of your second
10 affidavit, you claim that you've never lost any plants
11 to disease or mould is that right?

12 A No. Yeah. No. Plants just dye
13 because they're -- you get -- your odd one or two out of
14 the whole batch, right? That pass away, so.

15 Q Oh, so --

16 A But not mould or anything, no.

17 Q So, but in fact, you do lose some
18 of your plants though, don't you?

19 A One or two, yeah, yeah, yeah, every
20 time, you never, when you're getting -- my 60 -- or my
21 120, and then Brian's 150, that is 270 plants. You are
22 not going to get every one, every one going every time.
23 You are going to lose some, every time. Guaranteed.

24 Q Do you know why you lose those?

25 A Because they're not -- they're not
26 taking it to your clone cube.

27 Q I'm sorry?

28 A They're not taking to the clone

1 cubes, they are just not in -- they don't want to grow.

2 Q Paragraph 65 of your affidavit you
3 say you don't have your marijuana tested, is that right?

4 A Yeah. No.

5 Q So, you've never tested your
6 marijuana for its potency?

7 A I tasted, I tested -- my personal
8 knowledge of it.

9 Q You don't know how much --

10 A Works for me.

11 Q You don't know how much THC or CBD
12 is in your marijuana?

13 A No. No. It is about 14 percent,
14 but -- so they say, anyway.

15 Q Just so I understand.

16 A Yeah. Yeah. Yeah.

17 Q How do you come up with that
18 estimate of 14 percent without having it tested?

19 A They say, they say, they'll say
20 when you go to the store, how this plant produces. If
21 this is a 13 percent, or a 12 percent, or a 15 percent.
22 Yeah.

23 Q So, the seller of the seeds or the
24 clones --

25 A The seller of the seeds or the
26 clones, they will tell you.

27 Q Okay.

28 A I need to look it up under the

1 booklet too, so, there is a book that tells all the
2 strains.

3 Q So, how do you know then that the
4 marijuana you grow is safe and not contaminated if you
5 don't have it tested?

6 A I use it personally, I don't give
7 it to anyone else, and it works for me. That's good
8 enough for me. Why, why do I have to ask anyone else?
9 I don't want to know anyone else's attitude to anything.
10 I don't want anyone else knowing about my life, that's
11 it. My life is my life. I want to keep it in my life.
12 That's it.

13 Q So, let's turn to the question of
14 what kind of testing or inspections you've done in terms
15 of the safety of your operation. Paragraph 66. You say
16 that you had an electrical inspection done of your grow
17 facility, right?

18 A I -- this is all stuff that you
19 have to ask Brian about.

20 Q Okay.

21 A Yeah. For me, I don't get in to
22 doing any of the technical stuff, any of the building,
23 any of the mixing chemicals. My memory is shot, so it
24 doesn't deal with things that can ruin plans, so that's
25 it.

26 Q At paragraph 71 --

27 A Yeah.

28 Q -- you say that in terms of how you

1 learned to cultivate, you learned it from the internet,
2 is that right?

3 A I learned basics from the internet,
4 but yeah. And I learned a lot from doing it, right?

5 Q So you never took any courses --

6 A No. No.

7 Q -- in gardening or --

8 A Word of mouth.

9 Q Approximately how many hours did
10 you spend on the internet researching growing over the
11 years?

12 A I would say probably -- over the
13 years? I would say 150 hours maybe.

14 Q A long time.

15 A Oh yeah, oh yeah, oh yeah. I mean,
16 I always check up on it, just to see if there is
17 anything new happening, and any new hints and try this,
18 try that, yeah. I mean, this is my medication, I want
19 the best medication I can get. That's it.

20 Q So, would it be fair to say even
21 now you continue to research on the Internet --

22 A Oh yeah, oh yeah, always, always,
23 always, because you never know what is out there, so --

24 Q Approximately how much time every
25 day do you spend researching marijuana?

26 A I would say maybe half hour a day.
27 But I have, I don't have a job, you see? I have -- I
28 should have 40 hours a day to work, or a week to work.

1 When I got in the accident, I was working 70 hours a
2 week. I was working 30 hours overtime, 40 hours full
3 time, and bro, I was working my ass off. But they sent
4 me home that day because I already put in 70 hours that
5 week, and they couldn't keep me that day, so I had to go
6 home, and that was the accident. That put me in the
7 position in I'm in now, so.

8 Q Paragraph 73 of you affidavit you
9 say you've never had any injuries from growing
10 marijuana, right?

11 A Never, never.

12 Q So just to be sure, so you've
13 never had even a cut or a burn or back pain or?

14 A No -- well I've had, I've had --
15 yeah sure I've had back, where it hurts a little bit.
16 My back hurts a little bit all the time, so that's it.

17 Q I'm just wondering because just in
18 terms of the kinds of injuries that an ordinary gardener
19 might experience. You would have experienced some of
20 those by gardening, wouldn't you? Cultivating the
21 marijuana?

22 A Sure, I mean, but I don't call
23 those injuries, I call them as life. That's life,
24 right? You have to deal with life as getting your
25 plants growing the way they should, so.

26 Q Mr. Davey, I'd like to move now to
27 your finances.

28 A Okay.

1 Q If we look at paragraph 27 of the
2 same affidavit.

3 A 27?

4 Q Which is at page 240 of the Joint
5 Book of Documents. It starts there anyway.

6 A Yeah.

7 Q Just to confirm, it says that you
8 have a monthly income of --

9 A Just over five grand.

10 Q That's the figure I have. \$5,119
11 per month.

12 A That's it.

13 Q Is that right?

14 A That's it, that's it.

15 Q So \$4500 per month from your
16 annuity.

17 A My annuity, yeah.

18 Q And \$619 per month from your
19 disability pension?

20 A Yeah.

21 Q Right?

22 A Yeah.

23 Q \$5,119 per month. Now, in terms
24 of your expenses, if I understand correctly, you've set
25 that out at paragraph 30 of the affidavit.

26 A Mm-hmm.

27 Q Look paragraph 30. And again I
28 don't think you totaled it up, but from my calculator it

1 appears that your monthly expenses are \$3,747 a month.

2 A Yeah, that works, yeah.

3 Q Okay. So your income per month is
4 5,120, your expenses, which include marijuana growing,
5 are 3,747 per month, right?

6 A Mm-hmm.

7 Q In terms of your assets, you
8 explain at paragraph 28 that right now you don't have
9 any real estate. You recently sold your home which
10 allowed you to get rid of all your debts, right?

11 A That's it. I'm debt free. Yeah.

12 Q And you do own a car?

13 A Two trucks.

14 Q A truck which you value at \$2,000?

15 A Yeah.

16 Q And it doesn't have any loan on it
17 or --

18 A No, no, I got two trucks too.

19 Q You have two trucks?

20 A Yeah.

21 Q How much is your second truck
22 worth?

23 A About \$2,000 too.

24 Q You say you also have an ATV.

25 A Oh yeah.

26 Q And you value that about \$3,000?

27 A I would value at about 2500.

28 Q Okay.

1 A Now. It's been a while since I
2 wrote that, so yeah. They go down in value in time, so.

3 Q You also say you own a camper,
4 right?

5 A Oh yeah, yeah, yeah.

6 Q And you value that a thousand.

7 A Yeah.

8 Q And in terms of your savings,
9 about \$10,000 in savings?

10 A Yeah. But in the same respect,
11 the thing of that and thing that I have a 750 gram a
12 month prescription, okay?

13 Q Mm-hmm.

14 A I use that 750 grams a month. So
15 when you're talking about buying the 750 grams a month
16 from Health Canada, whatever, at 8 to 10 bucks a gram,
17 that's \$7500. I only make 5 grand, bro, that's not
18 working. And along with that -- and along with the fact
19 that I don't trust the growers, because if I don't get
20 to see the product and deal with it from beginning to
21 end, I don't trust it, so. That's it. It's my
22 medication, that's it.

23 But I don't hear anyone talk about it as
24 gracefully about marijuana is that, but yeah. It's help
25 me 100 percent, every aspect of my life, so.

26 Q Lets talk a bit about your
27 experience with Licenced Producers. In the same
28 affidavit at paragraph 22 you said that up to that time

1 you've made no effort to determine if Licenced Producers
2 offer your preferred strains or equivalent strains in
3 terms of THC, CBD content, is that --

4 A I already know that to get what I
5 need is going to be minimum of 10 bucks a gram and at
6 750 grams a month, that's 7500 bucks a month. I can't
7 do it, bro. There's not point in even going looking
8 because it's just wasting gas. No way. And I trust
9 what I grow. That's it. That's it.

10 Q Your counsel filed an affidavit
11 from a Mr. King indicated prices for Licenced Producers,
12 some of which get down to \$5 a gram or --

13 A Even at \$5 a gram, bro, even at \$5
14 a gram you're still dealing with 4 grand a month and I
15 only have 1300 bucks to play with. You know what I
16 mean? So that's still puts me in a bad, bad position.

17 Q I'm just interested in that,
18 because here you say you earn \$5,120 a month. And you
19 spend \$3,747 a month. So that leaves approximately --
20 let's see, \$1200 additional left over.

21 A Yeah. But I mean, there's other
22 things I've got to spend money on, right? Like probably
23 500 or 750 of that is going to groceries and gas and
24 everything else, right? So --

25 Q Well, Mr. Davey, you've already set
26 that out in your list here, what you spent on it. So,
27 if you were to cut out marijuana cultivation --

28 A Yeah.

1 Q -- according to your own evidence,
2 you would save about \$830 a month. 330 for growing, 500
3 for electricity.

4 A Yeah.

5 Q So that's going to reduce your
6 expenses to about \$2900, right?

7 A Yeah. Yeah.

8 Q So that means that you would be
9 able to spend around \$2200 a month on marijuana.

10 A But do I trust it? No, I don't.
11 Not at all. There's no way in hell. I don't know -- I
12 don't -- yeah, yeah. I'll stand behind that 110
13 percent. I trust what I grow, and that's it.

14 Q So it's not really an issue of
15 affordability.

16 A No.

17 Q It's an issue of trust.

18 A That's -- trust would be number
19 one. Number one for me, yeah. That's it.

20 Q Okay.

21 A This is my body, and I don't want
22 anyone else dealing with it, I want to deal with it.

23 Q Now, you say that you haven't
24 contacted the Licensed Producers because you don't trust
25 them.

26 A No.

27 Q Now, of course, you're covered by
28 the interlocutory injunction that permits you to

1 continue to cultivate.

2 A Yeah. Yeah.

3 Q In accordance with the terms of
4 your licence. Right?

5 A That's it.

6 Q Okay. But in the event your action
7 is dismissed, and the injunction is set aside, which
8 means that you can't lawfully grow marijuana for
9 yourself any more, you would then approach the Licensed
10 Producers, wouldn't you, to buy from?

11 A No, I wouldn't. Why would I do
12 that? Why would I go put myself in that position, to
13 buy stuff I don't trust? That -- you don't -- like,
14 that's what I'm trying to explain to you. I don't trust
15 it. That's it. I don't trust it. And as far as it
16 goes, they're out there to make money. That's why it's
17 out there. That is exactly why it is out there. It's
18 the same as liquor. I mean, it goes around, because
19 everyone wants it, and the producers want to make the
20 biggest, best they can. And it's not the best, it's the
21 most quantity, right? So, yeah, that's it. I want what
22 I want for my body. I want to know exactly what goes
23 into it, and exactly what I'm getting out of it. That's
24 it.

25 Q So even if the only lawful supply
26 available is these Licensed Producers, charging \$5 a
27 gram --

28 A I would grow my own. I would grow

1 my own. That's it. That's it. And, yeah, I would go
2 to court, no problem. I have no problem with that.
3 This is my life. I use it for only my good -- my --
4 anything that happens to me is me. That's not going to
5 anyone else.

6 Q I'm just going to check my notes,
7 if I have any further questions for you.

8 A Go ahead.

9 Q Just getting back to inspections,
10 you said you've never had your facility inspected.

11 A I -- not for me. I haven't had it
12 inspected for me. You can ask Brian, because Brian has
13 been there for longer than I have, and it's his -- where
14 he was at. So I don't know.

15 Q Mm-hmm.

16 A I mean, as far as it goes, I don't
17 deal with any of that. So --

18 Q And I assume, of course, Health
19 Canada has never inspected your facility.

20 A Not from my calling. I -- like I
21 say, I don't deal with that stuff, so, yeah, that's it.

22 Q And would you have any concerns
23 with Health Canada inspecting --

24 A Never. Never. Come on over. Come
25 over. No problem.

26 Q Without a warrant at any time.

27 A Not a problem.

28 MR. BRONGERS: No further questions.

1 Thank you.

2 JUSTICE: Re-exam?

3 **RE-EXAMINATION BY MR. CONROY:**

4 Q Just to clarify first of all, there
5 is three affidavits that you swore, correct? Do you
6 recall?

7 A I kind of recall, I don't recall.

8 Q You remember swearing an affidavit
9 for purposes of the injunction, the first affidavit that
10 you swore?

11 A Yeah. Yeah.

12 Q Okay. And that affidavit was sworn
13 January 8th, 2014, I assume you don't remember the date,
14 but you remember doing the first affidavit?

15 A Yeah. Yeah. Yeah, yeah, yeah.

16 Q And then the second affidavit you
17 did, do you remember what you were responding to there?

18 A No.

19 Q Okay. Do you remember that the
20 defendants asked a number of questions and you put the
21 answers in the affidavit and then swore that affidavit?

22 A Yeah, yeah, yeah, yeah, yeah, yeah.

23 Q Okay, and then the third affidavit
24 was simply attaching those affidavits?

25 A Yeah, yeah, yeah. Yeah.

26 Q You said you haven't worked since
27 2000.

28 A I haven't worked since 2000. June

1 16th.

2 Q And by that I take it you meant
3 working in the commercial body building things that you
4 used to do?

5 A No, exactly, exactly, yeah. Yeah.

6 Q But what do you do every day?

7 A I work on my -- I work on my
8 growing.

9 Q Okay.

10 A I make sure my plants are all there
11 and healthy and everything is good, so.

12 Q Okay, my friend asked you if you
13 had any other issues except pain and memory. Why do you
14 use this big walking stick?

15 A Because my left side of my body is
16 totally numb. And I wasn't supposed to walk, and that's
17 it. I can't -- I fall down often, so yeah, that's it.

18 Q So, you've said pain and memory,
19 and that's a balance -- would it be fair to describe
20 that as a balance problem?

21 A That's balance, yeah, yeah, yeah,
22 yeah, yeah, oh yeah.

23 Q Anything else like?

24 A No, I think it's just my balance
25 and my memory is bad, so.

26 Q You told my friend that you first
27 experienced some marijuana use in 2002 when you were at
28 GF Strong Rehabilitation Centre?

1 A GF Strong, yeah, yeah, yeah.

2 Q But your first application, if I
3 have it correct, is July -- or the date of issue of your
4 first application was July 16th, 2010?

5 A Yeah, yeah, yeah, yeah.

6 Q And that is when you had a
7 designated grower --

8 A That's Jim Walsh, yeah.

9 Q -- indicated at page 2,007 of the
10 joint book, Volume 6.

11 A Yeah, that's it.

12 Q And then what I have indicates that
13 your next licence was July 19th, 2011, to July 19th,
14 2012, and that was you growing, or getting a personal
15 production licence for yourself?

16 A Yeah, it didn't work out, so.

17 Q Okay. So, originally a designated
18 grower, then you tried to grow for yourself, and then
19 the next one --

20 A Was another grower, and it didn't
21 work out again, so I just have bad news of those
22 growers, so.

23 Q Okay, let me just -- there is the
24 authorization to possess, July 19th, 2012, and a personal
25 production licence July 19th, 2013. So, designated
26 grower, then personal production, and then another
27 personal production but you are saying somebody else was
28 doing it for you?

1 A Yeah, yeah, yeah.

2 Q And then November 1st, 2012, to July
3 19th 2013, was again a renewal of your personal
4 production?

5 A Yeah.

6 Q But just carried on under the same
7 -- with the same arrangement?

8 A Yeah.

9 Q Or a different arrangement? Or do
10 you know?

11 A I don't remember. But I think it
12 was, is that the last one?

13 Q No, the last one is your current
14 one, right?

15 A That is the 25g a day, right?

16 Q Yes.

17 A That -- the one before was, yeah, I
18 think it was the same, I think it stayed the same as it
19 went 14 again, so that one, the last one is to when I
20 got bumped up, so.

21 Q Okay, I am looking at page 2,091 of
22 the book, joint book, authorization to possess says July
23 19th, 2012, is your authorization to possess, and the
24 next page is the personal production, and that is 69
25 plants, correct?

26 A Yeah.

27 Q Okay. And so that's the one which
28 is indicated to be on 7th in Mission, and are you saying

1 that you did that yourself, or somebody --

2 A Yeah, that was one didn't work out
3 very well. Yeah. Yeah. That was me trying to do it
4 myself, and, yeah, it didn't work out, so.

5 Q All right. And then the final one
6 is page 2153, the authorization to possess, July 19th,
7 2013 from February 18th, 2013. I'm sorry, that's the one
8 -- sorry, that's not the final one. That's the one that
9 -- you look at that page, 2154, has that name of the
10 female on it. Do you see that?

11 A Yeah. Yeah, that's -- that's still
12 the bad news one, so --

13 Q But that's still a period when
14 somebody else was --

15 A Yeah, yeah.

16 Q -- doing it.

17 A Yeah, yeah, yeah, yeah. That was
18 the last -- yeah, that was the last of it there, so.

19 Q So the last one is 2171 of the
20 book. Your authorization to possess from September,
21 2013, with a personal production licence. On 2172,
22 correct?

23 A Mm-hmm. Yeah, there's -- that's
24 it. Okay. Yeah.

25 Q It's that last one which you worked
26 together with Mr. Alexander.

27 A Exactly. Yeah.

28 Q Okay.

1 A That one's been the key. That's
2 the best part of all. I haven't had any job as good as
3 this yet, so --

4 Q All right. Can you clarify us what
5 you do in a typical day? And what I'm wanting you to
6 clarify -- my friend asked you some questions about
7 using every half hour, and this sort of thing, which I
8 took it to mean smoking or vaporizing.

9 A I -- yeah, yeah. Yeah.

10 Q Just a minute. And then you talked
11 about using the cookies. So, I just want you to clarify
12 for us what do you do in a typical day, smoking and/or
13 eating, or whether it's tea or what? Just give us a
14 typical day.

15 A Okay. On a **reasonable day,
16 right?

17 Q That's current.

18 A Okay. Yeah. I'll give you a
19 current typical day. A current typical day will start
20 with -- I wake up, I smoke a joint in the morning.
21 Smoke --

22 Q When you say "smoke" -- you
23 vaporize, or --

24 A I -- I vaporize.

25 Q Okay.

26 A But, I mean, from the first joint
27 of the day, before my vaporizer's heated up, and
28 everything -- I'll roll a joint. And then that will be

1 the one-tenth of what I used to smoke, right?

2 Q Right. Let me just clarify. So,
3 sometimes you roll an actual joint, like a cigarette --

4 A Yeah, yeah. Yeah.

5 Q -- and smoke that while your
6 vaporizer is --

7 A Yeah. Well --

8 Q -- warming up.

9 A Yeah, yeah, yeah, yeah, yeah.

10 Q Okay.

11 A And then I'll make breakfast, have
12 breakfast. And then I'll sit down, watch a little TV.
13 I'll have a puff on the vaporizer, and just go out just
14 during the day. And then a small 50-gram cookie for the
15 day. And, yeah, that's probably about five to seven
16 grams for that. Yeah.

17 Q Okay.

18 A And I'll smoke the vaporizer all
19 day.

20 Q And then, as I understand it, you
21 eat a cookie at night.

22 A Oh, yeah. And then I eat a big
23 cookie at night. That's a bedtime cookie. Yeah.

24 Q Okay, so -- so you're -- correct
25 me, now, if I'm not getting this right.

26 A Yeah. Yeah.

27 Q You're vaporizing regularly
28 throughout the day.

1 A Oh, yeah. Yeah.

2 Q And you have a cookie during the
3 day, a smaller cookie.

4 A A smaller cookie, 50-gram cookie.

5 Q And a bigger cookie at night.

6 A Yeah. That's it, yeah.

7 Q And when -- what about the teas and
8 oils?

9 A The teas, I'll have tea, if I feel
10 like it in the morning I'll have -- I'll start off with
11 a cup of tea. Start with tea, and, yeah. I'll make
12 coffee, and I'll have coffee, and a bit of tea, and
13 that's it. That's it. I mean, I'll try every way I
14 know. So --

15 Q Okay. And the oils -- am I
16 understanding that that goes into the batter of -- to
17 make the cookie? Or to the --

18 A No, the oil -- the oil is -- it's
19 made of a grapeseed oil.

20 Q Oh, yes.

21 A And I use the grapeseed oil, and
22 it's for outside of the body, right? So, any pain on
23 any part of my body, I can take care of it with that.

24 Q You put it on -- on the outside.

25 A Outside, yeah. Yeah, yeah, yeah,
26 yeah.

27 Q How much cannabis do you need to
28 make the oil?

1 under your tongue?

2 A No. No.

3 Q Okay.

4 A Never, never had that. I did the
5 pill one time and that was the only thing I -- I went
6 with the pharmaceuticals.

7 Q Just on one occasion?

8 A One, one occasion. I couldn't
9 stand it. It made me sick. It was not good, so.

10 Q You don't remember the name?

11 A No, don't remember the name. I
12 remember --

13 Q My friend -- sorry?

14 A I remember it was a clear, like a
15 -- it's like a little golden clear pill.

16 Q Okay.

17 A So.

18 Q My friend say Nabilone but you
19 don't remember that name?

20 A I don't remember. I have no idea.

21 Q Marinol, have you heard of that?

22 A I -- no, no. And once again I say
23 that I don't like to use those pharmaceutical
24 medications because they're call crap.

25 Q Okay. And then to do with the
26 income issue, my friend put to you that you could reduce
27 your expenses, the electrical and other, I think, by
28 down to basically you having \$2200 a month. Do you

1 remember that?

2 A Yeah, I remember that, but yeah
3 it's --

4 Q So that -- so if I'm understanding
5 correctly, you would only have \$2200 a month to spend on
6 purchasing marijuana --

7 A And not having anything left over,
8 so yeah that's crazy.

9 Q And nothing else?

10 A Yeah, yeah. That's --

11 Q Okay.

12 A I would never, ever do that, so.

13 Q Your income is roughly 5,000 a
14 month and this would be roughly getting close to half
15 your income per month?

16 A Yeah, yeah, yeah, yeah. And well,
17 yeah, that's a -- that's at the cheap price. If it's
18 the good -- if it was at the regular price that would be
19 way over my total budget.

20 Q Okay.

21 A I mean I get 5 -- it would 7500 if
22 it was 10 bucks a gram, so.

23 Q All right. So my friend suggested
24 to you that affordability wasn't the issue, it was
25 control over what you're producing.

26 A Yeah.

27 Q So, and you mention a number of
28 times your distrust of others and wanting to control --

1 A That's right, yeah.

2 Q -- what's in your plant and so on.

3 A Yeah, yeah, yeah.

4 Q But am I right that affordability
5 is another factor?

6 A If -- they both play a role in it.
7 Yeah, that's it. That's it. Hand in hand.

8 Q All right. My friend ask you
9 about having anything to do with the Licenced Producers.

10 A Yeah.

11 Q What we call the LPs.

12 A Yeah.

13 Q Have you been watching news or
14 reading things, anything about them from time to time?

15 A I have. I, I always, always keep
16 up on the whole what's going on in our community. So
17 yeah.

18 Q Have you heard about recalls of
19 some of the product? Things like that?

20 A I haven't heard too much about
21 recall some of the product, but I mean as far as it goes
22 I want to know -- I, I don't know. Like I say, I want
23 to know exactly how that plant was grown. I'm putting
24 it in my body, I want to know exactly how it's grown
25 from beginning to end. I plant it from, from being
26 plant in a cooling cube to big potted plants and I watch
27 them grow all the way up, right? And then I, I trim
28 down. So that's it. And I -- I know the medication is

1 mine. That's it.

2 Q Okay thank you Mr. Davey.

3 A Thank you very much.

4 (WITNESS ASIDE)

5 JUSTICE: I think we're concluded and
6 I'll see -- we will start again at 1:30.

7 **(PROCEEDINGS ADJOURNED AT 12:24 P.M.)**

8 **(PROCEEDINGS RESUMED AT 1:34 P.M.)**

9 MR. CONROY: The next witness, Justice
10 Phelan, is Brian Alexander. Mr. Alexander, if you'd
11 take the stand.

12 For the record, his affidavit appears in
13 the joint book, Volume 1 at tab 1.

14 **BRIAN ALEXANDER, Affirmed:**

15 THE REGISTRAR: Please state your
16 name, occupation, and address for the record.

17 THE WITNESS: Brian Alexander.
18 Occupation, framer. Address is 2459 Pauline Street,
19 Abbotsford, B.C.

20 MR. CONROY: If his affidavit could be
21 marked, I guess, as Exhibit 2. And then would you
22 please answer any questions my friend has.

23 THE WITNESS: Yes.

24 **(AFFIDAVIT OF BRIAN ALEXANDER MARKED EXHIBIT 2)**

25 JUSTICE: I think we're ready.

26 MR. BRONGERS: Thank you, Justice
27 Phelan. Before I begin my questions for Mr. Alexander,
28 though, there's just one small preliminary matter. I

1 just want to remind the court, as of course no doubt
2 aware, Mr. Alexander is not one of the plaintiffs in
3 this case. And so as a result, I am not intending on
4 asking him any questions about his medical history or
5 his finances, even though he is a medical marijuana
6 patient. The only reason I raise it is because on
7 reviewing one of his affidavits that was tendered in
8 January of last year, there is an allegation at
9 paragraph 6, a brief and a vague one, about his personal
10 concerns regarding affordability of marijuana under the
11 new regime, as well as a line about his medical
12 condition.

13 And I hope that my friend will not be
14 relying on that evidence in his closing argument.
15 Otherwise, then, I suppose we would need to have a
16 ruling on it. But I just wanted to confirm perhaps with
17 my friend that he is not relying on paragraph 6 in
18 support of any allegation of affordability of marijuana.

19 MR. CONROY: I do take the position
20 that it's part of the evidence, and it's relevant. He's
21 a patient. His authorization is there as an exhibit,
22 and he is -- again, it's a constitutional challenge in
23 which you've got all sorts of statements by all sorts of
24 people, most of them not even sworn affidavits, both in
25 my friend's materials, Ms. Ritchot in particular, and in
26 some of our affidavits that they've decided not to
27 cross-examine on, such as Mr. Wilcox's affidavit, or
28 Danielle Lukiv's affidavit. They have all these

1 exhibits from all of these patients to try and give you
2 the full sort of picture of all the problems that the
3 patients say they're having. So, I submit that this is
4 relevant and my friend can cross-examine him on it.

5 MR. BRONGERS: We have two
6 difficulties with that, Justice Phelan. First of all,
7 there is nothing in the pleadings about Mr. Alexander's
8 condition or affordability. More importantly, because
9 he's not a plaintiff, we were never given an opportunity
10 to examine him for discovery. If indeed he had been
11 joined as a plaintiff, or if there had been allegations
12 along these lines, we would have conducted an
13 examination for discovery so I could do a proper cross-
14 examination on his medical condition, on his finances,
15 on his ability to afford marijuana. I would be doing a
16 cross-examination blind, if I'm forced to do that in
17 this case, which would be enormously prejudicial to the
18 Crown.

19 JUSTICE: But no objection was taken
20 to the tendering of his evidence.

21 MR. BRONGERS: Except his evidence was
22 tendered in support of the injunction application. And
23 it was not understood that he would then be relying on
24 that one sentence at the actual hearing of the trial.
25 And that's why I guess it's a good thing that I'm
26 clarifying. I thought this would be an uncontroversial
27 matter that my friend would say, "Yes, that's right,
28 there's this one sentence in there that we are not

1 relying on, and that's fine."

2 But if the court is going to put any
3 stock in the notion that here we have a fourth patient
4 who is alleging that there are affordability issues with
5 respect to the new medical marijuana regime, I would ask
6 for an opportunity to discover -- first of all, I would
7 insist that my friend should amend his pleadings so that
8 we understand what the allegation is specifically. But
9 secondly, that we would get an opportunity to examine
10 for discovery. And we submit that it's far too late at
11 this stage, and that it's really unnecessary to my
12 friend. He has essentially three fact patterns that
13 he's putting before the court with respect to
14 affordability of marijuana and the medical need of these
15 individuals: Mr. Davey, Ms. Beemish, and Mr. Allard.
16 We had not understood that there was going to be a
17 fourth one as well, Mr. Alexander.

18 And again, I repeat, this would be very
19 prejudicial to us, and if the court is considering
20 allowing this, again, we would ask that this witness be
21 stood down and that we be given an opportunity to
22 examine him for discovery.

23 JUSTICE: Well, I'll let your friend
24 respond to this.

25 MR. CONROY: This comes as a complete
26 surprise to me. I have not heard of this prior to a few
27 minutes ago. And it's a *Charter* challenge. We have
28 picked a few people to try and have some representatives

1 of the group. You're entitled to introduce
2 hypotheticals and so on, in these types of cases. And
3 so I say -- but more importantly, he, as you've heard
4 from the previous witness, has become the other patient
5 who's working with the patient who has brain damage.
6 And that the two of them working together in that type
7 of a *modus operandi* is how it's working well for them.
8 And I submit you should hear that evidence.

9 His own personal situation -- he's
10 indicated that there in paragraph 6, and my friend can
11 cross-examine him on it. I don't see where the
12 prejudice is, given that this is a -- we've picked
13 representatives of the patients. Otherwise we'd have to
14 call a huge number, and make them all plaintiffs, and
15 have them all subject to discovery and cross-
16 examination.

17 JUSTICE: Mr. Brongers, is it your
18 position that the only people that you could -- well,
19 you can only discover parties. I appreciate that. Are
20 you taking the position that the plaintiff can't elicit
21 affidavit evidence from non-parties in support of their
22 position?

23 MR. BRONGERS: That is our position,
24 yes.

25 JUSTICE: On what authority?

26 MR. BRONGERS: Well, it's -- it's
27 actually more the issue of the fact that the statement
28 of claim says nothing about this. We thought that the

1 factual evidence, in terms of lack of affordability and
2 medical need for marijuana, was limited to those three
3 plaintiffs who are patients and who set out detailed
4 information about their ability to afford marijuana and
5 their medical need for it.

6 I was only planning today -- I'm
7 surprised this has become such a big issue. I was
8 planning on a relatively brief cross-examination of Mr.
9 Alexander, dealing with the work that he does to assist
10 Mr. Davey, the plaintiff, in terms of growing his
11 marijuana. So these will be questions about their
12 operation and how much it costs.

13 I was not intending on asking the same
14 questions I asked Mr. Davey this morning about how much
15 money he earns, what he spends it on, when he first
16 started using marijuana, whether he uses it for
17 recreational purposes, and whether he uses it just for
18 medicinal purposes. I'm not sure it's fair to the
19 witness himself that he would be subjected to these
20 questions when I'm not sure the witness was expecting
21 that that would be part of his cross-examination today.
22 This is one sentence in --

23 JUSTICE: I was going to say, this
24 seems to be truly the tempest in a teapot.

25 MR. BRONGERS: Maybe.

26 JUSTICE: It's one sentence. He's
27 concerned about affordability. Well, you know, in the
28 scheme of things, it's a sentence. How much weight the

1 court's going to give to one person's concern about
2 affordability -- affordability may well be an issue, and
3 your friend is entitled to establish that there are
4 concerns out there. But the fact that there is one more
5 person who's concerned about affordability, where there
6 might be three or four people downstairs who are
7 concerned about affordability, okay. What that's --
8 this case isn't going to rise and fall on this
9 gentleman's concern for affordability.

10 MR. CONROY: And we are producing an
11 expert, Zachary Walsh, that addresses the affordability
12 issue.

13 JUSTICE: Yes.

14 MR. BRONGERS: Your statement, Justice
15 Phelan, has assuaged any concerns we have.

16 JUSTICE: Yes. I didn't think --
17 okay. So, like you, I thought that this would be fairly
18 brief. I think we have affordability and we have now
19 calm in the teapot, and so we will move on.

20 MR. BRONGERS: Thank you, Justice
21 Phelan.

22 **CROSS-EXAMINATION BY MR. BRONGERS:**

23 Q So Mr. Alexander, the questions I'm
24 going to ask will relate to your affidavit which I hope
25 you have in front of you.

26 A Yes.

27 Q The Joint Book of Documents at page
28 1 and following.

1 A Yes.

2 Q And also I'll have some questions
3 about Mr. Davey's affidavit which is also in that same
4 book there, starting at page 226. Is that all right?

5 A Yes.

6 Q Thank you. So I'll begin by asking
7 you some questions about your background just to
8 confirm. You were born on May 31st, 1970?

9 A Yes.

10 Q So that means you're now 44 years
11 old?

12 A Yes.

13 Q At paragraph 2 of your first
14 affidavit, so at page 4, you explain in terms of your
15 profession that you are a self-employed contractor who
16 does renovations. Is that right?

17 A Yes.

18 Q Could you just tell the court what
19 kind of contractor you are? Residential, commercial?

20 A More of a renovation contractor.
21 Somebody needs a door put in, I get called. Somebody
22 needs a wall built, I get called. Drywall. Kind of
23 spent since I've been 19 building houses and whatnot.

24 Q So you described yourself I noticed
25 earlier as a framer. Is that a better description?

26 A It's pretty well what everybody
27 knows that business like, yes.

28 Q And how long have you been doing

1 this?

2 A Well, pretty well since I've been
3 19.

4 Q Just doing the math then, so you've
5 been a contractor for 25 years?

6 A Yeah.

7 Q What other kinds of jobs have you
8 done in your life?

9 A As getting out of high school I've
10 done painting, I've done Capp's Bicycle, I worked there
11 for three months. I've worked at Streifel Industries
12 making saw blades for another three months until pretty
13 well I became a framer.

14 Q When did you start becoming a
15 framer? Around 19 or --

16 A Yeah, pretty well 19 is when I
17 pretty well got into the --

18 Q And what kind of education or
19 specialized training have you had in order to do that
20 profession?

21 A Basically just hands on for many
22 years.

23 Q No formal training?

24 A No.

25 Q And how much do you work as a
26 framer? A 40 hour week or how does it average out?

27 A Lately at least 25 to 30 hours a
28 week.

1 Q And is that a good average
2 representation of how much you work during a year?

3 A It depends on how much other work I
4 have in my licence ability. If I'm super busy that week
5 there, then I'm less for working. So I'm kind of basing
6 it on pretty well average, yeah, 25ish.

7 Q So you don't work a full 40 hour
8 week?

9 A No.

10 Q At paragraph 7 of your affidavit,
11 to your first affidavit, you say you're a caregiver to
12 Mr. Davey. You assist him with such things as buying
13 groceries, that sort of thing.

14 A I don't buy his groceries, but I
15 take him down to the grocery store and if he needed
16 anything I'd go get it. I know what he's gone -- well,
17 not knowing what he's gone through, but I see how hard
18 he's had to be to get to this point, and it's like he
19 doesn't get much help. He gets pretty well walked on
20 more than he does get help.

21 Q And you help him as a volunteer,
22 right? He doesn't pay you for your assistance.

23 A No, he doesn't, no.

24 Q And how many hours a week would you
25 say you are spending helping Mr. Davey?

26 A Probably -- it used to be probably
27 about 10 hours a week I used to run him around and take
28 him to Costco or anything he needed. I always made sure

1 that he got everything he needed. He never had a
2 vehicle at that time, right? So I was pretty well his
3 wheels.

4 Q So how did this arrangement come
5 about? When did you first meet?

6 A Shawn used to be my neighbour two
7 houses down, lived there for pretty well eight years.
8 Didn't really know him, I just have seen him there and
9 seen his friends and stuff. I think -- I don't -- how I
10 actually introduced myself, we've kind of known, each
11 other so it's kind of tough.

12 Q Do you remember what year you met
13 him?

14 A I'd say at least two years that
15 I've actually met, met him. But working with him, yeah,
16 a year and a half, that pretty well been together.

17 Q That's helpful, because you -- your
18 personal use production licence and your decision to
19 grow together at the same property, that licence came
20 into effect on September 26th, 2013. Does that help you
21 a bit in terms of recalling when you two decided to grow
22 marijuana together?

23 A Oh, when we started growing, it was
24 pretty well that time. It was about a year and a half
25 ago. But I thought you meant how well have I known him,
26 or when did I meet him. There was a difference on that
27 one.

28 Q There is indeed. But more

1 significantly, this arrangement came about in 2013.

2 Would that be fair?

3 A Pretty well, yeah.

4 Q And if you could just explain to
5 the court the nature of your ownership of this property,
6 or your lease over this property. I must confess I had
7 understood from your affidavit that you own the growing
8 property.

9 A No, I don't own. I rent it off a
10 friend that owns the property. He lives in -- I won't
11 say where, but you guys have his information on certain
12 pieces of paper. So basically I just rent the property
13 from him. And also the -- trying to think of the right
14 word. Can't think of the right word, or -- kind of take
15 care of his property for him, make sure the lawn's cut,
16 make sure everything's done that Shawn can't do.
17 Everything like that gets done on that behalf. Anything
18 blows up, the hot water tank blows up, I get a phone
19 call like I did two days ago. I kind of do all the
20 maintenance on the property too.

21 Q So when did you start renting this
22 property?

23 A It was probably pretty well when my
24 licence started, which was just before, that I was
25 interested in renting it, just before my licence was --
26 which was -- I can't remember.

27 Q 2013?

28 A No, it was -- no, my licence ended

1 '12, so would have been a year before that time.

2 Q About 2012, then.

3 A That's when it started. That's
4 probably when I was looking into getting the property
5 from the guy.

6 Q Okay. So you rented that property
7 in 2012. And if you could just describe the property a
8 bit for it. We know it's a five-acre property, right?

9 A Yeah, it basically -- driveway is
10 here, gate, drive up the driveway, house is off to the
11 left-hand side, with a wrap-around driveway. Creek. At
12 the far end of the property is a building that is an
13 outbuilding. Everything was already powered, and there
14 was already power already up there. There's chain-link
15 fence, it goes down both sides to the Beech Creek.
16 There's a cable gate going across the driveway, so
17 nobody can get a little farther that we don't want.
18 It's all treed.

19 Don't know what else you need about the
20 property, right?

21 Q So you started leasing it in about
22 2012. At that point, was there somebody living in the
23 house when you leased it?

24 A No, there was -- moved out. Of
25 course I had to clean up the house, because basically
26 renter moved out and didn't leave it well. And I spent
27 almost a week taking garbage to the dump and whatnot.
28 And that's kind of when I offered it to Shawn. Like, we

1 actually started working before -- like just at that
2 time frame. But he didn't move in just yet. We talked
3 about it, and other stuff, before I actually just let
4 him -- I don't want somebody to just jump into
5 something. I've got to make sure that he wants to do
6 before I -- I'm not --

7 Q Right.

8 A He has to understand the
9 consequences of living there too, right?

10 Q Do you remember approximately when
11 he moved in? Again, keeping in mind that you started
12 leasing it in 2012, you got your licence to grow there
13 in September of 2013, if that helps at all in
14 remembering when he moved in.

15 A I think as his licence was
16 transferred, or getting transferred, or whatever it was,
17 I think we negotiated about him moving in about that two
18 months prior to his licence actually getting there.

19 Q In the summer of 2013, maybe?

20 A Yeah, could have been. I'm bad
21 with dates, too. As you can see, my birthday.

22 Q Okay. And so just to confirm then,
23 your financial arrangement with him, then, is that he
24 rents that residence from you for \$1,000 a month. He
25 pays you the rental amount?

26 A Personally, yes.

27 Q Right, and you're paying rent of
28 course to --

1 A I go down to the bank and deposit
2 the money in the bank account and send that out to the
3 homeowner.

4 Q I see. So yes, so you have a lease
5 with the home owner as well.

6 A Yes.

7 Q How much are you paying in rent for
8 that property?

9 A I pay 500 towards the outbuilding.

10 Q You don't pay any rent for the main
11 property itself?

12 A No. Not for the property itself,
13 no. It's more or less -- if I was to rent the whole
14 thing I'd be looking at \$1500 for the house, the
15 property and then blah, blah, blah.

16 Q I think I understand now. So in
17 fact Mr. Davey rents the residence from the owner of the
18 entire property. You just take the cheque from him and
19 deliver it to the owner of the property.

20 A Pretty well. It's more of a -- we
21 both share all the bills because we both have a licence
22 there.

23 Q Right.

24 A So whatever the bills are, we split
25 the bills in half. I don't -- didn't want the house,
26 but Shawn said that he'd take the house to live in, so
27 he pays a little bit more to live in the house. So
28 that's worked out better for everybody. He could have

1 stayed at his older residence where he used to be, but
2 he likes being hands on.

3 Q Would this be another way of
4 describing the rental arrangement that you have with
5 this other person who owns the property, that you're
6 paying a total of 1500 in rent?

7 A Yeah.

8 Q To use the entire property?

9 A To take the whole property, 1500,
10 yes.

11 Q So I assume that the outbuilding,
12 is "barn" a fair word to describe it or would you prefer
13 "shed" or --

14 A Pardon me?

15 Q I'm just trying to figure out a
16 good word to describe the outbuilding. I keep calling
17 it a barn, but maybe that's not fair.

18 A To me it's -- some of the numbers
19 he might have mentioned were -- it's actually 35 by 45.
20 It's all insulated. It's not just a barn. It's roof
21 trussed and it's foursquare walls, not one of those lean
22 and bars that's going to fall down next week. To me
23 it's a decent building.

24 Q Okay. Now, given that you're a
25 contractor you could probably do this. How much would
26 you estimate it would cost to build a structure like
27 that?

28 A A structure like that, you're

1 probably anywhere from 50 to 60 thousand dollars.

2 Q Would it be fair to say it's
3 probably worth that since you keep it in good shape?

4 A Yeah.

5 Q And when did you start growing
6 marijuana in it? I know you got your licence in
7 September of 2013. Is that when you started or --

8 A I started building just before
9 then.

10 Q I'm sorry, Mr. Conroy reminds me
11 I'm talking about when Mr. Davey started growing and it
12 was September 2013.

13 A Okay.

14 Q But you may have started earlier
15 than that.

16 A Yeah, it was already -- before
17 Shawn was actually there, I already had what I needed
18 built, how I wanted it built. I was just finding it
19 tough, me personally to afford all the bills. Like I
20 had my own residence, three kids, so it starts to add
21 up. I can't go to work every day to take care of -- all
22 my bills was adding, so that's why we kind of did it
23 together and it split the bills in half, which makes
24 life a lot easier for me and my family.

25 Q So you were growing alone then from
26 approximately September 2012 to September 2013, and then
27 after that the two of you were both growing --

28 A Yes.

1 Q -- in that facility, correct?

2 A Yes.

3 Q Great. Now, at paragraph 4 of your
4 first affidavit, it's at page 5 of the Joint Book of
5 Documents, the first sentence, your evidence is: "Based
6 on your experience as a contractor, I primarily
7 constructed the facility using half-inch plywood and no
8 drywall and ensuring lots of venting. We also bleach
9 and wash and clean the site constantly. We have never
10 experienced any mould or other significant problems of
11 that nature." What do you mean by based on your
12 experience as a contractor?

13 A For a few years there, I was doing
14 quite a lot of grow-op clean up. Busted grow ops in
15 Maple Ridge, Mission, and you see the problems that they
16 cause, and what you can do if they're illegal. So, you
17 kind of learn from that. Like I spent pretty well two
18 years in between -- like back and forth of how not to do
19 things and how to do things. Its just -- you don't use
20 drywall. Instantly, that's just, I know. It is mould.
21 Just by keeping everything cleaner, water messes, all
22 that stuff, it makes mould.

23 Q So, based on your experience
24 beforehand, you are saying you knew what to do in order
25 to fix up this building to get it in a state where you
26 could grow marijuana safely, right?

27 A Yes.

28 Q When did you do this work to the

1 putting in the plywood and --

2 A Pretty well in the two months
3 before I actually had my licence. I started, like it
4 was all blown in attic insulation, you could start
5 seeing the poly was -- pulled the whole works -- it's
6 got to be done anyways, because eventually the poly is
7 going to rip down, the insulation is going to fall down,
8 you should put it up. So, it is kind of a mutual
9 agreement that I kind of help him clean up the building,
10 and I kind of get the space that I need.

11 Q And how many hours of work was
12 that? Or weeks, or whatever is easiest for you to
13 estimate?

14 A If -- I'd probably at least say a
15 month.

16 Q And you did that work by yourself?

17 A Pretty well, yeah.

18 Q Mr. Davey didn't assist you with
19 that I'm sure?

20 A Well I -- no, back then I didn't
21 have anybody, I don't -- you don't want to tell anybody,
22 pretty well, what you're doing and what not. So, you
23 kind of do it yourself and kind of make it -- I don't
24 like advertizing, "Yeah, come on over, help build walls,
25 help" -- it is none of their business what I'm doing.

26 Q You didn't hire anybody to do it?
27 You did it --

28 A Not at that time, no. Before I

1 actually got going on covering up with plywood and
2 stuff, I actually did hire an electrician. He came into
3 the building and certified that all the electrical was
4 up to date, was fine, and after I was done building, I
5 brought the electrician back, and we did a load test and
6 all the circuits, so I wasn't pulling too much, blowing
7 things up. Heating things -- yeah. Everything was
8 tested after I was done building.

9 Q And you felt that was important to
10 do, right?

11 A It is. It has got to be safe. Now
12 that Shawn has moved in with me, just -- I did it up to
13 my standards, but now that Shawn is -- I have to -- it
14 is completely different. Everything has to be safe for
15 Shawn. You can't have what I've seen -- cords rolled
16 across the floor, cords hanging off ceiling, you can't
17 have that with Shawn. Because if he stumbles, he grabs
18 for whatever he can to -- so it all has to be safe.

19 Okay, the next one I am going to look at
20 is putting chair rail all the way around the building,
21 but that is more or less for Shawn, it's not for what
22 has to be done.

23 Q And according to your affidavit,
24 the cost of that inspection was \$400, right? That's at
25 paragraph 4 of your affidavit?

26 A The cost wise of what?

27 Q Oh, sorry, I've got the wrong
28 reference. That is in your second affidavit, at

1 paragraph 66, it's between 66 and 70. So, if we turn to
2 page 255. Yeah, top of page 255 it seems to say the
3 cost of the inspection is \$400. It's actually Mr.
4 Davey's evidence, but I just wanted you to confirm
5 because --

6 A Yeah, at the very end I pretty well
7 spent \$400 to get the final --

8 Q My mistake, exactly, it's Mr.
9 Davey's affidavit, yes. So you confirm that you did
10 spend \$400 to get that electrical inspection done?

11 A Yes, it was spent, yes.

12 Q Did you have any other inspections
13 done say by as a certified fire safety inspector?

14 A No.

15 Q Why not?

16 A Didn't know I had to.

17 Q I don't think you have to, I am
18 just curious if that is something that you thought
19 about?

20 A It's not necessarily knowing that
21 you have -- I didn't know that these ones had to get all
22 the inspections. Like, if Health Canada walked in,
23 fine, they can come walk through it. I didn't know I
24 had to inform everybody to what I was doing, and let
25 them to walk through too. If Fire Department showed up,
26 I'd let them walk through it. I am not -- I have
27 nothing to hide.

28 Q Did you have a home inspector

1 inspect it, just a general home inspector?

2 A Not from Health Canada, no.

3 Q No, I don't mean from Health

4 Canada. A private home inspector.

5 A Not since I've rented the property,
6 no.

7 Q So the only inspection was the
8 electrical one done, correct?

9 A Yeah, the electrical one, yes.

10 Q In your affidavit, I think it is,
11 yes, at Affidavit No. 1 at paragraph 4. Yes, page 5 of
12 the Joint Book of Documents.

13 A Okay.

14 Q Paragraph 4, your second sentence:

15 "Similarly I ensured that all of the
16 electrical work was reviewed by a certified
17 electrician and installed a heat kill unit so
18 that if any power fluctuations of any
19 significant occur, or if it gets too hot in
20 the production site, the power will shut down
21 automatically."

22 So that's a safety feature that you
23 decided to add on, right?

24 A Yes.

25 Q And we can look at the affidavit if
26 it helps, but I'll tell you that Mr. Davey in his
27 affidavit at page 242 said that that cost about \$1,000,
28 that heat kill unit. Would you agree with that?

1 A If you buy all the -- each piece of
2 it, then yes.

3 Q Now, to address the risk of break-
4 ins and theft, you installed what appears to me anyways
5 to be a pretty elaborate security system.

6 A Yeah. No, I don't want anybody in
7 there. What's mine is mine.

8 Q I understand, and the description
9 that you've given here is that you've got a locked gate
10 at the entrance to the property, a further steel cable
11 across the road that leads to the outbuilding, steel
12 cage door with double deadbolts on the outside of the
13 shop, further steel door with double deadbolts, one-inch
14 plywood door with double padlocks, siren alarm upstairs,
15 siren alarm downstairs. Do you agree you put all those
16 in?

17 A There's still another steel cage
18 door. There's still another man door. And then to get
19 into the room there's still another plywood door that
20 goes over with double padlock and another door behind
21 it. You ain't getting in.

22 Q And at your fifth paragraph of this
23 affidavit you explain that you've also got an alarm
24 system, right?

25 A Yes.

26 Q And you indicate there that if it's
27 tripped, the alarm company will call your cell phone and
28 then it'll call Shawn Davey's cell phone, and then

1 either of you, your plan is you would call the R.C.M.P.,
2 right?

3 A Yes. I found over my building
4 experience, I've sanded drywall before, and for some
5 reason that has set off the alarm system. Fire
6 department shows up with police and the whole nine yards
7 and the homeowner gets billed 75 bucks. This is why I
8 had it designed to call me or Shawn, and if neither one
9 of us don't answer, yeah, I know where to go.

10 Q Now, leaving aside false alarms,
11 has the alarm system ever been tripped or --

12 A The heat kill ones usually because
13 the power goes out. It's a back road area so you
14 usually get trees that go across lines. I get a phone
15 call saying that power is out, and then I've got to wait
16 until they phone me again, tell me power is back on,
17 then I go up there and reset everything.

18 Q And we heard evidence from Mr.
19 Davey which I'm sure you'll confirm. The cost of this
20 setup was \$3,000. Is that --

21 A Yes, it was.

22 Q And you pay \$600 a year to have the
23 alarm monitored?

24 A Yes, which the guy just called me
25 now. I'm like I don't know if I've got to renew it just
26 yet.

27 Q If you could just turn to Mr.
28 Davey's affidavit at page 243.

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A Two hundred and thirty-three?

Q Forty-three.

A Okay. As you can tell, I'm old and deaf. Or getting older and deaf.

Q We all are. Have you found the page, Mr. Alexander?

A Pardon me?

Q You've got the page now? 243?

A Yeah, 243, yeah.

Q You can see there's a list that starts on the bottom of that page. It continues on to the next page. And if I understand correctly, this is a list of all the equipment that you and Mr. Davey purchased in order to grow marijuana at the site?

A Yes.

Q And you haven't totaled the amounts there. You've indicated the cost of them, but I used a calculator as you, I think, heard this morning. Came up with a total of \$27,040. Would you agree with that amount?

A I would -- I'll trust you.

Q Thank you. Similar question about paragraph 37. There you've provided a list of the growing supplies that you use every month: dirt, fertilizer, CO₂ gas fill, and natural pesticides. You've provided a monthly estimate for each amount, but

1 you don't have a total. When I total it, I come up with
2 \$290 a month. Does that make sense to you?

3 A Pardon me? How much did you say?

4 Q \$290 a month.

5 A I think those four items total more
6 than that. 220, 260 -- this is about 320, isn't it?

7 JUSTICE: 120, 100, 40 and 30? Is
8 that what we're talking about?

9 MR. BRONGERS:

10 Q The first one is 120. Second one
11 is 100. So 120 plus 100 is 220. The next one is 40,
12 that's 260.

13 A 20 -- 260 -- 290.

14 Q Next one is 30, I've got 290.

15 A Yes, okay. Yes.

16 Q Okay. Now, at paragraph 40 of Mr.
17 Davey's affidavit, he testified that he doesn't insure
18 his marijuana or the growing equipment. How about you?
19 Do you have insurance that would cover the grow-op if
20 there was a fire or something happened to it, or a
21 theft?

22 A No. I would just build it again.

23 Q Did you decide not to get insurance
24 because you were concerned that you wouldn't get
25 coverage for it or --

26 A I didn't know I could get
27 insurance.

28 Q So you didn't -- you didn't try.

1 You didn't ask or anything.

2 A No, I didn't really ask, no. Now
3 that I know, maybe I should look into it. Or we.

4 Q Paragraph 41 of the affidavit
5 indicates that the electricity costs for the grow is
6 about \$1,000 per month for the outbuilding, but you
7 share the cost between the two of you, about \$500 a
8 month. Would you agree with that?

9 A Yes.

10 Q Paragraph 42 of Mr. Davey's
11 affidavit, he testified that there was a water well on
12 the property. So you don't have any water expenses,
13 right?

14 A Zero water expenses, but I know you
15 asked him about water testing. I have a test sheet from
16 -- I can't remember what company did the testing of the
17 original owner, who owned the property. The water's
18 safe to drink, the water's safe to do this. Other than
19 that, as long as you know what you're doing to the
20 water, and bringing the pH levels up and down,
21 correctly, the water's fine.

22 Q So you do have to do some treatment
23 of it in order to grow the plants property?

24 A Basically a pH up, or else a pH
25 down, to bring it to the right nutrient level.

26 Q And if I understand correctly,
27 would -- you'd have to do that with a municipal water
28 supply as well?

1 A Oh, no. It just -- the tank that
2 you put your food into, that you water your plants with.
3 The house water you don't have to touch, itself.

4 Q Now, at paragraph 45 of the
5 affidavit of Mr. Davey, he says that there were no
6 issues with odours at your site. Correct?

7 A No odours, no.

8 Q But you explain that in part
9 because you've put charcoal filters at the production
10 site inside the building, and that's to help control
11 odours, right?

12 A Yes.

13 Q And I also note that you say that
14 it's a considerable distance from the neighbours, right?
15 So --

16 A Yeah, there is nobody around. It's
17 like gravel pit one end, and there's a house there, and
18 kind of know that both the other houses are -- I won't
19 say no more than that, but --

20 Q Okay. Mr. Alexander, you know what
21 a "grow box" is, right?

22 A Grow tent, grow box.

23 Q A device that you can purchase to
24 grow marijuana in a self-contained box, so as to help
25 control odours, that sort of thing.

26 A Yes, I know what it is, yes.

27 Q You obviously don't use one,
28 though, do you?

1 A I don't need one.

2 Q You say you don't need one.

3 A Yeah. The building is a grow tent,
4 or a grow box.

5 Q It's a giant grow box. Now, at
6 paragraph 49 of this affidavit of Mr. Davey's, he
7 estimates that in terms of the amount of time that he
8 spends cultivating marijuana each month, it's about 20
9 to 25 hours. Now, given that you're involved in that as
10 well, you would confirm that that's about what he spends
11 --

12 A Yes.

13 Q -- on growing?

14 A Yes. It is.

15 Q How about yourself? How much time
16 do you spend each month growing marijuana?

17 A Pretty well -- at least 20. It
18 could be 20 -- up to 25. But least 20.

19 Q So you would say you work about the
20 same as he. You don't work more than he did? Than he
21 does, I should say.

22 A Oh -- each time I'm in there, he
23 has his certain things I ask him to do. He goes in
24 there and he does those things while I'm doing the other
25 things. We're usually -- because the odd time that he
26 enjoys something better than I do, so I -- yeah, I give
27 'er. It means I don't have to do it. And he's happy to
28 do it. Like, he's all smiles whenever he's in there.

1 Q But given you're obviously -- your
2 greater level of expertise and experience here, wouldn't
3 it be the case that you would spend more time on the
4 grow than him or not? It's about the same, basically.

5 A Everything -- I built everything so
6 it's really easy. So it's easier for time for us,
7 because I work, so I have to make sure that it's just --
8 there is the odd time that I might put in a few more
9 hours than him, but if you average it out, I bet you
10 it's pretty well -- like, over a three-month period, it
11 might be completely different, but over just one month
12 period, it's pretty well the same amount of hours.

13 Q So you would say about 20 to 25
14 hours a month for you as well.

15 A Yes.

16 Q Okay. And how would you say having
17 Mr. Davey help you or work with you affects the amount
18 of time you spend? Would you need to spend even more
19 time if he wasn't helping? Or because you're guiding
20 him, is -- it kind of works out to be about the same
21 amount of time, it's just perhaps less effort for you?

22 A Yes. It -- I say there's certain
23 jobs that I don't like doing, because it's quite a bore.
24 Like transplanting. Boring. He enjoys it. He's like,
25 every time, "I put my love into every one of those
26 things," and he's just all smiles. It's just what he
27 does. It's a big relief for me, because it's stuff that
28 I don't have to do. And he's more than tickled pink.

1 So --

2 Q But the time you do spend working
3 on your cultivation operation, which is still fairly
4 significant, you would agree with me this is time that
5 you could be spending working on jobs trying to get
6 contracts, that sort of thing, wouldn't you?

7 A Truthfully, no. My family doesn't
8 love me because of what I do, because I usually waste a
9 lot of time on the weekends, or the evenings. Where I
10 go out at stupid hours in the morning, so I can still
11 deal with my job that I have to do. Work does come
12 first. This is a hobby, and I enjoy it. And it's
13 something that I can deal with myself personally, that I
14 don't want to change Shawn. I've taken pills and it
15 just doesn't work. It's just -- kind of enjoy it.

16 Q But I'm interested, as you say,
17 your family is not pleased with what you're doing. Why
18 is that?

19 A Because it's less time that I spend
20 with my wife, right? So say if she wanted to go to the
21 mall and walk around, yeah okay, I don't want to go to
22 the mall, I'm going up there. You go to the mall. So
23 it's -- but we always find the time, if we go camping,
24 yeah okay, I drop everything. I tell him, my call
25 forward goes to somebody else and everybody knows I've
26 gone camping that count, and I spend my quality time
27 with my family. But it's the little things I guess in a
28 marriage with kids that I kind of miss. But the big

1 things like my kid graduating, stuff like that, I drop
2 everything. That still comes first. There's a fine
3 line between what I do on my after hours, my morning
4 hours, my business. It's a busy life.

5 Q Mr. Alexander, how did you learn
6 how to cultivate marijuana? Did you take courses?

7 A More or less just the internet.
8 Trial and error. When I was new at it, okay, I had
9 quite a lot of death. To me it's learning. But since
10 I've -- to me now it's just how I can do it and how it
11 works. I find it easy now. The first little while it
12 was quite stressful.

13 Q So you've never taken any courses
14 in gardening or horticulture or that sort of thing?

15 A No.

16 Q No.

17 A Trial and error.

18 Q But you did research on the
19 internet.

20 A Yes.

21 Q Yes. And Mr. Davey explained that
22 he spends about half an hour a day researching marijuana
23 on the internet. How much time do you spend on the
24 internet researching marijuana?

25 A For the first little while it was
26 probably every night. Two or three hours at home
27 sitting on the idiot box and learning how to deal with
28 things and how to get calculations correct. But now I

1 think I've spent more time in the last year, spending
2 more time with the court case than I have been studying
3 how to grow properly.

4 Q All right, at paragraph 52 of Mr.
5 Davey's affidavit, so the next page at 251, here he
6 explained the sort of steps that the two of you are
7 taking in terms of growing the marijuana. And like with
8 him, I just have a couple of questions for you about
9 that. He mentions that you basically do a hand count of
10 the plants, but I just want to confirm. Mr. Davey said
11 that he doesn't keep any paper records or accounting of
12 his plants or how they're doing. How about you? Do you
13 keep a log book for them or --

14 A No, I don't. I see just about
15 every day.

16 Q So you do a visual inspection.

17 A Visual inspection morning and
18 nighttime.

19 Q But you don't write down the --

20 A No.

21 Q -- the results of your growing
22 efforts or you don't keep track of each plant, how it's
23 doing, how tall it's getting.

24 A No. You can kind of see everything
25 each day.

26 Q I'm hoping you might be able to
27 explain to me also the cross-contamination answer that
28 Mr. Davey explained, that you basically sealed two rooms

1 to avoid cross-contamination. And is that because
2 you're growing two different strains in the two rooms or
3 --

4 A No, it's just like the size of the
5 air conditioners meant for this room and size for this
6 one. You can't afford buying a big one. So two rooms
7 just means you can keep two rooms control easier.
8 Cross-contamination is when you go in one door you can't
9 go in the other kind of thing, so you can't bring
10 something from one room into the other room. There's
11 always that break in between the two.

12 Q Again I'm just curious. In terms
13 of the fact that you didn't keep any written records,
14 were you not concerned about the possibility of an
15 inspection from Health Canada where they might want to
16 ask you about where your plants are going, making sure
17 that you were consuming them all yourselves and that you
18 would need some documents to prove what you've been
19 doing with the marijuana over the last few months? Was
20 that ever a concern for you?

21 A I have no problem if they come
22 there. I am not hiding anything from anybody. Well, I
23 am not hiding anything from courts or anything, but I am
24 hiding things from other people knowing where I am. I
25 am not -- you know.

26 Q But is there any reason why you
27 can't keep records of these -- of your plants?

28 A No, there is no reasons, I probably

1 could. If --

2 Q You just choose not to?

3 A It is more or less again, if
4 somebody gave me a piece of paper, I'd be happy to fill
5 it out. But for me to spend the time to go on the idiot
6 box and print the form off, that I have no problem with.
7 Just spending the time -- it is more or less not knowing
8 where to get it, I guess. If somebody asked me to go
9 get one and bring it, and fill it out and bring it back
10 to me, I wouldn't return it, Shawn would, because he has
11 got more time than I do. And that is why he enjoys,
12 kind of. But if somebody asked me to do it, yes, I
13 would.

14 Q Now, Mr. Davey says at paragraph 59
15 that you've never lost any plants to disease or mould.
16 He, I think, modified that answer a little bit this
17 morning that there might have been a couple that didn't
18 survive. If you could just tell the court what your
19 experience has been with your plants in terms of losing
20 --

21 A Once they're in a certain stage, we
22 haven't lost any. But when they're new, and their
23 vulnerable and their fresh, sometimes there is
24 casualties, things are over gripped, or something like
25 that, and squashed, but -- they don't care for that kind
26 of stuff.

27 Q Can you offer an estimate in terms
28 of percentage? How many do you lose? For each cycle?

1 A Between the total of our plants,
2 maybe three? Maybe four each time.

3 Q Three or four plants out of a total
4 of?

5 A In total? You know the plant
6 total.

7 Q In a cycle I believe you are
8 authorized up to 69 now?

9 A Me? Or him?

10 Q Let's go with you. I am just more
11 curious about how many plants you lose, typically.

12 A Out of my 146?

13 Q Yes.

14 A If I say 3.

15 Q Right.

16 A Out of his 126? Then zero. If the
17 plant total is that much? Then yeah, three over all.

18 Q I am just wondering as you visually
19 inspect them, you must notice a few of them die once in
20 a while or don't take? Or --

21 A Yeah, we do see that some -- if,
22 its -- some do pass away, yeah, they get pulled out and
23 a new one gets put in, if it needs to be up to count.
24 But, if it is not up to count, then it usually gets
25 discarded.

26 Q You'd say three or four out of 126
27 for you?

28 A Out of Shawn's, yes.

1 Q Out of Shawn's. Now, at paragraph
2 65, Mr. Davey says that he doesn't test his marijuana.
3 How about you? Do you test your marijuana?

4 A No, no I don't.

5 Q So, you've never had it tested for
6 potency?

7 A No, I haven't.

8 Q No. Never had it tested for
9 microbes, mould, or mildew, or e-coli?

10 A No, I haven't.

11 Q Never had it tested for pesticides?

12 A No, I haven't. My question is,
13 again, if Health Canada posted that, where I could take
14 it to, and actually have it tested, I probably would.

15 Q So, you're not aware of there being
16 testing facilities available for cannabis?

17 A I didn't know that they -- I don't
18 think its -- I haven't really spent a heck of a long
19 time. But if they actually posted "Yes, you can take
20 your stuff to here, get it tested, get it everything",
21 I'd be more than happy to do that.

22 Q So, you don't really know though,
23 given that you don't test, whether your marijuana is
24 contaminated or not?

25 A No, I don't.

26 Q Okay.

27 A But I'm still alive.

28 MR. DAVEY: Yeah, me too.

1 JUSTICE: Stop right now, Mr. Davey,
2 please. Don't interject.

3 MR. DAVEY: Sorry.

4 JUSTICE: Okay? This is cross-
5 examination.

6 MR. BRONGERS: Thank you, Justice
7 Phelan.

8 Q Now, at paragraph 8 of your first
9 affidavit, which is back a page. Sorry, just one moment
10 please.

11 I'll ask you this from Shawn Davey's
12 affidavit at paragraph 72. This is the question about
13 the neighbours and whether they've had any complaints
14 about your grow operation. If I understand correctly
15 your neighbours have never complained about your grow
16 operation.

17 A No complaint, no.

18 Q And indeed you suspect that they
19 probably have medical marijuana licences as well, right?

20 A Yes.

21 Q Paragraph 73 of Mr. Davey's second
22 affidavit he says that he's never been injured from
23 growing marijuana. I'm just curious about you. Have
24 you ever had any cuts or burns or back pain or shoulder
25 injuries from growing marijuana?

26 A Maybe when I originally built it,
27 overstressing myself on lifting up the piece of plywood
28 by myself. But other than that, no.

1 Q And my last question is that Mr.
2 Davey estimates that he produces about 25 grams per day
3 but he says he doesn't weigh the marijuana. I'm
4 wondering, in your view is that a reasonable estimate,
5 25 grams per day, given that you grow with him or --

6 A All I know is the way he does his
7 oils and his cookies and his smokes, it's pretty well --
8 I'm not -- I got too many things in my head before. But
9 the way he lays it out for each oil and the way -- it
10 pretty well works out that the bottom of the buck is
11 usually gone by the time that he gets the cookies, then
12 he gets his oil, gets a little bit of smoke and my
13 little bit of smoke. But again it's his, I keep
14 forgetting it's ours but it's his. That's how he
15 calculates it. It's pretty well what he uses for his
16 cookies and the rest of it. I know he has his formulas
17 in his head. I don't know how, but yeah, he has his
18 formulas in his head, what he uses for each batch of
19 cookies and what he uses and that's -- we don't sit
20 there and put it in bags and weigh each one of them and
21 dump it and -- too much work. We're not -- just one big
22 tub or container, that's what we kind of use.

23 Q But it's your understand that he
24 uses all the marijuana he grows, right?

25 A Pardon me?

26 Q It's your understanding that he
27 uses all of the marijuana that he grows, right?

28 A Yes.

1 MR. BRONGERS: No further questions,
2 thank you.

3 **RE-EXAMINATION BY MR. CONROY:**

4 Q Just to be clear, because I think
5 my friend used a number of different dates when he put
6 things to you, your affidavit, you have it in front of
7 you?

8 A If I remember which page. Okay.
9 Yeah.

10 Q Page 4, I think, of the Joint Book.

11 A Yes.

12 Q So attached as Exhibit A is your
13 current authorization to possess, is that right?

14 JUSTICE: Now, are you talking --
15 there's an Exhibit A which is --

16 MR. CONROY: Oh sorry, sorry, yes.

17 Q Capital A is your affidavit, and
18 there's a small lower case (a) as an exhibit to that
19 affidavit. Do you have that?

20 JUSTICE: If you look on the tabs.

21 MR. CONROY: Page 8.

22 JUSTICE: Page 8.

23 A I don't think I'm at the right page
24 as you guys.

25 JUSTICE: Bottom right corner is page
26 --

27 A New age.

28 MR. CONROY:

1 Q That's your authorization to
2 possess. It was from December 18th, 2012 to December
3 18th, 2013. Is that right?

4 A Yes.

5 Q Okay, and then the lower case (b)
6 is your personal production licence, and it similarly
7 was December 18th, 2012 to December 18th, 2013, correct?

8 A Yes.

9 Q Okay. And then at Capital B,
10 continue on -- well, actually, let's deal with -- we may
11 as well deal with those other -- at C, those are the
12 doors that you told my friend about, correct?

13 A Yes.

14 Q And so we've got, lower case (c)
15 we've got, one, two photos on the first page, and that
16 is the -- well, describe what those are?

17 A They're kind of in reverse. 12 is
18 actually the first set of doors.

19 Q Okay. So that is the second, or
20 third page?

21 A Yeah, that's the outside door,
22 steel cage door.

23 Q All right.

24 A Then you come in and I guess 11
25 would be the next door. And then to get through that
26 door, is this door, which the last door to get --

27 Q I see.

28 A They're still -- you see, I never

1 took a picture of one extra door. It's just a one inch
2 plywood with steel man door.

3 Q And at the last tab B, capital B,
4 that's a document that you obtained from Dr. Goddard
5 under section 52 of the *Narcotic Control Regulations*, is
6 that right?

7 A Yes.

8 Q And that was, I assume, and correct
9 me if I am wrong, we go back to lower case (a), your
10 authorization to possess expired in December of 2013, so
11 you weren't covered by the injunction for possession.

12 A Yes.

13 Q And that's what the purpose of the
14 last document at tab capital B was?

15 A Yes.

16 Q To cover possession. Is that
17 right?

18 A Yes.

19 Q Okay. So, when did you -- if your
20 licence to produce is December 2012 to December 2013,
21 just clarify when you started doing things with Mr.
22 Davey?

23 A From the date -- I think Shawn's
24 been there for pretty well a year and a half.

25 Q Okay.

26 A Because I think his licence has
27 been there pretty well a year and a half.

28 Q Okay, so my friend, and correct me

1 if I am wrong, I thought said September of 2013, is that
2 --

3 A If that's -- I can't remember off
4 hand, but if that is when Shawn's licence was brought to
5 that address, then that would be the day we pretty well
6 started.

7 Q Okay, just wanted to confirm
8 because you started before Mr. Davey, didn't you?

9 A Yes.

10 Q All right. Okay. My friend asked
11 you about home inspections since rented. Now, there is
12 a distinction that you've made between the residence
13 where Mr. Davey now lives and this out building. Were
14 there home inspections done on the residence? Or do you
15 know?

16 A I know recently, about a year ago,
17 the property owner had to get refinanced for mortgage-
18 wise, and the bank did an inspection on the property,
19 but since it is an outbuilding, they don't classify as
20 an outbuilding as something that they want to look at.
21 So, there was no money value, so they said "no, we don't
22 have to go in there."

23 Q Okay. My friend put to you a
24 question from Mr. Davey's affidavit from page 242, and
25 it relates to paragraph 30, I believe. Where you
26 indicate the cost. That's not it, I mustn't have
27 written it down. It was about the cost of each piece of
28 equipment, so maybe 32, paragraph 32? And the note I

1 had was an indication of a cost of about \$1,000 was put
2 to you, and you said, "If you buy each piece, yes."
3 Now, I am trying to clarify what you meant.

4 JUSTICE: That was in relation to the
5 kill switch.

6 A Yeah.

7 MR. CONROY?

8 Q Okay, right. So, what did you mean
9 if you buy each piece?

10 A Well, I -- there is one control in
11 each room, which is set at a certain temperature.

12 Q Yes.

13 A And those have to go in to a board
14 that is controlled with a relay. So, if there is any
15 heat, it clicks out the relay and then shuts everything
16 down. But it doesn't shut the A/Cs off, and the
17 scrubbers, it just shuts off all the lights, all power
18 to the lights.

19 Q "A/C" is air conditioner, is that
20 what you mean?

21 A Yes.

22 Q What's a scrubber?

23 A A scrubber? A charcoal filter.

24 Q Oh, okay. That's the odour. The
25 odour we talked about earlier, I think.

26 A Yeah. Yes.

27 Q All right. And this word "cross-
28 contamination". When you use it, or it's used, you seem

1 to be talking about people going between rooms and
2 taking things -- carrying things into one room or the
3 other?

4 A Mm-hmm.

5 Q Can you explain a bit of what you
6 meant there?

7 A Oh, I -- each room has its own
8 garden hose, and its own wand, its own everything. You
9 don't cross-contaminate that way. So the only way you
10 could possibly is if you went straight from this room
11 into that room. So you personally brought anything from
12 in to in. So other than that --

13 Q So you're talking about things that
14 might be on a person's clothing or something like that?

15 A Yes.

16 Q Is that --

17 A If there was an insect on your
18 clothing that came in, and you went in -- there's always
19 a room that you stop, and there's always cold rooms.

20 Q Okay.

21 A Because there's a --

22 Q So you're not talking about the
23 plants contaminating each other in terms of --

24 A No, it's more or less --

25 Q -- spraying or anything like that.

26 A -- you bringing in something with
27 you, or --

28 Q I see.

1 A -- possibly you contaminating from
2 one room to another. If it's infected in one side, you
3 go straight into the other side, yes.

4 Q Okay. So, your evidence was,
5 there's no mould or disease that is apparent to you in
6 terms of what you've been doing.

7 A No, there's no mould.

8 Q So when you talk about being
9 affected, in this cross-contamination, affected by what?

10 A I'm just trying to think. Like,
11 you're outside, working in the garden. You bring in
12 spiders with you. I know that there's aphids and stuff
13 like that outside. So if you enter straight from
14 outside into your room, if you've got aphids on, I don't
15 know if it will do anything to it. But you always have
16 a break between each room, so you can't have the chance
17 of that.

18 Q And on this inspection issue, quite
19 apart from Health Canada wanting to inspect, or things
20 of that nature, or testing, were you aware of being able
21 to go anywhere to have anything -- any of your product
22 tested?

23 A No, I wasn't aware. But --

24 Q You don't -- do you know of any
25 device available, or --

26 A Supply -- supposedly now there is a
27 handheld or possibly machine, I have no idea. We
28 haven't checked on it. But it is one of those things,

1 if we're allowed to continue, yeah, we'll look into it.

2 Q Have you ever had any attempted
3 break-ins or anything like that?

4 A No.

5 Q Anything close to that?

6 A Not since me and Shawn being in
7 there, no.

8 Q Okay. So you've got all of this
9 elaborate security system, but -- and you mentioned
10 something about an alarm going off. Was that just like
11 the heat kill thing you told us about, or --

12 A Yeah. If there's any -- it's all
13 tied into the alarm. So if there's any power
14 fluctuation, I get a phone call, because I like to know.
15 Because if somebody -- it's -- I'm just trying to think.
16 It's got to do with the heat kills and everything. If
17 there's anything to do with power fluctuation at all,
18 the alarm will call me. It's not -- they actually tell
19 me which it's doing. It'll say "AC power failure". Or
20 the alarm company phones and says, "Security door". It
21 will tell me which door and everything else. But it's
22 usually the AC power failure, which is just power out.

23 Q My friend asked you about fire
24 inspection, or when you were putting it together, having
25 a certified fire person come in. Have you -- do you
26 have any concerns about fire? Based on what you've
27 produced?

28 A The way it's set up and everything,

1 steel box and everything -- precaution-wise, yeah, okay,
2 I've got fire extinguishers. Just every door you have,
3 I've got a fire extinguisher. If power goes out while
4 we're in there, I have Costco LED lights that
5 automatically turn on, which light up the way out. If
6 we're both in there, I know which way to go, and I know
7 which way to get out, and you can tell. Like, even he
8 knows, because he ended up going to Costco to buy the
9 lights.

10 Q You talked about pH balancing.

11 A Yes.

12 Q As I understood, that is to do with
13 the nutrients -- the water and the nutrients of the
14 plants.

15 A For the plants.

16 Q And putting it into a container.

17 A It's basically a holding tank that
18 we use for our -- feeding our plants.

19 Q So what you put in there, is it
20 something you get from a nursery store or supply store?

21 A I'm pretty sure RONA sells it. I'm
22 pretty sure Home Depot sells it.

23 Q So you just put a little bit into
24 the --

25 A A couple drops in there just to
26 bring up the pH level.

27 Q Okay. Have you been -- you've told
28 us how you do all of this growing and helping Mr. Davey

1 as well as working out doing your framing and other
2 work. Have you turned down any paying jobs in order to
3 be able to keep doing the marijuana growing?

4 A No.

5 Q Okay.

6 A It's bad enough I've had to turn
7 off my phone when I've already had one phone call at
8 lunchtime.

9 Q The plants that did die that you
10 talked about, the three or four I think it was out of
11 the -- three overall, three to four overall out of the
12 126, or out of your 146, did any of them die from mould
13 or disease?

14 A It's usually accidental death.

15 Q Okay.

16 A We'll call them a Davey death.

17 Q I see.

18 A I understand things like that do
19 happen.

20 Q Okay. And when you harvest, do you
21 inspect the plants for mould and things like that to
22 make sure that they're consumable?

23 A You can tell what the plant looks
24 like. You can see, like I'm -- you can see the leaf and
25 you can see what's all in it. You can see if there are
26 spiders on it. You can see just by the naked eye. If a
27 plant looks the exact same when it starts pretty well to
28 the end, you know it's okay. I could see if it was,

1 say, covered in a cocoon like an outside tree. Yeah, I
2 wouldn't want to smoke that or eat that. I wouldn't
3 touch it.

4 Q Do you grow any of your own food?

5 A Yes.

6 Q Do you treat it the same as your
7 food or differently?

8 A I pretty well treat it the exact
9 same. I sometimes actually use the same nutrients on my
10 licence as I do on my vegetable garden. Like my
11 carrots, tomatoes, beans, once in a while I'll give them
12 the same little formula that I have written down.

13 Q Have you ever gotten sick from your
14 food that you produce? You've got to say yes or no for
15 the record.

16 A Oh. No.

17 Q Have you ever had an adverse
18 reaction from any of the cannabis that you've grown?

19 A No.

20 Q And you told us that you worked in,
21 as I understood it, remediating other grow operations.

22 A I did for a period of time, yes.

23 Q And were these legal or illegal?

24 A Those were illegal.

25 Q Were they all illegal or were some
26 legal?

27 A No, those ones were all illegal.

28 MR. CONROY: Okay. Thank you. That's

1 all I have.

2 JUSTICE: I take it we're done? All
3 right.

4 MR. CONROY: I should maybe advise the
5 court, I did speak to Mr. Hebert at lunch and he advised
6 me that his wife is back in hospital and in very bad
7 shape. So I was going to propose, and I think my friend
8 agrees with this part, of having Mr. Hebert come at 9:30
9 instead of 1:30 if that works.

10 JUSTICE: Okay.

11 MR. CONROY: And then I hoped that I
12 could still keep alive the possibility of her attending
13 on one of our down days. Given the nature of her
14 situation I would expect it would be a fairly brief
15 appearance, but I'd like to keep that opportunity but I
16 know my friend doesn't want me to do that or has a
17 position on that.

18 MR. BRONGERS: As you know, Justice
19 Phelan, this is a simplified action, so the only reason
20 to call --

21 JUSTICE: Except there is nothing
22 simplified about this --

23 MR. BRONGERS: A bit of a misnomer.
24 The purpose of bringing witnesses here is for cross-
25 examination. It's not so that they can be heard if
26 there's no good reason for that. We have proposed that
27 one way of dealing with Ms. Beemish's condition is that
28 we could cross-examine Mr. Hebert on her affidavit.

1 Knowing that they are spouses, the chances are very good
2 that he will be able to answer those questions, and
3 we're satisfied with that if my friend is satisfied with
4 that.

5 So I am prepared to proceed tomorrow and
6 cross-examine Mr. Hebert on both his affidavit and Ms.
7 Beemish's affidavit. But if I do that, what I want to
8 avoid is then perhaps having to cross-examine Ms.
9 Beemish again, effectively a second time, if she's
10 somehow brought back. I think my friend should make a
11 choice. Either she comes tomorrow and I will cross-
12 examine her on it, or not, in which case I will pose the
13 questions to Mr. Hebert.

14 JUSTICE: Mr. Conroy?

15 MR. CONROY: It's hard to make a
16 choice when a patient is unable to choose what I would
17 like her really to do, which would be to come here and
18 testify. So that's the problem. The trouble is --

19 JUSTICE: This isn't a perfect world.

20 MR. CONROY: Yeah, no, I --

21 JUSTICE: And we have to deal with it
22 as best we can.

23 MR. CONROY: Yeah.

24 JUSTICE: I've said the court was
25 prepared to go to the hospital.

26 MR. CONROY: Yeah.

27 JUSTICE: Drag all of you there.

28 We'll do whatever we can accommodate. But either I have

1 to hear her, and she can be examined and cross-examined,
2 or alternatively if she consents to her husband
3 testifying on her behalf and agrees to be bound by his
4 answers, then there will be only one cross-examination.

5 MR. CONROY: All right. Well, if we
6 can leave it on this basis, then, I will see what I can
7 find out, and try to get a communication to the court
8 just as quickly as possible. And either we'll have her
9 here in the morning, with him available, or -- and an
10 outside possibility of some way of her being maybe on a
11 screen.

12 JUSTICE: That takes a little while to
13 set up, but you're right, you can do that.

14 MR. CONROY: Yes. But otherwise, Mr.
15 Hebert, her husband, will be here and I'm confident that
16 if she is not able to be here, that she'll consent to
17 him being cross-examined.

18 JUSTICE: Yes. And while you would
19 never -- or very seldom would you say one witness's
20 evidence would bind the other, we may have to do an
21 inelegant solution for that, since I doubt that anyone's
22 going to commit perjury, so --

23 MR. CONROY: No. I agree.

24 MR. BRONGERS: Well, of course, the
25 other option is that we simply cross-examine Mr. Hebert
26 tomorrow and then we wait and see if Ms. Beemish is
27 better later on in the next couple of weeks and we fit
28 her in at a later time. Again, all I really want to

1 avoid is being in a situation of asking the same
2 questions --

3 JUSTICE: No, I -- yes, I understand.

4 MR. BRONGERS: -- of two different
5 people.

6 JUSTICE: There are -- there can only
7 be one crack at the cookie, however many cookies.

8 MR. CONROY: So if I understand that,
9 then, if we went that way, it may be that Mr. Hebert
10 would have to come back simply to be cross-examined on
11 her affidavit, if he's not cross-examined on it
12 tomorrow.

13 MR. BRONGERS: I suppose --

14 MR. CONROY: Well, I'll explore --

15 JUSTICE: Yes, we should explore,
16 because at some point -- we can't keep this open
17 forever.

18 MR. CONROY: Yes. No, no.

19 JUSTICE: And we're going to have to
20 fish or cut bait.

21 MR. CONROY: I was thinking only of
22 one of those blocks that seems to be coming open, to try
23 --

24 JUSTICE: Well, as I say, we'll try to
25 accommodate her as best we can, but we do have to kind
26 of keep --

27 MR. CONROY: Yes.

28 JUSTICE: -- some order in this. All

1 right. Well, we'll hear more, no doubt, tomorrow.

2 Thank you very much.

3 MR. CONROY: It may be a short day
4 because of the situation with --

5 JUSTICE: And we'll see what happens.
6 That's why they call these things a trial.

7 (WITNESS ASIDE)

8 **(PROCEEDINGS ADJOURNED AT 2:51 P.M.)**

9

IN THE FEDERAL COURT
(Before the Honourable Justice Phelan)

Vancouver, B.C.
February 24, 2015

T-2030-13

BETWEEN:

NEIL ALLARD, TANYA BEEMISH, DAVID HEBERT
and SHAWN DAVEY,

Plaintiffs;

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,

Defendant.

PROCEEDINGS

Mr. J. Conroy, Q.C.,

Mr. K. Tousaw,

Ms. T. Grace,

Mr. B. Vaze,

Mr. M. Jackson,

Appearing for the Plaintiffs;

Mr. J. Brongers,

Ms. B.J. Wray,

Mr. C. Januszczak,

Mr. P. Alma,

Ms. M. Nicolls,

Appearing for the Defendants.

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VANCOUVER, B.C.

February 24th, 2015

Volume 2

(PROCEEDINGS COMMENCED AT 9:34 A.M.)

JUSTICE: Good morning.

MR. CONROY: Good morning. We've done a little bit of rearranging, Justice Phelan. We have Mr. Hebert here this morning instead of this afternoon.

JUSTICE: Okay.

MR. CONROY: And we've got a plan to try and have Ms. Beemish by way of a video type of a situation for this afternoon. So, we're going to ask your indulgence, probably, once the -- once Mr. Hebert's finished, we're going to have one of our lawyers, is going to go to the hospital with some equipment, and we've already checked with the Registry in terms of what's necessary here. And our hope is that we'll be able to get it set up. We may ask for your indulgence to start a little bit later this afternoon.

JUSTICE: Yes, okay.

MR. CONROY: But that's the plan.

JUSTICE: All right. Well, nothing better than a plan. Usually a common point from which confusion reigns. Go ahead.

MR. CONROY: Thank you. So, Mr. Hebert, would you please take the stand?

DAVID WESLEY HEBERT, Affirmed:

THE REGISTRAR: Please state your

1 name, occupation, and address for the record.

2 THE WITNESS: My name is David Wesley
3 Hebert. I'm an environmental protection officer with
4 the B.C. Ministry of Environment. And my address is
5 2459 Pauline Street, Abbotsford, B.C.

6 MR. CONROY: And we've identified the
7 location of Mr. Hebert's affidavits in the joint book,
8 Volume 2. The first tab, 6.

9 JUSTICE: Tab 6, is it?

10 MR. CONROY: Yes.

11 JUSTICE: Okay.

12 MR. CONROY: And he has one in front
13 of him. So -- I guess, that's right, we have to mark
14 that as an exhibit.

15 JUSTICE: That was Exhibit 3?

16 MR. CONROY: Three, yeah.

17 JUSTICE: Okay.

18 **(AFFIDAVIT OF DAVID WESLEY HEBERT MARKED EXHIBIT 3)**

19 MR. CONROY: And I'm following the
20 procedure. Please answer any questions that my friend
21 has, Mr. Hebert.

22 JUSTICE: Okay. We're back on, we're
23 live? Okay. The Tonight Show doesn't have that
24 problem. Okay.

25 MR. BRONGERS: One housekeeping
26 matter. The red light doesn't appear to be on, on the
27 microphone. I'm not sure if that means the system isn't
28 working, but now the red light is on.

1 JUSTICE: Yes. Now. Good. All
2 right, I think we're all ready to go.

3 MR. BRONGERS: Thank you, Justice
4 Phelan.

5 **CROSS-EXAMINATION BY MR. BRONGERS:**

6 Q Good morning, Mr. Hebert.

7 A Good morning.

8 Q I'm going to be asking you some
9 questions about your affidavit, which you have in front
10 of you, but I will also be referencing Ms. Beemish's
11 affidavit. I'm wondering if perhaps a copy of that
12 could be given to Mr. Hebert as well. That's actually
13 at Volume 1 of the Joint Book of Documents, at tab 3,
14 page 142 and following.

15 I'm happy to mark it now, that's fine.

16 JUSTICE: Why don't we do that? That
17 would probably make sense. Mark her --

18 THE REGISTRAR: Exhibit 4.

19 JUSTICE: Yes, so that we be following
20 along. So, Exhibit 4 will be Ms. Beemish's affidavit.
21 Okay.

22 **(AFFIDAVIT OF TANYA BEEMISH MARKED EXHIBIT 4)**

23 MR. BRONGERS:

24 Q Thank you. I'll begin by just
25 asking you some questions about your background. Just
26 to confirm, you were born July 26th, 1981?

27 A That is correct.

28 Q So that makes you now 33 years old,

1 is that right?

2 A That is correct.

3 Q And I understand your common law
4 spouse is Ms. Tanya Beemish, right?

5 A That's correct.

6 Q And I also understand that you have
7 no children or other dependants, right?

8 A We do not.

9 Q In terms of your educational
10 background you have a Bachelor's Degree in science from
11 Simon Fraser University, correct?

12 A Yes.

13 Q And you also are currently studying
14 environmental engineering technology at the British
15 Columbia Institute of Technology?

16 A I'm almost completed the program.

17 Q When will you be completed?

18 A When I go back to finishing it.

19 Q And in terms of your profession or
20 your current occupation, you explained that you are now
21 an environmental protection officer with the British
22 Columbia Ministry of the Environment, right?

23 A That is true, yes. I'm a
24 compliance officer.

25 Q And you've been working there since
26 2011, is that right?

27 A Yes, I was a hazardous waste
28 inspector previously, and now I'm a compliance officer

1 for the province and I specialize in hazardous waste,
2 heavy industry and health safety, emergency issues.

3 Q That's a full-time job, right?

4 A Absolutely.

5 Q And your studies at the British
6 Columbia Institute of Technology, if I understand
7 correctly, that was from 2009 to 2011?

8 A Yes, and part time on and off. I
9 have a few courses left and I have to write a project to
10 get my designation so I can be an engineer in training.
11 But I'm quite busy with life lately.

12 Q And prior to 2009 you worked for C-
13 Seaspan, correct?

14 A Yes, I worked for Seaspan.

15 Q And what was your job there?

16 A Pardon me?

17 Q What was your job there?

18 A I was an environmental officer
19 there as well, although it wasn't regulatory. It was
20 cover your butt. And I dealt with hazardous waste and
21 waste management and it got me into the government job
22 that I'm currently at.

23 Q You were a compliance officer
24 maybe.

25 A I was an internal compliance
26 officer.

27 Q You also describe in your
28 background, in addition to being an environmental

1 professional, you describe yourself as a long-time
2 gardener. Is that right?

3 A That is correct. I also worked for
4 Agriculture Canada as a co-op student, and I've always
5 had gardens.

6 Q When did you start gardening?

7 A When I was a little child with my
8 grandparents.

9 Q And did you take any formal courses
10 in gardening?

11 A I'm a biologist. I've studied
12 ecology. I've studied plant biology and physiology
13 extensively, and entomology. So I feel fairly certain I
14 understand how plant biology works.

15 Q Would it be fair to say you've been
16 gardening basically all your life?

17 A Yes.

18 Q You mentioned your experience at
19 Agriculture Canada. When did that occur? It's not on
20 your CV, so I was just --

21 A I believe I worked there from 2000
22 to 2001 but I'd have to refer. It's been a while.

23 Q You were a co-op student there.

24 A I was.

25 Q Right. And could you describe what
26 you were doing at Agriculture Canada?

27 A In the exciting technical way or
28 the layman's way?

1 Q Just start with the layman's way.

2 A I was part of the small breeding
3 program. We grew strawberries and raspberries. I taste
4 tested them. I tied them up. I maintained 35 acres of
5 farm. I was in charge of, I don't know, four other co-
6 op students at one point.

7 Q You describe that as working in a
8 lab, right?

9 A There was lab component at the
10 Agassiz Research Centre, but that was mostly in winter
11 season. The summertime I was a farmer.

12 Q Right. But you were also doing
13 paperwork, right? You were keeping log --

14 A Not a lot in co-op, no. It was
15 mostly collecting samples for back to the lab in the
16 summer, or digging up roots to do cultivation, or it was
17 actual pruning, tending, picking, maintaining the crops.
18 It was a little bit of an exploit-the-student program,
19 but it was good experience.

20 Q We have all been there. And again,
21 at the risk of embarrassing you, you describe yourself
22 as having a bit of a green thumb, is that right?

23 A I would say that. I've grown a lot
24 of habanero peppers and other spicy peppers. Like I
25 said, I've always had gardens for foodwise. I'm an
26 environmental scientist. I believe in sustainability.
27 Last year and the year before I grew enough food to
28 offset most of our produce.

1 Q So I'd like to turn now to
2 marijuana cultivation and your experience with growing
3 marijuana. Just as a preliminary matter to deal with a
4 small contradiction between your affidavit and that of
5 Ms. Beemish, you have testified that she is unable to
6 cultivate cannabis and that she relied on you to do it
7 for her. She has testified that you did almost
8 everything but she occasionally would help out with
9 trimming. If you could just reconcile those two
10 statements, that would be helpful.

11 A So, occasionally would probably be
12 once or twice when she was feeling up to it, for half an
13 hour. That was about as much effort as she could put
14 into it. She doesn't have a lot of energy to
15 participate. It was quite difficult for her. But I'm
16 assuming when she wrote that she was trying to be as
17 honest as she could. I would say all in all, Tanya
18 probably participated three to four hours out of
19 hundreds and hundreds and hundreds of hours.

20 Q So you were usually working by
21 yourself on the cultivation.

22 A It was frustrating sometimes, yeah.
23 It's a lot of work. It wasn't -- it was like a part-
24 time job on the side.

25 Q In terms of the dates, based on
26 when you obtained your authorization from Health Canada,
27 I see you first got a licence in January of 2013.

28 A Yes.

1 Q Does that accord with your memory?

2 A Early January. That's --

3 Q We can look at the licence, if that
4 would help, but I thought you might remember.

5 A I'm assuming that I copied it
6 directly off the licence on here. But it was early
7 January, 2013.

8 Q All right. And if I understand
9 correctly, even though it was valid for a longer period,
10 you stopped growing in September of 2013 because you had
11 to move?

12 A Yes, that's correct. We tried to
13 contact Health Canada. I did. And I didn't say who I
14 was or anything, and I said I would like to change my
15 production and designated grower licence to a new
16 address, but we don't have a new home yet. And I got
17 two different responses which were, "Fine, give us an
18 address in advance and we'll try to get it done," or,
19 "You're S-O-L." And it was a little bit disappointing.
20 But we had to move, because of financial and health
21 reasons for my spouse.

22 Q So in terms of the time when you
23 did produce under a Health Canada licence, it would have
24 been a period of nine months, then, right? From
25 January, 2013 to September, 2013?

26 A We produced three cycles. I did.

27 Q Did you ever grow marijuana prior
28 to January, 2013?

1 A As a teenager?

2 Q At any time.

3 A Yes. As a teenager.

4 Q So just as a teenager. Could you
5 give us the years when you did that? Or your age?

6 A Somewhere between 16 and 18.

7 Q So you --

8 A Am I supposed to incriminate myself
9 here?

10 Q Just for your own benefit, under
11 Section 5 of the *Canada Evidence Act*, nothing that you
12 say here in this court can be used against you.

13 A I know. Sorry, I was joking.

14 MR. CONROY: More importantly, Section
15 13 of the *Canadian Charter of Rights and Freedoms*, I
16 think.

17 MR. BRONGERS: Correct.

18 JUSTICE: And common sense.

19 MR. BRONGERS:

20 Q And common sense.

21 A Thank you.

22 Q So you grew for two years, then, as
23 a teenager. Would that be true?

24 A I put seeds in the ground and
25 walked back in the summer time and put water on plants.
26 I was a teenager.

27 Q I'm just curious about how long you
28 did this for.

1 A I probably did it two different
2 summers. It wasn't very much. It was just -- went to
3 the Vancouver Seed Bank and bought some seeds and
4 planted them in the ground.

5 Q And so just judging by your birth
6 date, this would be around 1997, 1998, the late 90s?

7 A That sounds about right.

8 Q Okay. And then you stopped. You
9 stopped growing until you started up again, once you got
10 the licence from Health Canada in 2013. Is that right?

11 A I've kind of been on the
12 professional path since about 2000, 2001. I've been in
13 university, like I said. Like we talked about, I've
14 been in -- I have two different degrees. I've had
15 professional jobs in labs. Cannabis really wasn't part
16 of my life then. So -- I was still growing other
17 things, just not that. Not cannabis.

18 Q Thank you. Now, during that time
19 as a teenager, could you describe briefly what your
20 production facility was like?

21 A Nature. A clearing in the forest
22 in an undisclosed location.

23 Q Not more sophisticated than that.

24 A Not really. I'm actually quite
25 experienced with sophisticated growing systems, working
26 for Agriculture Canada, though, and also in my
27 inspection and lab duties in previous jobs. So if you
28 are trying to find out if I have expertise in that, I

1 do. It's just not with cannabis specifically.

2 Q But at that time were you
3 successful with your growing? Were you able to grow
4 cannabis?

5 A Yes. It's quite easy.

6 Q How many plants did you grow back
7 then as a teenager?

8 A Ten, eleven. Five of them were
9 eaten by rabbits and the rest were gigantic trees.

10 Q Now, you say it was easy, but of
11 course you had background with your grandparents as a
12 gardener.

13 A Sure, but I had no education or
14 anything. I was a teenager. It was easy in the fact
15 that you carry water to a place and then you pour water
16 on said plants, then every second week you come and pour
17 Miracle Gro on them.

18 Q Any idea of the volume you grew
19 during that period.

20 A No clue. It all disappeared in
21 some sort of thing.

22 Q Now, I'd just like you to turn to
23 your third affidavit.

24 A That's just -- tab 6?

25 Q It's the most recent one. It
26 starts at, yeah, tab 6, page 316.

27 A Got it.

28 Q If you could go to your third

1 paragraph on page 317.

2 A Yeah.

3 Q So if I understand correctly, you
4 explain in this paragraph that after September 2013 you
5 were not able to produce cannabis any more.
6 Particularly I would look at the last sentence in that
7 paragraph. You testified:

8 "The house has turned out to be a nightmare
9 for us since day one, and we never once would
10 have been able to produce cannabis for Tanya
11 even if we were allowed to."

12 Is that right?

13 A So the home we moved into was -- a
14 slumlord owned it. He owns the whole street. And it's
15 contaminated with asbestos, it has illegal wiring, and
16 we've been fighting with him for the last year. So even
17 if we had -- we moved there with the intent to do that,
18 hoping that Health Canada or all this injunction would
19 have worked out for us, but it did not. And yeah, we've
20 had nothing but a nightmare at the new home and it would
21 have not been possible there anyways, and we just -- we
22 still haven't moved out. All of our possessions are in
23 there and covered in asbestos. So we've kind of lost
24 everything. This is a little difficult actually.

25 Q So you're saying that even if home
26 cultivation was lawful in your current circumstances,
27 you wouldn't be able to do it.

28 A Well, we would have moved to

1 another location earlier. If we could have changed the
2 address we would have, but we were stuck in a horrible
3 situation financially.

4 Q So financially you had to move into
5 a place that wasn't suitable for cultivation.

6 A No, no. It seemed suitable on the
7 surface until the electrician came in and then the other
8 people. And because I'm a hazardous waste inspector, I
9 recognize there is a lot of asbestos in the home and we
10 couldn't do anything. And then Tanya got really,
11 really, really ill in -- I want to say November of 2013.
12 She has basically been in the hospital full time with
13 two or three days out here, a week here, and then back
14 for six weeks sometimes, and we just have no money.
15 It's very hard to move. And then when we finally gave
16 our notice our ceiling collapsed on December 14th and I
17 spent my Christmas in an Econo Lodge that my landlord
18 begrudgingly paid for and I still haven't heard from
19 him. And Tanya and me have lost every piece of
20 clothing, every piece of furniture, and the only things
21 we salvaged were pictures, books, and two TVs. And
22 that's a different legal battle we have. So she's under
23 a great deal of stress and this whole thing has been a
24 nightmare.

25 Q So you can't grow where you are,
26 and your current financial situation is such that you
27 can't move to a place where you could.

28 A Well, now, my financial situation

1 has improved, because I'm living at a friend's house for
2 very cheap, and Tanya's living at her mom's, and trying
3 to collect more disability, because my income disallowed
4 her, even though we have no money. But that's -- I'm
5 sure you'll ask me about that later.

6 Q I will be asking you about your
7 finances, but again, I just want to confirm that right
8 now, as of today, you're not in a position to grow --

9 A Right. We wouldn't -- we could
10 probably change that at this point, because we're not
11 taking care of her full-time, and she's moved in with
12 her mom. But at this current stage, no, we would not be
13 able to grow. However, if the injunction would have
14 applied to us, we would have moved and found a place to
15 produce for her, because it was so expensive to obtain
16 otherwise.

17 Q So instead what you're doing right
18 now, if I understand correctly, is you're buying
19 marijuana for Ms. Beemish on the black market?

20 A Liberty versus her health.

21 Q The answer is yes?

22 A Yes.

23 Q And you've testified -- and I
24 believe it's at paragraph 6 of your affidavit, on page
25 318, I just look at the second sentence.

26 "From November, 2013 to the present, I was
27 purchasing about 60 grams of cannabis for her
28 consumption a month at about \$300. This

1 Q Now, at paragraph 12 of this same
2 affidavit, if you just move forward two pages, to page
3 341. You provided a list of all the equipment and
4 supplies that you needed to build your growing room?

5 A Yeah. That is correct.

6 Q And you said that the total cost of
7 that was \$4,225.97, right?

8 A That is the receipt. However,
9 there is probably plus or -- well, there was probably
10 plus another two or three hundred dollars in
11 miscellaneous things that were purchased after. But
12 that was what we purchased originally when we were
13 granted a licence -- and what I purchased originally.
14 And I'm still paying interest on.

15 Q You've mentioned that, and I do
16 want to confirm that with you. In your third affidavit
17 --

18 A That's tab 6?

19 Q Yeah, tab 6. If we go back to page
20 318.

21 A Yes.

22 Q We look halfway down the paragraph
23 there, you say,

24 "I am so in debt, I may have to declare
25 bankruptcy, partially due to the investment
26 costs put into the *MMAR* production cycle at
27 the old place that we had to stop."

28 A So the \$5,000 or so, because there

1 was added costs, in conjunction with the lack of Tanya's
2 ability to pay any rent, pretty much put me in the
3 situation where we -- I've been in the red for almost a
4 year and a half now, waiting, so that -- like, we were
5 paying \$300-plus a month for cannabis costs, and we were
6 paying interest in debt on all the things that we
7 purchased. And there's food, and there's her
8 medication. And there's the driving, and the parking,
9 and --

10 Q But you point out that this was a
11 particularly significant expense for you.

12 A Huge. That, you know, 9 percent
13 interest on a line of credit.

14 Q Now, you explained at -- I'm now
15 back at paragraph 8 of your first affidavit.

16 A Sorry, could I interrupt? Could I
17 have a glass of water, please? I'm sorry. I have a
18 nice glass here, but I do need -- I'm a little bit dry-
19 mouthed here. Thank you very much.

20 Sorry about that.

21 Q No, not at all. Any time you need
22 a break, please let me know.

23 Actually, the better source to ask you
24 about this question, I wanted to ask you about the
25 structural work you did on your grow. If you turn --

26 A Back to 339?

27 Q It's -- at 324, actually, is the
28 better one. Your second affidavit, paragraph 8.

1 A Are these the discovery questions?

2 Q Yes.

3 A Yeah.

4 Q So there you say that essentially
5 there was only some minimal structural work you needed
6 for the grow-op, just attaching bars to the window and
7 single-screw cable hangers.

8 A There was only two modifications
9 that were made to the home, as I didn't want to damage
10 anybody's property. And I didn't want to leave any
11 lasting issues that I had to repair before I moved out,
12 so I'd get my damage deposit back. We put bars across
13 the lower window, because it was ground level. And I
14 think there was four or five single screws, cable
15 hangers, nothing industrial into the stud, which I
16 puttied over when we moved out and repainted.

17 Q Now, sorry to have to keep jogging
18 back and forth between these affidavits --

19 A That's okay.

20 Q -- but the information is set out
21 in a number of different spaces. I'm now going to ask
22 you about paragraph 13 of your first affidavit, which is
23 at page 341.

24 A Three forty-one?

25 Q Yeah.

26 A I feel like I should be talking to
27 Justice Phelan. I'm at a weird angle here, sorry. 341.

28 Q Yes.

1 A All right.

2 Q Paragraph 13. This is the
3 paragraph where you explain your monthly growing costs,
4 one of which you mention in there, the miscellaneous
5 purchases. Fertilizer, pH probe, buffer solution, CO₂
6 refills, new pots, soil mixes, gloves, other gardening
7 items. And you say there it's about \$25 to \$50 a month.
8 Is that right?

9 A I was trying to give a rough
10 estimate. Some months I'm sure it was \$65 and other
11 months it's probably \$2. So --

12 Q But as an average, it was \$25 to
13 \$50, right?

14 A I'd go down to the hydroponic store
15 usually once a month to stock up on whatever was needed,
16 even sometimes there would be a new pair of scissors or
17 gloves. A box of gloves, you know.

18 Q Right. Staying in this affidavit,
19 but moving on to paragraph 15, page 342. I'm sorry,
20 I've got the wrong -- if you just give me one moment.

21 I'm sorry. I'm referencing paragraph 15
22 of your second affidavit. If you can move to page 325.

23 A Yeah.

24 Q This is a question about insurance.
25 And if I understand correctly, that you did not declare
26 the existence of your grow-op to your insurer, right?

27 A No, we did not. We did not have an
28 insurer at the time. I changed that when we moved to

1 the new location. In fact, I believe when I filled out
2 these discovery forms, I really thought a lot more about
3 it, and of course because we were no longer producing,
4 it was a moot point to bring up with an insurance
5 agency, which did not cover us in our asbestos nightmare
6 that we're currently living in.

7 Q Okay. So you weren't insured.

8 A No. In fact, I do think I said
9 that, that I was uninsured at the time.

10 Q Yeah. And you also said that you
11 didn't tell your landlord about the fact that you were
12 growing marijuana in this property, right?

13 A No, I did not, because the previous
14 landlord that we had basically chased us out, because
15 Tanya was smoking cannabis even at that time, and he
16 made us feel very uncomfortable. His wife worked at the
17 R.C.M.P. precinct, which was funny, because so did my
18 uncle previous to that, who actually was the precinct
19 superintendent, and he constantly threatened us, and
20 said "I'm going to send my friends over," and which made
21 no sense. I work with law enforcement all the time, and
22 I've always found him kind of offensive. So that's why
23 I moved to the new place and got a licence, because it
24 -- Tanya was -- I didn't want to lose my job, and she
25 didn't want to get in trouble.

26 Q But you said you were morally torn.
27 You would have liked to have disclosed it but you felt
28 that that wouldn't be --

1 A Absolutely. No, I just didn't want
2 to have put her health in jeopardy.

3 Q Okay.

4 A For my sake. I don't -- I would be
5 -- the liberty thing for me, for over her health, I've
6 done it every day, so.

7 Q Now, you give a couple of estimates
8 for what the electricity cost is for the grow, and I can
9 give you the specific cites, but in the -- citations in
10 your affidavits, but at one point you said it was \$75 a
11 month and in the other you say it's \$90 a month. I can
12 take you to the --

13 A Of 16 of the discovery questions?

14 Q Yes.

15 A I say 240 bi-monthly, so that's
16 \$120 and about 75 percent is 90. And then where did I
17 say it was \$75?

18 Q In your first affidavit at
19 paragraph 13, which is at page 341. In the first
20 sentence you say it was 150 bi-monthly.

21 A Oh. I actually know why. It's
22 because that one was before and after months and months
23 later, I did better calculations. I took out all the
24 bills because B.C. Hydro is very nice about electronic
25 records, and I think the second time that I gave the
26 discovery questions, that's a little more accurate. Of
27 course, it's very hard to determine what the percentage
28 is because I know that I was at about 45 to 50 percent

1 load when the equipment was running, and it's very hard
2 to make an estimate. And B.C. Hydro's rates aren't
3 data.

4 Q So the better estimate is \$90.

5 A I would say \$90. But somewhere
6 between there is probably the magic number.

7 Q And we asked you about water costs
8 and you said there aren't any because you're on a
9 municipal supply, I assume, is that right?

10 A Yeah. Yes, and I tried to make it
11 as close -- I'm very sustainable, I didn't want to
12 waste, I didn't want to have excess water standing, so I
13 used exactly what was needed, everything was metered out
14 very carefully.

15 Q Right. But where you lived in
16 Surrey there was no -- there's no water meter.

17 A Maybe my landlord paid it. But I
18 wasn't.

19 Q I think most municipalities in the
20 Lower Mainland aren't metered.

21 A I know.

22 Q Okay, you describe at paragraph 18
23 of the discovery questions, pages 326 and 327 --

24 A Eighteen?

25 Q Yeah, paragraph 18.

26 A Yeah.

27 Q Pages 326 and 327 you describe your
28 security system.

1 A Yes.

2 Q And so if I can summarize it, you
3 basically said that you didn't have a real security
4 system for the grow-op in your garage. There were
5 blinds and a bar across the window. The doors were
6 dead-bolted. You had no alarm but you did have two
7 dogs. Is that --

8 A That sounds like a security system.
9 That sounds like a real security system to me. I just
10 did not have an alarmed electronic system activated. It
11 was quite expensive and the landlord didn't really want
12 to have us sign up. He used to live in the house and we
13 just decided not to do that. The house would have been
14 -- the garage would have been difficult to get to. Our
15 gates were all -- we were at a blind end of a cul-de-sac
16 and there would be no way to get in behind without a key
17 to come into the window that was barred, and the garage
18 itself was barred and locked, and I parked my car in
19 front of it.

20 Q So just to be clear, this was a
21 townhouse. How many units were in the row?

22 A We -- I don't -- 40. I can't even
23 remember what unit we were on now. It's been a while
24 since we were there, so I think we were the second to
25 last and they'd be plus one, whatever unit we were.

26 Q But you were in the middle with
27 neighbours on each side?

28 A Yeah, neighbours on both sides.

1 They were very good friends of ours. They'd come over.
2 They had no idea any of this was going on. There was no
3 smells. There was no moisture. There was no issues.
4 Sorry, it went off topic with the security.

5 Q You anticipated my next question.
6 That's perfect, thank you. Do you know what a grow box
7 is?

8 A Yes, absolutely. That's what we
9 originally started with and switched to a tent rapidly.

10 Q So you originally had purchased a
11 grow box for your facility?

12 A Yeah, it was inexpensive -- it cost
13 money. I don't even remember what it cost. It was very
14 inexpensive relative to the \$5,000 price they come with
15 for the one that we have, but it was never used much. I
16 think we used it to grow them to start, and then the
17 tent was much better because of the height.

18 Q I see. How much did you spent on
19 the grow box?

20 A It was prior to getting the
21 licence, with the intent that we were going to get the
22 licence, and honest, off the top of my head, somewhere
23 between 500 and 800 dollars. It was a steal. They're
24 normally priced at like \$8,000. It's not included in
25 this because it was never really -- I use it to grow
26 tomatoes.

27 Q So it was an unnecessary expense
28 for you in your case.

1 A It was a lesson learned about that,
2 but once again it is -- it's utilized. So it's not like
3 it was really just for this. I wanted something to
4 start seed tomatoes and cucumbers and things like that
5 in January.

6 Q If you could explain to the court
7 why precisely you prefer growing with a tent setup as
8 opposed to a grow box, please.

9 A Cannabis plants like to grow really
10 tall. They don't really like being pushed down. You
11 have to put a lot more effort to band and prune and do
12 things to them. They prefer to stretch. And when you
13 have a tent it's much -- there's a good 18 to 24 inches
14 more of space to operate in, and it doesn't kill your
15 back leaning over. And ergonomics are important when
16 you're sitting on your knees on concrete roll-out pad
17 doing that. I found that the tent was significantly
18 easier to operate it, and however the grow box did do
19 its thing. It was really great at starting seedlings
20 and cloning and things like that.

21 So it had its uses but it was not ever --
22 it was never intended as part of this. It was a thought
23 and a deal a year in advance and it was used for other
24 things before and used for other things after.

25 Q How many plants could you grow in
26 it?

27 A Eight. But they would all be very
28 short and they wouldn't -- they didn't grow to their

1 full potential. Like I said, cannabis does like to
2 stretch.

3 Q So how many mature plants could you
4 have grown in there? Maybe one?

5 A No, you could grow eight but they
6 would be short and they'd give you significantly less
7 yield per plant. And because of the rules of the Health
8 Canada licences, you might as well get the best amount
9 of yield per plant because those things are made for
10 growing many, many, many small plants and turning them
11 over, or they're for seedlings, cuttings and things like
12 that. Not just for cannabis, for any type of plant.

13 Cultivation is often staged. You put
14 something in a small pot, you move it up to a bigger
15 pot, and then the roots grow out and that was very good
16 for the first two stages but it is not good for the --
17 it could be good for the right person but it wasn't very
18 good for what we were trying to do.

19 Q Even though you have a relatively
20 small operation, right?

21 A Very small. That's why we wanted
22 taller ones because Tanya would get more leaves and
23 fresh buds that we could try juicing and things like
24 that; whereas these you'd get tightly packed small
25 amount of fresh buds and they'd be dense but they would
26 -- we didn't get the variety or the characteristics that
27 we wanted either in those. The larger taller ones grew
28 better in the tent.

1 Q Now, in the second affidavit, the
2 discovery affidavit at paragraph 24.

3 A Page

4 Q The question is at 329, and the
5 answer is at 330.

6 A Yeah.

7 Q You say that you spent about 50 to
8 100 hours per month cultivating, and the initial setup
9 was even more time-consuming. Is that right?

10 A I am very obsessive-compulsive. I
11 have worked in labs most of my life. I'm very attention
12 to details. I ran it like a lab. Did I need to spend
13 50 to 100 hours there? No. Sometimes I would just sit
14 down there and pat myself on the back. I was very proud
15 of how it all worked. And sometimes there would be 50
16 hours of actual labour in a month and other times
17 there'd just be 50 hours of going down and trimming the
18 leaves and vacuuming and wiping counters and things like
19 that.

20 Q And what about the setup time? You
21 said it was even more than that. Could you tell the
22 court how much time you spent on the setup?

23 A Probably a good 40 hours over one
24 week of wiping every square inch of the room down,
25 sealing -- and the whole garage, even outside of the
26 grow area. I wanted to make sure there was no pests, no
27 contamination. The only thing I didn't do was buy an
28 ozone generation. That was more because I had fears for

1 my dogs because ozone is toxic. You fill a room, run an
2 ozone generator, it kills all the pathogens and things
3 in it, but on the other hand it smells like lightning
4 and it's not actually good for your lungs and you should
5 leave your house for, you know, 12 hours and I just
6 never got around to doing that, but we used a bleach
7 solution which was probably one to four percent, wiping
8 every square inch. Washed the concrete, scoured it with
9 a stronger bleached solution. Took all of the carpets
10 and hydrogen peroxide every square inch of the growing
11 area, and then did it again over two or three days. I'm
12 very conscientious of microbes and pests. And then
13 sealed the doors.

14 That's actually -- I guess that could be
15 security too. We sealed and weatherproofed all the
16 doors and the garage extra to make sure nothing could
17 come in or out except through the designated air outlet
18 for the windows with bars.

19 A Did I go off there? Sorry.

20 Q No, that's a good thorough answer.
21 Obviously you've put a lot of work into it, is what
22 you're telling me.

23 A I try to do things right when I do
24 them.

25 Q Now, at paragraph 27 of your
26 affidavit, which is pages 330 and 331, you explain
27 essentially your growing process. And if I understand
28 correctly, you never grew more than 14 plants, even

1 though you were allowed up to 25, right?

2 A Yeah. The tent that we had, and
3 the size of the pots -- excuse me -- that we used
4 limited you to two patterns of one with six plants
5 around it. And I would rotate them through that
6 pattern. And any more, if you tried to fit in there,
7 would -- it was overkill. That was what the tent could
8 -- what we were doing could support.

9 Q Right.

10 A If we would have went to 25, there
11 would have been issues with plants touching, and all
12 things like that.

13 Q Right. And so you say in your
14 first harvest, February, 2013, you made 400 grams from
15 12 Purple Kush plants?

16 A Yeah. That sounds -- that's what I
17 wrote.

18 Q Mm-hmm. And then your second
19 harvest, in May of 2013, you produced 300 grams from 12
20 plants, six White Berry and six Jackie White?

21 A That is correct.

22 Q Okay. And your third harvest was
23 14 plants, three White Berry, five Afghani, three Sweet
24 Skunk, and I got in trouble yesterday for mispronouncing
25 a strain, but I'll try this one. Three Jack Herer. Is
26 that the right pronunciation?

27 A I would pronounce it that way, I
28 think.

1 Q And that was a total of 480 grams,
2 right?

3 A Yes.

4 Q Just to be clear, though, when you
5 give those estimates of the grams you produce, those
6 were just estimates, right? You didn't have a scale
7 that you used.

8 A The last time, I believe we
9 actually had a digital kitchen scale. So, you know,
10 it's probably plus or minus five or ten grams. The
11 second time we probably used my mom's digital scale, and
12 the first time was probably was an estimate. Based on
13 -- no, I actually remember that now. They were in a
14 jar, and the amount of jars I had, a friend of mine told
15 me, he's like, "A jar is about this." So, I think
16 that's how I came up with 400 grams. I think it was
17 like 60 grams a jar, and however many jars that was.

18 Q I think you've answered the
19 question, but at the second paragraph of your answer on
20 discovery, you said "I had no scale initially so did not
21 record all harvests." Is that the case?

22 A Yeah. The first one was a little
23 iffy. I just filled jars up and cured them over two
24 months.

25 Q And at paragraph -- in this
26 paragraph, as I said, you described your growing
27 activities quite thoroughly. And I won't take the court
28 through what you've specifically set out. But at one

1 point you said you ran the operation like a lab, because
2 you'd worked and studied in many. Is that fair?

3 A I think I mentioned that earlier as
4 well, yes. I don't like dirt or germs or waste, and I
5 know what's going on in the media, and I didn't want to
6 be perceived as anything but doing it right. Also as a
7 regulator, I report people who do things like that, or
8 recommend charges, or financial penalties. So, I wanted
9 to make sure there was no recourse against me, and then
10 I did it the most absolute best way I could.

11 Q But you didn't keep any
12 documentation about your operation, did you?

13 A I actually do have a little lab
14 book somewhere that's probably in my asbestos house now,
15 that does state the approximate weights, how many jars,
16 and visual observations daily. I just don't know where
17 it is. It's somewhere in my ruined home.

18 Q That perhaps explains it, because
19 we did ask you on discovery to provide us with that
20 documentation, if you have it.

21 A I think by the time discovery
22 happened, we were already moving and having problems.
23 So, we -- it's there, I'm sure. If I really dug and I
24 went into the asbestos house with a respirator on, I
25 could probably find it with the books and everything
26 else that are sitting in my home. But -- I'm sorry, I
27 don't actually remember being asked for that directly,
28 but -- I keep a lab manual or a field note thing with me

1 all the time for my job, so I'm very meticulous about
2 notes. In fact, if this was for my professional thing
3 it would be sitting here with dates and initials in the
4 corner of each page, so.

5 Q At paragraph 29 of this affidavit
6 you say you've never had any moisture issues with your
7 grow-ops?

8 A The whole way it was designed was
9 to move 34 cubic feet per minute, I believe, and don't
10 quote me on that exact number, of the blower that we
11 used, would move it through a carbon filter, and that
12 carbon filter would then evacuate through the window
13 about seven feet away from the tent. And the exhaust
14 that came out, I would check the humidity on it and it
15 was always below 80 percent and it's about 80 to 90 in
16 the tent. The house -- the humidity in the garage never
17 went above 70 percent and the humidity in the house was
18 always below that or around it, which is the ambient
19 humidity.

20 Sorry, did I go off? I've lost track
21 what your question was again. About the humidity,
22 correct?

23 Q I was asking you to confirm that
24 you had had no moisture issues.

25 A Yeah.

26 Q And you've explained why, I think.

27 A Never once. We did have times
28 where the tent would fluctuate itself but it wouldn't

1 impact the environment around it and it would just be a
2 matter of me going downstairs and changing the dial. Or
3 once the air filter was worn I'd change the carbon
4 filter and it would increase the air flow, so.

5 Q Now, you say at paragraph 30 that
6 you did have -- that you never lost any plants to
7 disease, right?

8 A Whenever any plant prior to going
9 into that tent, because sometimes there would be
10 seedlings, and I'm pretty sure I had excess of 12 plants
11 a few times for a day or two, I would cull the weak.
12 And we never put diseased plants in, so we never really
13 had diseases. However, there is -- I did mention that
14 once we had spider mites up here briefly and I put them
15 in -- I controlled them immediately using a fairly
16 natural solution that I've known from Agriculture
17 Canada, and that was prior to them having any buds or
18 forming and being in the flowering stage. And I'm
19 almost certain it was to do with me and the dog coming
20 back into the garage and wiping him off and brought in
21 foreign contamination that one time.

22 Q So you saw that from a visual
23 inspection, right?

24 A Absolutely and I checked it and
25 within days, so.

26 Q But you've never actually tested
27 your marijuana for parasites or contamination?

28 A Kind of hard to do. As I have

1 access to labs and I would not hazard to do that even
2 that I'm legally authorized to do, I still wouldn't feel
3 comfortable bringing it to the lab and "Hey, can you
4 check this for CBD and THC, mould and pesticides?" I
5 just -- there's no infrastructure, there's no system to
6 do that there now. I'm sure I could probably like ship
7 it to California or something, but I'm not aware of any
8 labs that would sample for those things for -- and feel
9 comfortable doing that or not overcharging by a thousand
10 dollars.

11 Q But if you were authorized to do
12 it, you would get it tested?

13 A I would if there was labs -- I'm
14 very familiar with the lab industry, Maxim, LS. They
15 don't do these things typically. Like I'm sure I could
16 get a special request to get it in, but there's not --
17 I'm not aware of any cannabis labs. They might exist
18 now, now that there's more people doing this, but --
19 yes, absolutely I would get it tested, though, if I
20 could and if it was reasonable in cost, obviously.

21 Q Thank you. You did say in
22 paragraph 40 that you wish you could have it tested if
23 it was available.

24 A Absolutely.

25 Q Okay.

26 A I'd love to know.

27 Q Now, at paragraph 41 of this
28 affidavit you explain that you did have a licensed

1 professional electrician install and inspect the
2 electrical operation, correct?

3 A That's correct. He would not
4 really like it if I revealed who he was, because he
5 doesn't feel comfortable participating in anything to do
6 with medical or illegal marijuana, but he was very
7 happy, he was a very close family friend, so.

8 Q So even though it was authorized
9 and lawful --

10 A Still felt uncomfortable.

11 Q -- you still felt uncomfortable
12 doing it?

13 A Very uncomfortable. In fact, his
14 advice was, why would you sign up with the government to
15 do such a thing? Now they know where you are.

16 Q But what was your reaction to that?
17 You knew it was a lawful grow operation.

18 A Yeah. I work for government. We
19 intentionally try to get people to tell us where they
20 are, so they're easy to go find, and bother, and
21 prosecute. So I'm a little bit cynical about all of
22 this.

23 Q And you were probably also worried
24 about the security of your marijuana, right? If others
25 were to know.

26 A Absolutely. I didn't want anyone
27 to really know about it. And I -- and not because I'm
28 ashamed of it or anything. It helps Tanya greatly. But

1 it's -- I live in Surrey. There is lots of crime.

2 Now, am I concerned about a home
3 invasion? No. But I was after I received my letter
4 from Health Canada that outed us. But at that point,
5 we'd moved, and the new tenants actually got it.

6 Q Now, you explained that you didn't
7 have a fire safety inspector inspect your grow-op, did
8 you?

9 A If you did that in the City of
10 Surrey, I would have got a notice, just recently, that
11 said, you know, you owe us 5200 for abatement and
12 cleanup. Because that's what they were doing recently.
13 I wish that it was a system that you could phone the
14 fire department and invite them. I have lots of
15 colleagues I work with that are in the fire department.
16 And I'm very aware of health, safety, and environmental
17 concerns. So I felt that it was not a fire risk. An
18 electrician went through it.

19 But, if -- in a perfect world, you should
20 be safe.

21 Q And just to confirm, at paragraph
22 45, you said you never had any children around your
23 grow-op, right?

24 A No. And it was safe enough that if
25 there was children in the house -- and there was
26 children that came to our house, but they never went in
27 the garage. I was not concerned for anyone's safety.
28 No different than growing tomatoes or anything else.

1 Q And it's your evidence that you
2 never injured yourself growing marijuana?

3 A Itchy hands, if you don't wear
4 gloves. Once that -- once I touched my eye, I had an
5 itchy eye all night. Sore back from bending over.

6 Q Ordinary gardening injuries, right?

7 A Absolutely.

8 Q My next set of questions deal with
9 your financial situation, and it might be a bit early,
10 but I'm wondering if this might be a good time for a
11 break.

12 JUSTICE: We'll take ten minutes.

13 (PROCEEDINGS ADJOURNED AT 10:25 A.M.)

14 (PROCEEDINGS RESUMED AT 10:39 A.M.)

15 JUSTICE: Go ahead.

16 MR. BRONGERS: Thank you, Justice
17 Phelan.

18 Q Mr. Hebert, I'd now like to turn to
19 the question of your financial situation, and we asked
20 you some questions about this on discovery. So, I just
21 am going to confirm some of the information. Beginning
22 with your income, which you have answered at paragraph 2
23 of your second affidavit, which is at page 322.

24 A Twenty-two?

25 Q No, 3-2-2.

26 A Paragraph 2?

27 Q Paragraph 2, right.

28 A Yeah.

1 Q And you've also attached as a
2 couple of exhibits, I don't think we need to turn to
3 them, but tax return summaries. Just to confirm, if I
4 understand correctly, after tax you are basically making
5 about \$49,824.39 per year? Is that right?

6 A Is that what it says on my tax
7 return?

8 Q That is basically what it says on
9 your tax return.

10 A Then that's what I make.

11 Q Right. And just doing simple math,
12 so dividing that by 12, that is \$4,152 a month after
13 tax?

14 A \$4,000 a month?

15 Q \$4,152 per month? I am just --

16 A I usually make 1500 to 1600 dollars
17 a pay cheque, so it is a little bit lower than that.

18 Q Right, but of course we can't go by
19 what your pay cheque says because there are deductions
20 made and that sort of thing --

21 A Totally.

22 Q -- so.

23 A So, sure.

24 Q But anyways, you are satisfied with
25 the answer you provided --

26 A Yeah, that is off my tax.

27 Regarding my income, it's all my 2013.

28 Q Right. And I suppose I could ask

1 Ms. Beemish this, but you probably know it as well. Her
2 only source of income is Canada Pension Plan disability,
3 correct? And that was recently increased to \$619 a
4 month?

5 A It was a while ago now, but yeah.

6 Q Yeah. So, if we add that together,
7 the 4,152 per month, plus 619 per month, that means that
8 your total income together is \$4,771 per month?

9 A That seems a lot higher than what
10 it is. I don't think it is that high. Because there is
11 so many deductions, I don't think I clear more than
12 \$3,000 a month usually.

13 Q I'm giving you an opportunity to
14 change the evidence on discovery, but again, this is
15 based on the tax returns.

16 A Sure.

17 Q Okay. Now, in terms of your
18 expenses, if we look at paragraph 4 of the affidavit.
19 What you helpfully did is you set out your expenses in
20 an exhibit, Exhibit E. So if we could just turn to
21 Exhibit E.

22 A Yes, this table at page 350?

23 Q Which is at page -- exactly, page
24 350.

25 A Yeah, that was an estimate that I
26 made for John back in 2014, in the summer I believe.

27 Q Mm-hmm.

28 A Most of those are, you know, right

1 on. Like the loans, Canada student loan, that is how
2 much it is. My ICBC, Fortis. Fortis fluctuates, B.C.
3 Hydro fluctuates, but the other things are pretty much
4 my monthly payments. And there is a bit of estimation
5 for medical pharmaceuticals for Tanya, and cannabis, and
6 cell phone for Tanya, because when she is in the
7 hospital, it can sometimes be a \$200 - \$300. So those
8 do fluctuate. But yeah.

9 Q But it is more or less -- you are
10 still comfortable with these estimates?

11 A It has changed a lot now, our
12 living situation has, but at the time, that is correct.
13 And as you can see, I even put income at the top for
14 "Dave" at \$3,000.

15 Q Now, just in terms of the rent, the
16 first item there, "Landlord 900"?

17 A Yeah, Tanya paid the other 400 out
18 of her disability, but by the end of this all, it had --
19 by after August, Tanya just stopped paying disability,
20 because she had to put -- I just paid the whole thing,
21 so that was another \$400 out of my cheque.

22 Q But your collective rent expense is
23 1300 a month, right?

24 A That was for rent alone, yes.

25 Q Right, and before at your old
26 residence, you were paying 1,650 per month for --

27 A That is correct. Although at that
28 time, I had a roommate, and then we got the licence, and

1 he moved out, and we tried there for the year, but it
2 just -- we couldn't cope without the roommate.

3 Q And I see that you have a very
4 significant amount of interest that you have to pay on
5 your loans.

6 A I'm very well educated, and very,
7 very, very, very in debt.

8 Q In fact, when I total the amounts
9 there, you're paying \$2,375.19 a month on interest.

10 A Yeah. Well, it's interest and
11 principal, but that sounds about right.

12 Q Yes. That's your debt carrying
13 charge.

14 A I am drowning in debt, yes.

15 Q And in fact, and again, I don't
16 think it's necessary to go through it in detail, but
17 when I do the math, the total expenses are \$4,745.34.
18 So very close to what your total income is.

19 A I'd say it's more.

20 Q That you're spending more than your
21 income.

22 A That's why I had to move out of
23 that place. I was just tapping into line of credit to
24 borrow, so I could pay a bill, and then pay that back
25 when I got my pay. It was horrible. It was horrific.
26 I have been mentally stressed for at least a year.

27 Q So, but you would agree that you're
28 essentially spending everything you earn, maybe a bit

1 more.

2 A Just to keep afloat.

3 Q Right.

4 A And that did not cover all of
5 Tanya's cannabis. It just got the bare minimum. That
6 did not get us healthy, happy food all the time. That's
7 why I grew produce. That was the bare minimum to live
8 in absolute poverty while I have a nice job, and I'm
9 still living in absolute poverty.

10 Q So in terms of your assets, your
11 only real asset is a car, a 2012 Mazda 3.

12 A Yeah. Bought it just in case I had
13 to go live in it. You can pull the seat down.

14 Sorry, that was a little sarcastic, but
15 it was kind of true.

16 Q I'm just going to ask you again
17 about your current marijuana expenses for Ms. Beemish.
18 And you testified that you paid at the time an average
19 of about \$300 per month for 60 grams. That's about \$5 a
20 gram. You just explained now that your source is
21 charging you a little less.

22 A When I told my source about this
23 case, he immediately dropped his price by about \$40 an
24 ounce, which is down to about \$3 a gram. He's given it
25 to us before, and just said, "Here, Merry Christmas. I
26 know she's suffering." So I do now try to obtain it for
27 her when she's out of the hospital, but in the last
28 seven months, she has barely been home. Once in a

1 while, I will roll some up and go sit outside with her
2 when she's detached from her feeding tube and all of her
3 IVs. But in general, the hospital makes you feel very
4 uncomfortable about consuming it anyways.

5 Q In terms of -- go ahead. I didn't
6 want to interrupt you.

7 A Sorry. There's a mixed feeling, as
8 you probably are well aware, and I'm sure other people
9 have mentioned. Not all doctors look at it the same
10 way. Her specialist feels very strongly it's helped
11 her, and other doctors say that she's a hopeless drug
12 addict and a drug seeker, and imply that she's -- well,
13 she is part Native, and that she's just a drug seeker.
14 And pretending. So we've had lots of wonderful
15 experiences with social workers in the hospital system.
16 Not just about cannabis but about opiates and everything
17 else. So, yeah. We -- I do still get it for her. And
18 I still put my liberty at risk every time I drive and go
19 to the person's house and drive it to her house.

20 Q Now, remember, you swore this
21 affidavit in January, so it's just a month ago. So you
22 were saying at that point you were spending an average
23 of \$300 a month on 60 grams. So, would that be fair,
24 she was consuming about 60 grams a month at that point?

25 A Oh, when she's home, I would say
26 she consumes a lot more than what her actual licence
27 says, but then on days that she's not, she doesn't. So
28 in January she was home a little bit, and in December

1 she was home a little bit. She probably did consume
2 close to that. But it sits in a jar in our house, so, I
3 couldn't tell you how much is actually left over. I
4 just top it off whenever -- every second pay cheque, I
5 help her out.

6 Q All right. And of course I'll ask
7 her the question as well, but I assume that you would be
8 with her often when she is consuming the marijuana.

9 A No.

10 Q No?

11 A Like, she's at home all day. So if
12 she's at home, I'd be at work. You know, once in a
13 while she'd text me and say she's feeling better or
14 worse, or come pick me up and take me to the hospital.
15 But you know, in the evenings, I'd be around her. But
16 she would consume most -- mornings are the worst time
17 for her. She'd struggle with her nausea and her pain.

18 Q But given that you say you were
19 buying \$60 a gram -- or, sorry, 60 grams for her in one
20 month, it's a 30-day month, would it be fair to say she
21 was probably using an average of about two grams a day?

22 A No. Like, you could average it out
23 there over a 30-day average, but because she's in the
24 hospital so much, it would be more like when she's home,
25 she's smoking like 10 or 12 grams a day, or eating
26 cookies, or whatever was helping her at the time.
27 Eating, that's really difficult for her, so edibles are
28 iffy. Once in a while she's tried them. Juice was

1 better.

2 Q So the daily consumption varied,
3 but over the month --

4 A You could average it over 30 days
5 but that's not a realistic amount per day. She would
6 sometimes have a week with zero.

7 Q But 60 grams a month would be
8 reasonable.

9 A Yes, that is absolutely true.

10 Q And just to confirm in terms of
11 your expenses, you don't indicate that you spend any
12 money on tobacco?

13 A No.

14 Q No money on alcohol?

15 A I work in a government office.
16 Once a month we go to pub night. I might spend \$40 at
17 pub night and that's mostly on food. I'm not much for
18 drinking. Tanya cannot drink.

19 Q And you say you spend nothing on
20 marijuana for yourself, I assume?

21 A I've consumed it, I'm not going to
22 lie, but not in that volume.

23 Q That's not one of your monthly
24 expenses --

25 A No.

26 Q -- is buying recreational marijuana
27 for yourself.

28 A If I was going to consume

1 recreational marijuana it would be indirectly through
2 her. And honestly I find it's not even recreational for
3 me. If I consume it it's because I'm under a great deal
4 of stress and it does help me as well. And my doctor is
5 totally okay with me consuming it as well. I have a
6 great deal of stress and mental trauma from all this and
7 I've actually found it helps me, but I don't consume
8 more than one or two puffs off the vaporizer every so
9 often.

10 Q So you do consume marijuana right
11 now?

12 A I have consumed marijuana in the
13 last three days.

14 Q But you've never gone to a doctor--

15 A I have a mental health issue. I
16 have bipolar disorder, which I have consulted with my
17 doctor, and he says, "I think it helps you." I don't
18 take any pharmaceutical drug at all. I'm very health,
19 I'm fit, I'm competent in my job. So I feel that there
20 is no issue with consuming medical marijuana or
21 recreational cannabis, whatever. It helps sometimes.
22 It's like having a beer.

23 Q And you've never received an
24 authorization from Health Canada to possess marijuana.

25 A Just to be a designated grower.

26 Q Now, assuming hypothetically if
27 your spouse's symptoms were to disappear, you would stop
28 buying marijuana for her, right?

1 A I don't think -- theoretically she
2 is not going -- this is never going to disappear. She
3 has nerve damage. It's permanent. She probably won't
4 live a long or happy life. Not my favourite topic.

5 Q I'm just trying to understand
6 hypothetically whether it's being used purely as a
7 medicine or partly recreationally.

8 A She has no recreation. There's no
9 joy. There is no happiness in her life. It is a
10 miserable, miserable existence. If her life got better
11 and it was regard -- related to cannabis, she probably
12 would continue using it.

13 Q I just want to take you to your
14 first affidavit which you swore in January of 2014, at
15 paragraph 11, which is on page 340.

16 A Yes.

17 Q If you look at the first two
18 sentences:

19 "If the cost of this medicine from Licensed
20 Producers is between 8 to 12 dollars a gram,
21 we will simply not be able to afford to
22 purchase the medicine for her. Even at \$5 a
23 gram that would be a ten times increase that
24 we cannot afford."

25 You testified to that, right?

26 A Yeah, that was when we were ending
27 our own personal cultivation and it was costing
28 somewhere under a dollar a gram.

1 Q And then if we look at paragraph 6
2 of your most recent affidavit of this year, which is at
3 page 318.

4 A 318 you say?

5 Q Yeah.

6 A Okay.

7 Q In the middle of paragraph 6 you
8 say, "This comes out to \$5 a gram and sometimes less."
9 So ultimately you were spending \$5 a gram for marijuana
10 from the black market, right?

11 A Yeah, the \$300 a month.

12 Q And you could afford that.

13 A We can't afford that, but we did.
14 And luckily, like I said, we have a very compassionate
15 -- I have two very compassionate friends who have
16 supplemented that. Especially after I wrote this, I
17 believe in August of last year.

18 Q Actually this affidavit --

19 A Was it the January one?

20 Q -- was sworn in January, a month
21 ago.

22 A Yeah, the August one, when I did
23 that, that changed our drug dealer's attitude towards
24 all of this. He's like, "Oh, I did not know, this is
25 horrible." So I'm sure that although I did spend about
26 \$300 a month, sometimes we probably got more than 60
27 grams for that amount because it changed. And in 2015
28 when I wrote this I was basically looking at the old

1 affidavits and I've kind of given up on -- sometimes I
2 buy a whole bunch at once or -- because she'd stay in
3 the hospital so long it was there and I would get a
4 discount, so, you know.

5 In fact in January I do believe that the
6 last time I did buy it I think I spent \$400 all at once,
7 but she probably still has a whole bunch sitting at her
8 mom's house.

9 It's very expensive, regardless of where
10 it comes from, and it shouldn't be, because it doesn't
11 actually take that much effort to make.

12 Q Now, in that same paragraph, you
13 explain the black market cannabis that you have been
14 buying. If we go about again half-way down, it says,

15 "The black market cannabis supplier is
16 organic, and ensures no mould or pests are
17 present. The crop is destroyed."

18 Right?

19 A Yes, so if the two gentlemen that
20 my colleague deals with, they both are illegal. I do
21 believe he knows another person probably is not, I'm not
22 sure. I don't really ask, it's none of my business, I
23 don't want to -- not that I am scared, these are not
24 organized crime people, these are very nice, friendly,
25 would never know your neighbours, and yeah, I know for a
26 fact that if there is ever a pest on any of his product,
27 it is all destroyed, he takes a huge loss. He will not
28 tolerate powder mildew, and all those.

1 Now, I don't know if he sends it off for
2 analysis, but he has a microscope. I have a microscope
3 at 100 times. I inspect anything that I get from him,
4 right in front of him. And if it is faulty, it's a no-
5 go. And I have witnessed things that do have things
6 like powder mildew on them, or dead spider mites and
7 stuff like that, and I said "no thank you." But at
8 least I have the option.

9 Q So, you are saying that when you
10 receive the marijuana from him, you ask him about the
11 quality -- I am just trying to --

12 A We have in-depth discussions about
13 it. I am -- I love horticulture, I love plants, I love
14 biology, I am always interested in how things work. He
15 is always interested to share. I know a great deal
16 about where he sources his stuff.

17 Q And you say you haven't got it
18 formally tested, but again, just to be clear, how you
19 can confirm --

20 A I am inspecting it myself, with a
21 100 times microscope, with visual and olfactory test,
22 and of course, you know, usually I'll probably have a
23 smoke out of the bag that I get for Tanya, so I can tell
24 of its quality. In fact, we have a volcano vapourizer,
25 and you can tell approximately how much THC and other
26 volatiles are in it, by how many bags it fills up. The
27 more potent it is, the more vapour you get off of it.
28 You can't tell the exact percentage, but you can have a

1 pretty good idea.

2 Q So, you have to consume it yourself
3 to test it?

4 A Sure, let's call it that. But no,
5 it's through visual, and olfactory, and of course I have
6 the microscope to double check if there is any moulds or
7 pests on it. And I would -- I have only seen that once,
8 and I said "no thank you" and he -- the next time I saw
9 him, it was all resolved.

10 Q Okay.

11 A Can I actually further add on to
12 what organic is? Because this is something I put in
13 there for a reason? Organic is, there is no pesticide
14 sprayed on it, there is natural based additives to the
15 soil or the hydroponic medium, and you know, that is how
16 things should be grown in general. I know it is a buzz
17 word for food, but I can't get that confirmation from
18 any of the LPs that I have looked in to.

19 Q And I'm just curious, in order to
20 ascertain Ms. Beemish's amount of consumption, because
21 it appears that you are using some of her supply, is
22 that right?

23 A No, I would add extra for myself.
24 I do not incorporate -- if I bought \$10 worth of
25 cannabis for the month, it was not part of her supply.
26 It would be my friend going, "here you go." It was
27 definitely distinctly separate, and it is all recorded
28 in a book, I made sure, because of this.

1 Q And I ask you ten, did -- how much
2 have you consumed in the last three days then?

3 A I smoked a joint, like I said,
4 three days ago with my roommate. Having a really rough
5 time thinking about this, actually. Tanya went back to
6 the hospital on Saturday, that was the night I did it.
7 So, whatever, Saturday night was.

8 Q My final series of questions relate
9 to your experience with the Licenced Producers. If we
10 look at your third affidavit, at paragraph 6 I believe,
11 you're talking --

12 A Is this 318?

13 Q Yeah, page 318.

14 A Yes.

15 Q You are explaining what you know
16 about pricing at Licenced Producers.

17 A So --

18 Q Now, let me just ask the question
19 please.

20 A Sorry.

21 Q Halfway down the page, you say,
22 "The best price I've seen before taxes and
23 shipping was \$9 per gram for questionable,
24 and irradiated cannabis form an LP."

25 Do you still believe that there are --
26 you cannot get medical marijuana from a Licenced
27 Producer for less than nine dollars a gram?

28 A I have not attempted to look into

1 since being completely disappointed by the system back
2 in last year. This, even though this is for January
3 2014, this is based on information from August or
4 September, before our house became unlivable due to
5 asbestos and things like that. I looked into it a
6 little bit, I looked online. A lot of them say "sold
7 out", a lot of them you phone and you don't get an
8 answer, or you leave a message and you don't get a phone
9 call back.

10 And I do have many, many friends that I
11 do know have their medical cards, and they have terrible
12 experiences, and they go through the same guy that I go
13 to, and he's -- his experience is, he gets pictures of
14 the crap that comes from these LPs. And then he puts
15 them on his wall and shows people. So, it kind of
16 turned me off of the whole thing.

17 And then personally, I don't like giving
18 my medical or personal information to, you know, not a
19 pharmacy or a hospital. These are not pharmacies,
20 they're not hospitals. I'm not a hundred percent
21 convinced that they can control that personal
22 information, considering, you know, Health Canada and
23 Human Resources Development Canada have lost my private
24 information. And I work in a Ministry that's lost
25 private information too. Really reluctant to give it to
26 a private corporation.

27 Beyond that, I don't like the idea of
28 being mailed something. I'd rather have chain of

1 custody the whole entire time, because, well, theft and
2 things like that. So I'm turned off of the whole LP
3 thing, and I don't like the idea that I'm being forced
4 to purchase something that I can produce for next to
5 nothing.

6 Q So your counsel has tendered an
7 affidavit from a Mr. Mike King which sets out some of
8 the prices that Licensed Producers are charging. And
9 they range from \$5 to \$15 a gram with some compassionate
10 discounts, as low as \$2.50 or \$4.50 per gram. So you
11 are saying that even if, at those prices, you would not
12 be willing to purchase marijuana from Licensed
13 Producers?

14 A I didn't find -- I did not find any
15 of them would give me any offer like that, and there
16 wasn't many when I looked. And I'm kind of stopped --
17 it doesn't sound like Health Canada has licensed too
18 many more. So I'm not certain where those prices come
19 from. If someone presented that to me and it was easy
20 and accessible through Health Canada's website, perhaps
21 maybe I would have looked deeper. But my experience
22 was, it was a bunch of bullshit. It was really
23 difficult to interact with these organizations, and try
24 to figure things out, and some of them were just not
25 accessible. They just had fluff on their website. I
26 don't even know if they actually produced or they bought
27 from somewhere else.

28 And it goes back to, I like control over

1 what goes into my spouse's body. I didn't want her to
2 get stuff with metals or toxic issues. And I don't feel
3 really that comfortable giving her or my information,
4 financial or medical, to these organizations. I don't
5 think it's fair that we were forced into that situation.

6 Q So you haven't even contacted --

7 A Oh, I've phoned them. But I
8 stopped in about September of last year, because it was
9 a joke. I'd get put on hold, I'd get told one thing and
10 then I go, okay, "Well, what do you need from me?" "Oh,
11 we need copies of your licence, and as soon as you give
12 it, it's ours." And you -- it just -- the whole system
13 is really sketchy-feeling. I don't really want to
14 participate in it, because it doesn't feel stable. It
15 doesn't feel like Health Canada is truly endorsing it.
16 I'd just rather stay away from it and see what happens
17 here. Because what we were doing before was far better,
18 and she did far better under having an unlimited amount
19 when she needed it. She stayed home for three months
20 straight while we were in this program. She has not
21 been home for three months straight ever since we moved
22 and any of this has occurred. And I think that's, right
23 there, an indictment of how stressful and horrible this
24 whole entire change has been for us.

25 Q But you haven't even contacted them
26 for the last six months. You've never --

27 A September would be the last time.

28 And I --

1 Q -- Licensed Producers.

2 A And I've given up, because I can
3 get it and drive down the street and, like I said, I'm
4 avoiding shipping, taxes, everything. It's a huge money
5 grab, in my opinion. I'm not impressed. I don't really
6 want to participate in the LP program. If that's what
7 you're trying to get out of me, I'm not interested in
8 buying from them.

9 Q I'm trying to understand whether
10 there is any real impediment to you at least trying the
11 Licensed Producers --

12 A I did attempt to try, and I learned
13 a lot of things I did not like, immediately. In fact, I
14 don't even -- where is their inspection records? I'd
15 like to see those. I'm an inspector. I'm an
16 environmental inspector. Those have environmental
17 impacts, and yet they're completely -- it's a strange
18 system. Doesn't feel like it's very stable or
19 established yet. I don't really want to participate in
20 it and get poisoned, or my financial information or my
21 medical information, turned into a public record or sold
22 on the black market. I have no faith in it.

23 MR. BRONGERS: No further questions.

24 Thank you.

25 THE WITNESS: Thank you. Am I done?

26 MR. CONROY: No.

27 THE WITNESS: Sorry. Sorry.

28 MR. CONROY: Not yet.

1 **RE-EXAMINATION BY MR. CONROY:**

2 Q You said to my friend that you've
3 been a long-time gardener and you explained your
4 involvement over all the years in growing food. And I
5 think you said something about growing food for your --
6 you and Tanya Beemish. Is that -- did I get that right?

7 A We've juiced things.

8 Q And this was all food for the two
9 of you, not for anybody else. Is that right?

10 A I'd always give away tomatoes at
11 work, because I produce too many of them. And spicy
12 peppers, because you can't eat enough of -- you can't
13 eat too many of those. But other than that, yeah, it
14 went to us.

15 Q All of this food that you've grown
16 over the years for yourself and Tanya, and some that
17 you've given away at work, did you have to go through
18 any of the same sort of processes as you've experienced
19 with trying to grow cannabis for Tanya?

20 A No. No, not at all.

21 Q And have you or Tanya ever suffered
22 any health issues as a result of the food that you've
23 grown for the two of you?

24 A Yes. It's increased.

25 Q Your health got better?

26 A Our health has gotten better
27 because of our food that we've grown and take care of
28 ourselves. Both mentally and physically it's healthy

1 for you, and I think the act of growing plants in
2 general is good for your mental health.

3 Q Nobody at the office got sick from
4 the tomatoes?

5 A Everybody at the office loves my
6 tomatoes and my habanero peppers.

7 Q My friend asked you about the blue
8 -- or the grow box is what he called it, and then you
9 explained how you went to a tent. Can you just for the
10 court maybe try and describe exactly how this tent works
11 compared -- I mean you talked about the height and
12 everything in terms of the plants, but what's the
13 significant difference, if any, between the grow box and
14 this tent structure that you talked about?

15 A Technically --

16 Q Yeah.

17 A The biggest thing is the volume.
18 You have a greater dimension in the height, about 24
19 inches. But I find that the tent was easier to
20 ventilate. There was more space to put proper fans so
21 you get the air flow, which helps makes the branches and
22 the leaves a little more sturdy. And it was more about
23 the space. It had better bang for buck for value-wise
24 where it was sitting, so.

25 Q So it's a garage, it's an attached
26 garage or --

27 A It's a garage where the townhome
28 sits on top. So there was the first level garage and

1 living area, bedrooms on the top floor.

2 Q All right. And so in that garage,
3 at the back of the garage is where the tent was. Is
4 that --

5 A It was about one-third up, and then
6 the back of the garage had been partitioned off.

7 Q Yes.

8 A And not by wall, just drop tarps to
9 keep the air flow inside better. And it was about eight
10 feet in from the door and the windows, just so the pests
11 and things like that, if I opened the door, couldn't get
12 in.

13 Q So the picture I'm getting, there's
14 neighbours on either side with a similar structure.

15 A Every --

16 Q -- two levels.

17 A That's right.

18 Q And at the back, closer to where
19 your tent is, what's there?

20 A Tiny back yard that's probably from
21 this table to there, about eight feet by eight feet
22 where the dogs could poop and pee.

23 Q You're pointing to the back of the
24 courtroom.

25 A This back room, I had a little back
26 yard attached to it. It was completely sealed. No one
27 could come in. Both gates were permanently locked by
28 the strata. They didn't like people walking through the

1 backs of people's yards. We used that for letting the
2 dogs out to pee. And the way I set it up is so that the
3 dogs wouldn't interfere with the cannabis grow. I
4 didn't want their hair or anything in it. But we did
5 need access to the back door.

6 Q You said that your friends came
7 over and nobody knew this was going on.

8 A I would say one of my co-workers
9 knew and one of my good friends because I've known them
10 forever and it just came up over conversation. But
11 other than that, everybody else was oblivious to it.

12 Q Any complaints about smell from any
13 neighbours?

14 A We'd have neighbours over for
15 coffee and we'd sit in the back yard and they'd tell us
16 how wonderful neighbours and how horrible what Tanya was
17 going through is.

18 Q So as I understand the grow box,
19 it's a contained unit, correct?

20 A That's correct. It's a stainless
21 steel box.

22 Q The tent

23 A Is also --

24 Q Most of us -- is this a normal tent
25 or can you explain?

26 A No. It's a rectangular tent. I
27 think it was eight feet by seven feet by four feet deep.

28 Q And then how do you control

1 moisture and temperature and so on in a tent?

2 A Okay, so --

3 Q We'll get to this box.

4 A The box has a carbon filter on the
5 outside and then it would have a blower that would pull
6 air from the internal chamber, and it would have an
7 internal fan and exit fan.

8 Q And you just plug it in.

9 A You'd plug it in and then you'd
10 take a regular ducting for, you know, a dryer or
11 whatever, and run it to your window system and I had a
12 box and everything was placed in, and it would also go
13 through one last filter and be right between the bars.
14 I had to find bars that fit them.

15 Q Okay.

16 A The tent was the exact same,
17 However, the tent, all of the blower and everything was
18 internal and much larger and could move more air and it
19 caused the actual tent to pull in and there was a
20 negative pressure inside the tent as it vented air,
21 which drew in clean air that was fresh from the garage
22 itself and exhausted slightly more humid air that was a
23 lot warmer to the outside environment.

24 Q So it's a tent that's like a sealed
25 tent.

26 A A sealed tent with two holes in the
27 top and two holes in the bottom. The bottom holes I
28 pinch shut. The top two holes I leave one open to draw

1 air in, and it had a filter on it. What sort of filter?
2 It was not a HEPA filter but it was a fine filter with
3 detached particulate, pests, things like that, to be
4 drawn into there, and it would be exhausted through -- I
5 want to say 34 cubic feet per minute, but I just can't
6 remember. It's on the box. Fairly large blower.

7 Q It's something you can buy in a
8 store.

9 A Any greenhouse store.

10 Q A greenhouse store.

11 A Yeah. It's a very small blower,
12 relative like what you'd buy for commercial or
13 industrial purposes, but for an eight by four by seven
14 tent it is more than sufficient.

15 Q My friend asked you a bit about the
16 security system. Did you ever have any problems with
17 security?

18 A No. Other than the one time after
19 we moved, the new tenants got the paperwork, and I did
20 feel a little concerned. They were very sketchy.

21 Q You mentioned that, and maybe we'd
22 better just explain what that is to the court.

23 A Sure.

24 Q You said "a letter from Health
25 Canada that outed us. But after we'd moved, so the new
26 tenants got it." You're talking about a letter in
27 November of -- if my memory serves, of -- I can't
28 remember now if it was 2013 --

1 A 2013.

2 Q From Health Canada, that came to
3 your old address?

4 A Yes. And we --

5 Q Where you had the production site.

6 A Yes. And we already moved, and we
7 picked up the mail, and the current tenants were very
8 weird, and asking a lot of questions, because obviously
9 they saw that, and for about --

10 Q Well, what did they see? What was
11 --

12 A They saw -- I received two large
13 envelopes --

14 Q Yes.

15 A -- with a cellophane thing that
16 very clearly said "Medical marijuana access program", or
17 whatever the program's called, from Health Canada, Tanya
18 Beemish. And then I received one for David Hebert. It
19 was very clear that obviously it was all your documents
20 related to medical marijuana growing. Which is not
21 something that I wanted someone that I didn't know to
22 have access too. Was there any risk to my person? No,
23 but I did feel like it was a security breach, because
24 now those few people knew what we had been doing.

25 But nothing ever came of it, obviously.

26 Q You got two letters, one to you and
27 one to Tanya, at the same address.

28 A At the same address.

1 Q That you used to be in.

2 A In fact, many people I know -- my
3 stepdad got one too, because he has MS, and he uses --
4 he doesn't grow, but he does purchase from dispensers.

5 Q Did you know that that's the
6 subject of ongoing litigation?

7 A I do know all about that.

8 Q All right. You're -- my friend
9 asked you about your -- or calculated what he determined
10 to be your -- if I can put it, it sounded like your
11 gross income as opposed to your net income. Is that
12 correct?

13 A That's correct.

14 Q So the \$4,000 and something -- and
15 52, was gross. And you said 1500 --

16 JUSTICE: I think he said -- it was
17 after-tax.

18 MR. CONROY: Oh, okay.

19 A There's more deductions after tax.

20 JUSTICE: And then there were further
21 deductions, I take it, after tax.

22 A I pay into a --

23 MR. CONROY:

24 Q I just want to be clear about that.
25 My note -- sorry.

26 A If you'd like, I could show you my
27 last two pay stubs on my phone. They were about \$1539
28 after all deductions.

1 Q Right. Now, if you've got the
2 affidavit in front of you that's page 322, so it would
3 be your second affidavit, the discovery one --

4 A Yeah.

5 Q And you look at paragraph 2.

6 A Yeah.

7 Q That sets out your situation
8 between 2009 and 2011.

9 A Yes.

10 Q And you specify in that paragraph,
11 since 2011, "Since 2011 I make \$58,000 per year before
12 tax." And no money from disability payments. Is that
13 fair?

14 A That's -- yeah, that's correct.

15 Q And so after tax, if I'm
16 understanding your answer correctly, you said to my
17 friend that you thought it was more like \$3,000 a month,
18 as a --

19 A I get about two pay cheques a month
20 that are about \$1,539 after all deductions.

21 Q And this is a cheque from the
22 Environmental Protection --

23 A Provincial government.

24 Q -- your deductions and all that
25 stuff.

26 A Absolutely.

27 Q Okay. All right. So the
28 disagreement is, you think my friend is high at 4,052,

1 as a net amount, after deductions. You think it's
2 closer to 3,000.

3 A I know it's closer to 3,000.

4 Q Okay.

5 JUSTICE: I think just to make it
6 clear, your friend's number, 4,005, is after tax. One
7 presumes that then there is deductions for other things
8 including insurance, and retirement and things like
9 that.

10 A Yeah.

11 MR. CONROY: Okay, that's --

12 A That's correct. I mean --

13 MR. CONROY:

14 Q Let me clarify that, because I was
15 obviously misunderstanding. So, the 4,000 rough figure
16 is after tax. The 3,000 figure that you give us is
17 after tax and other deductions. Fair enough?

18 A Yeah. That's what I see in my bank
19 account every month.

20 Q Okay, fair enough. And similarly,
21 in terms of the expenses, my friend put to you his
22 calculation, 4,700 roughly. Your belief is that it's
23 more than that?

24 A No, that sounds about right. It's
25 more than what I actually make, expense-wise.

26 Q Oh, I see.

27 A Or it was. Like I have moved. As
28 of January 1st I don't have a \$1300 a month rent bill, I

1 have a \$400 a month rent bill, and I sleep on my
2 friend's floor in his second bedroom. It's really
3 wonderful.

4 Q All right. And you, I think said
5 to my friend, you've got a personal -- or a designated
6 grower permit, or licence under the *Medical Marijuana*
7 *Access Regulations* for your spouse, Tanya Beemish, fair
8 enough?

9 A That's correct.

10 Q You didn't -- and she had an
11 authorization to possess?

12 A That's correct.

13 Q And her authorization to possess,
14 do you recall it expiring in January of 2014?

15 A January 5th or 6th, I believe.

16 Q I think we -- well, we have it
17 here, so let's be --

18 A Let's be exact?

19 Q In her affidavit, I guess. First
20 of all, in your affidavit, after the capital A, the
21 small (a) exhibit to your affidavit shows you're issued
22 a January 4th 2013, and expiry January 4th, 2014. Does
23 that sound about right to you?

24 A What page is that on?

25 Q I'm working from -- let's find
26 that. If my friend could -- it's your original
27 affidavit --

28 MR. BRONGERS: If it helps my friend,

1 I have the actual authorization to possess in Ms.
2 Ritchot's affidavit.

3 MR. CONROY: Oh, for Ms. Beemish.
4 Okay.

5 MR. BRONGERS: For Ms. Beemish, it is
6 2002 --

7 JUSTICE: Why don't we read out into
8 the record.

9 MR. CONROY:

10 Q Yeah, let me just put it to you.
11 January 4th, 2013, date of issue; January 4th, 2014
12 expiry for her authorization to possess.

13 A I was pretty close.

14 Q And that ties in with your
15 designated grow, which is also January 4th, 2013,
16 expiring January 4th, 2014 --

17 A That is correct.

18 Q So, her authorization to possess
19 elapsed before the decision on the injunction?

20 A That is correct.

21 Q She wasn't -- it wasn't effective
22 as of March 21st, 2014 --

23 A Yes, the injunction did not give us
24 any relief.

25 Q And -- but before that, if I am
26 understanding you, it was in September of 2013 that you
27 contacted Health Canada about moving, but couldn't find
28 a place until after, and haven't been able to move

1 since? Officially move the site since?

2 A Yes, we've never been able to
3 officially move the site.

4 Q Did you do anything about the
5 possession aspect? Did you go -- or do you know if
6 Tanya Beemish or even yourself, go to a doctor to seek
7 coverage for possession under regulation 53 of the
8 *Narcotic Control Regs*?

9 A At the point where we had moved,
10 Tanya had become fairly ill, because -- she became
11 fairly ill around December after moving. She had a
12 stable period, she had quite a bit of cannabis left over
13 from the last harvest, and then her health started to
14 degrade, and then at that point, when she brought it up,
15 her specialist Dr. Clarissa Wallace, her specialist,
16 endocrinologist, said "I will continue signing off", she
17 even signed off on the next round of paperwork. I think
18 I provided that even for you.

19 But at that point, she was under hospice
20 care, and there was two realms of thought. One group
21 was like, "Tanya you should do this", another group
22 would literally fight in front of her about the fact
23 that cannabis was obviously causing her mental grief,
24 which she disagreed, but it's hard to argue when there
25 is a bunch of doctors fighting over you while you are
26 puking in a bucket.

27 Q And the contact that you had with
28 the Licenced Producers, am I understanding it correctly

1 that it was mostly looking online?

2 A Yeah, I did make a few phone calls
3 in summer of last year, and just kind of -- but like I
4 mentioned to your friend, it was frustrating. I would
5 be put on hold, I wouldn't get clear answers.

6 Q Right. Did you ever see anything
7 to do with compassionate pricing? Lower prices? Or did
8 you inquire --

9 A I think I did phone one of the
10 companies that was trying to set up in Nanaimo, I
11 believe, and they said they had some, but when I phoned
12 they're like, oh, wait, you've got to phone us back, and
13 I don't think I ever heard back from them.

14 Q But this was in September of 20 --

15 A This was more like June or August.
16 September is when -- or August is when I --

17 Q August of 20 --

18 A 2014.

19 Q Okay. Okay, on your -- when you
20 were growing, producing for Tanya, what was the cycle?
21 You've mentioned doing the three --

22 A Oh. So for four weeks we would
23 have the -- I would have the lights on for 18 hours a
24 day and they would be in vegetative state, which means
25 that they don't produce buds. They're not very stinky,
26 they're just plants. And then I would prune throughout
27 that and take leaves and juice them for Tanya. And that
28 actually was fairly effective.

1 Q Let me just stop you there for a
2 minute. Juicing you said?

3 A Juicing.

4 Q A cold --

5 A Cold spinning centrifuge. It's
6 like a press.

7 Q It's just like making a cold juice.

8 A Yeah, like juice.

9 Q All right.

10 A And it has no psychoactive effect.
11 She found it pleasant. I mix it with apples and oranges
12 so she gets maximum --

13 Q Just a point of interest. Do you
14 need more or less when you produce juice compared to
15 anything else?

16 A I don't usually use a lot of -- but
17 use fresh. So yeah, it weighs more and you couldn't use
18 dry because you couldn't get juice out of it. So yes,
19 you would use a lot more. But of the same token, as
20 they're growing you kind of use that as a by-product.

21 Q So you don't make the juice out of
22 dried marijuana.

23 A No, you absolutely do not make
24 juice out of dry marijuana.

25 Q You have to leave it as fresh
26 marijuana.

27 A Absolutely.

28 Q Okay.

1 MR. BRONGERS: My Lord, just to be
2 clear, I didn't ask any questions about juicing to this
3 witness.

4 JUSTICE: No, you didn't.

5 MR. BRONGERS: I don't think this is
6 proper re-examination.

7 JUSTICE: We started off on growth
8 cycle.

9 MR. CONROY: I know, and I just
10 thought we should clarify that.

11 JUSTICE: Went walkabout for a moment.

12 MR. CONROY: Sorry, I just thought
13 that should be clear for the record.

14 MR. BRONGERS: Again, I'm going to
15 give lots of latitude to my friend, but at a certain
16 point the rules of re-examination do need to be
17 respected.

18 JUSTICE: We've already had evidence
19 on --

20 MR. CONROY: Okay.

21 JUSTICE: And there is evidence about
22 dried marijuana and the ability to juice. I don't think
23 we've touched upon anything that's shocking to me so
24 far.

25 MR. CONROY: Sorry if I've shocked
26 you, Justice Phelan.

27 JUSTICE: I'll get over it.

28 MR. CONROY: Okay.

1 Q Did you ever see any mould in your
2 production?

3 A Never. Not in my operation.

4 Q Did you ever see any mould on your
5 food plants that you grew?

6 A Actually, yeah, last year I had
7 blight on my tomatoes in my little greenhouse, which is
8 a kind of form of mould, but it's kind of unavoidable.
9 Tomato blight is one of the most common agricultural
10 viruses you can get.

11 Q Did you ever buy food from grocery
12 stores?

13 A Yes.

14 Q Did you ever see that in any of the
15 food you bought from grocery stores?

16 A I spent a lot of my youth working
17 in grocery stores. The whole purpose of a produce
18 department is to clear out that crap and throw it in the
19 compost.

20 Q Okay.

21 A Then they sell you the nice-looking
22 food.

23 Q The 60 grams a month that you
24 talked about.

25 A Are we jumping forward to post?

26 Q Yes.

27 A Okay.

28 Q Is that -- are you able to

1 determine if that's enough for her or --

2 A She's so sick in the hospital, it
3 just gives her a slight amount of relief. It's not a
4 miracle cure for her issue. It is something to cope
5 with all of the symptoms of all the other medications
6 she's on and the symptoms of her actual illness, which
7 is paralyzation of the nerves.

8 Q So it's an estimate of her
9 consumption when she's not in hospital.

10 A That is correct.

11 Q And so it isn't a need thing
12 necessarily. It's simply when she's not in hospital
13 this is what --

14 A Well, it is because when she's not
15 in the hospital she's not hooked up to IV painkillers
16 and she usually goes through all of the symptoms of
17 lowering those, and it does help her with that as well.

18 Q Is there a number that you're able
19 to give us as to what you think she needs or --

20 A Honestly, when she has a horrible
21 day, the day before I take her to the hospital, I've
22 seen her consume 10-15 grams in one day, which is
23 unbelievable that she's not passing out. But she's in a
24 lot of pain, she's crying, she's puking up blood.

25 Q When you were producing, I think
26 you said she was out of hospital once using for three
27 months?

28 A That was the best she's been in

1 three years. And I think it had a lot to do with
2 unlimited access to -- like it says 5 grams a day on her
3 licence, and some days she'd be way below that, but
4 other days she'd, like I said, 15. And I think just the
5 mental stress of always trying to obtain more and being
6 poor caused her a lot of grief above and beyond not
7 having access. Whereas when we had it, she seemed a lot
8 more content. My life was easier. It was a significant
9 reduction in costs. So --

10 Q So when you lost your right to
11 produce, you weren't able to obviously keep doing that
12 for her. Did her health decline?

13 A Absolutely.

14 Q Is she in hospital more now than
15 she used to be?

16 A Way more.

17 Q Okay.

18 A Can I elaborate on that? She used
19 to come out for a week and go back in for a week or so.
20 Now she goes in for four weeks and comes back out for
21 four days. She has very little control of her symptoms
22 now that she's spent so much -- the hospital is not
23 helping her. It's made her worse. But at this -- she's
24 completely dependent on this amount of medication she's
25 on, and the fact that she has a feeding tube installed
26 in her.

27 Q And finally my friend asked you
28 about the LP system, and you answered that you weren't

1 interested, that you didn't think it was stable, that
2 you didn't have any faith in it. Assuming it is stable
3 and safe, could you afford, given your circumstances, to
4 buy enough from an LP for her at a cost of \$5 a gram?

5 A It would be the same as we're doing
6 now. It's a lot more than less than a dollar. Could I
7 afford it? Currently with the rent situation, I guess
8 so, but it's not sustainable forever. We're not getting
9 ahead in life. We have not had a vacation or done
10 anything in five years. So, yeah, sure, I could afford
11 it, but then there's no new clothes. There's crappy
12 bubbles -- you know, you -- it's taking away from
13 somewhere else.

14 Q And do you still have all of your
15 equipment?

16 A Absolutely.

17 Q So, if you were able to set up
18 again, you could do so?

19 A Not in my current location, but it
20 is a temporary place. A friend is helping me out in
21 this time of --

22 Q Contamination and everything in the
23 house, you still have your equipment, though.

24 A The equipment's in the garage,
25 which is not in a contaminated area. It's sealed up
26 nicely. It's all wrapped, and made sure it's contained,
27 because when we moved out in October, 2013, we assumed
28 that there was an injunction coming, and all these

1 things, and that there would be some sort of relief.
2 And we assumed originally, incorrectly, that our house
3 was sound and there wasn't serious hidden issues from a
4 slumlord.

5 Q So you would be able to set up
6 again. Your investment in all of that equipment and
7 everything is still there, in terms of starting up
8 again.

9 A I have all the equipment. I would
10 have to buy new fertilizer, and things like that. Or go
11 and make organic mulch in my back yard, which in my
12 previous yard I did have the ability to. Now I live in
13 a condo on the third floor, so I'd have to find a new
14 place to do this.

15 Q Okay. Yeah, okay. Just a further
16 point on the finances, because of the calculations. My
17 friend points out that in that paragraph, where you were
18 discovered, that was put to you, and let me just get it
19 for you. It was paragraph 2 in your affidavit of August
20 14th, which was at page 322. And I've put to you that --

21 A Okay.

22 Q -- the 2011 figure of making
23 \$58,000 before tax.

24 A Yeah, that was I think what I made
25 my first year working for the Ministry of Environment.

26 Q Okay. So, I'm told that if you
27 divide 58,000 by 12, that that comes out to about 4,752.

28 A I -- should I check on a

1 calculator?

2 Q Well, if you want to.

3 A I kind of do.

4 Q All right.

5 A Sorry.

6 JUSTICE: It has to come out pretty
7 close to 5,000.

8 A Yeah, I just want to be --

9 JUSTICE: From my grade-school math.

10 MR. CONROY: Yeah.

11 A Yeah. It's 40 -- 4700 sounds
12 right. So you said 58,000 divided by 12, \$4833 it says,
13 yeah.

14 Q Okay. And it's before tax.

15 A That's before tax.

16 Q Okay. Just so that -- that was
17 the point we wanted to just make clear.

18 Thank you. That's --

19 JUSTICE: Just before you go, I want
20 to clarify something in my own mind. You were taken
21 through your finances and you mentioned your wife's
22 medicines. And the only ones that show up -- the only
23 medical expense I see is the marijuana. What about the
24 other medicines your wife takes?

25 A Tanya is on the PharmaCare program,
26 so a lot of her medications are subsidized. But I
27 believe I was -- and it was intermittent. She takes
28 intramuscular Gravol.

1 JUSTICE: Mm-hmm. Diamond hydrate.
2 And give her a shot in her butt or her arm. But that
3 was intermittent and it would keep her at home a few
4 extra days.

5 JUSTICE: But that's not covered.

6 A That was about \$26 for a vial. So
7 some months I would spend \$100 on it, but then it would
8 sit in our cupboard for weeks and months and that, so.

9 JUSTICE: Most of her medicines were
10 covered but not all.

11 A Because of her financial situation
12 and because of my coverage and her coverage, almost
13 everything was covered. But she does have Type I
14 diabetes and an insulin problem, so there's all these
15 assorted -- like buying rubbing alcohol every month was
16 an extra \$15, you know. Those things build up.

17 JUSTICE: Thank you very much. Any
18 questions arising from my questions?

19 MR. BRONGERS: No, thank you.

20 MR. CONROY:

21 Q If I could just -- it was never a
22 situation where the PharmaCare didn't cover all of the
23 medications. There were just these other things that
24 you --

25 A Oh no, there was a few that were
26 not covered and we had to fork out, you know, \$80 for
27 something that would last for most of the year. But it
28 was a brand name that wasn't covered and the doctor

1 insisted she take that versus --

2 Q So in some cases it would cover a
3 percentage of the cost, is that fair?

4 A Yeah.

5 Q Okay. Not always all of the costs.

6 A Once in a while doctors would be
7 compassionate in the hospital and they'd prescribe her
8 something and realize that her economic situation was
9 terrible, and they would fill out -- I just can't
10 remember what the form is, but they can get her onto the
11 PharmaCare, even things that aren't supposed to, through
12 special orders. So she's -- if there was a will there's
13 a way. We'd always try to figure out a way to do it in
14 the least financially stressful way.

15 MR. CONROY: Thank you, Mr. Hebert.

16 JUSTICE: Okay, thank you, you are free
17 to go.

18 (WITNESS ASIDE)

19 JUSTICE: So what's the story now?

20 MR. CONROY: Well, what we'd like to
21 do, I'd need to get a hold of Ms. Grace who is ready to
22 go with Mr. Hebert to the hospital.

23 JUSTICE: Okay.

24 MR. CONROY: And then they'll
25 communicate with us and we'll try to get something that
26 works. And so I'm wondering if we could maybe go till
27 2:00 and keep you posted in terms of what we're doing.

28 JUSTICE: Okay, we'll hold off till

1 2:00 and we will then take --

2 MR. CONROY: Yes, we might want to
3 access the courtroom at 1:30 to try and have it all set
4 up for you, but I'm sure we can arrange that.

5 JUSTICE: We'll do that, then we'll go
6 into technological wizardry.

7 MR. CONROY: Right.

8 MR. BRONGERS: Sorry. To be clear,
9 should we all be back here at 1:30?

10 JUSTICE: Not unless you need to help
11 set up. I think the 1:30 is for you, isn't it?

12 MR. CONROY: Yes.

13 JUSTICE: For setup. 2:00 we'll
14 start.

15 MR. BRONGERS: Thank you.

16 JUSTICE: Thank you.

17 (PROCEEDINGS ADJOURNED AT 11:35 A.M.)

18 (PROCEEDINGS RESUMED AT 1:35 P.M.)

19 MR. CONROY: Unfortunately, Ms.
20 Beemish is just too ill, Justice Phelan. So, Mr. Hebert
21 is back as -- on her behalf to be cross-examined, with
22 her consent. And, for the record, the affidavit of
23 Tanya Beemish is joint book Volume 1.

24 JUSTICE: It's already in.

25 MR. CONROY: Yeah, that's right.
26 Sorry. That's right.

27 JUSTICE: Already in.

28 MR. CONROY: Exhibit 4, I believe,

1 yeah.

2 JUSTICE: Yes, 4.

3 **DAVID WESLEY HEBERT, Resumed:**

4 MR. CONROY: So, Mr. Hebert, if you
5 would answer any questions that my friend has in
6 relation to your spouse's affidavit.

7 THE WITNESS: And they are in here
8 somewhere, you'll --

9 MR. CONROY: I think you may have the
10 wrong volume.

11 THE WITNESS: I've got 2 of 13.

12 MR. CONROY: You need 1 of 13, please
13 and thank you.

14 JUSTICE: Start on page 142.

15 MR. BRONGERS: You should keep the
16 other volume, though. I may be referencing your
17 affidavit as well.

18 THE WITNESS: Thank you. Thank you.

19 MR. CONROY: Keep his as well?

20 MR. BRONGERS: Just in case.

21 MR. CONROY: Okay.

22 THE WITNESS: And Tanya sincerely
23 apologizes. She's very -- she just can't do it today.

24 MR. CONROY: Volume 1 there?

25 THE WITNESS: Thank you very much.

26 JUSTICE: All set.

27 MR. BRONGERS: Yes. Thank you,

28 Justice Phelan.

1 **CROSS-EXAMINATION BY MR. BRONGERS:**

2 Q Thank you, Mr. Hebert. So you
3 know, I'm going to be asking you questions on Ms.
4 Beemish's affidavit, which you and your counsel have
5 consented will be binding as if she had given these
6 answers herself, under oath.

7 Just as a preliminary matter, I think
8 it's worthwhile just ascertaining for the court how long
9 you have known Ms. Beemish. So let's begin with a
10 simple question of when did you first meet.

11 A I guess it would be 2007. We met
12 online, and we've been dating since November of that
13 year, 2008-ish. So, going on seven years.

14 Q You've been a couple for seven
15 years? So you started dating in late 2007, early 2008.
16 And when did you start living together?

17 A 2011. I want to say January or
18 February, 2011.

19 Q So you've been living with her,
20 then, for the last four years, then?

21 A That's correct.

22 Q Have there been any breaks in your
23 cohabitation? Did you separate at all?

24 A January 1st. We lived apart. She
25 lives with her mother now.

26 Q Right. But you still consider
27 yourself to be common-law spouses, even though you're
28 not living together.

1 A We're in a very difficult
2 situation. This is -- I don't really want to lose my
3 cool here.

4 Q I understand. And the only reason
5 I'm asking these questions is to see just how well we
6 can expect you to be able to answer personal questions
7 about her.

8 A I have been her caregiver full-time
9 since she got ill in 2012. I know all of her daily
10 routines. I administer her medications. I took care of
11 her.

12 Q So, Mr. Hebert, I'm going to ask
13 just a few questions about Ms. Beemish's medical
14 condition and her medical history. If you could try and
15 answer them to the best of your ability. Based on her
16 affidavit I understand that she has diabetes Type I and
17 gastroparesis, correct?

18 A That is correct.

19 Q And this diabetes was diagnosed in
20 the year 2000?

21 A It was before we had met. She has
22 had many comp- -- she's always been not wealthy. Her
23 mom is on disability, so she's had many complications
24 over the years from diabetes, and this was suspected in
25 2001. It's one of those things, there's no test. They
26 do a radioactive egg sample and see how long it goes
27 through your stomach a couple times and take pictures,
28 and hers is about 5 to 10 times longer than an average

1 person, which causes her to have egg ferments in her
2 stomach, causes a great deal of health issues.

3 Q Again from her affidavit, she said
4 the diabetes was diagnoses in the year 2000 and then the
5 gastroparesis, which I understand is a problem delayed
6 gastric emptying, that's a complication of diabetes and
7 that was diagnosed in 2005. That would be accurate to
8 your knowledge?

9 A Yeah. That's -- to the best of my
10 knowledge. I think at that point in time she was not
11 seeing physicians as frequently as she was once we were
12 a couple.

13 Q Okay. Now, in terms of the
14 symptoms that she suffers from, I'm going to list them
15 off from what we know from the affidavits and I'll ask
16 whether you can confirm that those are her symptoms.

17 MR. CONROY: Could you give us the
18 reference?

19 MR. BRONGERS: If that would help.

20 Q There's a couple of places it's
21 set out. At the second affidavit, paragraph 3.

22 A Page 143?

23 Q Page 146.

24 A Sorry. Yeah.

25 Q You see a reference to nausea and
26 lack of appetite? Would you confirm those are symptoms
27 that she has?

28 A Absolutely.

1 Q We also have in her first affidavit
2 at paragraphs 5, 8 and 9 there are various references to
3 conditions. Paragraph 5, which is on page 167. He or
4 she lists her symptoms as "extreme nausea, vomiting,
5 pain, lack of appetite and sleep." And by that I assume
6 she means difficulty sleeping, correct? And then if we
7 go to paragraph 9, which is at page 167, she references
8 two other symptoms: anxiety and depression.

9 A That's correct.

10 Q Okay. So to your knowledge is that
11 a complete list of her symptoms or does she suffer from
12 any others?

13 A Tanya's life is an ongoing
14 miserable hell. That's the bare minimum.

15 Q Now, according to her affidavit she
16 went on medical disability leave in June of 2012,
17 correct?

18 A That's correct.

19 Q And since that time can you explain
20 generally how her medical condition has changed? Has it
21 gotten worse? Has it improved? Has it been stable?

22 A It has gotten unbelievably
23 horrible. She lives in hospital.

24 Q So steadily worse. Would that be a
25 fair way of summarizing it?

26 A Give me a second. Yeah.

27 Q And is it her expectation that she
28 will continue to suffer from these symptoms for the rest

1 of her life?

2 A Yes.

3 Q I'm now going to ask some questions
4 about her marijuana use. If you could turn to the
5 second affidavit at paragraph 16, which is on page 150.

6 A Yeah.

7 Q The question was asked, "When did
8 you first use marijuana?" And she says, "I used it
9 occasionally at around 17 to 18 years of age." Now,
10 that would have been before you knew her. But to the
11 extent of your knowledge, is that her first use of
12 marijuana?

13 A It's like the question you asked me
14 about growing plants. She was a teenager. It's kind of
15 vague in her head. She said 17-ish.

16 Q Okay. So you have no reason to
17 dispute that figure, obviously.

18 A No.

19 Q Okay. Now, at page 146, paragraph
20 3.

21 A Yeah.

22 Q The question, "When did you first
23 use marijuana for medical purposes?" And Ms. Beemish
24 answered,

25 "I do not recall. I used it before, and it
26 seemed to provide some relief from nausea and
27 lack of appetite."

28 So do you have any idea how many years

1 before she was first authorized she would have tried to
2 use it for medical purposes?

3 A I would have guessed some time in
4 2005 and on, once she started having the delayed gastric
5 symptoms. I think that's when she first found it kind
6 of helped. But it was very mild, until June -- until
7 April of that year, and then it just -- she couldn't
8 stay at work, and it just got -- and it spiraled out of
9 control.

10 Q Right. Now, we know that she
11 apparently first approached a doctor about using medical
12 marijuana at some point in 2012.

13 A That would be under my
14 recommendation, as I was already purchasing on the grey
15 --

16 Q Right.

17 A -- on the black market, for her
18 purposes. And I said, "I think we should do this the
19 right way, as I have a government job and I don't want
20 to be ..."

21 Q So would it be fair to say, then,
22 she was using medical marijuana for about seven years
23 before she was authorized? So about from 2005 to 2012?

24 A Yeah, I guess so, though I don't
25 think she was seriously -- it was an on-and-off again
26 thing that would help her through the nausea, and she
27 was using it specifically for that. It wasn't until
28 2012 when she was off that she really started to

1 investigate if there was some potential for alleviating
2 her symptoms, because they had become so disabling.

3 Q And so during that seven-year
4 period of unauthorized use, how was she accessing the
5 marijuana?

6 A Prior to meeting me?

7 Q If you know, yes, please.

8 A I don't know. I'm guessing from
9 family members that she knew. It wasn't -- Tanya is a
10 very shy and introverted person. I don't think she knew
11 drug dealers or anything, so I'm assuming it was through
12 someone she knew. Once she met me, I knew a person, and
13 I said, "Hey, this guy's a nice guy," and he's been
14 helping us out ever since.

15 Q So from about 2007 onwards, you
16 were assisting her with accessing medical marijuana?
17 That's when you started --

18 A I would say probably a couple of
19 years after that. The first two and a half years of
20 Tanya and my's relationship wasn't -- this wasn't really
21 a big part of it. She wasn't hospitalized. She had a
22 job. In 2009 to '11, I was unemployed and going to
23 school, and Tanya was taking care of me.

24 Q Right.

25 A So, the roles have been reversed.

26 Q And you started living together
27 around 2009, so presumably --

28 A No, 2011.

1 Q In '11, I'm sorry.

2 A But she would come, and she'd buy
3 lunch.

4 Q Right.

5 A She helped out when I was in
6 school.

7 Q Right. Right. But around that --
8 when did -- well, let me ask it to you this way. When
9 did you start assisting her with obtaining her medical
10 marijuana?

11 A Oh, 2012. Before that, maybe a few
12 times. And you know, a joint or something. But prior
13 to that, not really. It wasn't -- it's not -- that
14 wasn't one of our activities.

15 Q So how much was she using initially
16 when you first became a couple, and --

17 A Prior to 2012?

18 Q Correct, yes.

19 A Almost nothing.

20 Q Okay.

21 A I would say occasionally, and she
22 would go "Oh, I'm not feeling very good," and she'd have
23 a little bit.

24 Q Do you remember how much it was
25 costing her back then?

26 A Oh.

27 Q How much you were paying for it?

28 A She didn't have -- it wasn't an

1 all-time illness. Maybe like \$20 here or there, and
2 they she'd have it for a month.

3 Q You were buying --

4 A This is speculation, like, and she
5 had her own money, so I don't know.

6 Q So she was just buying it by the
7 gram.

8 A She was buying a very small amount
9 or probably getting it given to her.

10 Q Right.

11 A Friends and family.

12 Q Okay, so I'll now turn to her
13 marijuana use once she was authorized starting, as we
14 know, in January of 2013. I just have some questions
15 about how she consumed marijuana, and if I understand
16 correctly it was almost exclusively ingesting through
17 smoking marijuana and vaporizing marijuana, isn't that
18 correct?

19 A On the timeline? Or sorry, June
20 2012 it was primarily smoking it and vaporizing it. But
21 by the time we were cultivating in 2013 she was trying
22 edibles and tinctures. We tried other things.

23 Q There's a couple of sentences in
24 her affidavits which indicate that she had some
25 difficulty with edibles, so I just want to put those to
26 you. Affidavit number 2, paragraph 25.

27 A Is that page 152?

28 Q Correct. If you look at the last

1 sentence.

2 A These are the discovery questions,
3 correct?

4 Q These are the discovery questions.

5 A These are dated originally August
6 2014, yeah.

7 Q That's right. She says:

8 "I have no access to edibles or juice any
9 more as we cannot produce it. Therefore I'm
10 stuck on opiate painkillers while admitted to
11 hospital."

12 So that's one of them. And before
13 answering the question I'm just going to ask you to look
14 at a couple more of the statements she gave earlier in
15 the first affidavit, which -- basically at paragraphs 5
16 and 9. So if you could turn to page 167.

17 A Okay.

18 Q 167, paragraph 5.

19 A Yeah.

20 Q The second sentence:

21 "I use a daily dose of 2 to 10 grams per day
22 of dried cannabis, but depending upon my
23 health via smoking and vaporizing. I find it
24 difficult to eat, so I have not been using
25 edibles as well, as we no longer have access
26 to fresh plant material."

27 And then the final one is at paragraph 9,
28 the next page.

1 A Yeah.

2 Q Where she wrote starting at the
3 second sentence:

4 "I have tried to find ways to ingest CBD,
5 cannabidiol, and THC, tetrahydrocannabinol,
6 as extracts, but have difficulties with fats
7 and alcohol, the solvents, due to my
8 condition and have no more access to the
9 necessary fresh cannabis for juicing any
10 longer."

11 So based on those answers, could you
12 explain the extent to which she was using edibles at
13 all, given that she testifies that she had difficulty
14 with them?

15 A So there's many different types of
16 edibles. So things that you -- we would make butter,
17 like you take butter and you take the waste trimmings
18 and things like that and you puree cannabutter and you
19 make cookies. That stuff doesn't agree with her. She
20 can't consume fats. We did attempt to make tinctures
21 and put them on her tongue, which actually wasn't a big
22 deal. I don't know why she wrote the alcohol part in
23 there, but she didn't drink it. You just -- and then
24 we've tried other things with coconut oils and things
25 like that, that she can tolerate a lot better.

26 By the time that this was written,
27 though, we had no fresh materials to make that any more,
28 and also her health had degraded. I believe this is in

1 2014, this one. Yeah, and this, by this point we had
2 now moved, we were three months out, we had no more
3 excess and it just -- we had to pare down to the bare
4 minimum so that she could at least have something in the
5 morning to deal with her nausea.

6 Q But presumably given that you're
7 now going to the black market, you could get fresh
8 cannabis for juicing if you wanted to.

9 A Very, very difficult. It's kind of
10 an infrequent "Hey, I've got this. Do you want it?"
11 It's not something that someone can -- I'm certain if
12 you keep looking there's a better opportunity to get it
13 from the black market than an LP, because they can't
14 provide it at all under the new rules, but it's still
15 not something that is, you know, "Here's your bag of
16 leaves and fresh --" because it's a product that
17 expires. So people obviously want to transport and ship
18 it dry so it has a longer shelf life.

19 Q So if you could perhaps give a
20 percentage estimate now, what is the percentage of
21 marijuana use that she does by way of smoking and
22 vaping, compared to edibles?

23 A 98 percent, and then once in a
24 while I'll bake her some brownies, for if she can handle
25 some solid food, and it helps her with sleep. And she
26 takes that in lieu of Ambien, or Zopiclone or whatever
27 the sleeping aid. But those are very, very, very mild
28 and I've -- she's -- she doesn't eat very much food.

1 She has a feeding tube installed through her stomach.

2 Q Okay.

3 A So --

4 Q In terms of the baking, do you bake
5 using butter, or do you just put the dried marijuana --

6 A Oh, no, you don't put the dried
7 cannabis in that.

8 Q It's butter that you're using.

9 A You use the butter to extract the
10 cannabinoids into the butter through -- it's more
11 soluble in the fats than it is in the plant material.
12 And then you take that butter and you put it in your
13 fridge, and it cools down. And then you cut off the
14 amount for the equivalent amount of the recipe, and
15 bob's your uncle. So, it's not rocket science. There
16 is no solvents, there's no -- it's just butter.

17 Q Right. And she doesn't use tea,
18 does she?

19 A She's tried. But it just doesn't
20 seem to give her that much effect, fresh or dried. It
21 just didn't have any real impact. And as Tanya has
22 limited income, you've got to use a lot of cannabis in
23 tea to have any impact. Like significantly more than
24 you would to vapourize or anything, at least in her
25 opinion. So she didn't waste it any more, she just
26 stopped doing that.

27 When we were producing it, she did drink
28 a lot of raw cannabis that was juiced, and she did try

1 teas, and she would try a lot more, but when you start
2 getting down to it costing a lot more, you're more
3 conservative with its use.

4 Q I'd like to turn now to strains.
5 Her affidavit evidence about the strains that she used
6 was quite limited, a little different from what you
7 said. So I just want to give you a chance to clarify
8 that to the court.

9 A Sure.

10 Q Her -- in her affidavit, her second
11 one, the discovery questions one, at paragraph 17,
12 that's at pages 150 and 151.

13 A Yeah.

14 Q We asked the question about,
15 "Please list the strains of marijuana that you're
16 presently using, and those -- what did you use in the
17 past?" The answer was,

18 "In the past we have one main strain, White
19 Berry, which is very effective. Currently we
20 use whatever we can through the black market
21 at a reasonable price."

22 And then she also says in her first
23 affidavit, at paragraph 13, which is at page 169.

24 A Yeah.

25 Q The last sentence in that paragraph
26 says, "David Hebert produced two strains for me that I
27 understand are Blueberry strains that alleviate my
28 pain." So she's talking about Blueberry and White

1 Berry. Now, you gave us a list which we went through --

2 A Mm-hmm.

3 Q -- this morning. You mentioned
4 White Berry was one of them. Just as a refresher, the
5 other five that he said you were growing were Jackie
6 White, Purple Kush, Afghani, Sweet Skunk, and Jack
7 Herer. Just to confirm, which strains of those six was
8 she in fact using, given her answers?

9 A She used all of them, but she found
10 that the White Berry, specifically, and the other -- the
11 Blueberry cross, or whatever it was called, sorry -- was
12 the most efficacious for her nausea and her vomiting
13 issue, which is the most severe and debilitating of --
14 well, the pain blended with that is what has caused her
15 to be disabled entirely. The other ones were the ones
16 that often got ground into food, or done that, because
17 they weren't as effective for vapourizing. So I think
18 when she says that, she means by vapourizing or smoking
19 it. I think the edible portion, I don't think she could
20 differentiate between them.

21 Q Right.

22 A But they definitely first -- I --
23 we saved those till the end, the very most, and it was
24 rationed out very carefully for her, so that she at
25 least had those, because she did find that they gave her
26 a lot more relief, significantly.

27 Q Are you able to say which strains
28 were effective and which ones were not?

1 A Yeah. I think so. Well, I
2 personally?

3 Q I mean obviously by speaking with
4 her. Did you --

5 A Yeah.

6 Q -- have an understanding of which
7 ones worked and which ones didn't?

8 A She could rank them without their
9 names, and then they would be -- we even did that, for a
10 blind test. I'm like, "Okay, we'll try this one." And
11 she knew the ones that worked for her. And she would
12 identify White Berry every time as the ideal one. And
13 when we did move, I had to destroy that, and we were
14 devastated.

15 Q So White Berry was particularly
16 effective. Were any of these strains less effective, or
17 not effective at all?

18 A None were not effective at all.
19 However, I will say that some would make her sleep very
20 well, and she could kind of ride out the symptoms, that
21 could be anywhere between two or three days, in kind of
22 a sleepy stupor, because she smoked a lot of it.
23 Whereas some of the other ones would make her anxious,
24 and a little bit more alert, which sometimes she was,
25 like, "Oh, I feel less depressed today because of this."
26 But her symptoms -- the serious symptoms were definitely
27 most impacted by the White Berry strain, and she could
28 pick it out of the line-up of five, no problem. As what

1 was effective.

2 Q Did you have a system you used in
3 order to try and figure out which strains were effective
4 and which were not?

5 A Well, I think, you know -- I call
6 it the scientific method, but it's trial and error. We
7 would write down, I would say, "How much did you consume
8 of this?" because we were -- I was pretty controlling
9 after the first crop of how much was consumed because I
10 figured we'd be here one day. So we did try a lot,
11 there was -- like I do have a notebook. I kind of wish
12 that it was evidence here but it just got lost in the
13 shuffle. But it did state, you know, "On February 18th
14 she had nausea and tried this one. On February 19th she
15 had nausea and tried this one. February 18th seemed to
16 be relieved better by this one." We're talking one
17 person as a sample. This is -- it's still subjective.
18 It would have been great to be part of a medical study.
19 In fact her doctor was very interested in these things,
20 but there's just nothing out there to participate in yet
21 because it's still kind of a burgeoning new industry.

22 Q So you did keep a journal or a
23 diary of her medical use of marijuana?

24 A She keeps a journal for her medical
25 stuff and we input that. But I would note sometimes
26 when I was feeling extra sciencey and I would corner and
27 I would say, "You know what? Which do you think works
28 better?" or, you know, I was trying to figure out what

1 strain we were going to grow indefinitely and just
2 master cultivating that one. And White Berry was going
3 to be that, but then we had to move and I cut it down
4 and I might have shed a tear because it --

5 Q Now, that would have been a
6 relevant document to produce. Did you speak to your
7 counsel about providing that? You said you wanted to
8 provide it.

9 A No, no, no. What happened is the
10 document -- there's two documents. Tanya fills books
11 like the Bible monthly on how -- what food she eats, and
12 it's interspersed in that with all of her -- how much
13 hydromorphone she took, how much Gravol. But there was
14 moments where I was interested and there's, you know, a
15 very rough table and I go, "(a), (b), (c)," and I
16 present them all to her and I say, "Which one worked
17 best?" It's still pretty subjective but it's still
18 something. She could tell the difference between White
19 Berry and the other strains, and by taste, and also by
20 the feeling that she got which was -- it would make her
21 pass out.

22 Q So you told us that the production
23 log book that you created was lost, right?

24 A The production log book, yeah, it
25 was more about volumes, yields, how much water was used,
26 what fertilizer was used on what day. It was not so
27 much about -- there might have been a couple notes and
28 like "Tanya really likes this," on the margins, but that

1 was not to do with her health. It was to do with the
2 actual operation efficiency and my obsessive-compulsive
3 need to catalogue stuff.

4 Tanya's health stuff, there might be a
5 couple notes, like I said, in the margins of mine, but
6 her stuff is in 75, that many books. She's been filling
7 books for the last three years because doctors tell her
8 to, and she would note things like that.

9 Q So based on that information, you
10 were able to tell which strains were effective and which
11 were not. Is that what you're saying?

12 A Of the ones that we had access to,
13 yes.

14 Q What about the strains you're
15 buying on the black market? How do you know what
16 strains you're buying there?

17 A This is one of those incriminating
18 things, but the White Berry thing we keep on buying, or
19 the White Widow and the other strains. We still can
20 obtain those from other people. That's where they were
21 originally got from. But they're the more expensive one
22 and that's not what she is always getting. I'm often
23 getting her the compassionate Wal-Mart brand let's say,
24 and it's not that it's bad or low quality. It's just
25 it's not that one, and that actually took -- that
26 specific strain took more effort and more maintenance
27 than some of the other ones, which to me, and I was
28 looking for maximizing everything, I was always kind of

1 like "Are you really sure?" I was always questioning
2 her if she was certain that was the best, because the
3 Purple Kush actually grew the biggest and -- but that's
4 the one she liked, so that's the one we were focusing
5 on.

6 Q But how could you tell that these
7 were in fact the strains that you wanted to buy? You
8 asked for a brand name?

9 A They're distinctive in smell. The
10 White Berry is so distinctive in smell anybody in this
11 courtroom, if I put them all out and said, "This is
12 White Berry," put it behind my hand mixed up, you'd go,
13 "That's White Berry." It's obvious there's a difference
14 between the two.

15 Q But to be fair, it's obvious to
16 someone like yourself who is experienced with marijuana,
17 is that right?

18 A Oh, it has a completely different
19 smell and look and everything. It's unique on its own.

20 Q So you're saying that by the smell
21 of this marijuana you're able to tell what type of
22 strain it is.

23 A I wish that I had some of whatever
24 she has now, so I could bring it in in the baggies and
25 show you because it is so different smelling you can't
26 mix them up. You could put them in the bag and pick out
27 the different, the buds and separate them. So it was
28 unique and now it's gone. We had it for ourselves and

1 then I, like I said, I can still obtain things like that
2 once in a while through my friend because he knows
3 compassionate growers, but it's not consistent. It's
4 not always the same, whereas my standards in our
5 operation were almost identical product every time, so.

6 Q But what you buy on the black
7 market, you don't know if it's standardized or not.

8 A I can tell that it's the same, but
9 -- it would -- I don't know how large these operations
10 are. There is variation. Plants are different, every
11 human being is different. They -- even clones, under
12 conditions in a corner of a tent versus the middle, will
13 produce slightly different sizes. But the smell and the
14 look of it would be very similar, yes.

15 Q Okay. If you could just turn to
16 the second affidavit of Ms. Beemish, at paragraph 8.
17 It's on page 148.

18 A Forty-eight?

19 Q Yeah.

20 A Yeah.

21 Q We asked at that paragraph,
22 "Have you ever used cannabinoid-based
23 medications such as Nabilone or Sativex to
24 address the conditions and/or symptoms set
25 out in your answer to Question 4A above? And
26 if no, why?"

27 The answer to the question was,
28 "Yes, Nabilone. However it had no effect on

1 my symptoms or condition."

2 Were you aware that Ms. Beemish had tried
3 Nabilone?

4 A Oh, yeah.

5 Q Yeah.

6 A She's -- she was very excited to
7 receive it at first, thinking that it would -- you know,
8 it would either supplement or work in -- oh, excuse me.
9 Work in combination with the cannabis she's consuming.
10 It didn't really do anything for her. It just -- she'd
11 take it and, you know, she was on other pain-killers.
12 It was, like, I don't -- she just always felt like she
13 didn't know if it was actually doing anything.

14 Q So did she --

15 A And it wasn't covered. I don't
16 think it was actually covered. It was quite expensive
17 for us to purchase. We -- I think she was on it for
18 maybe four months, three months.

19 Q But you said she was using it in
20 conjunction with cannabis.

21 A Oh, she was using cannabis, and
22 hydromorphone, and anti-emetics like Gravol, and --

23 Q So she never tried to use it alone
24 in isolation, so you could really tell what impact it
25 has.

26 A She hadn't been alone on any
27 substance since 2012. She is always on some sort of
28 opiate painkiller, either Fentanyl or hydromorphone.

1 So, it's very hard to isolate these things. And if you
2 go to most people who have illnesses, they're usually on
3 three or four medications. Tanya's on, like, ten. So,
4 yeah. Scientifically it would be very hard to isolate
5 if it was effective on its own, because then she would
6 have to take -- stop taking the other things, and their
7 side effects would kick in, like, take -- if she stopped
8 taking hydromorphone, she has a hell of a time. She
9 needs to wean herself off of it over weeks.

10 Q And what about Nabilone? Did she
11 ever try that?

12 A Yeah, that was the one we were
13 talking about.

14 Q Her -- sorry. You're right.

15 A Sativex.

16 Q It's Sativex, exactly.

17 A She never tried that.

18 Q Okay. Any reason why she didn't
19 try it?

20 A You know, I think a doctor kind of
21 said, "Hey, let's get you on that." But she has a
22 rotating crew of doctors, and sometimes I think they're
23 just throwing ideas at the wall and see if they stick.

24 Also once again, I don't think it was
25 covered, and that was our big complaint. A lot of the
26 doctors, as I mentioned earlier, in my examination,
27 would be -- "Oh, yeah, you can do this, you can do
28 that." But then when it came to her going, "You know, I

1 court, caused her panic, so contacting Licensed
2 Producers and passing off of her licence just -- she
3 read enough news, she was terrified of the whole
4 process. She feels like we've been criminalized for
5 this, so she was scared to phone them in case they would
6 report us to the city. Because she heard the city of
7 Surrey was doing -- you know, it was just -- for her,
8 this is overwhelming. For me, I've looked into it.

9 Q Well, you agree that it is lawful
10 to contact those companies.

11 A Oh, I know, but you've got to
12 understand this is a woman who is (a) on drugs all the
13 time, on opiates, and is in absolute misery, so -- and
14 she feels that this is punitive, even though Canada is
15 the defendant. So I think she was just reluctant -- she
16 didn't like talking about it to doctors unless I was
17 there because some doctors would turn on her and treat
18 her like she was a drug-seeking idiot. She was
19 discriminated against in the hospital numerous times
20 because she looks First Nations, because she is part
21 First Nations.

22 So she's very scared to bring this sort
23 of stuff up and phoning a Licensed Producer and asking
24 him, and plus it would go on my VISA card, so it's
25 through me. Tanya has no credit, no nothing, so.

26 Q I have no further questions. Thank
27 you very much, Mr. Hebert.

28 A Thank you.

1 **RE-EXAMINATION BY MR. CONROY:**

2 Q When you said a moment ago that she
3 couldn't stay on the pills that she's on, can you just
4 explain what you meant there? You mean the
5 pharmaceuticals?

6 A If you -- she continues to take
7 Lyrica, Gabapentin and all the other motility drugs that
8 stimulate your bowels to move, and she's already
9 displaying these symptoms, you will start to display
10 tardive dyskinesia, which is involuntary shaking. And
11 if you would have seen Tanya today she would have been
12 sitting in her bed shaking because she has been taking
13 these. Eventually they will destroy your nervous
14 system. A lot of people with MS and things like this
15 have similar issues, and they will destroy your nervous
16 system. It is guaranteed. She has been taken off
17 medical -- a couple of the other things that are listed
18 here because she has now hit the toxic point to her
19 nervous system. So she will not be able to continue
20 doing this forever. It will kill her.

21 Q You talked about her doing edibles
22 and you talked about juicing. Do you treat them as two
23 different things, edibles versus juicing, or do you --

24 A Yes.

25 Q -- treat them as the same?

26 A Juicing extracts THCA and non-
27 psychoactive compounds because it's fresh. The curing
28 process, the heat thermal thing actually alters T -- I'm

1 not an expert, so I don't know if I'm supposed to go on
2 about this.

3 Q What's your understanding?

4 A My understanding is that THCA,
5 which is produced from the juicing, the precursor
6 chemical to THC and CBD -- well, three -- there's a lot
7 of chemistry going on. If you juice it before it's been
8 cured or processed or heated, you won't have any
9 psychoactive effect but you'll get a lot of the
10 cannabinoids. If you make edibles, I would always
11 decarboxylate it, which you heat it, and then it would
12 have a psychoactive effect. You would feel stoned. You
13 never feel stoned from juicing.

14 So I differentiate in those because, one,
15 any human being in those courtroom could probably
16 benefit from -- because it's just like drinking kale
17 juice or spinach juice. The other, some people might
18 have anxiety and fear and things like that because there
19 is effects from cannabis that some people don't tolerate
20 well.

21 So I always felt that juicing was an
22 unlimited thing for Tanya, whereas if you make a coconut
23 oil pill, tincture, if she ate three of those she'd be
24 comatose. So I differentiated how potent they are, but
25 I do think there's health benefits of both.

26 Q So juicing is fresh material.

27 A Correct.

28 Q Edible on your definition is when

1 it's been heated up.

2 A Yes. Decarboxylated.

3 Q Dried marijuana.

4 A Yeah. Well, dried marijuana is a
5 slow decarboxylation process. But often when you put it
6 on the stove and you put it in a double boiler with the
7 butter, it'll decarboxylate it in the --

8 Q In the heat.

9 A -- 60 degree temperature material.

10 Q Okay. And then you talked about
11 telling the difference by smell. You were talking about
12 the cannabis. Based on your other food growing
13 experience, were you able to tell the difference between
14 various other types of herbs and things, even though
15 they look similar, such as say cilantro or parsley? Are
16 you able to do that --

17 A As a biologist I'm trained to
18 identify pretty much all the trees and grasses and all
19 the other plants in British Columbia. So I might have a
20 little more experience in that. But when it comes to
21 cannabis, you know, it does have a lot to do with how it
22 was grown. The strain makes a big difference to the
23 smell and structure of the plant. But, you know, how
24 dense it is and all those have a lot more to do with the
25 cultivation and the environment.

26 Q Okay.

27 A There's a nature and there's a
28 nurture thing going on here.

1 MR. CONROY: That's all I have, thank
2 you, Judge.

3 JUSTICE: I take it with that we're
4 concluded?

5 MR. CONROY: Yes, for the day. So,
6 tomorrow we have Mr. Allard --

7 JUSTICE: Mr. Allard.

8 MR. CONROY: -- and then the first
9 expert, Professor Walsh.

10 JUSTICE: All right. We'll see you
11 all then tomorrow at 9:30.

12 (WITNESS ASIDE)

13 **(PROCEEDINGS ADJOURNED AT 2:16 P.M.)**

14

VANCOUVER, B.C.

February 25th, 2015

Volume 3

(PROCEEDINGS RESUMED AT 9:39 A.M.)

JUSTICE: Good morning.

MR. CONROY: Good morning.

MR. BRONGERS: Good morning.

JUSTICE: Go ahead, Mr. Conroy.

MR. CONROY: Thank you, Justice

Phelan.

The next witness for the plaintiffs is Mr. Neil Allard. Mr. Allard, if you could take the stand, please. And for the benefit of the court, we have identified his affidavit and materials as in volume 1 of the joint book.

JUSTICE: Yes.

MR. CONROY: At the tab --

JUSTICE: Two.

MR. CONROY: -- 2. So, Mr. -- if we mark that Exhibit 5, I think it is.

(AFFIDAVIT OF NEIL ALLARD MARKED EXHIBIT 5)

NEIL ALLARD, Affirmed:

THE REGISTRAR: State your name and your occupation and address for the record.

THE WITNESS: My name is Neil Allard. I am a retired postal worker and counselor. And my address is 2459 Pauline Street, Abbotsford, B.C.

MR. CONROY: I think that's exhibit

1 number 5.

2 JUSTICE: Yes, I think so.

3 MR. CONROY: So, Mr. Allard, would you
4 please answer any questions that my friend Mr. Brongers
5 has.

6 **CROSS-EXAMINATION BY MR. BRONGERS:**

7 Q Good morning, Mr. Allard.

8 A Good morning.

9 Q I will be asking you questions
10 about your own affidavit, but I'll also be referencing
11 the affidavit of the Health Canada official who swore an
12 affidavit to which she attached your Health Canada file,
13 Ms. Jeannine Ritchot. So I'm wondering if perhaps that
14 document could be brought to the witness. It would be
15 at volume 4, from page 1435 and following. And then in
16 volume 5 is actually the exhibit, which has the file,
17 the first tab in volume 5.

18 In other words, I'll be working with
19 volumes 1, 4, and 5 in the Joint Book of Documents this
20 morning.

21 JUSTICE: Go ahead.

22 MR. BRONGERS: Thank you, Justice.

23 Q So, Mr. Allard, just to confirm,
24 you were born on May 25th, 1954? Correct?

25 A Correct.

26 Q So that would make you now 60 years
27 old, is that right?

28 A That's right.

1 Q Now, in your first affidavit at
2 paragraph 2, which is at page 54 of the Joint Book of
3 Documents, you explain your educational background. So
4 just to confirm, you have a Bachelor of Social Work from
5 the University of Manitoba?

6 A That's right, yes.

7 Q And you also continue to study in
8 the evenings at colleges and universities, namely the
9 University of Winnipeg and at UBC?

10 A Yes.

11 Q In terms of your professional
12 career, I understand you worked at Veterans Affairs
13 Canada from 1988 to 1999. Is that correct?

14 A I worked until '95, and then I was
15 -- I had to go on to sick leave. So, then I retired
16 medically in 1999.

17 Q And at this present time you have
18 no children, that's correct?

19 A Correct.

20 Q And you were recently divorced.
21 You have no spouse, right?

22 A Correct.

23 Q So in sum, you have no dependents,
24 isn't that right?

25 A No dependents.

26 Q Now I would like to ask you some
27 questions about your medical condition and your medical
28 history. If I understand correctly, you were diagnosed

1 with Myalgic encephalomyelitis?

2 A Myalgic encephalomyelitis.

3 Q Thank you for correcting my
4 pronunciation, not an easy word. That is a condition
5 that colloquially is also known as chronic fatigue
6 syndrome, right?

7 A That's right.

8 Q And if I understand cor -- you were
9 also diagnosed with clinical depression, right?

10 A Yes, I was.

11 Q And I believe that was around 1995,
12 is that right?

13 A Yes.

14 Q In terms of your symptoms, I see in
15 your third affidavit at paragraph 5, which is at page 16
16 of the Joint Book of Documents, you set out there in the
17 second -- sort of second half of paragraph 5, what you
18 use raw juicing for in terms of dealing with symptoms.
19 I went through your affidavit, it seems to be the most
20 comprehensive setting out of your symptoms generally. I
21 know you don't just juice to deal with them, but the
22 question I am going to ask you, is I just want to
23 confirm what you suffer from, and if I understand
24 correctly it would be nausea, first of all? You suffer
25 from that?

26 A Yes.

27 Q Cramping?

28 A Yes.

1 Q Gastrointestinal problems?

2 A Yes.

3 Q Headaches?

4 A Yes.

5 Q Muscle and joint pain?

6 A Yes.

7 Q Fatigue?

8 A Yes.

9 Q All right. Do you suffer from any
10 other symptoms beyond the ones I've just mentioned?

11 A Well, the condition I have affects
12 my entire body. So, my autonomic nervous system
13 basically goes out of whack. And the symptoms I could
14 have are needles, pins and needles, and orthostatic
15 intolerance, pain in the back, chest pains. There could
16 be any number of things that could come on suddenly, as
17 a result of my autonomic nervous system being
18 dysfunctional essentially.

19 Q Turning to your second affidavit at
20 paragraph 10 which is page 25? Just looking at the
21 second sentence of your answer with respect to the
22 frequency of your doctor visits, you testified --

23 MR. TOUSAW: Can you give us the
24 paragraph?

25 MR. BRONGERS: Yes, it is, sorry,
26 paragraph 10.

27 A 10. Oh.

28 MR. BRONGERS:

1 Q The second sentence of your answer.

2 It says,

3 "As can be determined from Exhibit A attached
4 hereto, initially from 1995 until 1999 I
5 visited many doctors, and the visits lasted
6 from five minutes to over an hour. But since
7 1999 I have visited them less often."

8 Would it be fair to say based on that
9 statement that your condition since 1999 has been more
10 or less stable?

11 A No, there have been periods when I
12 have been almost bedridden, or to the point where I am
13 almost not able to get off the sofa. So there have been
14 -- my illness is quite variable, and stress plays quite
15 a big role with it. And I was in a stressful marriage,
16 and so my health deteriorated in that time.

17 Q You've obviously been suffering
18 since 1995, so 20 years now. I am just wondering over
19 those 20 years, excepting of course there will be ups
20 and downs, has it generally stayed about the same on
21 average, or is your medical condition getting better
22 over the years?

23 A No, it has stayed about the same on
24 average, I would say.

25 Q And it is your expectation, I
26 assume, that you will suffer from these conditions for
27 the rest of your life, right?

28 A Well, I would hope that something

1 will happen in the medical field to find some sort of
2 cure for this, so I am hopeful. I remain hopeful.

3 Q Right. I'm now going to ask you
4 some questions about your marijuana use. It is not
5 entirely clear from your evidence when you started using
6 marijuana medically, but at paragraph 6 of your first
7 affidavit, pages 55 and 56?

8 A Mm-hmm.

9 Q And that paragraph you wrote,
10 "Through trial and error, I learned that I
11 had a profound sensitivity to pharmaceutical
12 medications, and that on the advice of my
13 healthcare practitioners, including a
14 specialist, I began using cannabis marijuana
15 to get some relief from many of the symptoms
16 I was experiencing. The results were very
17 positive, and I was referred to the B.C.
18 Compassion Club Society in Vancouver, through
19 a written notice of support from my general
20 practitioner in October of 1998, at a time
21 when I lived in Vancouver."

22 Does that assist you a bit in recalling
23 when you first started to use marijuana for medical
24 purposes?

25 A Yes.

26 Q When did you start using it?

27 A Around October, 1999 -- '98 I think
28 it says here. That is when I got a note from Dr.

1 Shintani, which is part of the exhibits.

2 Q Now, was that the first time you
3 had used marijuana?

4 A No, it wasn't the first time.

5 Q Okay, when did you first start
6 using marijuana?

7 A Medically?

8 Q No, recreationally.

9 A First time I ever used marijuana
10 was when I was 15 years old.

11 Q And how frequently were you using
12 marijuana?

13 A At that time, not very frequently,
14 I didn't have a lot of money and had issues.

15 Q Right. Well, you were 15 in about
16 the year 1970 or so, so I am just wondering over that
17 next 28 year period from 1970 to 1998 when you started
18 using it, marijuana medically, how often were you using
19 marijuana recreationally, just on average?

20 A Well, you see, I had to do a lot of
21 studying, because I had to do the upgrading courses and
22 then the college of electronics, and the university, et
23 cetera. And what I found was, when I went to the doctor
24 to complain about problems of anxiety and panic attacks
25 during exam time or paper writing, I was prescribed
26 Ativan and things of that nature. And what I realize is
27 I wasn't able to think clearly. I couldn't remember
28 what I had studied. And so, I started using cannabis to

1 write my papers, and to study for my exams, and also to
2 write my exams. And I found that my marks started to
3 improve quite considerably, and I was much more relaxed,
4 and felt I could complete the job.

5 Q Again, can you give us an idea of
6 how much you were using? I know that is a long period
7 of time, 30 years from 1970 to 1998, but perhaps you can
8 give the court some idea of the extent of your use prior
9 to when you started using it for medical purposes?

10 A I would say maybe once a week or
11 something at that point. Maybe if I had a little more
12 stress, and it was paper time, or exam time, it would be
13 a little more. But at that time I just had little
14 puffs. My tolerance has increased quite dramatically
15 since then. So, the effect I got from the cannabis back
16 then was pretty minimal, and I titrated, as I do now,
17 and it was very effective. But, they used -- the amount
18 of cannabis I use is nothing like the amount I need now.

19 Q Understood. So, you are saying you
20 were using it about once a week. Would that be a fair
21 average for the whole 30 year period, if you averaged it
22 over 30 years, was about once a week?

23 A No, because there were times when I
24 was broke, and I couldn't afford any, and I had to take
25 Tylenols or Ativan, or whatever else was available. So
26 no, you know, I went through periods, you know, without
27 any cannabis, sometimes for months. So, no, that
28 wouldn't have been -- that wouldn't be correct.

1 Q What would be a better estimate in
2 terms of average consumption than once a week?

3 A As I say, it was variable. So,
4 sometimes it could once or twice a week or more, other
5 times it would be several months of nothing. So, it is
6 really hard to come up with an estimation of a, you
7 know, any better than that, really.

8 Q Leaving aside that you couldn't
9 always afford marijuana, were there any periods of time
10 during that 30-year stretch when you quit marijuana
11 completely?

12 A Oh, yeah. Oh, yeah. There were
13 times when I had -- I stopped alcohol many times, and
14 cannabis as well. And those were generally not very
15 good times for me. They were difficult.

16 Q How long would you quit at a
17 stretch?

18 A Two, three years, periods.

19 Q Now, I see from your affidavit,
20 your first affidavit, paragraph 13, on page 57 --

21 A Mm-hmm.

22 Q -- that you first were authorized
23 to possess and produce marijuana in 2004, is that
24 correct?

25 A That's correct, yes.

26 Q So obviously you were accessing
27 marijuana prior to that date in terms of your -- prior
28 to that date without Health Canada approval. And here

1 I'm talking about medical marijuana. You testified that
2 you began using it medically around 1998. From 1998 to
3 2004, you were using medical marijuana, right?

4 A That's right.

5 Q And without the authorization of
6 Health Canada, right?

7 A I did have the authorization and
8 the recommendation of my physicians.

9 Q But you didn't have a licence to
10 produce.

11 A No, I didn't.

12 Q Or -- yes. I'm just interested
13 during that period, that six-year period from 1998 to
14 2004, how were you accessing your marijuana?

15 A Well, primarily through the
16 Compassion Club, as I think I indicated in my affidavit.

17 Q And how much were you using during
18 that period?

19 A Well, this is what essentially
20 motivated me to move to Nanaimo, to buy a house, to
21 start growing my own. It was costing me about \$500 a
22 month, and for me, that was too much. So, I did move to
23 Nanaimo and started to grow it there.

24 Q So, when you were buying marijuana
25 at \$500 a month, how much were you using, in terms of
26 grams per day?

27 A Well, we couldn't get too much. It
28 was \$7 a gram or something like that. Sometimes there

1 were specials for \$5 a gram or so, but generally the
2 stuff I needed was \$8, sometimes 10. And so \$500 didn't
3 go very far. And I was always short. And I had to take
4 pills. I was on four pills at that time.

5 Q Just doing very basic arithmetic,
6 would that mean you were using about 3 grams a day,
7 then? At that time? I'm just trying to help you, is
8 whatever you remember.

9 A Yes, please help me with
10 arithmetic, because I have a lot of trouble with that.
11 So, \$500, if we were to average it, say, \$7 a gram, I'm
12 not sure what that would come out to. 30 days.

13 Q About 1.6 grams?

14 A 1.6 grams? Yeah, yeah.

15 Q 1.6 grams per day. Thank the
16 member in the audience for her calculator assistance.

17 All right. I'd now like to ask you some
18 questions about the amount of marijuana you've been
19 using since 2004 when you were authorized to use medical
20 marijuana. Started at about 1.6, before you were
21 authorized. But in terms -- once you were authorized,
22 if I understand correctly, your first dosage that was
23 authorized was five grams per day. Is that right?

24 A Correct.

25 Q And just to assist the court,
26 because it's not clearly set out in your affidavit, but
27 I think it is more clearly set out in Ms. Ritchot's
28 affidavit, at pages 1,440 and 1441 of the Joint Book of

1 Documents.

2 I don't know if Mr. Allard needs to refer
3 to this. It sounds like he might remember it.

4 A This one here?

5 Q In any event, according to this --
6 according to this affidavit, at paragraph 20, it says,
7 "In May, 2004, Mr. Allard's daily dosage was
8 5 grams per day and based on the formula set
9 out in the *Regulations*, he was authorized to
10 possess 150 grams of marijuana at a time, and
11 to produce 19 plants indoors and 5 plants
12 outdoors. He was authorized to store an
13 additional 1,875 grams of dried marijuana."

14 You would agree with that, wouldn't you,
15 Mr. Allard?

16 A Yes.

17 Q And then Ms. Ritchot explains in
18 her next paragraph that in 2005 you received an
19 authorization to possess, authorizing you to possess 150
20 grams of dried marijuana, based still on your daily
21 dosage of 5 grams. You were then licensed to grow 25
22 plants indoors and store an additional 1,125 grams of
23 dried marijuana. Do you agree with that?

24 A Mm-hmm. Yes.

25 Q Now, to the next paragraph, Ms.
26 Ritchot explains that in 2006 your daily dosage doubled
27 from 5 to 10 grams daily. You were -- you applied for
28 and were issued an ATP authorizing you to possess 300

1 grams of dried marijuana at one time. You were licensed
2 to grow 37 plants indoors and 10 plants outdoors, and
3 store an additional 3,750 grams. You would agree with
4 that, wouldn't you?

5 A Yes.

6 Q And then in the next paragraph,
7 it's explained that in the years 2007, 2008, 2009, 2010,
8 2011, and 2012, you applied for and received an
9 authorization to possess and a personal use production
10 licence, which authorized you to possess 300 grams of
11 dried marijuana, licenced you to grow 37 plants in
12 doors, and 10 plants outdoors. These amounts were
13 calculated based on your continued daily dosage of 10
14 grams per day, and the formula set out in the
15 regulations. You are also authorized to store an
16 additional 3,750 grams of dried marijuana in your home.
17 You'd agree with that?

18 A It sounds right. I'd have to look
19 over the licences to ensure that they're correct, but it
20 sounds correct.

21 Q Okay, and finally at paragraph 24,
22 in 2012, three months after your ATP and PUPL were
23 issued, an amended ATP and PUPL were issued to reflect
24 that,

25 "Mr. Allard's daily dosage again doubled from
26 10 grams to 20 grams per day. As a result he
27 was authorized to possess at any time, 600
28 grams of dried marijuana at anytime, and

1 licenced to produce 98 plants indoors. He
2 was also able to store an additional 4,410
3 grams of dried marijuana in his home. Mr.
4 Allard's subsequent applications for ATPs and
5 PUPLs under the *MMAR* were issued in the same
6 amounts and remain valid on these terms under
7 the Allard injunction order."

8 Would you agree with that, Mr. Allard?

9 A Yes.

10 Q So, just to summarize then, in
11 terms of how your dosage has progressed. If I
12 understand correctly, from 2004 to 2006 your authorized
13 daily dosage was 5 grams per day?

14 A Correct.

15 Q And then from 2006 to 2012 your
16 daily dosage that was authorized was 10 grams per day?

17 A That's right.

18 Q And then from 2012 to the present,
19 it has gone from 10 grams per day to 20 grams per day,
20 right?

21 A Right.

22 Q If you could turn to your second
23 affidavit at paragraph 25.

24 A Now, which tab is this at?

25 Q I will give you the page number, is
26 probably the easiest way, the pages on the bottom. Page
27 32.

28 A Okay, method of administration --

1 Q That's right, exactly.

2 A Mm-hmm.

3 Q And if you just read your first
4 sentence there, you say that your usage varies between
5 10 and 20 grams per day. Is that correct?

6 A Yes, that's correct.

7 Q Okay, so would it be fair then to
8 say that your average daily use is around 15 grams per
9 day, sometimes more, sometimes less?

10 A Lately I have been going through
11 pretty much 20 grams a day, steady, because of the
12 stress of this trial, and all the congregations I had to
13 set up, et cetera. So, I am not so sure that that is
14 valid. I mean, it's -- sometimes it can be 10 grams,
15 but lately it has been more like 20 grams, and then I've
16 got the juicing and the oils and all the other on top of
17 that.

18 Q Well, at the time you swore the
19 affidavit, though, you said that it varies between 10
20 and 20. I appreciate sometimes more, sometimes less,
21 and again, just simple math, the average would be about
22 15, right?

23 A Yeah, okay.

24 Q So, based on that, would you agree
25 with me then, that you could have simply asked Health
26 Canada for authorization to possess or to grow up to 15
27 grams per day, given that that would have worked out as
28 an average?

1 A Well, what I did is I sent a letter
2 to Health Canada, copied to my Doctor, after discussing
3 it with Dr. Mander, and it is part of the exhibit, in
4 terms of the number of plants and the problems I was
5 having with the yields, and the fact that I needed
6 various strains. And start from seedling often time,
7 and then have to deal with the males versus the females.
8 So, that was a part of my -- I provided that as an
9 exhibit, and I think that provides a fair amount of
10 explanation as to why I needed as many plants as I did.

11 Q So, you felt you needed the higher
12 amount because not all of your plants were going to grow
13 successfully. That is why you asked for a higher daily
14 dosage than you knew you were actually going to consume?

15 A That's only part of it. I wonder
16 if we could pull up that -- the exhibit about the
17 production?

18 Q You'll have to help me, Mr. Allard,
19 I am not sure what you are referring to.

20 A Oh, okay. Okay, it's page 98.

21 Q I see it. You will need to answer
22 the question.

23 A So -- yeah, so you can see that the
24 reasons that I've asked for the increased plant count,
25 that I'm growing organically with very minimal yield,
26 nowhere near 10 grams per day. I have had problems with
27 clones not rooting, plants stressed by heat, cold,
28 insects, plant sickness, just to mention a few problems.

1 Unfortunately I have not always been able to give due
2 care and attention to my plants because of my own health
3 problems, the cramped production site -- that was at the
4 previous place. And an unsuitable home.

5 And then, so I go on to talk about my
6 properly built production site, et cetera, et cetera.
7 And that I need to rest sometimes and give myself a
8 break from growing, so I shift on my flower room. So I
9 can just grow as I need to.

10 Q So if I understand correctly, you
11 didn't really need an average of 20 grams to dose each
12 day, but you had to ask Health Canada for that amount in
13 order to grow enough plants that you felt would
14 successfully bloom and provide you product. Would that
15 be a fair explanation of the 20-gram dosage request?

16 A Yes.

17 Q Well, now, given the -- go ahead,
18 Mr. Allard, if you want to --

19 A Well, I just wanted to add the
20 juicing and the oil takes some of that as well. I mean,
21 it requires product to make some of those. So that
22 bites into -- so I would say my vaporizing might be,
23 say, around 15 grams as we had agreed on, but in terms
24 of the other, I need more material to produce the oil
25 and the juice, et cetera. Particularly juicing. It
26 requires a lot of leaves and buds, fresh.

27 Q Now, nevertheless, whether it's 15
28 grams or 20 grams, you would agree with me that that's a

1 significant amount of marijuana to consume in a day,
2 right?

3 A Well, I don't feel that way,
4 personally. I mean, if it helps me, I mean, if it
5 hadn't been for cannabis today, I don't think I'd be
6 here. So, to me, the 20 grams does not seem excessive
7 at all. It seems like just about the right amount.

8 Q Could you take us through a typical
9 day of how you use marijuana, from the time you wake up
10 to the time you go to sleep, how often you use it?

11 A Mm-hmm. Well, in the morning I am
12 generally up around 4:30 because I have a wood stove and
13 I need to refill it. And so I use my vaporizer first
14 thing in the morning, and generally go through about 3
15 or 4 grams or so. I often go back to bed after doing
16 dishes and chores, checking on my plants, et cetera.

17 And if I do sleep some more, when I get
18 up I need a little bit more vaporizer to have an
19 appetite, to be able to eat. I do need to eat about
20 every three hours or so, because of issues with blood
21 sugar. And the cannabis helps me to settle my stomach
22 so that I can eat.

23 And so I would continue through the day,
24 pretty much, on an average of maybe every half-hour or
25 so, with my vaporizer, depending on what I'm doing, how
26 much stress I'm under, how much activity there is around
27 me. Noise, lights, things like that, I am extremely
28 sensitive to those things. So the cannabis helps to

1 filter out some of that external stimuli.

2 And so I use it throughout the day. And
3 occasionally I use a pipe, or a joint, for rapid onset.
4 So if I'm in a lot of pain, then it -- you know, it
5 dissipates quickly and then I can use my vaporizer after
6 that. So it's throughout the day kind of thing that I
7 use it.

8 Q You said you use it an average of
9 every half-hour, but I appreciate you are taking some
10 naps during the day.

11 A Mm-hmm.

12 Q If you were up all day and using it
13 every half-hour, and you were awake for 16 hours, that
14 would be 32 dosings a day. How many times do you dose
15 in a day?

16 A It could be as many as 32. It
17 could be more, it could be less. I don't really count
18 them. No.

19 Q Now, in your affidavit you explain
20 the reason for your dosage increasing at your second
21 affidavit. I believe it's at paragraph 4(g). Page 21.

22 You explain that the amount of marijuana
23 that you are authorized to use is set out on each
24 authorization to possess *MMAR* document, and "the amount
25 was determined based upon trial and error, and the
26 effects upon me and my needs in consultation with my
27 physicians and my methods of ingestion", right?

28 A Mm-hmm.

1 Q Now, logically, such an approach
2 would result in a slight modification of your dosage
3 each year, but in your case you're apparently satisfy to
4 maintain your dose at 5 grams a day for the first two
5 years. You then doubled it to ten grams a day for six
6 years, and then all of a sudden you doubled it to 20
7 grams in 2012. How can you explain that, as opposed to
8 going back each year and making a slight adjustment to
9 your dosage, having it stable for so long, and then this
10 enormous jump from 10 grams to 20 grams in 2012?

11 A Well, it would be the same as if I
12 had any other medication. If I went back to the doctor
13 and said it's not working, it's not enough, he would
14 say, "Well, let's try a little bit more, or try a
15 different type," or whatever. Let's double it. And if
16 I went back and he said it didn't work, I told him -- if
17 I said to him, this is still not working after it's
18 doubled, well, he might say, well, let's try it again,
19 and double this, and see what happens. So essentially
20 that's what happened here.

21 Q So on that basis, you would say
22 that if your condition and your dosing was stable and
23 satisfactory for six years, from 2006 to 2012, you
24 didn't need any adjustments?

25 A Well, see, the -- I was growing
26 with two other people. And so, we were pooling the --
27 at the first place, there was two other people growing
28 with me, and their needs weren't as large as mine. So

1 they took whatever they required, and I had what was
2 remaining. So whether it was 5 grams or not, I don't
3 know. It could have been more than 5 grams, or it could
4 have been 5 grams. You know, it's hard to know.
5 Because I don't generally weigh the amount that I use.
6 But I was just concerned about having enough for what I
7 needed.

8 Q So, your focus was more on how many
9 plants you could grow, rather than the actual dosage you
10 needed, right?

11 A No, the focus was on getting enough
12 product for all three of us.

13 Q Did your doctor, particularly in
14 2012, question why you all of a sudden needed such a
15 huge increase in your dose, from 10 grams per day to 20
16 grams per day?

17 A I don't think my doctor saw it as a
18 huge increase. I think he saw it just as I explained it
19 to you a moment ago.

20 Q So, even though you had started at
21 5 grams per day for two years, then went to 10 grams per
22 day for six years, and then all of a sudden you asked to
23 go up to 20 grams, your doctor never questioned that?

24 A No, because he could see that I was
25 coming off of Baclofen and clonidine and renadine. So
26 there were three medications that I dropped as a result
27 of increasing my cannabis.

28 Q You may be aware that your own

1 counsel has filed an expert report from Dr. Caroline
2 Farris, who indicated that in her opinion doses of 3 to
3 5 grams per day are adequate for most patients, and that
4 she is suspicious of doses at around 20 grams a day or
5 higher. And yet you are still telling me that your
6 doctor didn't have a concern with the 20 grams per day?

7 A No, he hasn't -- none of my doctors
8 have ever had concerns about it. And I think the
9 exhibits indicate that.

10 Q Okay, Mr. Allard, I'd now like to
11 turn to your methods of consuming marijuana.

12 A Mm-hmm.

13 Q And I'll begin with smoking,
14 although I think you've just answered the question
15 earlier. Your evidence on this point in the affidavits
16 was a bit unclear, because if we look at your first
17 affidavit, paragraph 28, at page 61?

18 A Yes.

19 Q If you look at the first sentence
20 of paragraph 28.

21 A Mm-hmm.

22 Q It says,
23 "I do not drink alcohol, as I cannot tolerate
24 it, and I do not smoke anything, including
25 cannabis."

26 A Yes, that's correct, and it was
27 correct at the time. Since then, my aim was to be
28 completely on vaporizers, and oil and juice, and to not

1 smoke anything at all. But I haven't been able to
2 maintain that because of the constant pain and the
3 stress. So, the rapid onset is necessary, and I do find
4 myself using a pipe or a joint, as I mentioned earlier.

5 Q So, in addition to smoking dried
6 marijuana in a pipe, and a joint, and in joints, you
7 also vaporize dried marijuana, right?

8 A Yes, primarily the method that I
9 take it.

10 Q And you also say you ingest
11 marijuana by chewing the fresh leaves, right?

12 A Well, I was chewing initially, but
13 somebody mentioned that it is kind of hard on your --
14 could be hard on your gastrointestinal system, so I
15 started doing the juicing instead of chewing.

16 Q You also say you ingest it by
17 eating baked goods that contain dried marijuana?

18 A Mm-hmm.

19 Q And by eating baked goods, do you
20 mean that you've just placed the dried marijuana within
21 the baked good? Or are you making a butter or an oil,
22 and then baking something afterwards?

23 A Either/or.

24 Q You do both?

25 A Yeah.

26 Q You also say you ingest marijuana
27 by using edibles. And just to be clear, what do you
28 mean by edibles? Just the baked goods? Or are there

1 other forms of edibles?

2 A No, the oil and the baked goods are
3 pretty much it. And then externally I use the oil as
4 well, if I have pain on my skin and my body, my back, my
5 shoulders, et cetera.

6 Q So, you drink the oils, and you
7 also apply them to your skin, right?

8 A Yeah, the oils -- well, I'm not
9 sure if I drink it, but I put it under my tongue, and
10 swallow it with food or water or whatever. Yeah.

11 Q You've already said you use juicing
12 as well for ingesting marijuana?

13 A Yes. Yes.

14 Q And finally, you say you ingest it
15 using tea as well, right?

16 A Mm-hmm.

17 Q Can you give us a breakdown by
18 percentage or however you want to do it in terms of how
19 you consume marijuana, these various different methods.
20 Is it sort of 50 percent using it through methods that
21 the marijuana is ingested through your lungs, 50 percent
22 through your stomach? I'm just trying to help you with
23 a way of explaining it?

24 A No, I would say mostly through my
25 lungs, and a small amount through the oils and -- but
26 significant amount through the juice, though. So, it's
27 hard to give you a percentage, because if I have fresh
28 leaves available, and fresh buds, then I might want to

1 make a whole lot of juice, and consume quite a bit of it
2 at that time. Then I freeze the rest, so that I have
3 some available later.

4 So, it's hard to break down that
5 percentage. But I would say the vast majority of what I
6 use is vaporizing and then next would be the juicing.
7 And then oils. And edibles and topicals.

8 Q But the vast majority is vaping and
9 smoking, right?

10 A The vast majority, yes.

11 Q I'd like to turn now to strains.

12 A Mm-hmm.

13 Q If you could turn to page 28 of the
14 Joint Book of Authorities [sic]. This is your second
15 affidavit at paragraph 17.

16 A It's the same book?

17 Q Yes. Actually the question on
18 paragraph 17 is -- starts at page 27.

19 A Mm-hmm.

20 Q But then your answer is at page 28.
21 Have you seen that?

22 A Yes, I do.

23 Q Now, in your first paragraph of
24 this answer you list the strains that you're growing.

25 A Mm-hmm.

26 Q And I count there being 11 of them.
27 Aurora, Papaya, Hash Passion, Hash Bomb, Big Bang, Early
28 Queen, Lemon Skunk, Strawberry Cough, Mountain Jam, and

1 White Widow. Actually, sorry, I believe I saw somewhere
2 else you put the Shark in, down here.

3 A Yes, Shark. Yes. Mm-hmm.

4 Q And that's actually at the fourth
5 paragraph in there.

6 A Right.

7 Q That's a better list, actually. So
8 would you confirm that those are the 11 strains that you
9 are currently growing?

10 A Well, I made a notations there, but
11 if I can try to remember, no, they've changed. And they
12 constantly do change, for reasons I can explain, if
13 you're interested. But let's see. Do you want to know
14 which ones I have now, is that the question? Or --

15 Q I'm just interested generally how
16 many strains you're using, and how effective they are.
17 Those would be the nature of my questions.

18 A Okay. So I have one, two, three,
19 four -- I probably have about a dozen or so strains.

20 Q And you don't know the THC or the
21 CBD level of any of those strains, do you?

22 A Well, as I indicated in my
23 affidavit, the information was on the website from where
24 I bulk-purchase the seeds. Sometimes they provide the
25 THC, CBD, CBN breakdown. Sometimes they don't.
26 Sometimes they provide information about the strains,
27 sometimes they don't. For instance, the background, you
28 know, what it was crossed with. And so that gives me an

1 idea.

2 So, to answer your question, no. And if
3 I grew it my way, I mean, I'd come up with the same
4 proportion of cannabinoids in the profile anyway, so I
5 use that as a basic guide, but that's about it.

6 Q You've never had them tested for
7 THC or CBD, have you?

8 A No, I haven't.

9 Q But it would be beneficial for you
10 to know that information if you could, right?

11 A Well, I think if it works, that's
12 the main thing. I mean, I'm not that particularly --
13 I'm not a scientist, so I don't -- or a botanist, so I
14 don't really need to know what's in the plant, just as I
15 don't need to know what's in my pills. You know, my
16 pharmaceuticals. So if it works, you know, that's the
17 main thing.

18 Q If you could explain that to the
19 court, how do you decide whether a particular strain
20 works or not for you?

21 A Well, if it relieves the -- some of
22 the symptoms that I'm feeling, then it's working. And
23 to the degree to which it does that, lets me know how
24 effective it is.

25 Q So do you have a system for trying
26 out your strains? Do you try out a strain, see if it
27 works; if it does, you keep using it, and if it doesn't,
28 you stop using it? Is it as simple as that? Or do you

1 have --

2 A No, it's not quite simple as that,
3 because there's a tolerance that gets built up with a
4 particular strain. For me, especially. So I need to
5 keep switching strains for it to be effective. And then
6 I can return to the old strain again. Often. But there
7 are some strains, quite a number of them -- whether
8 they're *indica*, hybrids, or *sativas*, that will over
9 stimulate me and essentially make things worse.

10 So I'm very particular and very
11 sensitive, and I have to spend a lot of time, effort,
12 energy, and money trying to figure this whole thing out.

13 Q And each time you try a new strain,
14 you have to grow a new plant for it, right?

15 A I have to grow at least one plant,
16 because I want to keep a mother, and then I clone the
17 mother, and then try -- and then flower, flower the
18 mother, and then I have at least one clone left over.
19 So if that strain is effective, then I have a follow up
20 for it.

21 Q So, you have to grow a number of
22 plants just to try a strain, correct?

23 A That's right, yeah.

24 Q And if that strain doesn't work for
25 you, then you can't use those plants you've grown,
26 right?

27 A That's right, but I am getting
28 much, much better at identifying which strains work,

1 based on what their crosses are. What the hybrid is.

2 Q Do you keep a diary of when you use
3 a particular strain? How much you use, and what effect
4 it has? Do you write down this information?

5 A Well, I do have just notes on
6 pieces of paper that I collect, just for my own purposes
7 so that I know where I am at, but I don't keep any
8 detailed accounting notes, or you know, numbers of grams
9 or anything like that. I just kind of stay in the range
10 of where I know, okay, yeah, I am not over my limit, I
11 don't have too many plants, and that way there is no
12 stress, and I don't have to worry about the accounting
13 part of it. Because I am not very good with math and
14 accounting. I have to write everything down and I just
15 go over it, and over it again a number of times.

16 Q And you say you just take notes
17 occasionally, you don't have a systematic system, do
18 you? Or is this a very detailed --

19 A Well, it is my own sort of informal
20 system, but I always know what's in -- how many plants I
21 have, and what stage they're in, whether they're in
22 clone, seedling, vegetative, or flower.

23 Q And you didn't provide that to the
24 defendant in this case, did you? I didn't see it in
25 your counsel's list of documents or in answer to any of
26 our questions?

27 A I don't recall that I was asked
28 that, I'm not sure.

1 Q Now, you explained that -- in your
2 affidavit that you have tried Sessimat, or I guess
3 Nabalone is the trade name, which is cannabinoid based
4 pharmaceutical. But, you stopped using it, isn't that
5 right?

6 A Yes, it was just a trial. It
7 wasn't suitable at all.

8 Q When did you try it, do you
9 remember?

10 A No, I don't. But it was quite a
11 number of years ago.

12 Q Do you remember how long you tried
13 it for?

14 A No, I don't. No. But I went
15 through quite a number of medications, a long, long list
16 of medications, and that was one of them.

17 Q And you found it wasn't effective
18 for you?

19 A Not a thing.

20 Q And how about Sativex?

21 A I haven't tried Sativex.

22 Q Okay, any reason --

23 A But I believe it is in a tincture,
24 alcohol tincture or something?

25 Q That may be right. Is there any
26 reason why you haven't at least tried Sativex, or asked
27 your doctor?

28 A Yeah, because I don't take alcohol.

1 I am very adversely affected by any alcohol.

2 Q I just have a few more questions
3 about the impact that marijuana use has had on your
4 medical conditions. We went through that list of
5 symptoms earlier, and I can remind you of them. I am
6 going to ask you whether marijuana is effective for each
7 of these symptoms. Starting with nausea, is marijuana--

8 A Is --

9 Q I can just ask you the symptom and
10 then you can tell me whether marijuana is effective in
11 treating it.

12 A Okay, sure.

13 Q So, with nausea, do you find
14 marijuana assists you with that?

15 A Yes.

16 Q Cramping?

17 A Yes.

18 Q Gastrointestinal problems?

19 A Yes.

20 Q Headaches?

21 A Yes.

22 Q Muscle and joint pain?

23 A Yes.

24 Q Fatigue?

25 A Yes.

26 Q Difficulty sleeping?

27 A Yes.

28 Q Low energy levels?

1 A Yes.

2 Q Cognitive difficulties?

3 A Yes.

4 Q And you don't use marijuana to
5 treat any other symptoms, right? You said you weren't
6 really suffering from anything other than --

7 A Well, I have far more symptoms than
8 what you've just described. I think -- I believe I have
9 provided a list of the ME symptoms in my exhibit.

10 Q I'm just wondering -- I think your
11 testimony is that marijuana is effective for everything
12 that ails you, but I am wondering if there are some
13 conditions you have that marijuana is not an effective
14 medicine for you?

15 A Well, some think -- well I do use
16 clonazepam in conjunction with cannabis to sleep, and
17 for nerves. So, if you are asking me is cannabis alone
18 enough to take care of all these issues?

19 Q Yes.

20 A No, I need -- I am using a
21 pharmaceutical as well.

22 Q And that pharmaceutical is used for
23 the same symptoms or for something in particular?

24 A It's a Benzodiazepine. So it's
25 used for sleeping and nerves. And uses -- it helps for
26 pain and a few things.

27 Q And you, you need that as well as
28 the marijuana?

1 A Yeah, yeah.

2 Q If you could turn to your third
3 affidavit at paragraph 5, the third most recent one you
4 swore last month. That's at page 16.

5 A Sixteen?

6 Q Turn to page 16.

7 A Thank you. Mm-hmm.

8 Q If you look at the last sentence
9 of your answer there at paragraph 5,

10 "I consider it..."

11 And that's marijuana.

12 "I consider marijuana to be an essential
13 dietary food source and a prevention of
14 illnesses such as cancer due to its
15 antioxidant and anti-inflammatory properties."

16 A Mm-hmm.

17 Q That's your view?

18 A I -- well yeah I do, I do believe
19 that, yeah.

20 Q You would agree with me, through,
21 that the notion that marijuana can actually prevent
22 illness as opposed to treating it, is one that's
23 controversial, right?

24 A Yes, I, I understand that, yeah.

25 Q You're not suggesting, though,
26 that even healthy should be using marijuana?

27 A I'm not suggesting anything for
28 other people.

1 Q If you could turn to your send
2 affidavit, paragraph six, page 22.

3 A Page 22?

4 Q Yeah.

5 A Mm-hmm.

6 Q At the second sentence there, just
7 -- second sentence of paragraph 6, the answer, you said:

8 "The internal medicine specialist who
9 diagnosed me and examined me a number of
10 times has established that growing cannabis
11 indoors during these difficult cloudy damp
12 B.C. winters is highly therapeutic."

13 So if I understand correctly, you believe
14 that the simple act of cultivating and growing marijuana
15 has a therapeutic value for you, right?

16 A Yes, that's -- I have an exhibit,
17 a letter from the doctor who explains that in detail.
18 Would you like to --

19 Q No, I just wanted to confirm that
20 that's your, your view.

21 A And so exactly what is it that you
22 want me to confirm?

23 Q Well, I first of all want you to
24 confirm that that is your view, that part of the reason
25 you use medical -- or that you cultivate medical
26 marijuana is because you feel just the simple act of
27 cultivation gives you a therapeutic benefit.

28 A Well, it's a -- it's a twofold

1 process. I need the cannabis and the lights and the
2 temperature and the calmness of dealing with the plants
3 and the gentle exercise is very therapeutic for me. It
4 puts -- it relieves a lot of stress. I gives me -- I
5 don't have any pets. So for me these plants are
6 something that I am responsible for, I have to take care
7 of. I don't live with other people, so these are -- in
8 a way you might say my, my way of connecting with live
9 things and so the plants are important to me in that
10 way.

11 But more importantly they're, they're my
12 medicine. They keep me going and functioning. Without
13 the cannabis I, I would be in rough shape.

14 Q I understand that, but you would
15 agree with me that in terms of the benefit that you do
16 get from the growing activities, you could obtain that
17 from growing any vegetable or plant in your basement,
18 couldn't you?

19 A Well, I don't think it'd be quite
20 the same effect, because I know that these plants that
21 I'm taking care of are going to take care of me. So
22 there's a symbiotic relationship with these plants that
23 I wouldn't have with growing orchids or other things
24 that I'm not ingesting as medicine.

25 Q Mr. Allard, is it your expectation
26 that you will be using marijuana as medicine for the
27 rest of you life?

28 A No, not necessarily. I mean if,

1 if I could find -- or the medical people could help me
2 find a cure for what I have and if I didn't need
3 cannabis then I, I probably wouldn't use it.

4 Q You wouldn't continue to use it
5 for recreational purposes?

6 A Well, when you use it medically
7 there, there is not really a recreational element to it.
8 I know people will -- like to talk about getting stoned,
9 but that's not a concept that I, that I think about when
10 I'm using my medical cannabis. It's really just
11 essentially to get back to normal or some, some degree
12 of normalcy. So it isn't, you know, use it for -- to
13 get stoned or get high or whatever. And generally
14 speaking what I found is through tolerance, the high
15 disappears.

16 Q So if you could find alternative
17 relief to marijuana that would give you the same
18 benefits and impact from it, you would stop using
19 marijuana, right?

20 A If it was cost effective. As cost
21 effective as cannabis has been for me, then sure.

22 MR. BRONGERS: I am just trying to
23 calculate my time when it would be good for a break. I
24 guess we usually take a break about 10:45 or so?

25 JUSTICE: 10:45, 11 o'clock. Keep
26 going for a bit if you can.

27 MR. BRONGERS: Okay, I'll keep -- Yes,
28 I certainly can.

1 Q My next series of questions, which
2 should take us to about 11 o'clock, are related to the
3 marijuana cultivation you've been doing, and your
4 experience with growing and accessing marijuana.

5 So, we know from your evidence that you
6 were first authorized to produce marijuana in 2004, and
7 I gather you have been producing since that time, right?

8 A Mm-hmm, that's correct.

9 Q Now, I'm not sure we got the dates
10 right, precisely, but you'll help me. You did some
11 growing prior to July 2004 in your first home in
12 Nanaimo, while awaiting for your Health Canada permit,
13 is that right?

14 A Yes, I did.

15 Q Approximately when did you start
16 growing at that home compared to -- you got the
17 authorization July 2004, and you've been growing for a
18 few months before then?

19 A Yeah, a few months.

20 Q But basically 2004, since your
21 licence was issued in July, so you probably started
22 growing early 2004, is that right?

23 A Yeah, I would say so.

24 Q Okay, and just to confirm, you've
25 grown marijuana at three locations. First of all at
26 your first Nanaimo home, from 2004 to 2007, right?

27 A Correct.

28 Q And then at your Lantzville home,

1 Lantzville is spelled L-A-N-T-Z-V-I-L-L-E, from 2007 to
2 2012?

3 A Correct.

4 Q That's correct?

5 A Yes.

6 Q And your third location is your
7 current home in Nanaimo where you've been growing from
8 2012 to the present, right?

9 A Correct.

10 Q Now, in terms of your current
11 production facility, if I understand correctly, you are
12 cultivating indoors and in your basement, is that right?

13 A Mm-hmm.

14 Q If you could turn to your first
15 affidavit, paragraph 18, so page 59. You say at the
16 last sentence of that paragraph,

17 "I estimate that my total financial cost for
18 all of the equipment and building at the
19 three different sites, to be somewhere in the
20 area of \$35,000."

21 Is that right?

22 A Mm-hmm. Yeah, that is a rough
23 estimate. The problem I had with doing a lot of the
24 exam was that I have many, many files going back to
25 previous residences, and a lot of loose sort of
26 receipts. It was an onerous task, way more than I was
27 able to handle. So, what I've done, as I've indicated
28 in my affidavit, was I took the year, a particular

1 portion of a year, I think it was 2012 or 2013, and then
2 I estimated the amounts -- well, not estimated, I
3 figured out the amounts, and provided you with the
4 receipts on the basis of that.

5 Q We certainly don't take issue with
6 it, but your best guess is \$35,000 for the three --

7 A Yeah, I can't stand by the 35,000,
8 because I don't know, but the amounts that I have
9 provided you here, where I think it was 12,000 and then
10 another couple of thousand for attic insulation, et
11 cetera, et cetera. I think, if I remember, I believe
12 the total was around 18 or something?

13 Q We'll go through the specific
14 amounts for your current site, but you helpfully
15 provided us the information for all three, because you
16 have been growing for quite a while.

17 A Yeah, well I have got to say that
18 it is just a rough estimate only.

19 Q Okay. Now, you've also provided us
20 with a rough estimate of how much it now costs you to
21 grow marijuana per month. That's in the same paragraph,
22 paragraph 18, in the first sentence. You say it's about
23 \$200 to \$300 a month, right?

24 A That's clarified in my -- in the
25 exam that I was provided with.

26 Q We'll go through those figures.

27 A Okay, yeah.

28 Q Probably after the break, and

1 that's fine. You said it was merely a rough estimate,
2 so --

3 A Right.

4 Q Okay.

5 A And I do fall within that range.

6 Q Okay. At paragraph 32 of your
7 second affidavit, that's at pages 37 and 38.

8 A Mm-hmm.

9 Q Here you set out a list of all of
10 the equipment that you bought in order to set up your
11 current marijuana growing facility. It's a long list,
12 and I won't go through it. I also notice that you
13 haven't totaled the values that you came up with, and we
14 may have to ask our friend in the gallery with the
15 calculator, but when I use my calculator I came up with
16 a total of \$6,766. Is that fair?

17 A I have no idea. I didn't even want
18 to attempt it.

19 JUSTICE: Well, we'll take it as
20 whatever the calculator works out.

21 MR. BRONGERS: Thank you, Justice
22 Phelan.

23 Q All right, at paragraph 33, the
24 next paragraph, you've set out a list of all of your
25 structural work, expenses, to set up the grow-up in the
26 basement in your current home there. And you mentioned
27 growing rooms in the basement, \$11,837.06; laundry tubs,
28 572. Plumbing labour, 1,060. Attic insulation and

1 venting. Again, you haven't given us a total, but when
2 I use my calculator I come up with \$14,365.06. Would
3 you be willing to agree with that?

4 A If you can provide me proof with a
5 calculator, yes.

6 Q All right. For now, we'll accept
7 the figure of \$14,365.06.

8 Now, at paragraph 35, you say that you
9 purchased seeds through mail-orders in 2013 and 2014.

10 A Mm-hmm.

11 Q And you've attached some receipts
12 which are at pages 133 and 134 of the Joint Book of
13 Documents.

14 A Mm-hmm.

15 Q And we can look at them, but I can
16 also tell you that the 2013 bill is for \$198.97.

17 A Mm-hmm.

18 Q And the 2014 bill is for \$182.97.

19 A Right.

20 Q And for me, if I add those two
21 figures together, that brings us to a total of \$381.94
22 for seeds. Would you be willing to agree with that?

23 A If you say so, according to your
24 calculator, then I agree with you.

25 Q According to the magic calculator,
26 yes, thank you.

27 We move on to paragraph 45 of this
28 affidavit, which is at pages 25 and 26.

1 A Mm-hmm.

2 Q I'm sorry. Pages 43 and 44. Here
3 you explain that you've had no problem with odours or
4 smells from your grow-op. You use charcoal filters to
5 deal with them.

6 A Yes.

7 Q But you also say that the smell is
8 disguised by the nearby Nanaimo pulp mill and the fact
9 that there are wood stoves.

10 A Yeah. Prior to putting the
11 charcoal filters in, that was the case. Actually didn't
12 have any charcoal filters in any of my places until this
13 current one. And I provided the receipts.

14 Q But without the pulp mill and the
15 wood stoves, there would be some odour escaping?

16 A Without the charcoal filters, there
17 would be some degree of odour. But I'm very careful to
18 choose the strains that are not too -- don't provide too
19 much of that kind of odour.

20 Q Just to confirm, you cultivate the
21 marijuana by yourself, right? You don't have any help
22 from anyone else, right?

23 A That's correct.

24 Q Now, we asked you in the discovery
25 how many hours per month you spent cultivating
26 marijuana. You didn't provide an answer, but I think we
27 can assume it is a significant amount of time, isn't it?
28 Since you do it yourself and you find it therapeutic,

1 you sort of enjoy it. Can you give the court an idea of
2 how many hours a month, given that a standard work week
3 is 40 hours? How many hours a month do you spend
4 working on your marijuana garden and cultivating?

5 A Well, given that my house is very
6 compact, and downstairs is very accessible, I can be
7 there at any time. If I am doing a load of laundry, for
8 instance, I look into -- I look at my plants, maybe just
9 a few minutes. Other times I might take like 20 minutes
10 or so to get ready to make some clones, and then take a
11 break and then come back. So, you know, it is highly
12 variable. And when my flower room is closed, there
13 isn't a whole lot of work. You know, so -- it just
14 really depends on how much I am growing. So it is
15 really hard to establish a monthly time like that.

16 Q I'm wondering if this might help
17 you. Your co-plaintiff Mr. Hebert was testifying
18 yesterday, and he has a much smaller, or had a much
19 smaller grow operation than you do. And he said he
20 spends about 50 to 100 hours a month on cultivating it.
21 He has a full time job as well. So, I am wondering if
22 that assists you? Would you also say about 50 to 100
23 hours a month?

24 A Oh, nowhere near that. Nowhere
25 near. No, I don't have the energy to put that kind of
26 time in, so I do what I can, and in the process, if some
27 plants get sick and die, they get tossed out. My --
28 what drives me is the need for my medicine. And so if I

1 look on my shelves and I see I have a few tall glasses
2 of the buds and cannabis, and the shake, and whatever I
3 need, I kind of use an intuitive approach to it, look at
4 it, and say, "okay, I am okay for now, I am okay for a
5 month or so, I'll have to start with clones, or seeds in
6 a few weeks, or a few months, or whatever."

7 So, that's -- you know, I pace myself,
8 just as I pace myself in daily life with everything I
9 do. It is no different. But 50 hours? There is no way
10 that I could put in that kind of time. So my -- the
11 time I put in is small pieces of time, like generally 20
12 minutes at a time, and then I need a rest. And so that
13 is broken up, you know, over weeks or months or
14 whatever.

15 Q Would maybe an hour a day be a good
16 average? That would bring you up to about 30, 30 hours
17 a month?

18 A I don't even know if that is
19 accurate. It could be. I mean that would probably be
20 more closer to it than what you suggested earlier. It's
21 not a lot of time. And then other times it seems like,
22 yeah, this is a lot of work, but I'll be over it, and
23 then it'll be done, and then I won't have any work to do
24 for a while.

25 Q At paragraph 52 of this affidavit,
26 moving forward to pages 46, 47, and 48, the answer
27 extends over a couple of pages. You've described in
28 that paragraph the way you produce your marijuana, and I

1 don't have any specific questions about the information
2 that you've provided there, except in respect of the
3 number of plants that you grow.

4 A Mm-hmm.

5 Q You say you are authorized to grow
6 up to 98 plants, but you don't say how many you actually
7 grow. And we've seen from some of the other witnesses,
8 that they don't always grow as many plants as they are
9 authorized to grow.

10 A Mm-hmm.

11 Q How many plants do you in fact
12 grow?

13 A Again, it varies. So, I think
14 right now I have about 23 plants, 7 in flower, about 13
15 in the veg room I believe. What does that come out to?

16 Q You said you have --

17 A I think I have 23 right now. So, I
18 try to figure out what was the largest number of plants
19 I have ever had. I believe it was around 75, so -- and
20 that is including clones, which often don't -- they
21 don't work out. They don't root. So, you know, I might
22 have had, say, 20 or 30 clones, and then several in veg,
23 and then a number in flower. Now, that would be at the
24 highest point, you know, where I am trying to produce as
25 much as I can and then I take a break, because I just
26 can't keep the flower room going on a continuous basis.

27 Q So, right now you're at 23, and
28 sometimes it's more than that, sometimes less than that?

1 A Yes. Sometimes it will be just the
2 mother plant, just the strains that I want to keep. And
3 just maintain them in a vegetative state. Sort of -- to
4 the point where they're stalled.

5 Q So you never exceed the 98 plants.

6 A No, I don't. I make sure of that.

7 Q And you never even get close to
8 that, do you?

9 A Well, 75, I guess, would be about
10 the closest I've gotten to it.

11 Q Right. So, would it be fair to say
12 it varies between, say, 20 and 75 at any one time?
13 Maybe even less than that?

14 A Or even less than that, yeah.

15 Q Okay. But at paragraph 55 of your
16 second affidavit, which is at page 49, you testified,
17 "I cannot recall how many plants I have grown
18 each year since I started, as I did not keep
19 records of that kind of detail, including how
20 many of my plants died. I do not have an
21 accounting system to keep track of the number
22 of plants grown or lost or otherwise disposed
23 of."

24 Why wouldn't you keep records of your
25 plants?

26 A Well, as I mentioned, I keep
27 informal records and notes, so I do know what's in my
28 veg room, my grow room, and my flower room at any given

1 time. I just don't keep, you know, extensive accounting
2 sort of notes. I'm not a dispensary, so I don't need
3 to.

4 Q So these are just random notes on
5 sheets of paper. You didn't feel that in order to
6 answer this question, where we asked you about records,
7 that you needed to provide us with those pieces of
8 paper.

9 A But I don't keep that kind of
10 detailed record, so I'm not able to provide it.

11 Q Okay. But you would agree it would
12 be useful to have detailed information in order to know
13 just how much medical marijuana you use and need, right?

14 A Well, I get by with what I do now,
15 so I'm not sure that I need to change any of the system.

16 Q And again, I'm just curious.
17 Without that information, could you really be
18 comfortable going to your doctor and saying, "I need to
19 increase my daily dose from 10 grams to 20 grams,"
20 without providing the doctor without -- with some kind
21 of detailed records as to what you've been growing and
22 using.

23 A Well, my doctor -- I believe my
24 doctor understands that I'm responsible with my use of
25 cannabis. And I don't believe he has any concerns about
26 that whatsoever.

27 Q Could you turn to paragraph 59 of
28 this affidavit. That's on the next page, page 50. You

1 say that none of your plants have ever been affected by
2 mould or disease, although you do admit that you've seen
3 some insect pests, right?

4 A Yes, I have. Yeah.

5 Q Okay. But then you also say in
6 that same paragraph that "If a plant doesn't appear
7 healthy, I will not use it." So wouldn't that imply
8 that sometimes there is mould and disease? If it's not
9 healthy, it's diseased, right?

10 A Well, doesn't have to be mould.
11 There are a number of things that could happen to a
12 plant: if you don't fertilize it, if you don't water
13 it, or if it gets overheated, whatever. I mean, a
14 number of things might happen. And generally it's just
15 my inability to get to the plant and take care of it,
16 and so it ends up dying. Or I find it was just not
17 worth reviving. I might as well try to get a clone off
18 of it, or try another seedling, or another variety.

19 Q So it's your understanding that
20 there are ways the plants can die, other than mould or
21 disease? I'm just trying to reconcile the two answers
22 here. You say you've never had mould or disease, but
23 you've been very candid and clear that you've lost a lot
24 of plants over the years.

25 A Well, disease -- is that what I
26 wrote down here?

27 Q Yes.

28 "As far as I know, my plants and soil have

1 not been affected or infested with any kind
2 of disease, toxic mould, or substance, or any
3 kind of sickness or infection that I'm aware
4 of."

5 A Right. Well, see, I'm not a
6 botanist, so I don't know what's happening with my
7 plants. I look at them just as I would with a tomato
8 plant, for instance. The tomato plant is not producing
9 a tomato, or is not growing to the point where it will
10 produce a tomato, then I have to cull it, same as I
11 would. I'm not going to investigate what's happening to
12 it, I don't really care. I'm just going to move on and
13 get rid of it, and work on my other plants.

14 Q But you would concede, and
15 particularly you showed us that letter that you sent to
16 Health Canada. You will concede that you do lose plants
17 occasionally.

18 A Yes, I do. Yeah.

19 Q Yes. In fact, you say you've had
20 some significant difficulties with growing healthy
21 marijuana plants because of your own medical condition,
22 which doesn't allow you to always tend to the plants as
23 well as you would like to, right?

24 A Yes. But that's all been managed
25 now. I'm in a new home, and with proper facility, clean
26 gardens, and I have access to it readily. And it's not
27 as much of an issue as it was previously.

28 Q Now, you said before that your

1 assessment of the health of your plants, it's based
2 simply on a visual inspection, right? You don't have
3 the marijuana tested for parasites or insect infestation
4 or mould or toxins?

5 A No.

6 Q No formal testing.

7 A No testing right now.

8 Q But you're obviously concerned
9 with consuming safe, organically grown marijuana.

10 A Oh, yes. Just as I would with any
11 other food.

12 Q So you would agree that testing
13 marijuana in principle would be a good thing, right?

14 A If you think that -- I suppose --
15 like, I don't test my tomatoes or my oranges or anything
16 like that. So I'm not sure -- like I grow apples on my
17 trees, and cherries, and blueberries, et cetera, and I
18 don't test those either. So I'm not sure why I'd need
19 to test the marijuana.

20 Q So, you just take a risk with your
21 other vegetables. You eat them and hope you won't get
22 sick, is that --

23 A A risk?

24 Q Yes.

25 A Growing vegetables?

26 Q Because you're not testing them.

27 A So if I eat an apple off my tree,
28 are you suggesting I'm taking a risk by eating an apple,

1 because I haven't tested it?

2 Q I'm suggesting that it's possible
3 that you can eat a rotten apple that would make you
4 sick. I'm just trying to ascertain -- you're concerned
5 about safe food, safe marijuana.

6 A Right.

7 Q And if I understand correctly, you
8 say the way you test it is, you eat it and you see what
9 happens.

10 A Well, there's a visual inspection,
11 as there would be with an apple. Right? So if I looked
12 at the apple and I could see that it was bruised, or cut
13 into, or maybe had a bird chip on it or something, I
14 probably wouldn't want to eat that apple. Right? So,
15 it's a similar situation. If I look at something that
16 I've produced and there's something wrong with it,
17 visually, or it doesn't smell right or something, then I
18 wouldn't consume it. Same as any other food.

19 Q In terms of the security for your
20 grow system, you explain it at paragraph 17 of your
21 first affidavit.

22 A I'm sorry, what was the page
23 number?

24 Q Yes. Page 58 and page 59.

25 MR. CONROY: Page 58?

26 MR. BRONGERS: Yes, page 58.

27 Q I'm just going to read a portion of
28 your answer, starting at the third sentence.

1 "With respect to the public safety risk of
2 break-and-enters, and attempts to steal my
3 plants in production or medicine, I live near
4 the end of a short dead-end street with very
5 low car and pedestrian traffic, and I can
6 easily hear and see vehicles or persons
7 coming and going from the area inside my
8 home. I am home nearly all of the time, and
9 I have motion detectors at the front and back
10 of my house, and all outside doors are kept
11 locked. All three cannabis production
12 related rooms in my basement are equipped
13 with doors which lock, and I have both CO₂
14 and smoke alarms in place. My back yard has
15 tall wooden privacy fencing on both sides
16 between my property and my neighbours'. The
17 nearest neighbour's property is 13 feet from
18 my house. My lot is 70.5 feet by 150 feet,
19 which is slightly under one-quarter of an
20 acre in size. There are mature fruit trees
21 along the perimeter of my house, and a large
22 tall hedge at the rear."

23 Does that essentially describe the extent of your
24 security system?

25 A Well, my security system was put
26 into each application, so I guess Health Canada would
27 have a copy of the last one, indicating the extent of
28 the security measures that I put in.

1 Q We asked you about your security
2 measures, and this was the answer you gave us. I'm just
3 wondering if there is anything more than that. Do you
4 have a monitored security system? Or --

5 A No, no monitored security system.
6 I do have lights, like motion detectors that go off.
7 And normal locks and things. And my neighbours know I'm
8 a cannabis medical patient, and there is one neighbour
9 who is -- he looks into my yard, and we connect with
10 each other in terms of security issues, when he's away
11 or if I am away for a while, or whatever. And he looks
12 onto my property.

13 Q Right.

14 A I think that was described
15 somewhere else as well, though.

16 Q I'm giving you an opportunity to
17 elaborate if you feel there's more to your security
18 system than that.

19 A Well, if I could look at the
20 application, the last application for my current
21 production site, the security in that application, it's
22 all listed.

23 Q I guess what I'm trying to
24 ascertain here is just the extent of your system. And
25 you make the point, I think, that your security system
26 is based largely on the fact that you are in an isolated
27 area, right? And you only have a few neighbours that
28 you trust. You're not in a big city environment where

1 you have lots of neighbours to worry about, lots of
2 traffic. Is that fair?

3 A Well, currently where I am -- the
4 first place I was in in Nanaimo was -- did have a fair
5 amount of traffic and I didn't have any additional
6 security, nor did I have carbon filters at that point.
7 And I didn't have any trouble, any problems whatsoever.

8 Q And in your current location you
9 say you are home nearly all of the time, right?

10 A Yes, I spend a lot of time at home.

11 Q So that makes it easier to monitor
12 the home and keep it safe, the fact that you're home
13 most of the time.

14 A Well, yeah, essentially you can see
15 anybody who comes onto the street, walking or via car.

16 Q Right. So you don't leave the
17 house alone very often.

18 A Not a lot. I don't go out for very
19 long. This would be about the longest for a long time
20 now.

21 Q Now, you say that you had your
22 operation inspected by an electrician, right?

23 A Well --

24 JUSTICE: We're going to take a break
25 now.

26 MR. BRONGERS: Okay. Thank you, My
27 Lord.

28 **(PROCEEDINGS ADJOURNED AT 11:02 A.M.)**

1 **(PROCEEDINGS RESUMED AT 11:26 A.M.)**

2 JUSTICE: Yes, Mr. Brongers.

3 MR. BRONGERS: Thank you, Justice
4 Phelan.

5 Q Mr. Allard, I'm going to ask you
6 about the extent of the inspections you've have with
7 respect to your grow operation. But before we go there,
8 again on the topic of inspection, you said earlier that
9 you were essentially satisfied with doing a visual
10 inspection of your marijuana before using it in terms of
11 safety, right?

12 A Mm-hmm.

13 Q And that you basically viewed it as
14 being more or less the same as when you visually inspect
15 your food that you grow, right?

16 A Generally, yes.

17 Q And I'm just -- wouldn't you agree,
18 though, that medicine safety is much more important than
19 food safety, isn't it?

20 A Medicine safety is more --

21 Q I mean, you consider marijuana to
22 be a medicine, right?

23 A It's an herbal medicine, much like
24 lavender or lemon balm or other things of that nature,
25 only it has the cannabinoids that provide the medicine
26 on them.

27 Q You would agree it's particularly
28 important for the medicine to be safe, right?

1 A Yeah, I wouldn't want to put
2 anything unsafe in my body, if that's what you're
3 saying, yeah.

4 Q Particularly someone with a
5 compromised immunity system.

6 A Right.

7 Q They would need to be assured that
8 their medicine is safe, right?

9 A Well, yes. As I say, with
10 anything, if I buy blueberries from the store, sometimes
11 I get home and I find they're mouldy. I won't eat them.

12 Q In terms of inspections of your
13 home grow, I understand the one type of inspection you
14 did have is you had it inspected by an electrician,
15 right?

16 A Well, the electrician called for
17 an inspection, and I think I provided that as an
18 exhibit.

19 Q You provided the work order, yes.

20 A Yes. So the way it works in
21 Nanaimo is that there are a limited number of
22 inspections. And so he called for an inspection and the
23 inspection was waived. In other words the electrician
24 inspected his own work.

25 Q Okay. And how much of that cost
26 you? You didn't provide a receipt for it.

27 A No, the electrical was part of the
28 package. I don't recall exactly what the breakdown was

1 because I had it done through a general contractor.

2 Q Other than that electrical
3 inspector, though, you didn't have any other inspectors
4 of the grow that you set up, right? No fire inspectors
5 or building inspectors.

6 A No.

7 Q Now, you testified in your
8 affidavit that you did not disclose to your insurer that
9 you were growing marijuana in the house, right?

10 A That's correct.

11 Q And I would imagine that the reason
12 you didn't disclose the existence of the grow-op is that
13 you were concerned the insurer wouldn't provide you with
14 coverage, right?

15 A Well, I just didn't want to open up
16 a can of worms unnecessarily. So if they were going to
17 approach me and ask me whether, you know, I had a
18 cannabis garden, then of course I wouldn't deny that.
19 But there was no -- they have never asked me that, so I
20 never volunteered that information.

21 Q Even though you had a perfectly
22 lawful grow operation, you were still uncomfortable
23 disclosing of that fact to the insurance company, right?

24 A Well, a grow operation is something
25 I believe is an R.C.M.P. term. What I have in my home
26 is a medical cannabis garden. It's not a grow
27 operation.

28 Q Whatever, however you wish to

1 describe it, the question is the same. Even though it
2 was lawful, you didn't disclose it to your insurer,
3 right?

4 A As I say, I chose not to.

5 Q So you accept then that if your
6 marijuana is stolen or destroyed, you won't be able to
7 make an insurance claim for that.

8 A No, I don't accept that. I'd make
9 a claim.

10 Q You would claim that you were
11 covered under your insurance policy even though you
12 didn't declare --

13 A Well, I would attempt it anyway. I
14 would certainly see what they said about it. But that
15 hasn't arisen so I haven't had to deal with that.

16 Q Mr. Allard, you said you learned to
17 cultivate marijuana by speaking to other people and
18 reading books, trial and error, and you also took a
19 course at Malaspina College, right?

20 A The course at Malaspina College was
21 just to learn how to navigate the extremely difficult
22 and onerous process of the paperwork that we needed to
23 do every year through the application.

24 Q And how much time did you spend
25 learning to cultivate marijuana over the years? Can you
26 estimate that?

27 A Well, the time that I spent with
28 the plants was the time that I learned, and then I

1 ordered quite a number of books, and I read those books,
2 and you know, I read from the internet, et cetera.

3 Q So, you've read a number of books,
4 you've gone on the internet. Do you still do that
5 today? Or are you still --

6 A Oh yeah, I keep current of what is
7 going on in terms of strains, and what might be suitable
8 for me.

9 Q How much time do you spend each
10 month researching marijuana would you say?

11 A Oh, I think that is pretty
12 difficult to say. I mean, if I am on my computer I may
13 spend five minutes on it one time, or 10 minutes another
14 time or whatever, you know. It's something, it's a
15 habit, it's something that I do to try and keep my
16 strains up.

17 Q And you testified in your affidavit
18 that you've never had any injuries in relation to
19 growing your marijuana, right?

20 A Yeah, I can't think of any injury
21 I've had.

22 Q No cuts, no burns, no back pain
23 maybe? Or a shoulder pain, this type of injury that an
24 ordinary gardener would get? You've never suffered any
25 of those things from your --

26 A Well, see, I've said all -- like I
27 spend many hours thinking about the basement set-up.
28 Now, I have -- whenever I move plants, for instance, I

1 have dollies, and whenever I move water, I have dollies
2 to move the water around. So, anything I do is pretty
3 gentle. It -- you know, rinsing, and I have the
4 mechanic stools that I can sit on, with rollers on them.
5 So there is no, virtually no strain, and if I feel any
6 strain, I take a break and come back.

7 So, that's the advantage of being able to
8 do it in my own house, when and if I need to. And that
9 provides me with a reasonable amount of exercise, you
10 know Because I am very aware of how I am moving my body
11 and doing a meditation at the same time.

12 Q Mr. Allard, I'd like to turn now to
13 your finances, and your financial situation. This is --
14 the answers you provided with respect to this are mostly
15 at affidavit 2, paragraph 27, and following. So, let's
16 turn to page 33. Paragraph 27 on page 33, about halfway
17 down your answer, you testified,

18 "My income after taxes is \$33,049.61, or
19 3,000 per month after taxes and deductions."
20 Right?

21 A No, my income changes annually,
22 because I have three sources of income, and they are all
23 indexed to the cost of living. So, at the time these
24 affidavits were written, there has been essentially
25 three changes. But, I have the exact figures in my
26 notes if that is what you are interested in.

27 Q You testified in August of last
28 year, so 8 months ago, that this was your income at that

1 time, \$33,049.61 after taxes, or approximately 3,000 per
2 month, right?

3 A Yes, and then I believe we referred
4 to it as well in the exam, where I was more specific.
5 That question was asked of me, and I answered that in
6 more detail.

7 Q My understanding is that this was
8 your most recent information based on your income taxes
9 for, I guess it would be the year 2013, is that right?

10 A Well, I'd have to refer to the
11 exhibit -- or not the exhibit, but the exam.

12 Q Well, you've testified to this.
13 And I mean, certainly if your income has changed
14 significantly from that, please let the court know.

15 A No, it hasn't, it's in around that
16 amount, but as I say, my math is not my strong point, so
17 I really have to look over my amounts. And I do have
18 that information here, if that is what you want.

19 Q The evidence is as you've set out
20 here. I am giving you an opportunity to correct it if
21 you feel this is wrong. We have no information that it
22 is wrong, we are not disputing it. I am just confirming
23 it with you.

24 A Yeah. Well, if we could refer to
25 the exam, then that would be --

26 Q This is the exam, sir.

27 A This is the exam?

28 Q Yes.

1 A Okay.

2 JUSTICE: The examination, I have
3 never heard a discovery called an exam, but I guess that
4 is the first time.

5 MR. BRONGERS: It can feel like an
6 exam.

7 JUSTICE: I wondered, if you don't do
8 well, do you get to write the supp.

9 MR. BRONGERS:

10 Q Anyways. For current purposes, it
11 sounds like you are willing to accept that your annual
12 income is approximately \$33,049.61, which you've rounded
13 to \$3,000 per month. Are you comfortable with that?

14 A Yeah. It's in the ballpark.

15 Q Now, in terms of your expenses, you
16 set that out at paragraph 30 of the examination for
17 discovery.

18 A Mm-hmm.

19 Q So if we could just go through it
20 line by line, beginning at the top of page 35.

21 A Mm-hmm.

22 Q You say that your property tax
23 expense per month is \$127.41.

24 A Yeah, based on that annual amount
25 of \$1528.88.

26 Q And the house insurance expense is
27 \$29.16.

28 A Yeah, based on 350 a year.

1 Q All right. The house maintenance
2 is \$257.42 per month.

3 A Yeah. That's for the period that I
4 calculated, which I indicated in the exam.

5 Q All right. Then in terms of
6 electricity, you explain that you spend \$192.96 per
7 month.

8 A Mm-hmm. So the period I had was
9 May, 2013 to May, 2014.

10 Q Water, \$35 per month. Right?

11 A Yeah. From \$420.03 per year. Yes.

12 Q Water filtration, \$60.62 per month.

13 A Yeah. Well, that was a special
14 purchase, that I bought that filtration system, so it --
15 now, I just need to maintain the filters, of course.
16 Yes. But for that year, that's how much it was.

17 Q Firewood, \$72.91 per month.

18 A Yes.

19 Q Internet, phone, cable TV, \$103.48
20 per month?

21 A Right.

22 Q Groceries, health food,
23 supplements, including restaurant meals, \$555.31 average
24 per month?

25 A Mm-hmm.

26 Q Alcohol, tobacco and recreational
27 drugs, both legal and illegal, you say none.

28 A Mm-hmm.

1 Q Correct?

2 A Right.

3 Q Clothing, an average of \$71.43 per
4 month, right?

5 A No, that was altered in the last
6 affidavit.

7 Q How was that altered in the last
8 affidavit, sir?

9 A Can I refer to the -- can we find
10 the first affidavit here? Well, I'm sorry, the third
11 affidavit. The last one I did.

12 Q Oh, I see. The amount hasn't
13 changed, but you're saying that that figure of \$71.43
14 also covers household items and bedding.

15 A That's right, yes.

16 Q Okay. Under transportation, you
17 say that your cost of gas, insurance, repairs, and the
18 occasional ferry cost to Vancouver average out to \$437
19 per month, right?

20 A Again, that was for that particular
21 period, and there was some hefty car repairs during that
22 time. But yes, that's correct.

23 Q Understood. On the next page, at
24 the top line, under "Recreation," you say your
25 recreation costs, and this covers things like books,
26 musical instruments and concerts, \$75.35 per month?

27 A Yes.

28 Q Electronics for the year cost you

1 \$42.39 per month.

2 A Mm-hmm.

3 Q Court costs and fees, you were
4 going through a divorce at that time, so that cost you
5 \$50 a month on average?

6 A That's right. Yeah.

7 Q Your -- then your marijuana costs,
8 vaporizers and accessories, you said that works out to
9 \$31.58 per month.

10 A Mm-hmm.

11 MR. CONROY: He doesn't say marijuana
12 costs.

13 MR. BRONGERS: I'm sorry.

14 Q Your vaporizers and accessories are
15 \$31.58 per month?

16 A Yes.

17 Q Your cannabis seeds costs are about
18 \$31.82 per month? Right?

19 A 38 -- yes. Yeah, mm-hmm.

20 Q And then the marijuana to grow
21 costs, you explained it was \$100.45 for garden stores,
22 right?

23 A Right.

24 Q On average. Now, you mentioned in
25 that paragraph that the cost of electricity that you
26 used for marijuana is \$166.71.

27 A Mm-hmm.

28 Q But that's -- we don't want to

1 double-count that, because you've already included your
2 total electrical bill before as being \$192.96 per month,
3 right?

4 A Yeah, I'm just making the
5 determination of how much goes towards the cannabis
6 growing itself, specifically.

7 Q I think that's fair and perfect.

8 A Mm-hmm.

9 Q But at the end of this exercise,
10 I'm going to suggest a total figure for your monthly
11 expenses. And I don't want to double-count for you.

12 A Mm-hmm.

13 Q Because in fact you've already
14 accounted for the electrical costs before, right?

15 A I see. Yeah.

16 Q Other medications, you say an
17 average of \$31.54, right?

18 A Mm-hmm.

19 Q Now, you have totaled this amount
20 to \$1,182.23. When I use a calculator I actually come
21 up with a higher figure than that. It's \$2,305.52.

22 A That'll just prove the problem I'm
23 having with math and calculations.

24 Q Okay. So you would accept for now,
25 subject to of course your counsel can correct it in
26 final argument, that your monthly expenses are
27 \$2,305.52.

28 A If you say so.

1 Q You would agree with me, though,
2 that if you were to cut out marijuana cultivation, you
3 could save a few of these expenses, right? For example,
4 you wouldn't have to spend electricity on -- you
5 wouldn't have to spend money on electricity for
6 marijuana growing, right?

7 A Actually, the way my house is set
8 up, my primary source of heat is -- my only source of
9 heat is wood, and then my lamp -- the heat from my lamps
10 in my basement. So even if I didn't have plants there
11 I'd have my lamps on to heat my house.

12 Q All right. You set out that it
13 costs \$166.71 for marijuana growing, but you wouldn't be
14 willing to accept that you would save that money if you
15 stopped growing marijuana? You would still be running
16 these lamps?

17 A Yeah, I wouldn't run necessarily
18 the flower lamp as much, but pretty much, you know, if I
19 didn't use the lamps I'd have to plug in heaters and it
20 would probably come out to about the same.

21 Q You wouldn't have to use marijuana
22 vaporizers and accessories, right, if you stopped
23 cultivating and using marijuana, right?

24 A If I were to stop using cannabis?

25 Q Yeah, you would still need to use
26 it, right? I'm sorry, so you would still need to use
27 that amount, the 31.58?

28 A I'm not following you.

1 Q No. That amount should still be
2 included. I can't deduct that, right?

3 A The amount of what?

4 Q Your marijuana vaporizers. You
5 would still need to use that. I think we're on the same
6 page.

7 A I'm sorry, I'm not -- I would need
8 to use it if what?

9 Q I'm not -- I erroneously was
10 suggesting that you might not have to incur that expense
11 any more if you stopped cultivating. That's wrong.

12 A If I stopped cultivating.

13 Q I'm taking that away.

14 A Well, I'd still need to vaporize my
15 cannabis no matter what the source is.

16 Q Right. So you wouldn't be able to
17 save that money.

18 A That's correct. Well, of course,
19 the vaporizers last a little while, and that was for a
20 specific period of time, right?

21 Q Right. Now, the cannabis seeds,
22 you wouldn't have to buy those, right?

23 A If --

24 Q Okay.

25 A If I were not cultivating?

26 Q Right.

27 A Obviously, yeah.

28 Q And the garden stores, you wouldn't

1 have to buy that any more, right?

2 A If I weren't cultivating cannabis.

3 Q Right.

4 A Unless I were cultivating something
5 else in my basement.

6 Q Mm-hmm.

7 A Maybe I would have those expenses.
8 Because if I was going to have the light running I might
9 as well grow something.

10 Q Right. Well, you weren't willing
11 to agree with me entirely on the electricity amount, but
12 there would be some savings in terms of electricity,
13 right?

14 A I can't be certain, because if I
15 were to plug in heaters it may cost just as much.

16 Q Okay. But we do agree on the seeds
17 and perhaps some of the garden stores, right?

18 A Yeah, depending. But I were to
19 cultivate something else then of course I'd need to buy
20 the seeds for whatever else I decided to cultivate.

21 Q Right. Well, I'm going to suggest
22 to you that you would be able to save approximately \$250
23 a month if you didn't grow. Would you be willing to
24 accept that as a ballpark figure? And again we can
25 discuss this later in closing argument.

26 A Two hundred and what was it? I
27 think I had established -- yeah, it's roughly in the
28 ballpark. Two hundred and what did you say?

1 Q 250.

2 A 250?

3 Q Yeah.

4 A Yeah, I think that's a bit high. I
5 think it was more like 230 something dollars that I had
6 established in that exam.

7 Q All right.

8 A But roughly in that ballpark.

9 Q Now, in terms of your assets.
10 you've explained them at paragraphs 28 and 29 of your
11 affidavit. You own a house, right, Mr. Allard?

12 A Yes, I do.

13 Q And it's assessed at \$241,300?
14 That's its assessed value?

15 A Yeah, I just got a new assessment
16 now.

17 Q It's probably more.

18 A Yeah, a little bit more, yeah.

19 Q And how much is it now?

20 A I'd have to check.

21 Q Okay. You also indicated that the
22 replacement cost of the house from an insurance quote
23 you got was \$279,000.

24 A Is that what it said on my exhibit?

25 Q Yes.

26 A I will have to take your word for
27 it.

28 Q Okay. So, and that house does not

1 have a mortgage on it, does it?

2 A No, I don't have a mortgage.

3 Q And you also say you own a car, a
4 1994 Dodge Caravan, right?

5 A Yes.

6 Q And you value that at about \$3,000?

7 A Yeah, that might be a little
8 optimistic.

9 Q And you obviously have no loan on
10 that either?

11 A No loan.

12 Q You indicated, this is at paragraph
13 28 of your affidavit, and I appreciate it fluctuates,
14 but you said your savings and chequing accounts come out
15 to a total of about \$23,000?

16 A Roughly. I might have a little
17 more there now.

18 Q Also paragraph 28, you say you have
19 no investments right now? You apparently cashed out
20 your RRSPs to buy your house?

21 A Yeah, well, I bought a TFSA and it
22 is just basically a savings account too. I put my money
23 in there.

24 Q And just to confirm, I notice in
25 your CV that you said in the past you were involved in
26 real estate ownership, rentals, and investments.

27 A Mm-hmm.

28 Q But do you still do any real

1 estate, investing --

2 A No, I'm not capable of it.

3 Q So, just to be clear, you are debt
4 free right now?

5 A I am debt free.

6 Q Now, just in terms of travel
7 expenses, as we went through them, you said that your
8 transportation expenses include gas, insurance, repairs,
9 and occasional ferry cost to Vancouver at about \$437 per
10 month, right?

11 A Mm-hmm.

12 Q And you also testified in your
13 affidavit that you are at home almost all the time.

14 A Right.

15 Q So, you obviously don't travel away
16 from home very often, right?

17 A No, I don't.

18 Q Approximately how often do you
19 leave Vancouver -- or sorry, leave Nanaimo? Obviously
20 you've had to leave Nanaimo to come here, but how often
21 are you out of town?

22 A Maybe twice a year.

23 Q Twice a year? For how long?

24 A Like to Vancouver, and maybe to
25 Victoria a couple times, depending on my health.

26 Q For maybe one or two days at a
27 time?

28 A Well, I don't have a place to stay

1 in Victoria, but I do in Vancouver, so yeah, before
2 usually at least for one night.

3 Q Okay, but never longer than a few
4 days, right?

5 A No.

6 Q Okay.

7 A I need to tend to my plants.

8 Q I'd like to ask you some questions
9 about your experiences with Licenced Producers. You
10 explained the extent of the inquiries you've made to
11 Licenced Producers in some detail at paragraph 22 of
12 your second affidavit, that's at pages 30 and 31? Do
13 you have that, Mr. Allard?

14 A Which paragraph?

15 Q It's paragraph 22.

16 A 22 okay.

17 Q Pages 30 and 31?

18 A Mm-hmm, yeah, I have that.

19 Q So, if I understand correctly, in
20 terms of the inquiries you've made to Licenced
21 Producers, you've done some research on the internet and
22 then you've concluded that Licenced Producers
23 essentially sell product that is unaffordable and also
24 you are uncomfortable because their product is not
25 organic. Would that be a fair summary?

26 A Well, I'm concerned about the
27 price, obviously. Because it is more than I can -- it's
28 more than a make in a month. So if I were to use 20

1 grams, for instance, 20 grams at \$10 a gram, is -- I
2 think I made -- I did that in my exam, the calculation?
3 I'm not sure where it is, but it is more than my monthly
4 income.

5 Q We can talk about that in a moment.
6 I'm just curious about the extent of the inquiries that
7 you've made of Licenced Producers --

8 A Oh, I see, okay.

9 Q -- in order to see if you can buy
10 from them. And according to your evidence here, it is
11 back in August. At that point, all you had done was did
12 some research on the internet.

13 A Right.

14 Q But you didn't go beyond that and
15 actually try and contact the Licenced Producers, did
16 you?

17 A No, I didn't contact the Licenced
18 Producers, although I went to their websites. And I
19 spoke with a number of other patients, who had contacted
20 them, and there was a woman who did some basic research
21 on the costs. And I went through that, and looked at
22 the prices, and there were no organics available at that
23 time.

24 Q Now, your counsel recently filed an
25 affidavit from Mike King, setting out the results of his
26 inquiries with the Licenced Producers in early January,
27 and Mr. King found that there were some licenced
28 producers who were charging as low as \$5 a gram,

1 believe that the injunction is going to be upheld, just
2 based on the logic of it. So I'm not even willing to go
3 there. But I'm interested to know what's available and
4 I'll cross that bridge when I get there.

5 Q But let's put another hypothetical
6 to you, which is perhaps more plausible in your mind.
7 What if you physically become unable to cultivate at
8 home? You can no longer grow it yourself physically.
9 At that point wouldn't you at least try and contact
10 these Licensed Producers to see if you could purchase
11 marijuana from them at those prices, or would you just
12 stop using marijuana?

13 A Well, again you're asking me a
14 hypothetical question and I'm not sure I can answer
15 that. What kind of injury would I have? What
16 impairment would I have? To what degree? You know, can
17 I have somebody help me out? Are the rules going to
18 change with Health Canada so they're more flexible and
19 they cooperate with us so that we can people help, et
20 cetera? It depends. Really, I can't answer that
21 question until I know what's -- you know, until I'm
22 there.

23 Q I'm trying to understand your
24 unwillingness to even contact these Licensed Producers
25 to see if you could buy marijuana from them, so --

26 A Well, I don't think it's an
27 unwillingness to contact them. It's just that I don't
28 have a need to contact them right now because I'm

1 providing my own medicine at a sliver, a fraction of the
2 cost to which they're trying to sell me the similar
3 product.

4 Q Let's just go through the
5 hypothetical of how much marijuana you could afford to
6 purchase from these Licensed Producers. We ascertained
7 or you accepted that your monthly income is about \$3,000
8 per month, right?

9 A Mm-hmm.

10 Q And in terms of your monthly
11 expenses, your figure was a bit low, so you agreed with
12 my higher figure of \$2,305 per month in terms of your
13 current expenses?

14 A Mm-hmm, right. I'll have to take
15 your word for that.

16 Q Okay. And in terms -- but if you
17 were to stop cultivating marijuana you could save a bit
18 of money. We agreed on \$230 per month, right?

19 A I don't think we've agreed on that.

20 Q Okay. But your monthly expenses
21 would be reduced a little from the \$2300, right?

22 A Very little, yes.

23 Q Okay. Say it's down to 2100 or so.
24 That would give you \$900 a month, approximately, that
25 you could spend on marijuana, right?

26 A That you would expect me to spend
27 on marijuana?

28 Q That would be the money that you

1 would have available to you each month to spend on
2 marijuana.

3 A To spend on mar- --

4 Q Yes.

5 A That would be the money I'd have
6 left over, yes.

7 Q Yes.

8 A But I'm not sure I'd add "to spend
9 on marijuana" on that, with that statement.

10 Q But in principle that money would
11 be available to you, to spend on marijuana.

12 A For whatever I wanted, yes.

13 Q Right. And so at \$5 a gram, that
14 would provide you with approximately 180 grams, right?

15 A I have no idea.

16 Q And at 30 days in a month, that
17 means you could buy about 6 grams a day, right?

18 A I'm sorry. On what -- what cost
19 per gram are you suggesting?

20 Q \$5 per gram.

21 A And how many grams per day?

22 Q Well, 180 grams.

23 A Per day.

24 Q Yes.

25 A 180 grams per day.

26 Q Sorry -- per month. Per month.

27 A Could we just stick with the daily
28 amount, so that I don't confuse here?

1 Q Sure. So, 180 grams per month,
2 let's pretend there's 30 -- say there is 30 days in a
3 month. So that's 6 grams, right?

4 A So you're suggesting that I reduce
5 the amount of my consumption, my medical consumption,
6 by, what is it, 14 grams?

7 Q That you would reduce it from your
8 current level down to about 6 grams a day. Which is
9 still higher than your initial dosage when you started,
10 in 2004.

11 A Mm-hmm.

12 Q Which is higher than what Dr.
13 Farris says is an ordinary medically justifiable amount
14 of marijuana. She said 3 to 5 grams per day.

15 A Yeah. I can't comment on what the
16 doctor says, because I --

17 MR. CONROY: I don't think that's a
18 fair characterization of Dr. Farris's evidence, I'm
19 sorry. I think --

20 JUSTICE: We will come to that
21 evidence. But the proposition put to the witness is,
22 assume that 5 -- what is it, 5 grams a day?

23 MR. BRONGERS: \$5 a gram.

24 JUSTICE: Five grams a day, is --

25 MR. BRONGERS: Six grams a day.

26 JUSTICE: And he's got at 6 grams.

27 MR. BRONGERS: Right.

28 JUSTICE: And --

1 A From 20 grams.

2 JUSTICE: No, this is -- working out
3 the scenario. You're saying the expert says that 5
4 grams is --

5 MR. BRONGERS: The expert is saying
6 that the ordinary amount of medically-justifiable
7 marijuana dosage is between 3 and 5 grams a day.

8 MR. CONROY: I disagree. That's not
9 what Dr. Farris says. It may be what --

10 MR. BRONGERS: The expert --

11 JUSTICE: Okay, well, we're going to
12 come to that.

13 MR. CONROY: All right.

14 JUSTICE: At this point, we're putting
15 a hypothetical. Normally you don't put a hypothetical
16 to a fact witness to start with.

17 MR. CONROY: I know. I'm letting my
18 friend have some leeway here.

19 JUSTICE: But so far --

20 MR. CONROY: I think he could put his
21 expert witnesses if he wants, and what they say, but to
22 suggest --

23 MR. BRONGERS: It's even lower with
24 ours.

25 MR. CONROY: I know it is. I know it
26 is. But Dr. Farris, I think, is talking about her
27 practice, in her circumstances, not what your expert
28 witnesses say at all.

1 JUSTICE: But I think in fairness to
2 the witness, you're taking the witness from his, what,
3 20 grams a day. You say we're down to 6 on your
4 calculation. Some expert may say it's five grams is a
5 reasonable amount. Another witness might say something
6 else. But that kind of layout, what do you want the
7 witness to do with that number -- those numbers?

8 MR. BRONGERS: Understood. I wanted
9 to put them to the witness so that the witness could
10 explain if it was feasible for him to afford marijuana
11 at those prices.

12 Q And your answer is?

13 A No, it's not feasible. I can
14 expand on that if you want.

15 Q Certainly.

16 A My insurance with SunLife ceases
17 when I'm 65 years old. And I'm going to be 61 in May,
18 so I don't have much longer on that pension, which is
19 the bulk of my income. So when I'm 65, my income goes
20 down quite substantially and my plan is to put money in
21 the bank to take care of myself when I get older. And I
22 wouldn't be able to do that if I had to pay what you're
23 suggesting -- \$900 of my -- of the rest of my disposable
24 income, towards cannabis. By the time 65 came over, I'd
25 be broke. And I wouldn't have enough -- all the
26 medicine I needed.

27 Q And that's the reason I put the
28 hypothetical to you, in the event you were unable to

1 cultivate, which is a possibility too. You would
2 nevertheless be forced to purchase marijuana, would you
3 not? Or would you go without marijuana? If you
4 couldn't cultivate it for yourself. You were unwilling
5 to answer the hypothetical. And I'm saying it's a
6 relevant one.

7 A Well, if I couldn't cultivate for
8 myself, I -- well, again, it's a hypothetical, so I
9 don't know. But I would hope that I'd have a friend or
10 somebody that could help me. I mean, I know how to do
11 it now, I've done it long enough, and it works. And
12 it's fairly cheap -- really cheap, compared to what the
13 Licensed Producers are expecting me to pay. I think
14 it's 1600 percent increase to me. So that's a massive
15 amount of money to have to -- to ask me to pay out of my
16 pocket when I only spend, like you say, \$235 or \$250 a
17 month, as opposed to \$6,000 a month. That's -- I don't
18 know how anybody can, you know, realistically expect me
19 on my limited income to have to dole that out, when I
20 don't even make that much money per month.

21 Q So you're suggesting you could find
22 a friend who could provide you with marijuana for less
23 than \$5 a gram or 2.50 a gram, if necessary, that's your
24 plan?

25 A No, I don't recall saying anything
26 like that. I'm sorry, I think you may have
27 misinterpreted something I said.

28 Q But you haven't actually researched

1 Licensed Producers recently. We can agree on that,
2 right?

3 A Well --

4 Q Since August of last year you have
5 not contacted a Licensed Producer to find out their
6 prices.

7 A I haven't contacted them but I am
8 quite aware of how many there are. You know, I keep
9 abreast of how many Licensed Producers are coming on
10 board and what their average prices are and what they
11 supply. That kind of information is available on the
12 internet.

13 Q Okay. I have some questions about
14 your experience with Health Canada, and particularly I'd
15 like you to turn to paragraph 19 of your first
16 affidavit. This is at page 59.

17 A Mm-hmm.

18 Q So paragraph 19, the last sentence,
19 you say:

20 "I believe that reasonable regulation and
21 inspection can ensure safety, security, and
22 preventive use of the program."

23 Right?

24 A Yes.

25 Q You believe that?

26 A Reasonable inspection and -- yes.

27 Q Okay. So if I understand
28 correctly, what you're saying is that home cultivation

1 should continue to be permitted and that these safety
2 and security and abuse concerns could be addressed by
3 having Health Canada conduct inspections of home
4 cultivation operations.

5 A Well, they don't have to -- it
6 doesn't have to be Health Canada. For instance, with my
7 exhibits I provided the electrical certificate which
8 indicates that it was done safely by a qualified
9 electrician journeyman. And so if I were able to
10 provide that, those kinds of documents to whoever wants
11 them, it wouldn't infringe on my privacy to have all of
12 these kinds of inspections needlessly done. If I could
13 just an electrical inspection done or whatever else is
14 done, I would be happy with that, no problem, as I've
15 done with my exhibits.

16 Q So you would have no concerns with
17 a government inspector coming into your basement and
18 looking at your home cultivation operation?

19 A Well, I mean, it depends how
20 intrusive it is, but no, I would cooperate to a
21 reasonable level.

22 Q You would be happy if they could
23 come in without a warrant?

24 A Well, I mean, are you suggesting --
25 when you're saying "warrant" I think of police. Are you
26 suggesting the police would be coming into my home to
27 inspect?

28 Q I'm asking you whether you would be

1 comfortable with surprise inspections of --

2 A No, I wouldn't be comfortable with
3 surprise inspections. I don't think anybody would be
4 comfortable with surprise inspections.

5 Q The Licensed Producers are subject
6 to surprise inspections.

7 A Yes, I -- yes.

8 Q So I'm wondering if you would be
9 comfortable with that.

10 A No, I'd prefer if somebody called
11 me ahead of time to let me know, to arrange it with me
12 mutually.

13 Q Because it is your home, right?
14 You wouldn't want --

15 A Exactly. Just as if I had a guest,
16 I might want to clean it up a little bit and tidy up, et
17 cetera.

18 MR. BRONGERS: I have no further
19 questions.

20 JUSTICE: Thank you.

21 **RE-EXAMINATION BY MR. CONWAY:**

22 Q If I understand your answer then to
23 my friend's last question, you said you would cooperate
24 to a reasonable level. So if it wasn't a surprise
25 inspection you'd be quite happy to consent to them
26 coming in. Is that your answer?

27 A Yeah.

28 Q And you used the term "government

1 inspector", and if I understood you were saying, well,
2 it doesn't have to be Health Canada, it could be the
3 local inspector from the City or Nanaimo or whoever is
4 in charge of inspections for fire, electrical safety,
5 mould, whatever it might be.

6 A Right.

7 Q Going back to the beginning, or
8 towards the beginning of my friend's questioning of you,
9 he asked you about access before 1998. And suggested,
10 or said, and you agreed, that you didn't have an
11 authorization from the program at that time. Right?

12 A Mm-hmm.

13 Q But you did have an authorization
14 from a doctor?

15 A Yes.

16 Q And so you -- and I believe that's
17 exhibited to your materials, isn't it?

18 A It is.

19 Q You've listed each one of the
20 doctors you consulted and the letters or whatever they
21 gave you, approving that your use of cannabis, by them.

22 A That's right.

23 Q Okay. Did you know their authority
24 to prescribe, or did you -- you just accepted that you
25 went to a doctor, and the doctor -- you told the doctor
26 your issues, and the doctor approved you with that
27 letter. Is that what happened?

28 A Well, we discussed the use of

1 cannabis.

2 Q Yes.

3 A And the doctor actually suggested
4 I just grow my own. She said there is a hydroponic
5 place around the corner I saw, why don't you just grow
6 your own? And I explained, well, it's not quite that
7 simple, and that there is a whole process involved with
8 licensing, and it's extremely complicated, and very
9 onerous, and you need a number of doctors, et cetera.
10 So she said, well, what do you need from me? And I
11 explained, well, I need a note for the Compassion Club,
12 and that's what she provided.

13 Q And did you know at the time that
14 the note for the Compassion Club was based on advice
15 that every patient who goes to the club should have
16 something pursuant to Section 53 of the *Narcotic Control*
17 *Regulations* from their doctor?

18 A Yeah.

19 Q And did you believe that that made
20 your possession legal?

21 A Well, I felt more comfortable with
22 it, because my -- it was -- at least my doctor
23 understood why I was using it, and if I were to be
24 stopped by the police, even though I didn't have an
25 official licence, I was hoping that this would be
26 enough.

27 Q But you had this piece of paper
28 from the doctor that said the doctor was approving you

1 and authorizing you to use cannabis.

2 A The doctor was referring me to the
3 Compassion Club.

4 Q But supporting your use of
5 cannabis.

6 A Yes. Yeah.

7 Q Okay. My friend took you to -- it
8 was Ms. Ritchot's affidavit, but I don't think we need
9 to turn it up. But he took you through your grams per
10 day, and the different changes. Do you remember that?

11 A Mm-hmm.

12 Q So, 2004 to 2006 was 5 grams a day.
13 And so that was over a two-year period.

14 A Right.

15 Q Fair enough? Then you consult your
16 doctor again, as I understand it, and in conjunction
17 with the consultation it goes up to 10 grams a day.

18 A Right.

19 Q From 2006 to 2012. Fair enough?

20 A Right.

21 Q So a six-year period.

22 A Yes.

23 Q Okay. And then after six years,
24 you then again consult the doctor and determine in
25 consultation with the doctor to have it increased to the
26 20 grams a day.

27 A Yes.

28 Q Correct? So it was over a period

1 of -- if my math is correct, at least seven or eight
2 years that you went through this process of determining
3 what was working and whether you needed more, and so on.
4 Is that right?

5 A Right.

6 Q So it wasn't all of a sudden that
7 you changed --

8 A No.

9 Q -- to double it, was it? Okay.
10 And on this business of the average amount consumed a
11 day, I think you accepted that just doing the math, it
12 may be 15 grams a day, but that there are so many
13 variables, you weren't prepared to accept it.

14 A Yeah. I might be at 25 some days.

15 Q Okay. You talked about -- my
16 friend took you through a typical day and you explained
17 the vaping, you explained eating, and you mentioned
18 using a pipe or a joint; but you didn't, I think, give
19 us -- you talked about the juicing, but what do you do
20 in a typical day? Do you do juicing on a typical day or
21 does it vary?

22 A It does vary. It depends how I
23 feel and if I feel the need for it.

24 Q And the juicing as I understand it
25 is -- it's fresh marijuana, it's not heated up, and it's
26 turned into -- called juice like other juice.

27 A That's correct. Non-psychoactive.

28 Q And then you drink it when you feel

1 it's necessary.

2 A Yeah, basically I pop it into
3 blender, add water, you know, blend it up, screen it,
4 and then put it into a glass with maybe some other
5 greens and I drink that.

6 Q Okay. And also you talked about
7 using oils. And I thought I heard you say, correct me
8 if I'm wrong, that you use the oils in edibles and
9 things but also as a topical application.

10 A Yes, I do.

11 Q Okay. And is that a regular use as
12 well or does -- it depends on --

13 A It depends. I find it particularly
14 for itchiness. You know, I get up in the middle of the
15 night and I have this crazy itchiness I can't get rid
16 of, and then the cannabis settles all that right down.
17 And other times pain. So it just depends what's going
18 on with me.

19 Q Because my further note was you
20 said, "Baked goods dried or oil," and then you said,
21 "Edibles, oil and also externally," so --

22 A And tea.

23 Q And the tea. So when you do the
24 tea is that taking a dried bud --

25 A Yeah.

26 Q -- and then putting it in water
27 much like any other tea?

28 A Yeah, a tea, yeah.

1 Q Okay. But the oil is, apart from
2 when you use it topically, is it the same oil that you
3 use topically?

4 A The same oil, yeah.

5 Q Okay. And you make that oil
6 yourself?

7 A Yeah, on the stovetop.

8 Q And how do you make that?

9 A I just infuse it with -- I use
10 about 100 grams of dried cannabis.

11 Q Yes.

12 A And I grind it up a little bit, and
13 then just add grapeseed oil. I generally use about a
14 litre or a litre and a half and then I heat that up
15 slowly, and then I generally just leave it overnight,
16 not on heat, and then the following day heat it. I
17 might do that for a few days to try to get as much --
18 then been using tricones as I can into the oil. And
19 then I strain it. And of course what I strain is usable
20 -- well, for baking, but it's not as strong. So that
21 the final product essentially is just the grapeseed oil
22 and the cannabis.

23 Q And you just do this in your
24 kitchen.

25 A Yes.

26 Q On your stove.

27 A On the stove.

28 Q Okay. My friend asked you about

1 the strains and the testing and so on, and my note was
2 that if you were able to have tests done, it would be
3 beneficial. You'd be happy to have that sort of
4 information.

5 A Oh sure, it can't hurt.

6 Q And are you aware of any place
7 where you could go and officially have anything tested
8 at this time?

9 A I've only heard of places where you
10 can do a spectro something or other.

11 Q Spectrograph?

12 A Spectrograph. But they don't cover
13 all of the cannabinoids.

14 Q But you know of some place that you
15 can legally go and have it tested? You've been told
16 that or --

17 A I heard about something, but it's
18 very expensive though as well, I understand. And I'm
19 not sure about the legality of sending it and all that
20 sort of thing.

21 Q Okay. All right. My friend asked
22 you about Nabilone, Sativax, and again when you
23 mentioned Sativax you said no, you think there's alcohol
24 in the tincture and you have an adverse effect to
25 alcohol. Do you have adverse effects to other things
26 besides alcohol?

27 A Oh yes.

28 Q Like what?

1 A Well, like many foods and most
2 prescription drugs and chemicals, you know like cleaning
3 chemicals around the home. So I use baking soda and
4 vinegar, you know, natural things and hydrogen peroxide,
5 You know, things that are not really strong, you know,
6 alcohol, strong odours or are too -- yeah, I guess it's
7 the odour that gets to me mostly.

8 Q You use organic pesticides in your
9 production of your cannabis?

10 A Well, it's "Safer Soap". So I
11 don't know if it's actually organic, but it's made of
12 natural -- I think it's canola oil, or something like
13 that.

14 Q But it's called a pesticide, is it?

15 A Well, there's Safer -- one is End
16 ALL, yeah, pesticide.

17 Q Okay.

18 A And then I use the -- I use neem
19 oil. And essential oils, peppermint and a couple of
20 other ones.

21 Q What about other types of
22 pesticides? Have you had experience with other
23 pesticides?

24 A Well, I have. I did try using,
25 when I first -- I was growing, like, I tried the sprays
26 that you sort of invert this can, and then it sort of
27 steams up your room, and you sort of -- you run away, so
28 you don't -- I was told that's pretty dangerous. So,

1 you know, not to do that. So, I haven't done that.

2 Q Have you ever consumed cannabis,
3 though, with other pesticides in it? In your history of
4 consuming cannabis?

5 A From other people?

6 Q From whatever sources, yeah.

7 A From -- well, I don't -- I think
8 the pesticides would come off, because whatever I put on
9 my plant, I rinse off. You know, so if I would put End
10 ALL or whatever, with neem oil, I would follow it up
11 with a rinse the following day. So hopefully by the
12 time the end product is there, that's all gone.

13 Q But apart from your -- what you do
14 and the pesticides that you use, or that you call
15 organic pesticides, what about other pesticides
16 available on the market? You say you grow your own
17 food, these sorts of things. Do you have any experience
18 with other regular pesticides, that --

19 A No. No, I have a kind of fear of
20 pesticides. I don't want to deal with them.

21 Q And the fear is based on?

22 A Well, the chemicals, and the
23 exposure. I understand, you know, there is cancer-
24 causing agents in them, and all kinds of potential
25 hazards to your organs, and things. So I'm not fond of
26 using any sort of chemicals. And they're not
27 comfortable for me to breathe in.

28 Q In your looking into the LPs on the

1 internet and so on, did you become aware of any
2 pesticide issues?

3 A Well, what I was looking for was
4 organic. And there weren't any at that time. Possibly -
5 -

6 Q So when you say "organic" --

7 A Bugs.

8 Q Did what the information you see
9 show that they were using pesticides, and that's -- you
10 say, so they're not organic. But did they say, "We're
11 not organic"? Or how did you --

12 A Yeah. We were -- I think there was
13 a number of people that are asking that question. But I
14 didn't actually ask those questions of the Licensed
15 Producers. So I don't have any direct knowledge of it.

16 Q And my friend put to you that there
17 was the discussion about your symptoms, and that use of
18 the cannabis was effective for all of your ailments.
19 And you said you told us about using clonazepam, and so
20 that you used other medications as well which you
21 described as a benzodiazepine. Didn't you also tell us
22 that some of the strains of marijuana, though, caused
23 problems for you? Or didn't --

24 A Yes. Well --

25 Q So some don't help you?

26 A Yeah, I mean, like, some of them
27 that I grew, because I was growing with other people who
28 had licenses, we were able to swap, you know, to -- if

1 one wasn't working for me, then it would likely work for
2 one of the other two people. So in that sense we had a
3 bit of a community going to establish and keep our needs
4 going.

5 Q And my friend asked you about --
6 put to you some information from the other day, from a
7 previous witness. And talked about preventing and
8 controversy over some of the things to do with cannabis
9 is held out to help. And you said, "I'm not suggesting
10 anything for any other people."

11 I assume none of what you produce is
12 given to anybody else on your existing program.

13 A Generally not. I mean, if somebody
14 does ask me, if they're really stuck, I'll offer them,
15 you know, a little bit, if I can.

16 Q This is another patient.

17 A So --

18 Q This is another patient you're
19 talking about.

20 A Yes.

21 Q Okay. And my friend asked you, and
22 you gave him answers with respect to the therapeutic
23 benefit that you have or feel from working with plants
24 and so on. And you referred to, you said you had a
25 letter to a doctor that explained it. Was that the
26 letter from -- or a letter from a doctor, was that the
27 letter from Dr. Carruthers?

28 A Yes.

1 Q Okay. Just for the record, that is
2 Exhibit I to his affidavit, the first affidavit that he
3 did.

4 JUSTICE: What page would that be at?

5 MR. CONROY: That would be -- I
6 believe it is tab 9, roman numeral IX, page 76.

7 JUSTICE: 76, yeah.

8 MR. CONROY:

9 Q And that was when you first went to
10 the Compassion Club, as I understand?

11 A Yeah, the letter I am looking at,
12 is page 79.

13 Q Oh.

14 JUSTICE: That would make more sense.

15 MR. CONROY:

16 Q I see, oh I see, the second letter
17 from Dr. Carruthers.

18 A Yes, he expands on the second
19 letter.

20 Q So, that is page 79 of the joint
21 book, and he deals with it in that third paragraph in
22 particular, in terms of the therapeutic benefits, fair
23 enough? Fair enough? Okay.

24 You told us, to my friend, he went
25 through your costs in terms of three sites in the
26 estimate of the \$35,000 and so on. When you incurred
27 all of these expenses, in order to produce for your own,
28 you were doing it under the *Medical Marijuana Access*

1 *Regulations, correct?*

2 A Right.

3 Q Did you have any idea at the time
4 you were incurring all of these expenses that this --
5 there may be a new policy, that suddenly took away your
6 ability to continue to do this?

7 A Well, I know --

8 Q When you spent this money?

9 A I know that the government was
10 trying to stop the home growing from the year that I
11 began the process, but the courts have indicated over,
12 and over, and over again, that patients have a right to
13 grow. So, my sense was that that would just continue,
14 based on the logic of it all. Just based on the
15 principle of how much -- we would go bankrupt if we
16 didn't. So, my thinking is that the injunction is
17 likely going to prevail. So I thought, well, I am going
18 to do what I can for now, and if things change, well
19 then I will have to deal with it later.

20 Q Are you saying that this was the
21 case from the beginning in 2004 when you first started?
22 Or later?

23 A Well, in 2004, I contacted the
24 Minister of Health.

25 Q Yes.

26 A And he advised me -- under the
27 Liberal government. He advised me that they were
28 planning on discontinuing. Matter of fact, there was

1 something in the *Gazette* indicating that there was going
2 to be a change to the regulations. So, I wrote a
3 letter, saying "you can't do this, I can't afford it."
4 And he responded to me, I have a copy of the letter, it
5 was -- Minister, I can't pronounce his name. He was a
6 former premier of B.C. Anyway, that was what they were
7 attempting to do.

8 Q Have you ever had any health
9 problems from any of the tomatoes, oranges, apples,
10 carrots, that you grow for yourself?

11 A Well I don't grow any oranges, I
12 wish I could, but.

13 Q Are the oranges you bought -- they
14 are all bought, the oranges I assume?

15 A Yeah, the oranges. Well, I can't
16 eat oranges, so I don't buy them, but no --

17 Q Have you ever felt -- you've told
18 us that some of the strains don't work for you, but have
19 you ever had any, what you perceive to be an illness
20 from any of the marijuana that you have produced for
21 yourself?

22 A No. No.

23 Q Do you make any distinction at all
24 between the safety of your medical product and the
25 safety of your food product?

26 A Well, because it's an illegal
27 product, I, you know, I've got to be more careful.

28 Q But in terms of the inspection and

1 safety of those --

2 A No, you know, it's pretty much the
3 same.

4 Q Okay. You said, when my friend was
5 asking you about the breakdowns in terms of the cost,
6 you referred to a general contractor, and I take it that
7 is Mr. -- the Jonkers, Jonker Custom Building?

8 A That's right, yes.

9 Q And that is at page 132. Is that
10 what you were referring to?

11 A Yeah, that's the receipt I got from
12 the general contractor. Or the invoice rather.

13 Q Okay, so that was what you were
14 referring to in terms of the breakdown, including the
15 electrical and things like that.

16 A That's right, so there's a quote
17 there for the electrical, 36.95.

18 Q In terms of not telling your
19 insurance company, did privacy and security concerns
20 affect that decision in not telling the insurance
21 company that you had a grow?

22 A Well, I didn't think it was
23 necessary. I mean, why open a can of worms when you
24 don't have to?

25 Q I'm asking, was privacy or
26 security, were those factors or not, in your decision
27 not to tell them?

28 A Privacy I suppose, yeah.

1 Q Okay. When my friend asked you
2 about the Licensed Producers you indicated that, and
3 you've told us again, no organics available at that
4 time, and my friend put to you the affidavit from Mr.
5 King and there being some available at \$5 and 2.50 a
6 gram. And I noted you said you'd be interested but, and
7 I think you then again referred to growing your own. So
8 are there a number of -- if you could get it at 2.50 a
9 gram, would that be the sole factor, the cost?

10 A No.

11 Q Okay.

12 A No, I mean, the other factors that
13 were brought up this morning, you know --

14 Q All right.

15 A -- are all into play here.

16 Q Okay. I think you used the word
17 "orthostatic intolerance"?

18 A Yes.

19 Q What's that?

20 A If I stand up for too long or if
21 I'm upright seated too long, I lose my energy, get
22 excruciating pain, and I have to lay down.

23 Q Do you use cannabis for anxiety
24 now?

25 A I'm not sure "anxiety" is the right
26 word for it, because my nervous system is out of whack.
27 So what people normally who don't suffer what I suffer
28 from, if they experience this they might call it

1 anxiety. But I'm so accustomed to my nervous system
2 being overstimulated that it's not really anxiety any
3 more, it's just a state of being.

4 Q Okay. You told us that back in
5 university you used it for anxiety.

6 A Yes, I did, yeah, back then, yeah.

7 Q Did you think of that as
8 recreational or medical, or did you even think about
9 that?

10 A Well, I was actually amazed at the
11 medical application of it.

12 Q When you were obtaining from the
13 Compassion Club, I think your evidence was that you were
14 getting about 1.6 grams a day.

15 A Yeah.

16 Q Was that enough?

17 A I think that is what your friend
18 came up with.

19 Q Was that enough --

20 A No, it wasn't. That was the
21 problem. As I explained, I was on four medications at
22 that time, because of that, because I wasn't getting
23 enough cannabis.

24 Q When you had the latest bill or
25 production site put together by Jonker Custom Building,
26 did you know that there were fire and building
27 inspections required in Nanaimo? Did you have
28 discussions with the contractor about that, and was it

1 your understanding that he pulled all the appropriate
2 permits to do it?

3 A I think he did. I just said, do
4 the work and you know --

5 Q You assumed that he did.

6 A Yeah, I assumed that he did, but I
7 can't verify that.

8 Q Were you aware of any laws that
9 prevent you from growing other things in your garden, in
10 your basement besides cannabis?

11 A Such as Orchids or whatever? Yeah,
12 no.

13 Q Or things for food.

14 A As far as I understand, there is
15 absolutely nothing to prevent me from hanging lights in
16 a couple of rooms in my basement, it is perfectly
17 legitimate.

18 Q Are there plants that might on your
19 investigation help you medicinally?

20 A Yeah, if I found out that Lemon
21 Balm might help me or something, or some other one,
22 yeah, I might try that. As I mentioned, I do need the
23 heat in the basement anyways, so the lights would likely
24 be on.

25 Q And then I think you -- there is a
26 discussion about this 250 gram a day number -- and \$2.50
27 per gram, at 20 grams a day. And on our calculation,
28 that is roughly 1500 a month. Have you ever had to

1 spend that kind of money on any of other medicines that
2 you have had to take over your lifetime?

3 A Absolutely not.

4 Q Okay. When you decided not to tell
5 your insurer about the grow production in your basement,
6 did you think about that being an additional risk that
7 maybe the insurer should be aware of?

8 A Well, I thought of approaching
9 different insurance companies and discussing it with
10 them, and I did find a -- I found another grower who did
11 find an insurance company who was -- who did -- who
12 would accept them. And so thought of changing, but I
13 have a lot of discounts from my policy, because I was
14 with this company for a long time. So, they really add
15 up. And so the other option would have been to approach
16 them and talk about it, but I just decided I will leave
17 things as they are for now.

18 Q Okay, thank you, that is all that I
19 have.

20 JUSTICE: Thank you, you are free to
21 go, Mr. Allard.

22 THE WITNESS: Thank you.

23 (WITNESS ASIDE)

24 JUSTICE: Okay, we will start again
25 1:30? We want a quarter to two?

26 MR. CONROY: If that is possible, that
27 would be great.

28 JUSTICE: Quarter to two, all right.

1 We'll see you all then. Thank you.

2 MR. CONROY: Thank you.

3 **(PROCEEDINGS ADJOURNED AT 12:35 P.M.)**

4 **(PROCEEDINGS RESUMED AT 1:49 P.M.)**

5 JUSTICE: Yes, Mr. Conroy.

6 MR. CONROY: Justice Phelan, the next
7 witness is Professor Zachary Walsh. Professor Walsh, if
8 you could take the stand, please.

9 **ZACHARY WALSH, Affirmed:**

10 THE REGISTRAR: Please state your
11 name, occupation, and address.

12 THE WITNESS: Zach Walsh. I'm a
13 university professor and a clinical psychologist.
14 Address, 2459 Pauline Street.

15 THE REGISTRAR: Thank you.

16 MR. CONROY: You'll find Professor
17 Walsh's affidavit and exhibits, Justice, at the
18 consolidated book of experts, Volume 1. And it's tab 4.
19 And the affidavit has pages -- just the regular pages.

20 JUSTICE: Yes.

21 MR. CONROY: But then it appears that
22 the exhibits start with page 7. So, I'm assuming the
23 affidavit is the six prior pages, they just don't have a
24 number up in the top right corner.

25 JUSTICE: Okay.

26 MR. CONROY: And the only other volume
27 we may have to access is Volume 11 of the Joint Book of
28 Documents, at tab 20. But that will not be through me,

1 that will be presumably, possibly through my friend.

2 So I think this affidavit would become
3 Exhibit 6?

4 JUSTICE: Six. Exhibit 6.

5 **(AFFIDAVIT OF ZACHARY WALSH MARKED EXHIBIT 6)**

6 MR. CONROY: Okay. I am following the
7 procedure with experts.

8 JUSTICE: Yes.

9 MR. CONROY: My understanding, we have
10 a brief period.

11 **EXAMINATION IN CHIEF BY MR. CONROY:**

12 Q So, Professor Walsh, you are an
13 associate professor in the Department of Psychology at
14 the University of British Columbia, the Kelowna campus?

15 A That's correct.

16 Q And you're also a registered
17 psychologist?

18 A Correct also.

19 Q And the department that you're an
20 associate professor at the university is the Department
21 of Psychology?

22 A Yes.

23 Q And you've attached to your
24 exhibit, which is -- or to your affidavit, which is
25 Exhibit 6, first of all a *curriculum vitae* that sets out
26 your education, post-graduate training, professional
27 licensure, and then all of the publications in peer-
28 reviewed journals, publications in edited volumes,

1 abstract presentations, invited presentations, various
2 grants ongoing and completed, followed by honours and
3 awards, academic appointments, and your clinical
4 appointments. Is that fair?

5 A That's accurate, yes.

6 Q And then other appointments and
7 memberships in societies at the end of that. And then
8 after your CV, which is Exhibit A to your affidavit,
9 you've attached as Exhibit B an article at the top says
10 "In press, *International Journal of Drug Policy*,
11 research paper, 'Cannabis for therapeutic purposes,
12 patient characteristics, access, and reasons for use'?"

13 A Yes.

14 Q And that's a paper prepared for
15 that journal with a number of other persons which are
16 indicated there at the top of the article. All right?

17 A Yes.

18 Q And then your next exhibit, Exhibit
19 C, is another paper authored again with others, that's
20 been blind-peer-reviewed. That's in the *International*
21 *Journal of Drug Policy*, Volume 25, 2014, at pages 691 to
22 699, entitled, "Barriers to access for Canadians who use
23 cannabis for therapeutic purposes". Is that right?

24 A Yes, that's correct.

25 Q And then finally the last exhibit
26 attached to your affidavit is as Exhibit D, a copy of
27 the -- oh, sorry. It's not the last one, it's the
28 second-to-last one, and I'm now -- for the benefit of

1 others, it's page 40, begins Exhibit D, is a copy of a
2 PowerPoint presentation entitled "Cannabis access for
3 medical purposes, patient characteristics, patterns of
4 use, and barriers to access". And this is the CAMPS
5 study, apparently the largest study to date in Canada of
6 medical cannabis, marijuana consumers.

7 A Yes.

8 Q And that was externally funded and
9 reviewed by the UBC Institute for Healthy Living and
10 Chronic Disease Prevention.

11 A Yes, that's correct.

12 Q It was carried out between 2011 and
13 2012?

14 A Yes.

15 Q And then the other exhibit that's
16 attached as Exhibit E to your affidavit is a copy of the
17 *Delsys Cost-Benefit Analysis of Regulatory Changes for*
18 *Access to Marijuana for Medical Purposes*, the final
19 report from December of 2012. That is basically what
20 they call the regulatory impact analysis document
21 prepared for Health Canada, is that right?

22 A Yes, that's correct.

23 Q Okay. And that's pages 55 -- okay.
24 Thank you. At 238, Exhibit F, of course, is your expert
25 report, which starts at page 238.

26 A Yes.

27 Q Okay. So under the procedure that
28 we're following, you have an opportunity if you could

1 tell us essentially what your involvement in your expert
2 report, what are you saying to us.

3 A Oh, thank you. Yes, I've prepared
4 just a brief statement.

5 So I've conducted several studies that
6 involve Canadian medical cannabis users and have several
7 ongoing. The evidence that I will present today is
8 based primarily on a completed study called The Cannabis
9 Access for Medical Purposes Study, and the PowerPoint
10 and the two articles are both drawn from data collected
11 as part of that study.

12 While the study was designed to
13 characterize medical cannabis users and their experience
14 accessing medical cannabis, it is the largest study to
15 date of medical users in Canada with over 600
16 participants. The rationale for that study rested in
17 part on our observation that rates of registration in
18 the *MMAR* were well below estimates of medical cannabis
19 use. That is there were many more Canadians using
20 medical cannabis that there were who were registered in
21 the program, and we felt that this discrepancy reflected
22 factors that warranted further examination and
23 highlighted potential barriers to access.

24 So in general we did identify substantial
25 barriers to accessing cannabis by Canadians who wanted
26 to access it for medical purposes, and the vast majority
27 of Canadians who were accessing medical cannabis were
28 accessing it from unauthorized sources.

1 When we looked at -- when we broke down
2 those barriers, we identified affordability as a
3 substantial barrier to access, such as the poorest and
4 least healthy experienced the greatest difficulty
5 accessing sufficient cannabis to address their medical
6 need. Overall more than half of the respondents in our
7 study reported difficulty affording sufficient cannabis,
8 and it's increased to approximately two-thirds of
9 respondents in the most severely ill group. So those in
10 the worst health had greater levels of barriers related
11 to affordability.

12 A sizable proportion of our respondents
13 also self-produced cannabis; and among those who did
14 self-produce, financial saving was among the most widely
15 noted motives for self-production. Reliable access to a
16 specific strain or a specific quality of cannabis was
17 another popular reason for self-producing. The
18 projected cannabis prices associated with the *MMPR* as
19 identified in the Delsys report suggests that
20 affordability will remain an unresolved issue for many
21 of the most ill medical cannabis patients, as
22 characterized in our research.

23 Q You used the term "affordability" a
24 number of times. Can you be clear to the court and to
25 us what you mean by affordability.

26 A Affordability in our case was
27 measured in a couple of different ways. One was rather
28 straightforward, ability to pay for the amount of

1 cannabis that they needed to address their medical
2 needs. We also looked into the extent to which people
3 were having to choose between their medicine and their
4 other necessities of life.

5 So, to the extent that they were unable,
6 that they had to choose between their medicine or other
7 necessities, we also used that as an index of
8 affordability. So it's not an absolute ability to
9 afford based on the amount of money they have. It would
10 be the type of choices and lifestyle constraints that
11 would be implied by the cost.

12 Q Okay. Finally you mention a number
13 of studies, and as I understand it there's various
14 descriptions, phases for different studies when you
15 conduct this type of research. Can you explain that
16 briefly to us? There's a Phase 1, Phase 2, Phase 3 type
17 studies or something like that?

18 A Well, not so much for descriptive
19 research.

20 Q Okay.

21 A I think you're maybe more referring
22 to --

23 Q General?

24 A To clinical trials.

25 Q Okay, so --

26 A Discussing the --

27 Q Those phases only apply to the
28 clinical trials.

1 A Yes.

2 Q And not to this type of research.

3 A Not this research.

4 Q All right. Would you answer any
5 questions that my friend has, please.

6 **CROSS-EXAMINATION BY MR. JANUSZCZAK:**

7 Q Professor Walsh?

8 A Hi.

9 Q As you've just described it, the
10 study that is referred to in your affidavit, the report,
11 the articles that are appended to your affidavit, that
12 was a descriptive study, not a clinical trial.

13 A It was not a clinical trial, no.
14 Clinical trials refer to studies where they test a drug
15 against a placebo or another drug, and we did no such
16 thing.

17 Q I think it will be useful going
18 forward in this particular case, can you describe what
19 is involved in a clinical trial as compared to a
20 descriptive study like the one you did?

21 A Well, a clinical trial is sort of
22 -- a clinical trial involves a sort of a diverse range
23 of studies, but typically it's -- the standard in
24 research for a clinical trial would be a double-blind
25 placebo-controlled randomized clinical trial, where
26 people are given one treatment versus another, or versus
27 a placebo treatment. The investigator doesn't know
28 who's assigned to what condition, hence the double

1 blind. The participants don't know what condition they
2 are assigned to, so those are -- that refers to double-
3 blind. The clinical trial is just a trial of a clinical
4 intervention. This is not an intervention study. So
5 the type of questions that we are addressing in these
6 studies wouldn't lend themselves to a clinical trial.

7 Q So if I understand it correctly, in
8 very basic terms, when you conduct a clinical trial
9 you're more or less looking for linkages of cause and
10 effect. Is that fair to say?

11 A Yes.

12 Q All right. And in a descriptive
13 study, you're not determining cause and effect, you're
14 seeing things that may suggest something else. Is that
15 fair to say?

16 A A descriptive study of the type
17 that we have collects data on a large number of people,
18 and then we take averages so that we can compare the
19 averages in different groups. So it describes large
20 numbers of people in as few as possible parameters to
21 facilitate an understanding of what's happening in a
22 naturalistic setting, as opposed to a clinical trial
23 where people are assigned to different experimental
24 conditions.

25 Q So by virtue of the nature of a
26 descriptive study, you look at the data and you're not
27 saying that A caused B. You're saying that this is what
28 we see, and this is what may be happening. Is that fair

1 to say?

2 A Yeah, I think that that's accurate.

3 Q Now, the study that you refer to is
4 the Cannabis Access for Medical Purposes Survey?

5 A Correct.

6 Q And the short form for that is
7 CAMPS.

8 A Sure.

9 Q C-A-M-P-S.

10 A Yeah, it's acronymic.

11 Q Are you comfortable if I just refer
12 to it as CAMPS?

13 A Sure.

14 Q The first questions I'd like to ask
15 you about relate to the CAMPS study and your discussion
16 of that study in the affidavit. So again, I take it you
17 have your affidavit and report in front of you.

18 A Yes, I do.

19 Q All right. Now, in your affidavit
20 at paragraph 8, so that's on page 3, and as my friend
21 pointed out, the page numbers for the affidavit run from
22 1 to 6 on the bottom of the page.

23 A Mm-hmm.

24 Q And then the page numbers for the
25 exhibits and so forth are on the top right-hand side.

26 And to the extent that I'm able, I refer
27 to page numbers, so we can get through them fairly
28 quickly. So again, on page 3 of the affidavit at

1 paragraph 8, you note that in 2001 when the *MMAR* came
2 into effect that as of December -- sorry. So the *MMAR*
3 came into effect in 2001, and then you note that in
4 December, 2012 there were 28,115 Canadians who have
5 obtained authorizations from Health Canada under those
6 regulations to possess cannabis for medical purposes.
7 Correct?

8 A Yes.

9 Q All right. You also note in that
10 paragraph, and you've described this in your opening,
11 that that represented a low enrolment when you compared
12 that to the estimated 1 million people in Canada who had
13 self-identified and said they were using cannabis for
14 medical purposes. Correct?

15 A Correct.

16 Q All right. And that suggested to
17 you -- the low enrolment suggested to you that there
18 must be numerous barriers to access. That's fair to
19 say?

20 A Yes, it suggested that if we have
21 such a discrepancy between the number of people who are
22 using medical cannabis, and the number who are
23 registered in the official program, that there must be
24 something that's interfering with their registration.

25 Q When I looked at the papers that
26 are appended, the articles that are appended to your
27 affidavit, I noted that for the most recent one there
28 was a reference at about the same time, December 2012,

1 that there were 40,000 people that you were aware of
2 because of a study that was done, who were using
3 dispensaries. So if you turn to page 32 of your
4 affidavit.

5 A Yeah.

6 Q And the second full paragraph down
7 it says, "In addition to authorized sources of CTP," do
8 you see that?

9 A Yes.

10 Q And then the third sentence down it
11 talks about the 40,000 patients accessing cannabis
12 through dispensaries. Given that number, is it fair to
13 say that that also suggests that there are numerous
14 barriers to accessing cannabis using dispensaries?

15 A Yes.

16 Q Just by virtue of the fact of a low
17 number.

18 A The low number would suggest that
19 there are people who could be using dispensaries who are
20 not using them.

21 Q And it was these perceived barriers
22 to access that prompted you to start the CAMPS study,
23 correct?

24 A Yes.

25 Q Now, in paragraph 9 of your
26 affidavit beginning on page 3 and continuing on to page
27 4, you say, and again you refer to this using slightly
28 different words, but you say that your analysis draws on

1 the data from the largest survey of Canadians who use
2 cannabis for therapeutic purposes. And that's the CAMPS
3 study, correct?

4 A Yes.

5 Q Now, I just want to ask you some
6 questions about that.

7 A Sure.

8 Q On page 4 at paragraph 10 of your
9 affidavit you refer to the fact that you conducted a
10 literature review, and you refer there to a 2005 study
11 by the Canadian AIDS Society, as well as a more recent
12 survey that says -- you say reports similar things. Do
13 you see that?

14 A Yes.

15 Q Okay. Now, when I read paragraph
16 10, and this is more a point of clarification than
17 anything else, I was under the impression that when you
18 said "a more recent survey" you were talking about
19 research by other people. But when I read it and I
20 looked at the exhibits, the more recent survey you refer
21 to is your own research, correct? The CAMPS study?

22 A I believe so. Yes, low levels
23 obtained in cannabis from Health Canada and high levels
24 -- so broadly similar results.

25 Q So other than the CAMPS study, the
26 only other study you refer to in your affidavit and in
27 your report is the one undertaken in 2005 by the
28 Canadian AIDS Society.

1 A The study that is -- I believe the
2 authors are Bell, Allen, Hathaway. Yeah, the Canadian
3 AIDS Society study. There's other studies that are
4 referred to in the manuscripts that are entered. So in
5 our literature review, in both of those papers there's a
6 thorough literature review that discusses all the
7 previous literature that pertains to the questions.

8 Q The significant study, though, that
9 you refer to, other than your own, is this AIDS study,
10 correct?

11 A That's the most clear precedent for
12 our study, yes.

13 Q All right.

14 A Although there have been some other
15 studies that include some descriptive details about
16 medical cannabis users. But that's the one that most
17 clearly leads to our current study, and one of the
18 authors in our study was helpful in our design of the
19 subsequent study, so that would be the clear precedent
20 for it.

21 Q In many respects that study is
22 similar in terms of methodology but on a smaller scale
23 to the CAMPS study, is that fair to say? And I ask
24 because you don't discuss the methodology of the
25 Canadian AIDS Society study at all.

26 A Yeah. I mean, it's similar in the
27 sense that it was self-reported questionnaires of
28 medical cannabis users. In Canada.

1 Q So again descriptive and
2 exploratory in nature.

3 A Sure.

4 Q I had a look at the study. I don't
5 know if you recall the numbers, but it was a much
6 smaller sample size.

7 A Yes. Yes.

8 Q What I saw was that the authors
9 sought the views of 42 people living with HIV/AIDS using
10 focus groups. That was one component of the study. And
11 then they based their data analysis on responses from
12 197 questionnaires. Does that ring a bell?

13 A I hate to confirm those numbers
14 without having it in front of me, that study, but that
15 sounds about right.

16 Q At paragraph 10 of your affidavit
17 on page 4, you talk about the study, and you talk about
18 how only one-third of the patients had applied to
19 participate in the federal program in 2005. Correct?
20 You see that?

21 A One-third of the patients in that
22 study, yes.

23 Q Yes. And the reference to one-
24 third of patients, that -- from what I can tell, that
25 doesn't distinguish between those respondents who
26 reported using cannabis for medical purposes and those
27 that did not. Did you --

28 A Sorry, you're asking me for details

1 about the 2005 study?

2 Q Well, you're referencing it here.

3 A Yeah.

4 Q And you're saying that one-third of
5 the patients had applied to participate in the federal
6 program. What I'm asking you is that the one-third of
7 patients, does that distinguished between those
8 respondents in the Canadian AIDS Society's study who
9 reported using cannabis for medical purposes and those
10 who did not?

11 A I believe the Canadian -- that
12 that's referring to all who used -- who reported using
13 cannabis for therapeutic purposes, a third of them had
14 applied. A third of them -- two-thirds of them had not
15 applied but were nonetheless using cannabis for medical
16 purposes.

17 Q The reason why I asked about that,
18 and the percentage given, is because when I -- and I
19 didn't realize this at first, but when I was reviewing
20 your affidavit, and the report, at Exhibit F, you do
21 refer to a certain percentage of respondents said this,
22 said that, that sort of thing. And when I looked at the
23 articles appended to that, the understanding that I have
24 is that when you say in your affidavit or your report
25 that X percentage of respondents from the CAMPS study
26 said this, it's not a percentage of the total who
27 responded to the survey, the 628 individuals. Is that
28 an accurate understanding of this?

1 A There is a number of analyses in
2 the study, so some of them would take sub-groups of
3 that. So for instance, not all of the 628 had a given
4 condition. So we might look within a certain condition,
5 in which case I might say there's perhaps 25 percent of
6 those who -- and I don't know the number, but 25
7 percent of those who reported using for chronic pain.
8 So not all of our participants used for chronic pain, so
9 in that case I would be talking about a percentage of
10 those who were using for pain. So it wouldn't be a
11 percentage of the total 628, it would be a percentage of
12 that sub-group.

13 Q Okay.

14 A Does that --

15 Q Yes. And if you look at page 33 --

16 A Page 33 --

17 Q Of the affidavit. So this is
18 Exhibit C, the article that was published in the
19 *International Journal of Drug Policy* in 2014. And if
20 you look on page 33, under "Methods".

21 A Mm-hmm.

22 Q And then you look down, there's a
23 long first paragraph, and then in the second paragraph,
24 about halfway through the paragraph, it begins, "It was
25 administered online, and organized in a hierarchical
26 manner." You see that part?

27 A Yes.

28 Q And then below that it says,

1 "As a result, the number of recorded
2 responses varies across items, and no
3 participants completed all items. All
4 reported percentages are based on number of
5 responses to given items rather than on the
6 entire sample."

7 And then, in order to enhance clarity in
8 the articles, you've included an N number in your
9 analysis. And that number that falls under -- for
10 example, if you look at table 1, on that page --

11 A Yes.

12 Q -- the first or second column after
13 the descriptors is N. The numbers below that are the
14 number of responses. Correct?

15 A That's correct.

16 Q All right. And I raise this
17 because I want to be sure that Justice Phelan, if he
18 delves into some of this in more detail, has an
19 appreciation of what the percentages mean.

20 A Sure.

21 Q Both in your affidavit and the
22 report, and in the articles themselves.

23 A Yes. And that's why I made it
24 clear in the methods.

25 Q Right. So, looking at Table 1,
26 just as an example, I just use this for that purpose.
27 If you look under "Health status", and it's broken up
28 from "Excellent" to "Poor". And in the N column there

1 are numbers there. When I total that up I get 475.

2 So based on what you've said, 475
3 respondents to CAMPS or about 75 percent of the total
4 provided responses to the questions regarding health
5 status. Is that fair to say?

6 A That's accurate, yes.

7 Q All right. And further, when you
8 look at this and the raw numbers and also the
9 percentages in this case, of the people who responded to
10 those questions about 67 percent said they were in good
11 to excellent health. I'm just adding up the numbers or
12 you can add the percentages.

13 A Yeah, yeah, that looks about right.

14 Q All right. Now, in terms of the
15 CAMPS data sample, as you pointed out, it's a question-
16 based survey, correct?

17 A Yes.

18 Q And the survey responses were
19 collected during a one-year period, correct?

20 A Roughly, yes.

21 Q From about July 2011 to August
22 2012?

23 A That's correct.

24 Q So that's a period of time when the
25 *MMAR* was in force, correct?

26 A Correct.

27 Q And by that point in time the *MMAR*
28 would have been around for about ten years, correct?

1 Now, those who responded to the survey,
2 they self-selected, correct? This survey was available
3 and people chose to respond or not to respond.

4 A That's accurate.

5 Q And those reporting using cannabis
6 were reporting using it for self-identified, or I guess
7 self-reported medical conditions, correct?

8 A That's correct. We asked if they
9 used cannabis for medical conditions.

10 Q All right. And again, no one was
11 looking over their shoulders. It was the respondents
12 who were answering the questions on their own,
13 unsupervised. Is that fair to say?

14 A Unsupervised by me, yes.

15 Q Anybody?

16 A No. I don't know. But yeah, we
17 weren't tracking them in that way.

18 Q Okay. If I also understand it
19 correctly, the vast majority of respondents to CAMPS,
20 the survey, about 90 percent or almost 90 percent, they
21 responded to the survey online, correct?

22 A Yeah. That's correct.

23 Q And about 10 percent responded to
24 the survey at the one B.C. dispensary location where the
25 survey was available.

26 A Yes. The reason why we used the
27 two sources was to sort of address I think what you
28 might be getting at, which is that we wanted to make

1 sure that if people were -- in that case they were
2 supervised, the respondents, when they responded in
3 person and on the hard copy in the dispensary. So we
4 wanted to be able to compare the responses from that
5 group to our online group and see if they were
6 consistent.

7 Q Supervised how so?

8 A A research assistant was with them.

9 Q Okay, and what would that research
10 assistant do with them?

11 A Explain the survey to them, wait
12 with them while they completed it, and then collect it.
13 Answer any questions that arose as they tried to
14 complete it.

15 Q Other than that the respondents
16 would answer the way they felt they should answer.

17 A Absolutely, yes.

18 Q The majority of the respondents
19 were also from B.C. and Ontario. That's one of the
20 other statistics --

21 A Yes.

22 Q -- that you point out. The other
23 things you point out just very generally about the
24 survey is the majority of respondents indicated that
25 they were not registered under the *MMAR*, nor they did
26 attempt to register. That was one of your findings.

27 A Yes.

28 Q And of those, again if I'm

1 understanding it correctly, most of those respondents
2 reported that they obtained the cannabis that they were
3 using from friends or strangers.

4 A I think most had a variety of
5 sources, but those were amongst the most --

6 Q Prevalent.

7 A Prevalent, yes.

8 Q And about -- another finding you
9 convey is that about a third of respondents indicated
10 that they were registered with Health Canada, correct?

11 A I believe that's roughly it, yeah.

12 Q Okay. Now, because of the fact
13 that 90 percent of individuals completed this online,
14 that data, that number, that's something -- that's not
15 something that can be verified, correct?

16 A We didn't seek verification of
17 their registration.

18 Q You point out -- and perhaps the
19 best way to do this is to take you to Exhibit F, which
20 is your report, at page 244.

21 A Mine -- okay, yeah, I've got it.

22 Q Right near the end. So in part 7
23 -- sorry, page 7. Page 244, page 7 of your report,
24 under "Part J", you set out here a summary of
25 limitations of the study itself, because of the fact, I
26 take it, that it was a survey-based study.

27 A Yes.

28 Q And I won't go through those, but

1 one of the items that's not listed there, but I did
2 notice it in one of the articles, is that because a
3 number of people filled it out online, there's a
4 possibility that someone may have completed the survey
5 more than once. That's a possibility too, correct?

6 A Possible. That was not a
7 possibility for the onsite component. So the roughly
8 hundred or so that were completed at the dispensary, we
9 -- another one of the reasons why we wanted to have that
10 in person component was to be sure that we weren't
11 getting any duplicate responses.

12 Q So at the dispensary, with the 100
13 respondents, there is no duplicates there.

14 A We can be reasonably confident.

15 Q You also point out in that summary
16 of limitations on page 244 of your affidavit that as a
17 result of those sampling limitations, it's unclear how
18 representative the CAMPS data is of your target
19 population, correct?

20 A I beg your pardon? That we state
21 that it's unclear how representative it is?

22 Q Yes. There is -- that's -- you
23 don't know whether this is representative of the group
24 that you were interested in, in the study, because of
25 the limitations in sampling.

26 A Yes. And I don't know if we have
27 firm demographics on medical cannabis users across
28 Canada in general. So it would be tough to determine

1 just how closely it reflects medical cannabis users,
2 because this study is our best attempt to assess who
3 those people are, and how they use. So, whether it's
4 representative is tough to say. That's sort of what
5 we're trying to set a baseline for, is establishing some
6 parameters for understanding medical cannabis use
7 amongst Canadians.

8 Q And so again, looking at the same
9 page and the fifth paragraph down under (j) --

10 A The one that starts, "In light ..."?

11 Q Yes.

12 A Okay.

13 Q Hang on, I might be looking at the
14 wrong thing. Yes. You refer there to the fact that a
15 more systematic approach to recruitment is required to
16 conclusively determine whether what you were seeing in
17 fact is representative of what you're interested in.
18 That's a very general way of saying it, but -- so in
19 other words, the study that you've done, it's a good
20 stepping stone, but more rigorous studies would be
21 required to determine more conclusively what you say the
22 findings of this study are.

23 A Yes, replication with a different
24 approach is always of benefit in studies of this type.

25 Q And I'm not being critical of the
26 study or the methodology.

27 A No, no.

28 Q Or anything like that. I just want

1 to be very clear about what it involved and what the
2 limitations of it are, and then for the benefit of the
3 court what the limitations on the conclusions and
4 findings are as well.

5 A Yeah, I'd say the limitations are
6 pretty standard for research of this type, that asks a
7 large number of people about their practices and
8 preferences. So, it's a stepping stone.

9 Q Is it -- I refer to the target
10 population and we haven't delved into that at all, but
11 is it fair to say that the group that you were
12 interested in, the broader community -- you've described
13 it as the broader community of Canadian CTP users.

14 A Yes.

15 Q "CTP" being Cannabis for
16 Therapeutic Purposes.

17 A Correct.

18 Q Is another way of saying that, or
19 perhaps it's more precise, I don't know, but all
20 individuals who are legitimately using cannabis for
21 medical purposes? Is that fair?

22 A Yeah, I think that medical purposes
23 or therapeutic purposes, that's what we're saying.

24 Q And that language is used, that --
25 when I see "therapeutic" and I see "medical" in your
26 report and your affidavit, I take those -- those terms
27 are interchangeable.

28 A Yeah, we prefer the term

1 "therapeutic" because "medical marijuana" makes it sound
2 like it's a property of the marijuana.

3 Q Right. And I take it because of
4 the -- because of the nature of the study being
5 descriptive, that's the reason why you didn't apply
6 statistics to the sample broadly, to determine whether
7 it'd be representative or not. Is that -- and maybe I'm
8 just misunderstanding this and I don't mean to say it
9 inarticulately, but I did notice that there are some
10 statistics when you're looking at answers within a given
11 category.

12 A Yes.

13 Q But as to the representativeness of
14 the sample itself, there's no statistical analysis
15 associated with that.

16 A Well, we look -- if you look at
17 Table 1 -- is it Table 1? I believe there's --

18 Q Page 33?

19 A I just want to make sure I direct
20 you to the right table, but there is a table where we
21 compare our participants to -- no, sorry, it's page 23
22 of the other article, where we compare people, our
23 participants, so same sample, we compare them to the
24 Canadian census.

25 Q Right.

26 A So in that case we're comparing
27 them to the broader group of people. But most of the
28 other comparisons are just within our sample. So we're

1 comparing one group of medical cannabis users to
2 another. We did not have -- we didn't collect data on
3 non -- on people who weren't using medical cannabis,
4 weren't using cannabis for therapeutic purposes. So all
5 the comparisons are within medical cannabis users.

6 A more systematic approach might be to
7 survey all Canadians and ask them if they use medical
8 cannabis, but obviously that would have its logistical
9 problems.

10 Q The 1 million person figure, that's
11 kind of what you're talking about, but again that's just
12 an estimated number.

13 A The half a million to a million I
14 think is --

15 Q Yes.

16 A It's broad, yeah. And that's based
17 on population type studies, where they look at all -- in
18 one case it's all people from Ontario, in another case
19 it was a sample randomly selected of Canadians to see
20 broadly how many people are using medical cannabis, and
21 those numbers come between 2 to 4 percent.

22 Q And that's extrapolated to the
23 total population of the country.

24 A Yes, exactly.

25 Q For people of a certain age, I
26 gather.

27 A Sure.

28 Q Now, in terms of the findings that

1 you make, the inferences you draw from the CAMPS sample
2 data to the target population, so those people who are
3 using cannabis for medical purposes, another important
4 precondition to doing that is to ensure that the
5 likelihood that a member of the target population is
6 sampled cannot be systematically related to their
7 response to the survey. Is that -- so let me put it
8 another way.

9 The participatory approach, the fact that
10 people self-selected, that -- and it's mentioned in your
11 list of limitations, but that's a limitation because
12 people who had trouble accessing cannabis, given the
13 opportunity, may have been more likely to respond to the
14 survey. Is that fair to say?

15 A I don't think so. Yeah, I don't
16 think that our sample would be people who would
17 particularly have had difficulty accessing. I think the
18 converse might be the case, wherein people might look
19 into accessing medical cannabis, become discouraged, and
20 then due to the lack of participation in medical
21 cannabis venues, or medical cannabis information
22 sources, if they're completely disenchanted with the
23 system, may not have had an opportunity to answer our
24 questionnaire. So I don't think that people who had --
25 people encountered barriers to access were not -- I
26 don't think were over-represented in our sample.

27 Q I'm -- I guess I'm a little
28 confused. If you go to page 244. So again, this is

1 page 7 of your report.

2 A Okay.

3 Q At Exhibit F, under part J.

4 A Mm-hmm.

5 Q The third paragraph.

6 A Response bias.

7 Q Yes.

8 A Yes.

9 Q And there it suggests to me that
10 those who were experiencing access barriers may have
11 used the opportunity to complete the survey as a means
12 to effect change. That's what you say there.

13 A Oh, I say in fact resulted in over-
14 representation in the sample of individuals who are
15 invested in increasing access. So, because we recruited
16 through medical cannabis dispensaries, and through
17 medical cannabis organizations, in part, not entirely,
18 but some of our recruitment, you know, seems like a
19 reasonable way to find medical cannabis users, is
20 through medical cannabis organizations. We thought that
21 those people may be strongly invested in medical
22 cannabis, because they have overcome so many barriers to
23 access their medicine, that they may more strongly
24 expressed the benefits of it, because if they didn't
25 find medical cannabis to be effective, then they might
26 have just given up, and not found their way into our
27 study.

28 So if we're looking at people who are

1 using dispensaries, who are accessing medical cannabis
2 for the study, those are people who have overcome some
3 of the barriers and may be positively disposed to it.
4 Whereas someone who tried, didn't -- and wasn't able to
5 overcome those barriers, may not have found their way
6 into our study. So it's the people who really stuck it
7 out to get their medical cannabis who are on a survey.
8 That's what we're getting at, anyways.

9 Q All right. But if they're not
10 having difficulty accessing it --

11 A I think everyone -- 86 percent of
12 these people had difficulty accessing it, but they still
13 managed to.

14 Q Right.

15 A There could be other people who
16 tried to access and were shut down from the start, and
17 they never found their way into our study because
18 they're not medical cannabis users, even though they may
19 have wanted to be, because the barriers were too much
20 for them to overcome.

21 Q Okay, I'm just trying to understand
22 your response to the last question. I had taken what
23 you said to mean that those invested in increasing
24 access are the individuals who are using it, getting it,
25 and aren't having a lot of problem getting cannabis.

26 A Using it, getting it, but still
27 report having a lot of problems.

28 Q Right.

1 A So they're managing to obtain their
2 medicine, but at serious effort and serious problems in
3 doing so, but they're nonetheless finding a way to
4 access cannabis.

5 Q All right. So, if -- but for an
6 individual who's having those problems, they -- that
7 person may have been more likely than somebody else to
8 respond to the survey, correct? That's my point.

9 A Well, yeah. I'm not sure if I --
10 I'm not sure --

11 Q Maybe we're saying the same thing,
12 but in a slightly different way.

13 A What I'm saying is that the people
14 who are in the study already had overcome some barriers
15 in order to access medical cannabis and hence be in the
16 study. People who may have encountered those barriers,
17 yet not found a way to overcome them, were less likely
18 to complete the study, because they wouldn't have had
19 access to the type of medical cannabis resources that
20 would have alerted them to the presence of the study.
21 So if they're not visiting dispensaries, if they're not
22 engaged in the medical cannabis community, if they're
23 not -- if they -- if they're somehow alienated from that
24 process, perhaps due to barriers, perhaps for other
25 reasons, then they may have been less likely to
26 participate in our study.

27 What I was saying is that in terms of the
28 reported effectiveness of medical cannabis, given the

1 barriers that people had to overcome, people who are
2 willing to go through the complex and arduous process of
3 accessing medical cannabis, at least that's how it's
4 described in our study, are likely to have found some
5 benefit, because if they didn't find it to be terribly
6 beneficial, they would have been unlikely to go through
7 the difficult process of accessing.

8 Q So is it accurate to say, then,
9 that the study is about those who have access and want
10 easier access to cannabis for medical purposes?

11 A It's about people who have access
12 and then their experiences. We did a representative
13 study, but it's for people who are using cannabis for
14 medical purposes, so in order to do that they must have
15 accessed it.

16 Q Right, so they're looking for
17 increased or better access to cannabis for medical
18 purposes, right?

19 A They didn't say that. What they're
20 saying is that their experience to date has been fraught
21 with obstacles.

22 Q Right. You had just mentioned the
23 benefits of cannabis use, and I note that the focus
24 throughout the affidavit, the report, the CAMPS articles
25 that you've attached as exhibits, indeed the titles to
26 those articles themselves, so for example if you turn to
27 page 31 that's the 2014 article that was published in
28 *International Journal of Drug Policy*. In the title you

1 talk about use of cannabis for therapeutic purposes.

2 A Yes.

3 Q And if you go back to page 22,
4 again the reference in the title -- this is the 2013
5 paper published in the same journal -- the reference is
6 to cannabis for therapeutic purposes.

7 A That's correct.

8 Q That's the focus.

9 A Yes, to distinguish it from
10 cannabis for non-therapeutic, celebratory, recreational
11 purposes.

12 Q Okay. Now, so to be for
13 therapeutic purposes it seems to me that a couple of
14 things have to come into play. The respondent has to
15 actually have a medical condition or a disease. Would
16 that be fair to say?

17 A Or symptom, sure.

18 Q Yeah, yeah. In other words, and
19 you just referred to the recreational user, so
20 distinguishing between the recreational user and someone
21 who is using cannabis because they are ill, that
22 distinction is important.

23 A We characterize therapeutic use as
24 used to address a medical condition or symptom.

25 Q And because of the fact that about
26 90 percent of the people responded to this survey
27 online, if they said, "I have a symptom, I have a
28 medical condition that requires this," there's no way to

1 verify that, correct?

2 A We did not include a doctor's
3 medical assessment or medical records.

4 Q And the next -- to my mind the next
5 assumption for something to be for therapeutic purposes
6 is that if you've got such a medical condition or you
7 have such symptoms, it has to be something for which
8 cannabis, because we're talking about cannabis,
9 therapeutic use of cannabis, it has to be the type of
10 thing where cannabis is an appropriate treatment,
11 correct? Now --

12 JUSTICE: You have to say yes.

13 A Yes.

14 MR. JANUSZCZAK:

15 Q So again, because of the way the
16 survey was done, that's not something that's verifiable
17 either, correct?

18 A I'm not sure I follow you.

19 Q So whether someone -- so in
20 responding to the survey --

21 A Yes.

22 Q -- whether an individual has a
23 medical condition or a symptom to begin with, that's
24 something that couldn't be verified.

25 A We didn't assess malingering.

26 Q Right. And assuming that person
27 who responded saying that they do have a medical
28 condition or a symptom, and that's a legitimate

1 response, the next question seems to me, well, is
2 cannabis an appropriate treatment for that?

3 A Yes.

4 Q And that's not something that was
5 looked at as part of this survey?

6 A The parameters of appropriate use
7 of medical cannabis are something that is being actively
8 debated by scientists across the world, so there's a
9 growing list of conditions for which medical cannabis
10 seems to be an appropriate treatment.

11 Q But as you point out in your
12 materials, I think you'd agree with me, that there was a
13 lot of clinical studies and work that are yet to be done
14 for --

15 A Absolutely.

16 Q Yeah. Would you also agree that if
17 an individual has a medical condition, and if it's
18 something for which cannabis as a treatment is warranted
19 or suitable --

20 A Mm-hmm.

21 Q -- that then the type of cannabis
22 -- so, the percentage of THC versus CBD, that is also
23 going to come into play. In other words, certain
24 characteristics of the cannabis itself may be more
25 suitable to one condition than another. You would agree
26 with that?

27 A There is growing evidence that
28 different strains of cannabis may be particularly

1 effective for different symptoms and different
2 conditions. But again, the research is really lagging
3 behind the anecdotal reports and where patients are at
4 in terms of identifying which strains are most effective
5 for them. We haven't caught up with that, in terms of
6 the research, and that's largely due to structural
7 barriers to conducting cannabis research.

8 Q And so whether the respondents to
9 the survey who said they were using it for therapeutic
10 purposes were using cannabis that might have been
11 properly suited to their condition, that's something
12 that wasn't assessed. Because as you were saying, or I
13 believe you said now, that's not easy to do. We're not
14 in a position to do that quite yet.

15 A A number of our respondents, a
16 large proportion of them reported that a specific --
17 access to specific strains of cannabis was very
18 important for their symptom relief.

19 Q Right. But -- I mean, they don't
20 necessarily know what might be better for them or not
21 better for them. Again, it's anecdotal, as you put it.

22 A At this point, they know better
23 than anyone else.

24 Q I appreciate that. And I guess the
25 other question, when we're talking about using cannabis
26 as a therapy, the other question is the amount that's
27 being used. And again, I gather your response to that
28 is, well, there's anecdotal evidence but the clinical

1 studies have yet to be done, by and large. Is that fair
2 to say?

3 A We have not determined specific
4 dosages for specific conditions yet.

5 Q Okay. So in terms of your findings
6 about affordability, it could be that respondents --
7 assuming they're using it, they actually have a
8 condition or a symptom, cannabis is something that's
9 appropriate to deal with that. There is a possibility
10 that a number of people are using more than they might
11 otherwise need. Is that fair to say?

12 A I don't see why that would be the
13 case. I mean, it's possible, as it is with any
14 medication, if people would deviate from optimal dosage,
15 but I don't think that that's a conclusion of our study.

16 Q No, and that's my point. That's
17 not something that you looked at in your study.

18 A What? I'm sorry.

19 Q The question of the type of
20 cannabis -- specific to respondents, the type of
21 cannabis used and the amount of cannabis used, that was
22 -- that data set wasn't part of the CAMPS study.

23 A They didn't report on the specific
24 strains that they were using, but they did report that
25 accessing a specific strain was one of their priorities,
26 and one of the most important considerations in their --
27 when they were looking at options for accessing.

28 Q Yes, I appreciate that. And

1 likewise, in terms of the amounts being used, that's not
2 something that was part of the study, correct?

3 A We didn't monitor the amount they
4 were using. Is that what you're --

5 Q Yes.

6 A I mean, we -- based on self-report.

7 Q Yes.

8 A Yes.

9 Q Now, you say, if you turn to page 9
10 of your affidavit, so it's at page 3.

11 A Page 9 I have as my --

12 Q Sorry, paragraph 9, page 3.

13 A Okay.

14 Q My apologies. Do you have that?

15 A Yeah.

16 Q You say in that paragraph that you
17 employed a health services analytical framework to
18 define the concept of "access" and its relationship to
19 patient satisfaction. Do you see that?

20 A Yeah.

21 Q All right. You would agree with me
22 that subjective statements of patient satisfaction
23 regarding a particular treatment is not necessarily
24 reflective of clinical measures of medical or
25 therapeutic effectiveness. Correct?

26 A I'm sorry, I'm not --

27 Q So, patient satisfaction. That --
28 when you use that term, in paragraph 9 --

1 A Mm-hmm.

2 Q -- that's a subjective measure,
3 correct? That's coming from the respondents.

4 A I think respondent report would be
5 one of the gold standards of therapeutic effectiveness.
6 If you have a medical treatment and you say it works,
7 that's a big part of the evidence that it's working.

8 Q Well, you're at least feeling
9 better.

10 A Yes.

11 Q But whether you're --

12 A I wouldn't say "at least".

13 Q We had talked about and discussed
14 the sampling limitations, the fact that causal
15 relationships in your finding, that's not what your
16 findings are dealing with.

17 A We had no control group. Not a
18 clinical trial.

19 Q So you're making hypotheses,
20 correct? Well, the results that you're getting and the
21 findings that you were drawing from those results, those
22 are kind of like the best guess you can make. It's in--

23 A They are accurate representations
24 of the data we collected. They weren't -- they're not
25 guesses.

26 Q But to make the findings that you
27 do, it's necessary to ignore the sampling limitations,
28 right? You're pretending that they're not there.

1 A No. We're explicitly stating them
2 and asking people to interpret our results in light of
3 them.

4 Q Right, but that's what I'm saying.
5 When you say that your finding is X, that finding is
6 then to be interpreted against the fact that there are
7 these sampling limitations.

8 A You would find limitations in any
9 scientific study. So there are limitations, but that's
10 not at all unique or even special to our study.

11 Q No, I appreciate that and I'm only
12 asking about CAMPS.

13 A Yes.

14 Q If you -- in your materials you
15 point out that the CAMPS articles, so what appear at
16 Exhibits B and C, that they were published in the
17 *International Journal of Drug Policy*, and you refer to
18 the fact that that's after a double-blind review. These
19 are refereed.

20 A Yes.

21 Q That's a refereed journal, correct?

22 A Yeah. Blind peer-reviewed.

23 Q Right. Now, but of course the fact
24 that it was published in that journal in no way affects
25 the fact that there were sampling limitations inherent
26 in the study, correct?

27 A It suggests that an unbiased jury
28 of my scientific peers found the study to be

1 sufficiently reliable and valid that it warranted
2 publication.

3 Q Right. And that includes --

4 A The limitations notwithstanding.

5 Q Right. And I take it that you've
6 described the limitations accurately to their
7 satisfaction as well.

8 A Yes.

9 Q That's an important component of
10 the study, the limitations.

11 A It's standard in any published
12 scientific study to note the limitations since no study
13 can be comprehensive.

14 Q If you go back, or you may still
15 have it in front of you, page 244. This is back to your
16 report. If you look at the last two paragraphs, and the
17 second to last paragraph in particular, you say that the
18 sampling limitations are balanced by several strengths.
19 Do you see that?

20 A Mm-hmm. Yes.

21 Q And by balanced you're not saying
22 that they balance out or they correct the limitations.
23 What you're saying is that there are strengths to these
24 studies that stand on their own, correct?

25 A Yes. There are limitations and
26 strengths.

27 Q Right. So when you say that the
28 sampling limitations are balanced, you're not meaning to

1 suggest that somehow the strengths that you've referred
2 to there correct for any sampling limitations in the
3 study itself.

4 A They should be considered when a
5 reader is assessing the validity of our finding, they
6 should consider the limitations and the strengths. So
7 they balance them in that way.

8 Q But the sampling limitations are
9 what they are.

10 A Had we -- if I can give an example,
11 had we asked five medical cannabis users, then that
12 would speak less to our -- that would speak more to the
13 limitations than -- since we had several hundred, that
14 balances perhaps the limitations. That we'd get a more
15 representative sample, having a large sample, than if we
16 had had just a very few.

17 So when I say that the strengths are --
18 that the limitations were balanced by several strengths
19 including a relatively large sample, that's what I'm
20 referring to, the overall validity of our findings. So,
21 the limitations may detract from that validity. But
22 then the strengths reinforce that validity.

23 Q They may reinforce the validity.

24 A They reinforce the validity, yeah.

25 Q Well, I --

26 A The study is more valid given that
27 it had a large sample and the methodological strengths.

28 Q Right. But again, it doesn't

1 counterbalance or correct for the sampling limitations
2 themselves.

3 A In sum, the strengths of the
4 article -- so if you're looking at how valid is this
5 article, the fact that it has both strengths and
6 limitations, rather than only limitations, makes up for
7 the limitations in terms of assessing the total validity
8 of the article.

9 Q As a reader. So as a reader --

10 A As a reader, yes.

11 Q -- of the article.

12 So it may not be the case -- it may be
13 perhaps remote, but it is possible that the CAMPS
14 findings may not relate beyond the sample of 628
15 respondents.

16 A I'm not --

17 Q It's a possibility.

18 A I'm not following you.

19 Q If the study isn't representative,
20 that's a possibility, correct?

21 A If the study is not representative?

22 Q Of your target population --

23 A Then it would be not
24 representative.

25 Q Right. So --

26 A If it were not representative, it
27 would be not representative. But we have good reason to
28 believe that it is representative, given the strengths

1 of the study that have passed peer review and standards
2 of scientific communication.

3 Q If you look at page 2, and
4 paragraph 7 of your affidavit, you say in this paragraph
5 that the CAMPS findings reveal that it was difficult for
6 Canadians to find a physician to support their
7 application under the *MMAR*.

8 A Page 2, 7?

9 Q Yes. Paragraph 7 on page 2.

10 A Yes.

11 Q You see that?

12 A Difficult for Canadians to find a
13 physician, yes.

14 Q Okay. And again you're saying
15 Canadians, but that's on the assumption that the study
16 is representative.

17 A The Canadians in the study.

18 Q Okay. So the 628 people.

19 A It was a study of Canadians.

20 Q 628.

21 A 628 Canadians in the study.

22 Q And as you've already said, those
23 individuals reported using cannabis for treating largely
24 self-identified medical conditions, correct?

25 A Correct.

26 Q Isn't it possible that for those
27 individuals who responded about difficulty in getting
28 physician support, that that may have related to the

1 fact that the doctor felt that cannabis use for medical
2 purposes wasn't warranted in their situation? That's a
3 possibility, isn't it?

4 A I'm sorry.

5 Q A respondent who says in response
6 to the questions from which you conclude that Canadians
7 find it difficult to get physician support, for people
8 responding to those questions, one possibility is that
9 -- let's assume they consulted a physician. If they've
10 done that, one possibility is that the physician didn't
11 think cannabis treatment was appropriate for their
12 condition. That's a possibility that would result in
13 that kind of a response on the survey.

14 A That might be a reason for a
15 physician to decline.

16 Q All right, and another possibility
17 would be that the physician consulted may have had
18 concerns about dependency or abuse because of a person's
19 recreational cannabis use. That's a possibility.

20 A Yeah. I'm not sure why the doctors
21 would have declined. That wasn't part of our survey.

22 Q If you turn to paragraphs 13 and 14
23 of your affidavit, this is on pages 4 and 5, and you
24 mentioned this in your introductory statement as well,
25 that the CAMPS findings revealed that the cost of
26 cannabis -- well, you didn't say it quite this way.
27 This is a bit more specific. But the CAMPS findings
28 revealed that the cost of cannabis itself presented the

1 primary barrier to affordability. That's one of the
2 findings, conclusions that you made.

3 A Yes. We identified two areas where
4 there might be financial barriers. The first was in
5 paying a physician the fee to do the assessment whether
6 they were good candidates for cannabis, and then the
7 second one was affording cannabis itself. And we found
8 that the physician's fees, while they varied, were not a
9 substantial obstacle. Rather it was the price of the
10 cannabis itself that was the obstacle or the barrier.

11 Q Okay, and if you look at paragraph
12 9 of your affidavit on page 3, right down near the
13 bottom. So the last sentence that begins, "As mentioned
14 above," do you have that?

15 A Mm-hmm.

16 Q If you'd just review that sentence.

17 A Yes.

18 Q In terms of the affordability of
19 cannabis itself, that is defined for purposes of the
20 survey as a respondent's ability to pay or their
21 willingness to pay, correct?

22 A Yes.

23 Q So the CAMPS findings regarding
24 affordability reflect both of those things.

25 A The questions related to
26 affordability from CAMPS were whether you are able to
27 afford sufficient cannabis, and whether you have to
28 choose between cannabis and other necessities of life.

1 Q That's not -- at least that's not
2 what I'm reading.

3 A The definition of affordability
4 within the health care services format as defined by the
5 scientists who sort of delineated those five sections,
6 that's how they defined affordability. How we assessed
7 affordability was based on those questions that I just
8 outlined. Are you able to afford sufficient cannabis to
9 treat your conditions? And are you forced to choose
10 between cannabis and other necessities of life?

11 So to the extent that you're making a
12 choice between cannabis and other necessities, I suppose
13 that would be the willingness as opposed to just simply
14 having the finances.

15 Q What do you mean you suppose,
16 though? I mean this was a study that you led and this
17 is your affidavit.

18 A Perhaps I misused the word
19 "suppose".

20 Q So there were two components.
21 There was the ability to pay and the willingness to pay.

22 A There was the ability to afford
23 sufficient cannabis to treat the medical condition, and
24 then the question of whether they have to choose between
25 cannabis or other necessities of life. That's how we
26 assessed affordability in the study.

27 Q And that's how you characterize the
28 willingness component of what you say here in paragraph

1 9.

2 A In that -- yeah. In the
3 affordability there, is drawn from the health services
4 framework. Their definition of affordability, our
5 assessment of affordability in the questionnaires, the
6 two items that I've referred to.

7 Q Okay. If you go back to paragraph
8 14 on page 5 of your affidavit, in that paragraph, you
9 characterize affordability as one of the further
10 obstacles to "optimal cannabis use". Do you see that?

11 A I'm trying to find it. Where in
12 the paragraph is that?

13 Q Sorry, just give me a moment. Yes.
14 Yes. Thank you.

15 The second line. I'm used to looking at
16 the bottom of the paragraph.

17 A Lower income individuals. The
18 second line. Ah, yes.

19 Q All right. And you go on to say
20 there, with over half of respondents indicating that
21 financial considerations interfered with their ability
22 to treat symptoms with cannabis. CAMPS does not purport
23 to opine on what constitutes optimal cannabis use,
24 correct?

25 A That would certainly vary according
26 to different participants. So optimal cannabis use was
27 defined as their report of having enough cannabis to
28 treat their symptoms. So if they were to say, "Yes, I

1 have enough," I suppose that would be optimal.

2 Q All right. And you would take that
3 to mean that that was reflective of therapeutic need.
4 Is that fair to say?

5 A Yeah, optimal therapeutic use.

6 Q So, again, the reference to optimal
7 therapeutic use, that's something that's determined by
8 the respondents to the survey themselves.

9 A Yes, that is -- that's the best we
10 have as scientists right now, with -- relative to dosing
11 and what's optimal, is what patients are reporting. And
12 we know there's substantial variability in what's
13 optimal, depending on conditions, depending on
14 individuals, depending on strains, depending on an
15 individual's physiology could determine how they
16 metabolize cannabis. So, optimal use is pretty
17 idiosyncratic, I suppose, from patient to patient.

18 Q One of your big conclusions as a
19 result of the study was that the vast majority of survey
20 respondents were not accessing cannabis under the *MMAR*.
21 Correct? That was one of the big findings.

22 A Yes.

23 Q Is it not possible for at least
24 some of those individuals, perhaps a large number of
25 those individuals, that -- so these are the people
26 responding to the survey.

27 A Mm-hmm.

28 Q Is it not possible for some number

1 of them that that might simply reflect a personal
2 dogmatic opposition to participating in a regulatory
3 regime governing access to cannabis for medical
4 purposes?

5 A A dogmatic opposition? I'm not
6 sure what you mean.

7 Q Well, just -- it's their personal
8 feeling. It's something they feel strongly about.

9 A Oh, I wouldn't know.

10 Q So it might be possible that your
11 survey respondents held those views, and that's why a
12 large number of people were accessing it under the *MMAR*.

13 A I have no reason to expect that's
14 the case.

15 Q You don't know, right?

16 A I don't know what the people that
17 didn't respond to the survey -- I'm not sure.

18 Q Well, when you say you don't expect
19 that that's the case, that -- that's not something that
20 comes out of the survey. That's --

21 A Perhaps I don't understand your
22 question. Could you restate it?

23 Q All right. You found that the vast
24 majority of survey respondents were not accessing
25 cannabis under the *MMAR*. Correct?

26 A Yes.

27 Q Right.

28 A At least, not exclusive, and

1 particularly not exclusively.

2 Q Right. So my question is this. Is
3 it not possible that people were not accessing cannabis
4 under the MMAR just because of their personal feelings?
5 It didn't have anything to do with barriers to access.
6 They just weren't going to use the MMAR no matter what.

7 A That's not at all what I would get
8 from our findings. Our findings were the people who
9 weren't using the MMAR were reporting substantial
10 barriers along those five parameters as reported in the
11 article. So in the article we report a number of
12 reasons why people weren't accessing through the MMAR
13 and the obstacles that they face, and a personal
14 opposition or -- I can't recall the phrase he used --
15 was not one of the things that came up in our study.

16 Q Of course that's assuming that the
17 responses you received reflect reality, correct? You've
18 just referred to the responses that you go.

19 A Yes.

20 Q And that's why you wouldn't believe
21 that to be the case.

22 A That's what -- the study is based
23 on responses we got.

24 Q Right.

25 JUSTICE: Why don't we take ten
26 minutes now? I should tell you that the court can't sit
27 past 4:30 today, so govern yourselves accordingly.

28 **(PROCEEDINGS ADJOURNED AT 3:07 P.M.)**

1 **(PROCEEDINGS RESUMED AT 3:22 P.M.)**

2 JUSTICE: Just before we commence, I
3 want to remind the audience that there are to be no
4 pictures taken inside the courtroom and there is to be
5 no recording as well of these proceedings. And I would
6 remind you as well that when the judge enters and
7 leaves, as a matter of respect for the court, you will
8 stand. Thank you.

9 Go ahead.

10 MR. JANUSZCZAK: Thank you, Justice
11 Phelan.

12 Q Professor Walsh, turning to
13 paragraph 12 on page 4 of your affidavit, you deal in
14 this paragraph with the question of availability. Do
15 you have that in front of you?

16 A Yeah, I do.

17 Q Which was one of the key metrics of
18 the study. And you found among other things that those
19 who were not self-producing, which I understand were
20 about two-thirds of respondents, the most prominent
21 reason for not doing so was here you say, "Lack of
22 space, expense, and legal concerns." Do you see that?

23 A Yes.

24 Q All right. And does that reflect
25 the order of priority of the responses, do you know?

26 A I believe so. Let me have a look.
27 I could find it in the -- those would be the top three
28 though, yes.

1 Q This may help, I don't know. If
2 you turn to page 34.

3 A Yes.

4 Q So this is Exhibit C. Second
5 column, there's a chart at the top. Third full
6 paragraph down there's references to the same stuff.

7 A Yes, okay.

8 Q The paragraph beginning, "Almost
9 one-third of respondents." And then in the middle --

10 A Yes, I see.

11 Q -- it says, "The most prominent
12 reasons were lack of space," and then it's more specific
13 here. It says, "expense of setup and legal concerns."

14 A Yes.

15 Q Right. So the concern about
16 expense relates to the expense of setup.

17 A Yes.

18 Q Setting up a cannabis growing
19 operation for yourself in your home.

20 A Setting up their garden, yes.

21 Q Right. Just very generally
22 speaking about the study, CAMPS, the CAMPS study, this
23 was done to address your suspicions or what you thought
24 were barriers to access under the *MMAR* regime, correct?

25 A When we noted the estimates of how
26 many Canadians are using cannabis for therapeutic
27 purposes, and then we compared that to the number of
28 registrants in the program, as a scientist it just

1 raises a question of why is there such a disconnect
2 between the number of people in the program and number
3 of people who are using medical cannabis.

4 Q The CAMPS study, however, had
5 nothing to do with the *MMPR*, the new regime, correct?

6 A The dates when it was collected
7 were prior to the new regime, right.

8 Q So the responses you receive have
9 nothing to do with the *MMPR*.

10 A I wouldn't say -- they're drawn
11 from an era prior to that, yes.

12 Q Right. And at the end of the day,
13 what this study shows is that the solution in terms of
14 affordability for cannabis should be subsidization by
15 government, correct?

16 A The study doesn't compare
17 solutions. It highlights the prominence of
18 affordability amongst the barriers.

19 Q Right. And you conclude -- the
20 major conclusion is that because of affordability
21 barriers, the solution is to subsidize cannabis for
22 those who are using it for therapeutic or medical
23 purposes.

24 A I'm just looking at where we
25 discuss that.

26 Q If you look on page 5, paragraph
27 14.

28 A Yes. Sorry --

1 Q Page 5, paragraph 14.

2 A Okay, yeah. Okay, now we're back
3 on the affidavit, yes?

4 Q Yes. So right down at the bottom.
5 "Consequently, we concluded that this
6 financial strain across all income barriers
7 demonstrated the need for developing
8 approaches to mitigate financial barriers and
9 integrate cannabis therapy within a
10 subsidized medical framework."

11 A Yes.

12 Q That was your main conclusion, on--

13 A Yes. There were two things. We
14 need to find a way to mitigate the financial barriers
15 and integrate cannabis within the medical framework.

16 Q If you look at paragraph 15, on
17 page 6 of your affidavit, you give an assessment
18 regarding affordability as it relates to the *MMPR*,
19 rather briefly in paragraph 15 and 16. Do you have that
20 in front of you?

21 A The -- page 6?

22 Q Yes.

23 A Yes, I do.

24 Q Paragraph 15?

25 A Yes.

26 Q You say,

27 "Canadians who use cannabis for therapeutic
28 purposes will no longer have the cost-

1 self-produce because the cost was more manageable, yeah.
2 That was one of the reasons, their prime reasons for
3 selecting self-production, was access to specific
4 strains that they found effective and the affordability
5 of it.

6 Q CAMPS didn't independently look at
7 the costs of self-production, correct?

8 A We did not ask them how much they
9 were spending on self-production.

10 Q Okay. So things like out of pocket
11 expenses for a self-producer, buying and renting a
12 suitable location with sufficient space to self-produce,
13 that type of thing. That wasn't canvassed specifically
14 as part of CAMPS, correct?

15 A No. You're referring to the amount
16 that they spent to self-produce?

17 Q Yes.

18 A Yes. We relied on their assessment
19 of it being cost-effective.

20 Q Without providing any detail.

21 A They didn't provide details of the
22 actual -- they didn't give us the math.

23 Q Right.

24 A They just said that it was more
25 cost-effective to self-produce. That was one of the
26 reasons why they did it. That, and access to strains
27 that were most effective for them.

28 Q You, as a health care practitioner

1 and professional, you would agree with me that
2 cultivation of cannabis for medical purposes, that's
3 something that needs to be and should be done safely,
4 correct? You would agree with that. If you're going to
5 produce --

6 A If I were asked to choose between
7 safe and unsafe?

8 Q I'm not asking you to choose. I'm
9 saying, in your capacity as a medical practitioner
10 professional, that if you're producing your own medicine
11 at home, you should be doing that safely. You'd agree
12 with that?

13 A Yeah. It should be done in a safe
14 way. Protecting the safety and health of Canadians is
15 my job, part of my job.

16 Q And likewise the cannabis that
17 you're producing should be safe. You're using it to
18 treat a medical condition or symptoms, so the cannabis
19 itself should be safe.

20 A Yes.

21 Q At page 6, paragraph 16 of your
22 affidavit.

23 A Page 6, okay.

24 Q So it's probably the same page
25 you're on but below that, paragraph 16, the last
26 paragraph.

27 A Yeah. Yes, I've got it.

28 Q You assert that a major change

1 under the *MMPR* will be higher prices and you refer to
2 the study that had been done for the Canadian
3 government. You don't discuss as part of your
4 discussion of or analysis of the *MMPR* in these two
5 paragraphs, you don't consider other major changes that
6 have resulted because of introduction of the *MMPR*, do
7 you?

8 A I beg your pardon?

9 Q Things like quality control,
10 safety, security, other things that are addressed by the
11 *MMPR*. You don't talk about any of those things as part
12 of your analysis or discussion of the *MMPR* here in your
13 affidavit.

14 A No. What's in the affidavit is --

15 Q Because of what you do you're
16 undoubtedly very aware of the *MMPR* and what it provides
17 for?

18 A Yes. Well, reasonably. It seems
19 to be a bit of a moving target.

20 Q You would agree that the *MMPR* and
21 the Licensed Producer system has removed some of the
22 barriers that you identified to access to the cannabis,
23 would you not?

24 A That has removed some of the
25 barriers? Can you be more specific?

26 Q Well, Health Canada no longer
27 stands in the middle here, right? Under the *MMAR* you
28 had to get authorization from your medical doctor.

1 A Yes.

2 Q And then you had to get
3 authorization --

4 A From a specialist.

5 Q -- from Health Canada.

6 A Mm-hmm.

7 Q You no longer have to get
8 authorization from Health Canada. So that's an
9 administrative step --

10 A Yes.

11 Q -- if you want to call it that,
12 that's been eliminated.

13 A Yes.

14 Q You'd agree with me that that would
15 help in terms of access, would it not?

16 A Well, I think that's a fine point
17 that will remain to be seen. By transferring the onus
18 entirely to physicians, I think that there's a positive
19 side to reducing some of the arduous procedural work
20 that patients had to undergo, but it seems that that
21 might also be pressuring physicians. And we've seen in
22 the study as well difficulties in caregiver-patient
23 communication and concerns anecdotally and I think both
24 in -- and also in more structured reports that
25 physicians are concerned about being the gatekeepers.
26 So I think in balance that's a tough one to answer.

27 Q Physicians are waiting for the
28 clinical studies.

1 A Physicians are waiting for the
2 clinical studies and I think that they're -- yeah. So I
3 think in some ways they're waiting on them and there's
4 also all sorts of complexities with regional medical
5 bodies. So whether or not this addresses barriers I
6 think remains to be seen, but there are aspects of it
7 that seem to be on the right track, I would say,
8 perhaps, in terms of overcoming barriers. So the
9 reduction in paperwork and the application I think is
10 positive. Is that what your question is getting at?

11 Q Well, that's what I was asking.
12 You're saying it's positive. But do I take it from that
13 that you agree that that helps in facilitating access?

14 A Again I think that that's an
15 empirical question that, you know, perhaps a follow-up
16 to the study would be able to answer. But whether the
17 new program has introduced new complexities that in
18 balance are resulting in an equal level of barriers, I
19 really don't know. I certainly hope that it has helped
20 overcome some of the barriers because the barriers are
21 considerable.

22 Q One of the other changes under the
23 *MMPR* is that the authorized healthcare professional
24 category has been expanded.

25 A Mm-hmm.

26 Q It's not just licenced physicians
27 now.

28 A Yes.

1 Q Nurse-practitioners can also
2 authorize use of cannabis for medical purposes. You're
3 aware of that?

4 A Yes. I'm not aware of how that's
5 playing out, though, on the ground.

6 Q Presumably having that option,
7 someone else who can authorize it, that's going to help
8 promote access as well, is it not?

9 A Hopefully. Again, that's an
10 empirical question that, you know, hopefully future
11 research will help us to answer that and I think there's
12 studies under way that are looking at how the transition
13 from the *MMPR* to the *MMAR* is going to affect access. So
14 I think people are studying that right now and I think
15 we'll probably know more in perhaps a year or six months
16 when that data -- when those data are, are analyzed.

17 Q If you turn to page 4 of your
18 affidavit at paragraph 12, again this is that paragraph
19 about availability. We referred to it just a few
20 minutes ago. In the paragraph you say that almost one-
21 third of respondents reported self-producing and then of
22 those, approximately one-third reported difficulties in
23 learning to produce. So that was one of your findings
24 from CAMPS?

25 A Yes.

26 Q Now, doesn't the Licenced Producer
27 system that's been introduced also enhance availability
28 in that from a patient's perspective you don't have to

1 worry about lost crops, you don't have worry about
2 infestation or contamination? So in that respect the
3 *MMPR* -- *MMPR* also facilitates access, does it not?

4 A If the -- if you can afford the
5 Licenced Producer and if they have sufficient quality,
6 then -- and sufficient selection, than that would be a
7 good option for you, I suppose. But there's other,
8 other barriers that I think that we've referred to that
9 -- you know, again it's a balance. So the -- if the
10 Licenced Producers have the capacity to deliver it and
11 if the price is acceptable and if they have the strains
12 that are needed, then that would be an option. But I'm
13 not sure that all those are satisfied, at least
14 currently.

15 Q Well the strains that are needed,
16 I mean that's anecdotal, right? I mean a lot of
17 research -- clinic research remains to be done as to
18 whether specific strains are better for certain
19 conditions.

20 A Whether or not the empirical work
21 will correspond with the patient report remains to be
22 seen, but patients consistently across samples report
23 that a diversity of strains is important. There's basic
24 science showing different level -- different cannabinoid
25 levels across different strains. So there's a
26 scientific reason to believe that different strains
27 would have different physiological effects and there's
28 also entourage effects, referring to the concurrent

1 effects of these diverse cannabinoids that vary across
2 strains. So there's a lot of reason to think that
3 different strains would be differentially effective and
4 when you pair that with patient reports, the different
5 strains are differentially effective, it's pretty good
6 evidence.

7 Clinical research still remains to be
8 done and I think, you know, in five years we'll know a
9 lot more about which strains are best for which, but
10 again, there's so many structural barriers to doing that
11 kind of research that the best that scientists have to
12 go on now is a combination of basic science showing
13 different constituents of different strains and patient
14 reports, which overwhelming says hey, this strain works
15 better for this condition, this strain works better for
16 another condition.

17 So I wouldn't characterize it as just
18 anecdotal. There's a theoretical basis for why it
19 should be and then we're seeing a correspondence from
20 that theoretical basis on the patient experience level.

21 Q So what you've just described, that
22 you talked about the theoretical basis and you talked
23 about the anecdotal evidence, that's what we have
24 currently after 13 years under the *MMAR*, correct?
25 That's where we're at in terms of the hard science.

26 A The hard science now is that
27 patients report differential effectiveness of different
28 strains, and different strains have different profiles

1 of cannabinoids that are very likely to have different
2 physiological effects.

3 Q Right. But that's yet to be
4 determined by proper clinical trials, correct?

5 A There have not yet been clinical
6 trials that directly compare one strain to the other,
7 although they are being started as we speak.

8 Q Yes.

9 A So we'll know more in a few years.

10 Q As a matter of fact, there was an
11 announcement in November of last year of a study that
12 involves UBC Okanagan, where you are, and Tilray.

13 A Correct.

14 Q Which is one of the Licensed
15 Producers, for a double-blind clinical study to examine
16 cannabis as a treatment for one of the mental health
17 disorders, which I understand you have a very great
18 interest in, that being post-traumatic stress disorder.

19 A Yes. Correct.

20 Q You're aware of that.

21 A I'm involved in that study.

22 Q Yes. You're -- my understanding
23 is, you're the principal investigator.

24 A Yes. That's correct.

25 Q And from what I could tell, Tilray
26 has applied to Health Canada to sponsor the study. Do
27 you know whether they've received approval from Health
28 Canada yet?

1 A Not yet, no. We're in the process
2 of --

3 Q And the amount I saw was -- it's a
4 \$350,000 study.

5 A Roughly, yeah.

6 Q Yeah. And I take it you, in your
7 capacity in being involved in the study, you have to get
8 approval from the University's ethics board, correct?

9 A That's correct.

10 Q Okay.

11 A The University, and from Health
12 Canada.

13 Q Because you're going to be going
14 out there to find live individuals to participate in
15 this study.

16 A Yes. A clinical trial.

17 Q Okay. And for this particular
18 clinical trial, people -- there's going to have to be a
19 screening process for those people with psychoses,
20 because that's unsuited, as far as we know, and as far
21 as you know, I take it --

22 A Yes.

23 Q -- that's unsuited for cannabis
24 therapy, correct?

25 A It seems like a reasonable counter
26 indication.

27 Q And have you received that ethics
28 approval yet?

1 A Not yet, no. The ethics approval
2 and the Health Canada approval go hand in hand. So,
3 they have to come together concurrently. Hoping that
4 that will be completed in -- over the next few months.

5 Q Okay. Because what I had seen was
6 that you had expected the study to launch in the early
7 summer of this year, pending approvals, and that it
8 would conclude some time in late 2016.

9 A That's our hope, yes.

10 Q The hope. I take it you're
11 available -- you're also aware of other proposed studies
12 that are clinical trials that involve Licensed
13 Producers? Are you aware of any of those?

14 A I've heard of a few, yeah.

15 Q Can you describe very briefly what
16 you're aware of?

17 A Oh, boy. Pretty hazy. I heard
18 that there's one going on with arthritis. Isn't there?
19 Through McGill. I'm not sure what the other ones are.
20 I hear a lot of talk about different studies getting
21 started. It's an exciting time in the medical cannabis
22 field.

23 Q And you say it's an exciting time
24 because these clinical trials that need to be done are
25 now being done.

26 A Yes. There is so much that we
27 don't know.

28 Q And --

1 A We're really playing catch-up, as
2 far as scientists go, with patients.

3 Q And this is all starting to happen
4 after the *MMPR* was introduced and licensed producers
5 started to operate. Isn't that what you're saying? The
6 timing. You said this is an exciting time. We're
7 starting to play catch-up.

8 A Yes.

9 Q This is all happening post-
10 introduction of the *MMPR*, correct?

11 A Largely.

12 Q Was it a surprise to you that this
13 type of research is starting to be proposed?

14 A I'm not sure. I'm involved in the
15 research, so I'm not surprised.

16 Q Well, you've said that not a lot of
17 this was happening before. Now that there is Licensed
18 Producers, now that we have the *MMPR*, are you surprised
19 --

20 A There is such a growing interest
21 and sophistication in our understanding of cannabis
22 science over the last five to ten years, so, you know,
23 everything is increasing exponentially.

24 Q Do you expect this exponential
25 trend to continue here in Canada?

26 A Yeah, I would hope so. I expect
27 so. I'm an optimist.

28 MR. JANUSZCZAK: Those are my

1 questions, Justice Phelan.

2 JUSTICE: Thank you.

3 MR. CONROY: Mr. Tousaw is going to do
4 the re-examination.

5 JUSTICE: Mr. Tousaw. I would remind
6 you it is re-exam, not trying to get in as direct
7 evidence something under the guise of reply.

8 Okay, go ahead.

9 MR. TOUSAW: Thank you, Justice
10 Phelan.

11 **RE-EXAMINATION BY MR. TOUSAW:**

12 Q Professor Walsh, what do you mean
13 when you say peer review? What does that mean?

14 A It means that scientists who aren't
15 aware of the authorship. Usually I think usually a
16 panel of three will read a paper not knowing -- so it's
17 blind peer review. So not knowing who the author is,
18 they'll read the paper and write a detailed assessment
19 of the paper's strengths and weaknesses, limitations,
20 and then pass that on to an editor who oversees those
21 three. The editor will integrate the opinions of the
22 reviewers with her own opinions and then provide a
23 decision as to whether or not the paper will be
24 published.

25 Q And is it an iterative process? Is
26 there some back and forth with the author?

27 A Yes, often. There is an initial
28 decision that will either be accept with no revisions,

1 which is sadly very rare. More often there's a revise
2 and resubmit. So if perhaps the authors have overlooked
3 something or if there's some aspect that they deem to be
4 insufficiently rigorous they'll say, "Look into this.
5 Give me some more detail about that."

6 Q And both articles you published in
7 the IJDP went through this process.

8 A They did, and in fact one of them
9 was noted as the article of the month, based on its
10 rigour and impact.

11 Q Which one of the two was that?

12 A The first one.

13 Q You mentioned when discussing the
14 Canadian AIDS Society study, I think you used the term
15 "clear precedent". We know what "precedent" means in
16 law.

17 A Okay.

18 Q But what do you mean by that term?

19 A It was a smaller mini-version of
20 our study. So it clearly preceded our study and we
21 looked at that and said, "Hey, we can do this study
22 better, bigger," so that's what I mean.

23 Q And was that -- do you recall if
24 that Canadian AIDS Society study was peer-reviewed
25 published research as well?

26 A Yes, it was. So it was a solid
27 study but it was small.

28 Q Small sample studies.

1 A Small sample, yes.

2 Q My friend was asking you questions
3 about self-reporting as this study is a self-reported
4 study. Is that a discredited or invalid research
5 method?

6 A Well, for a lot of things self-
7 report is the gold standard because that's how you can
8 assess things that are not, you know, not assessed
9 physiologically. So people's own assessment of their
10 traits and preferences and health is pretty much the
11 best way to get at a lot of things, is by asking people.

12 Q And you used a term in response to
13 one of my friend's questions, I think it was
14 "malingering". What do you mean by that term?

15 A Malingering, faking illness. So we
16 didn't assess whether people were faking their illness
17 in this study, but we didn't have reason to believe they
18 would be.

19 Q And so this is a -- I think my
20 friend was sort of getting at this when he was talking
21 to you about strength versus limitations. When somebody
22 does a self-reporting study you don't have any way of
23 knowing if they're lying, basically. Is that about
24 right?

25 A Yeah. Some measures will have
26 certain questions that are meant to check. Check
27 responses. Typically if it's like maybe a job
28 application study there'll be certain questions that are

1 there to identify malingering. But in health studies
2 typically there's not any assessment of that.

3 Q So there was a -- you and my friend
4 had a discussion about the limitations of the study
5 versus the strengths of the study, and one of the
6 strengths you indicated, I think, was the relatively
7 large size of the sample, is that right?

8 A Mm-hmm.

9 Q And it was -- are you comfortable
10 with your sample size being relatively large for a study
11 of this nature?

12 A Yeah. Yeah. Given the detail that
13 we asked. So you're always doing a trade-off. The more
14 people you have, often the shorter the study will be.
15 So, you know, this got into quite a bit of detail with
16 quite a large number of people.

17 Q And that's a strength.

18 A Yes.

19 Q So when I was thinking about it as
20 you were going back and forth, I sort of thought about
21 it this way and tell me if it makes sense to you. If
22 you give a self-reported survey to one person and only
23 one person, and that person just sort of makes up
24 answers, the value of the study is essentially nil.
25 You've got a sample size of one and they just made this
26 up, so you have nothing of any worth comes out of it, is
27 that right?

28 A Mm-hmm. Yes, more or less

1 Q And if you give sample to 100
2 people and one person makes things up and just sort of
3 malingers, or whatever the term is, then the value of
4 your study is sort of 99 percent because one person made
5 things up and 99 didn't, and you asked more people so
6 it's stronger, is that about right?

7 A Yeah, and if people exaggerate one
8 way there will be people that exaggerate the other way.
9 And it will sort itself out in the mix when you have a
10 large sample. So that you get a reliable estimate based
11 on mean levels. And that's what we report in the study
12 are mean levels. Averages.

13 Q My friend asked you about patient
14 reporting of effectiveness of cannabis for therapeutic
15 purposes. Do you remember him asking about those?

16 A I believe so, yeah.

17 Q Is sort of patient self-reporting
18 back to doctors on the effectiveness of a medical
19 treatment something that is unique to cannabis?

20 A Not at all.

21 Q So you sort of go into your doctor
22 and you say I've got a sore elbow and they say take this
23 anti-inflammatory, let me know if it works. You say it
24 doesn't work, they give you something different.

25 A Yes. I would think that's
26 typical, yeah.

27 Q My friend asked you about the *MMPR*
28 creating benefits in terms of access and I think he

1 brought up the expansion of the categories of health
2 practitioners that can sign medical declaration under
3 the *MMPR* to include nurse practitioners, do you remember
4 that?

5 A Yes.

6 Q If that expansion to nurse
7 practitioners has resulted in one nurse practitioner of
8 all the nurse practitioners in Canada signing medical
9 declaration, is that in your view a substantial
10 reduction to a barrier to access?

11 A Not a substantial one.

12 MR. JANUSZCZAK: Your Honour, I just
13 -- I am a bit concerned that some of the questions are
14 leading.

15 JUSTICE: Leading. I've seen this
16 stuff on a dance floor. I was wondering when someone
17 was going to object.

18 This is re-direct. You don't get to put
19 to the witness the suggestion of the answer.

20 MR. TOUSAW: I appreciate my friend's
21 objection.

22 JUSTICE: One of the dangers or re-
23 direct is you never know what your witness is going to
24 say.

25 MR. TOUSAW: I appreciate my friend's
26 objection.

27 Q In your view is the remove -- is
28 the *MMPR's* removal of self-production as a lawful option

1 a mitigation of barriers to access?

2 A Does removing self-production
3 reduce barriers to access?

4 Q Yes.

5 A No.

6 Q What phase of clinical trial is
7 the Tilray study that you're involved in?

8 A It's a Phase 3 clinical trial.

9 Q What does that mean?

10 A It means that we are looking into
11 the comparative efficacy of cannabis relative to other
12 substances rather than just seeing if it's safe.

13 Q And is just seeing if it's safe an
14 earlier phase?

15 A Yes, that would be an earlier
16 phase of a clinical trial when you're developing a new
17 substance. But the safety of cannabis has been well
18 established.

19 Q So you don't need to go through
20 those earlier phases is what you're saying?

21 A We don't believe so.

22 Q Are you aware of whether or not
23 *MMAR* initially had a research component built into it?

24 A I am not aware of that.

25 MR. TOUSAW: Thank you, Professor
26 Walsh.

27 THE WITNESS: Thank you.

28 JUSTICE: Okay, thank you. You are

1 free to go, sir. Thank you.

2 (WITNESS ASIDE)

3 JUSTICE: Okay, so we're all set for
4 tomorrow, are we, with our witnesses?

5 MR. CONROY: I hope so.

6 JUSTICE: Okay. Good, well we will
7 see you all then at 9:30.

8 (PROCEEDINGS ADJOURNED AT 3:55 P.M.)

9

IN THE FEDERAL COURT
(Before the Honourable Justice Phelan)

Vancouver, B.C.
February 26, 2015

T-2030-13

BETWEEN:

NEIL ALLARD, TANYA BEEMISH, DAVID HEBERT
and SHAWN DAVEY,

Plaintiffs;

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,

Defendant.

PROCEEDINGS

Mr. J. Conroy, Q.C.,

Mr. K. Tousaw,

Ms. T. Grace,

Mr. B. Vaze,

Mr. M. Jackson,

Appearing for the Plaintiffs;

Mr. J. Brongers,

Ms. B.J. Wray,

Mr. C. Januszczak,

Mr. P. Alma,

Ms. M. Nicolls,

Appearing for the Defendants.

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VANCOUVER, B.C.

February 26th, 2015

Volume 4

(PROCEEDINGS COMMENCED AT 9:33 A.M.)

JUSTICE: Good morning.

MR. CONROY: Good morning, Justice Phelan. The next witness for the plaintiffs is Remo Colasanti. Mr. Colasanti, if you could take the stand, please.

REMO COLASANTI, Affirmed:

THE REGISTRAR: Please state your name, occupation, and address for the record.

THE WITNESS: My name is Remo Colasanti. I am -- I own a nutrient company, Remo Nutrients. Oh, my address is 2459 Pauline Street, Abbotsford, British Columbia.

MR. CONROY: And Mr. Colasanti's affidavit is in the consolidated book of expert reports, volume 1, at tab 2. If that could be marked, then, as Exhibit 7.

JUSTICE: Exhibit 7.

(AFFIDAVIT OF REMO COLASANTI MARKED EXHIBIT 7)

MR. CONROY: And just by way of housekeeping, before I start, in Mr. Colasanti's affidavit at paragraph -- first 28, over onto the top of page 6, there is a reference to document 82. And if you go back to page 5 it talks about the Green Planet catalogue, 2014.

1 JUSTICE: Yes.

2 MR. CONROY: That's on our list of
3 documents as 82, and in the confusion of the simplified
4 procedure, it didn't make it into the Joint Book of
5 Documents. And as I understand it, it should have made
6 it into the expert's book of documents but didn't make
7 it there either. So I've talked to my friends about it,
8 and that plus Exhibit 83, which is at paragraph 45, and
9 -- sorry. Sorry. At 40 -- no, I'm sorry. 45 -- sorry.

10 JUSTICE: Are you looking at --

11 MR. CONROY: 83 first I'm looking for,
12 which I think is at 45. Should be. Yes, 45 --

13 JUSTICE: The other document is 83 on
14 --

15 MR. CONROY: -- the top of page 10.
16 Yeah.

17 JUSTICE: Yes.

18 MR. CONROY: The PowerBox device.

19 JUSTICE: Yes.

20 MR. CONROY: Is 83. And then over to
21 48, the last line, 86. Again, basically catalogues that
22 describe or show various types of equipment.

23 JUSTICE: Mm-hmm.

24 MR. CONROY: So I've discussed it with
25 my friend, and we'll try to make sure we have copies of
26 those that can go into the record.

27 JUSTICE: Okay, and we'll just put
28 them in as an odd thing -- an odd-body exhibit.

1 MR. CONROY: That's right.

2 JUSTICE: Okay.

3 MR. CONROY: Thank you, judge.

4 **EXAMINATION IN CHIEF BY MR. CONROY:**

5 Q So, Mr. Colasanti, you have your
6 affidavit in front of you?

7 A Mm-hmm.

8 Q Yes or no.

9 A Yes.

10 Q If you go to Exhibit A to your
11 affidavit, which is at page 13, the top right corner,
12 that's a copy of what we call a resume or *curriculum*
13 *vitae* for you, is that right?

14 A Yeah.

15 Q And you show your employment
16 history at the top, and the last entry there is Urban
17 Grower Enterprises online video personality, and you
18 describe what that is. Fair enough?

19 A Yeah.

20 Q And then below that, additional
21 experience, you indicate patient advocate from 2003 to
22 2014?

23 A Yes.

24 Q And then again, a research and
25 development consultant for a company called Advanced
26 Nutrients?

27 A Yeah.

28 Q So, if I just take you back to the

1 online video personality, could you explain just briefly
2 to the court what that is? What you do?

3 A I make videos to inform other
4 patients, and entertain them. And it's a good way to
5 spread the word, and get the word out there, on various
6 ways to grow cannabis safely. And things going on in
7 our community.

8 Q Okay. And if you go to page 16,
9 the end of your report to the court, which is Exhibit B.

10 A Yes.

11 Q There's two paragraphs there under
12 subparagraph letter (k). Could you just address that
13 for us to the court?

14 A "That I'm a holder of an authorized
15 licence to grow MMAR?"

16 Q That and the lower part.

17 A "I am, however, mindful of my
18 duty to the court as an expert witness and
19 have held the opinions expressed herein long
20 before the commencement of these proceedings.
21 And have used the expertise that I have
22 acquired and developed over the last 14 years
23 to assist others in order to produce their
24 medicine properly and in a safe manner and
25 without risk or causing of a nuisance to any
26 others."

27 Q And just above that paragraph you
28 indicate that you have an interest in the proceedings.

1 Can you explain that?

2 A I do have an interest in these
3 proceedings. I am a medical marijuana producer myself,
4 and I also own a company that produces nutrients for
5 growing cannabis. So yeah, I do have an interest.

6 Q So is it fair to say that you don't
7 dispute that you are, outside of giving your evidence in
8 court, an advocate for people being able to grow their
9 medicine safely, et cetera?

10 A That would be accurate, yes.

11 Q Okay. All right, let's go back to
12 the beginning of your affidavit then, which at the
13 bottom, it's right after tab number 2 and doesn't have a
14 page number. You indicate at paragraph number 2 that
15 you have been a producer under the *MMAR* since 2001?

16 A That's correct, yes.

17 Q You've had a licence yourself. You
18 had a licence for many years and it was valid on March
19 21st, 2014 when Justice Manson made the injunction order.

20 A Yes.

21 Q And so it's continued to be valid,
22 and as you say there, to produce 98 plants, is that
23 right?

24 A That's correct.

25 Q Okay. You then in the next
26 paragraph discuss some of your research, and you again
27 mention the YouTube, the online personality, that that's
28 what you're referring to there, Urbangrower and

1 Urbanremo?

2 A Yeah, that's my online personality.

3 Q And then you describe some of your
4 other experience in the balance of that paragraph, fair
5 enough?

6 A Yeah.

7 Q Then your affidavit is divided into
8 a number of headings, and the first one is "Basic
9 Information Regarding Medical Cannabis Production".

10 A Mm-hmm.

11 Q Do you want to make a brief comment
12 about that?

13 A I think here we just talk about
14 just the basic ABCs of growing, how to veg a plant,
15 budding. We talk about safety a little bit. And, I
16 don't know, I think we show a bloom box in the corner.

17 Q In paragraph 10 you make specific
18 reference to something called a bloom box. Do you want
19 to give us a brief description of that, and then maybe
20 we can have you do the demonstration.

21 A I'm sorry, Jim, what do you want me
22 to --

23 Q Paragraph 10.

24 A Yeah.

25 Q You make reference to -- you say
26 "For example" and then you talk about square feet and so
27 on and then refer to the bloom box.

28 A Yes.

1 Q Do you see that? Can you just
2 maybe give us a brief synopsis of what you're saying
3 there so we can then show the court how this bloom box
4 works.

5 A Well, basically --

6 Q Starting at your example, I think.

7 A Should I just read it or --

8 Q No, no. Well -- yeah, you could do
9 that.

10 A I could just read it.

11 "The primary determinants of overall yield in
12 indoor cannabis production are lighting and
13 physical space. Assuming adequate levels of
14 other required inputs are not adjusting for
15 differences in various strains and sub-
16 strains significantly out-produce others.
17 For example, assuming a production site that
18 is 200 square feet with 6,000 total watts of
19 lighting, it is possible to produce the same
20 overall quality of cannabis from six plants
21 as it is from 600."

22 I'd also like to mention it's a lot
23 easier to care for the six plants than 600, so as a
24 patient.

25 "However, it would take significantly longer
26 to produce that similar quantity, assuming
27 that you have only one room to work with. In
28 addition there exist small size closed

1 production systems in which a small amount of
2 cannabis may be produced in extremely small
3 places including closets, grow tents, or grow
4 chambers. The bloom box version 3.0 is an
5 example of hydroponic grow box that can be
6 placed in an apartment, condominium, and
7 would enable a person to grow and take care
8 of or controlled by the technology of the box
9 itself. Now produced and marked Exhibit C to
10 this my affidavit is a copy of the website
11 printout of the bloom box which is listed in
12 the plaintiffs' documents at number 80. This
13 is a straight plug and play and use less
14 power than your dryer."

15 Q So if we go to page 17, that's
16 Exhibit C, that's the bloom box information that is
17 obtainable through the internet, is that fair? That
18 goes from page 17 to 21?

19 A Yeah.

20 Q All right. And this device we have
21 over in the corner at the back of the courtroom.

22 A Should I go over there?

23 Q I understand that is a bloom box,
24 is that right?

25 A That is a bloom box, yes.

26 Q So I'd like to do a brief
27 demonstration for the court.

28 So if Mr. Colasanti may be able to go

1 over there, I don't know if the court needs to be at a
2 better vantage point --

3 JUSTICE: Well, if I need to get up
4 I'm here.

5 MR. CONROY: Is that all right? Okay.

6 JUSTICE: Yes.

7 MR. CONROY: If you would then, Mr.
8 Colasanti.

9 A Absolutely.

10 JUSTICE: You are going to have a hard
11 time recording them, eh?

12 MR. CONROY:

13 Q Speak loud.

14 A I am good at that, no problem.

15 Here we have a B.C. Northern Lights Bloom Box. Can you
16 hear me over there?

17 JUSTICE: Hold on.

18 A No?

19 JUSTICE: Are one of those microphones
20 moveable?

21 MR. CONROY: I am wondering.

22 JUSTICE: That thing is on wheels,
23 isn't it?

24 A This one?

25 JUSTICE: No, no, the Bloom Box.

26 A It is on wheels. But it is plugged
27 in right now.

28 JUSTICE: Oh, it is plugged in over

1 there. Okay.

2 A You know what, maybe I'll do the
3 lighting demonstration first, just to open it to see
4 that you can have one of these in your apartment or
5 condominium.

6 VOICE: We need to have a (inaudible)

7 JUSTICE: Just a second, hold on.

8 A Can you guys see?

9 This is a bloom box. This is a self-
10 contained grow unit that you can easily set up in an
11 apartment or a condominium, and safely grow cannabis.
12 I'll open it up, it has got a lock on it, right here.
13 And right now, there are two chambers here to grow with.
14 This will be your -- you can grow nine plants in here,
15 hydroponically, and up here, this is where the light
16 comes from. There is a shade, and there is a 400 watt
17 light inside. And this is an all inclusive grow system,
18 you can veg your plants here, make clones, cuttings, and
19 flower stuff right here. All timers and stuff are built
20 inside. There is a CO₂ unit, there is a water pump in
21 it as well.

22 In the back, there is two out ports and
23 on these out ports are supposed to be charcoal boxes
24 here, just to filter the smell. It draws cold air from
25 the bottom to cool it. So I think you could safely take
26 this thing home and produce cannabis.

27 B.C. Northern Lights sister company is a
28 company called Urban Cultivator, and they were seen on

1 Dragon's Den, and they produce herbs in places like the
2 Four Seasons Hotel in units similar like this. And
3 actually they are being spec'd in condominiums in
4 Toronto and stuff, and some places around town here.
5 So, you can safely grow at home, without causing any
6 problems. This thing is not a fire hazard, it is not a
7 smell hazard, it is 100 percent safe. It is just like
8 having a dryer or a refrigerator. It is just an
9 appliance.

10 MR. CONROY:

11 Q You said hydroponic. Can you just
12 explain that? That means that you are using water as
13 opposed to soil?

14 A Correct, for your media, it would
15 just be water, it would be for all the rockwell, and
16 then going into some hydrostones, and then your roots
17 would just go straight into the nutrient solution which
18 you would just make a fresh nutrient solution every week
19 to feed your plants, and it is self-contained. You can
20 go to work, and this thing takes care of itself.

21 Q How does it take care of the
22 humidity of the water for -- and that sort of thing?

23 A Well, there is in-and-out vents in
24 this one, so that will draw your humidity out. It has
25 got automated pumps that turn by timer, pumps on and
26 off. Same with the lighting. CO₂ as well added to the
27 system.

28 Q Risk of fire either from sources

1 other than electrical or other sources, how does it take
2 care of that?

3 A Well, actually in here is a CSA
4 approved digital ballast. I've never seen one of those
5 go on fire in my life. And they typically don't. What
6 usually happens, if there is a problem, there is an
7 internal fuse, it will blow that fuse, and the unit goes
8 off.

9 Q You mentioned clones. Might want
10 to explain to the court what clone -- not everybody
11 knows --

12 A That would be baby marijuana
13 plants. You can take a cutting from a bigger plant --

14 Q Yes.

15 A And you can add a -- rooting them
16 (inaudible) which I produce, and it will develop roots,
17 and then you can later flower these.

18 Q So, it starts in the little section
19 there for the clones, and they get moved into here, into
20 the right side, is that it?

21 A Yeah, that's the idea here.

22 Q And then what size would they --
23 rest of the top of the box or?

24 A Well, this would be better suited
25 for Indicas because this is a smaller box. Sativas have
26 a tendency to double and triple in size. So --

27 Q You better -- let me stop you
28 there, because I'm sure not everybody knows what a

1 Sativa or an Indica is. You are just talking about
2 different types of cannabis?

3 A Yeah, different breeds.

4 Q Some of which get bigger, and some
5 stay smaller, is that the idea?

6 A Yeah.

7 Q Okay. All right, so you are saying
8 this is better for Indica, the smaller ones?

9 A Absolutely, because they'll stay
10 within this unit without overgrowing it.

11 Q Okay. All right. Anything else we
12 need to know in terms of this -- you are saying it can
13 be put in a basement and take care of all those issues?

14 A This would service a very small
15 licence. Very small licence.

16 Q Do they also get used in stages,
17 for starting a grow that then goes to another room or
18 anything like that?

19 A You could use this as a starting
20 area, absolutely, why not?

21 Q All right.

22 A Retail price on this, would you
23 like that?

24 Q Yes.

25 A It runs \$3300. Fairly cost-
26 effective for a unit like this, and it's all made out of
27 metal.

28 Q How many plants on the right side?

1 A It looks like there's allowance for
2 a lot more. But you'd probably only want to take maybe
3 20, because you're going to lose a couple.

4 Q You're now pointing at the clone
5 side.

6 A In the clone area. Because there's
7 only 9 ports here for plants.

8 Q Nine?

9 A You take your best nine and you
10 bring them over, and then I guess throw the rest away.

11 Q So all you have to do is buy it and
12 plug it in, is that the idea?

13 A That's it. It's all CSA approved,
14 and it's like buying a TV or a refrigerator, anything
15 like that.

16 Q Okay. So if you --

17 JUSTICE: Mr. Conroy, I didn't quite
18 hear the discussion of 20 plants versus 9 plants.

19 MR. CONROY: Okay, sorry.

20 Q Could you just explain that again?
21 You talked about the clones, the small plants on the
22 left.

23 A Yeah.

24 Q And you could have as many as 20?

25 A It looks like there is places for
26 more than 20 in here. Actually I'll give you an exact
27 number.

28 Q But the --

1 A Four, five, six --

2 Q Yeah, I don't think -- the
3 important thing the court needs -- didn't hear your
4 explanation as between the 20 plants there and the 9
5 plants here.

6 A Oh, you take your best nine, of
7 course, right? And then the rest, you just dispose of
8 them. Because not all plants are the same, you know,
9 especially with seeds. If you're -- because you get --
10 you can use this for seeds, to start seeds, bring them
11 over.

12 Q So all you're saying is, you can
13 have a lot of clones, or up to the number of holes in
14 that box?

15 A Yeah.

16 Q And then you take your best ones
17 and you put them on the side where you have nine.

18 A Yeah. And then you -- at that
19 point, also, this is a bench light in here. When you go
20 to flowering, you'd want to change that to a high-
21 pressure sodium. It gives you a different light
22 spectrum for flowering.

23 Q So I assume you could have -- if
24 you have a big enough basement, you could have a couple
25 of these, if you have a licence that was bigger than the
26 nine.

27 A Sure. Yeah, you could.

28 Q As a way to do it without having to

1 do any construction or anything to your home.

2 A That would be one way to get it
3 done. You wouldn't need any permits or anything like
4 that. And when you do construction, of course, you do
5 any electrical, you have to hire electricians and
6 construction people, take out permits with the city.
7 This is one way to get around it.

8 Q So could you have something like
9 this in a space in a condo, or an apartment, or a small
10 space, without any risk to anybody else?

11 A Absolutely. Actually I've made
12 videos to this effect, where we went into the guy's
13 garage and he had it in his carport, just right next to
14 his freezer. No smells, no problems.

15 Q Okay.

16 A Nobody knew.

17 Q All right. Back to your -- I guess
18 maybe -- is finished. Okay.

19 Okay. So, continuing, then, with your
20 affidavit, the next heading you have is "Light". And
21 I'll just take you back to the previous heading was
22 "Basic information". In your first paragraph, you said
23 three basic needs: light, water, and nutrients.

24 A Yeah.

25 Q And that's -- so you've divided,
26 then, your affidavit into those categories?

27 A Yeah.

28 Q So we first, starting at paragraph

1 11, you have the issues of light that you discussed
2 there for outdoor, greenhouse, or indoor.

3 A Mm-hmm.

4 Q And you talk on the next page about
5 the lights, and the different spectrums and ballasts and
6 so on that are used.

7 A Yeah.

8 Q To different effect. Then the next
9 section is to deal with water, and what -- obviously
10 watering, you need water for plants.

11 A Mm-hmm.

12 Q But I see you have a system where
13 there's no water running to your room whatsoever. Can
14 you briefly explain that?

15 A Well, actually the outbuilding that
16 I've constructed for growing cannabis has no water
17 source. And it has no in or out vents, so I exchange
18 absolutely no air with the outside. And we have giant
19 commercial dehumidifiers. And what happens is that we
20 collect all the condensate from the dehumidifiers and
21 from our air conditioners, and we feed it back to the
22 plants. So I had no need of city water. I top it up at
23 the end of the crop, or at the beginning, but that's
24 about it. It's a very efficient way to grow cannabis.

25 Q So you just take the water from the
26 air conditioner, use that to water your plants.

27 A That's correct. What happens is in
28 the air handler, there is a B coil. And in that B coil,

1 you get a lot of condensate. And actually to add to
2 this, I put UVC light in so the water is actually
3 treated by UVC so there's nothing alive in it. And the
4 UVC also treats the air. So if there is any moulds, or
5 any spores or pathogens, they get eliminated right away.

6 Q UVC, ultraviolet, is that what --

7 A Ultraviolet C, yes.

8 Q And that -- so there's no
9 connection between the watering of your plants or
10 anything like that, and any city water or other sources
11 of water in terms of going backflow or anything like
12 that?

13 A Absolutely not. We're not draining
14 the system. Actually because we're using recovered
15 condensate, we're eliminating chloramine or chlorine in
16 our water.

17 Q All right. The next heading is
18 nutrients and you cover that between paragraphs 18 and
19 28. Can you give us a brief synopsis of that?

20 A Well, just like people, plants need
21 nutrients to live, and this is just the basic nutrition
22 of what the plants need. There is three macro-
23 nutrients. Everybody probably already knows this. And
24 that's what you usually see on the fertilizer. You see
25 what's called NPK. Nitrogen-Phosphorous-Potassium,
26 those little three numbers. Sometimes you see them as
27 20-20-20. That's what that's all about.

28 As well you need secondary macro-

1 nutrients which are sulphur, magnesium, and calcium.
2 And then there's eight other nutrients that are needed
3 as well, and nine amino acids.

4 Q A lot of this is available through
5 various stores, or do you have to make it yourself for
6 these mixtures or --

7 A You can make it yourself. Very
8 difficult. A lot of the stuff is available in garden
9 centres and hydroponic stores all over Canada.

10 Q So the nutrients you talk about,
11 are they different than what you'd use for other plants
12 or are they the same?

13 A Well, it's funny. The plants, when
14 it comes to like nutrients, some nutrients are not good
15 for growing cannabis. For example, Miracle Gro.

16 Q Some of the -- you're talking about
17 what's sold in the stores?

18 A Yes, like some of it. Some it's
19 good for cannabis. Now, the problem with Miracle Gro is
20 it's very high in nitrogen. That's ammonium nitrate,
21 which is very hard to bleach out of the plant, and you
22 get residual at the end and it makes it hard to burn
23 because you actually see it is bone dry. It will light
24 your cannabis up and it'll keep going out and it'll be a
25 hard black ash. That's because you use cheap
26 fertilizer.

27 We use a lot of chelates for pelates and
28 it's very water soluble. So when you go to leeching

1 period it easily washes away and you have a nice clean
2 product at the end.

3 Q Okay. At the bottom of page 5,
4 paragraph 28, we refer to the Green Planet Catalogue
5 2015, and over onto the next page plaintiff's document
6 82, that's a catalogue that contains information about
7 these nutrients, is it?

8 A Yeah, actually the Green Planet
9 Catalogue has all kinds of nutrients and good gear for
10 growing cannabis.

11 Q Okay, I'll deal with some of the
12 other equipment in a moment, but particularly under this
13 nutrient section you're saying it also has all of these
14 various nutrients for sale, is that right?

15 A Absolutely, yeah.

16 Q Okay. If we move on the next
17 heading is "Hazards", and we talked a bit when you were
18 showing the demonstration, in paragraph 29 you refer to
19 what you understand the primary hazards to be?

20 A Yeah.

21 Q And so you've said fire, mould,
22 theft, and odour?

23 A Yeah.

24 Q And so then the rest of the next
25 portion of your affidavit, first you deal with fire?

26 A Yeah.

27 Q Brief synopsis?

28 A Well, you know, I recommend it in

1 my own grow-op. We have smoke detectors. We have fire
2 extinguishers. All our wiring and all our electrical is
3 CSA approved, all installed by a certified electrician.
4 We took out permits with the City. They came and
5 inspected everything, and actually the head inspector
6 came over a year after we built our structure, and I was
7 in flower and he couldn't smell anything and I asked
8 him, "How safe is this?" and he said, "This place you
9 built is safer than your house."

10 Q "Mould" is the next -- brief
11 synopsis about the mould topic?

12 A Mould is very undesirable,
13 especially on your cannabis. And we live in a
14 rainforest here and there is a lot of mould in houses.
15 Typically in our grow rooms we like to keep our humidity
16 about 40 percent, 40 to 50 percent humidity, which is a
17 lot lower than most households. Usually on the average
18 here in Vancouver it's 60-80 percent and much higher if
19 it's raining. So I think we make a good environment
20 that is resistible. As well, my walls are painted with
21 a mould and mildew resistant paint.

22 Q Okay. You don't have to get into
23 great detail.

24 A Oh, okay.

25 Q Give a synopsis for the -- so we
26 can -- you mentioned UVC lighting in paragraph 33 there
27 under this "Mould" section. That's the same as what you
28 were talking about before?

1 with the outside. I figure if you are exchanging air
2 with the outside, you are taking a risk of having a
3 smell go outside. So if you can keep it self-contained
4 it's way better.

5 Q Is it more expensive to do that
6 than the charcoal filters?

7 A Absolutely, it's way more expensive
8 because you have to air condition your environment.
9 Because a lot of the time, when they are exchanging air
10 with the outside, they are doing this to cool, and if
11 you are running an air conditioner, you are not
12 exchanging any air to the outside. In fact, I went an
13 extra step and in my own grow it's solid concrete, and
14 then we have spray urethane insulation, which allows
15 absolutely no exchange of air to the outside, and we
16 have limited the amounts of doors and windows in our
17 building. This helps as well.

18 Q The next heading is "security" and
19 you discuss that there, from paragraph 37 through 40.
20 And maybe just a brief synopsis of again what you do in
21 terms of -- and you mention it I think at 40, paragraph
22 40.

23 A Well, I think it would be
24 reasonable to have three levels of security. I myself
25 have a fence, with an electronic gate to close ourselves
26 in, or to keep people out. We have security cameras.
27 We have alarms with panic buttons, that we can push the
28 panic button, and in four or five minutes we will have

1 the police attend. Also, I have a couple dogs that are
2 pets, but they work as a deterrent. I've never had a
3 problem myself with somebody breaking into my house,
4 breaking into my grow, or even coming into my yard ever.

5 Q Okay. At the top of page 9,
6 reference is made to Green Planet Catalog again, and
7 their security systems, and that is our document 82, and
8 I take it that's the same catalog we just referred to
9 before. It just happens to have now a section on
10 security, which would be what, cameras and things like
11 that?

12 A Cameras, alarms, all this -- I
13 think this is necessary.

14 Q Next, carbon dioxide. Briefly tell
15 us about that.

16 A Well, carbon dioxide is necessary
17 for photosynthesis in plants, and in a closed room
18 environment, there is no source of CO₂, so we use tanks.
19 I've found tanks to be a -- good compressed CO₂ the
20 safest way to deliver it. A lot of people use burners,
21 which is a very cheap way. Not a big fan, because it is
22 an open flame. Also there is gasses that come off of
23 the burnt propane which the plants don't like. So, I'd
24 opt for bottles.

25 Also there is boost -- these bottles,
26 they are called Boost Bottles, and they have I believe
27 baking soda and vinegar in it, something like that, and
28 they release CO₂. There is also boost bags that you can

1 get, which have some sort of fungus which produces I
2 think -- mushrooms which produce CO₂, which takes no
3 power. And there is a few of these products available,
4 a few different ways to get CO₂.

5 Q Page 22, Exhibit D, that is a CO₂
6 boost bucket.

7 A Yes.

8 Q Is that the sort of thing you are
9 talking about?

10 A Yeah, I've tried one of those out,
11 It's good for maybe a closet grow, or a very small grow,
12 and it just keeps generating CO₂. It has a pump on the
13 top, which helps gets the CO₂ out of the bucket and to
14 the plants.

15 Q Next section, paragraph 45 and 46,
16 to do with fire and smoke. A brief comment on that?

17 A Sorry, I lost you here.

18 Q Back to page 9 of the affidavit,
19 paragraph 45.

20 A 45. Yeah, I have smoke detectors
21 hooked up to monitored alarm systems, so if -- that will
22 trigger my alarm, and within five minutes they'll have
23 somebody at my house.

24 Q Exhibit E, if we go back to the
25 exhibits at the end of your affidavit, it's page 24 of
26 the -- it's in the top left corner of that page.

27 A The Flame Defender.

28 Q Yeah, what is that?

1 A -- familiar with this item. I
2 actually made a video about this, and this is great.
3 This is a very similar to a haylon system that they have
4 in kitchens, and if there is a fire, it will release,
5 like it is a big canister, and it will release fire
6 retardant onto whatever is burning.

7 Q Does it damage anything?

8 A From what I heard, no. But I've
9 never seen one in action. I've -- but --

10 Q So if I understand it correctly, if
11 a fire starts, it kicks in?

12 A Yeah, it's a fire suppression
13 thing. It works on temperature. It hits a certain
14 temperature, it will release its entire contents.

15 Q So my --

16 A Very similar to a fire suppression
17 system that they use in most commercial kitchens.

18 Q So it might not actually be a fire,
19 it's just the temperature reaches a level that's set
20 that's too high, and then this will react? Is that the
21 idea?

22 A I suppose that's possible. Never
23 seen it myself, but --

24 Q All right. We refer at paragraph
25 45 on the next page again to the plaintiff's document
26 here, 83. A power box system. And a brief description
27 of that?

28 A A power box system is something

1 that's actually commercially available from Green
2 Planet. And basically it controls your lights and, you
3 know, for your light cycle. It also, if there is a heat
4 problem, it has a built-in thing, we call it a "Murphy
5 switch", if the heat gets too high it will just kill
6 your lights, which will save your crop, so it doesn't
7 roast them. If you can envision this, if you don't have
8 cooling and you have a bunch of lights in a grow room,
9 it's like an Easy Bake oven. Remember those things when
10 we were kids? The same thing will happen, but on a
11 larger scale.

12 Q Right. Next section is "Costs",
13 paragraph 47. And there again we refer to Exhibit C,
14 the bloom box.

15 A Yeah.

16 Q And give us a quick synopsis of
17 what you're saying there.

18 A Well, you know, I think it's --
19 when it comes to costs, it really depends on how much
20 money you have available to you. If you're a patient
21 with limited resources, you can still grow cannabis in a
22 cost-effective way. But I think it's just like building
23 a car or building a house. You can just keep going on
24 and on and on and adding things, and technology, and it
25 really depends on what you want to drive. If you want
26 to drive, you know, a bicycle or a Ferrari. So that's -
27 -

28 Q So would it be fair to say that the

1 bloom box is sort of a low-end cost, and you can just
2 improve upon that and build a room that's like that,
3 that costs you quite a bit of money.

4 A Absolutely. Yeah, that's a good
5 entry-level unit for somebody that's -- start growing in
6 the apartment.

7 Q All right. Then you talk at 48
8 about other equipment and accessories available. And
9 this is where we refer to at the bottom, at plaintiff's
10 documents 86, and as I understand it, that's another
11 catalogue that contains information about all this other
12 type of equipment that you've referred to there.

13 A Yeah.

14 Q And basically again you're talking
15 about lights, CO₂ things. There's reference to the C
16 vault. What's that?

17 A C vault is a storage unit for
18 cannabis. I tested this extensively and it is a good
19 way -- probably one of the best ways to store your
20 cannabis. But, I find for myself, cannabis is best when
21 it's fresh. Frankly, I think this is kind of like, you
22 know, any vegetable that's perishable. So it's best
23 when it's fresh, when the terpenes are more available,
24 and as time goes on, these terpenes diminish and go
25 away, and it's less effective as medicine. So I think
26 fresh is best.

27 Q All right. And then finally at 49
28 through 51, you set out your conclusions. And just

1 before I ask you to very quickly give us a synopsis
2 there, just to point out, you've also done an expert
3 report which starts at page 14 and is Exhibit B.

4 A Okay.

5 Q And basically you repeat some of
6 your opinions there. But also incorporate references
7 back essentially to your affidavit. Is that fair?

8 A Yes.

9 Q Okay. So to go back to your
10 affidavit, conclusions. What are your conclusions?

11 A Medical cannabis can be produced
12 indoors in a residential setting safely and
13 economically.

14 MR. CONROY: Would you answer any
15 questions that my friend might have, please.

16 THE WITNESS: Sure.

17 **CROSS-EXAMINATION BY MS. WRAY:**

18 Q Thank you, Mr. Colasanti. I want
19 to let you know my name is B.J. Wray. I'm with the
20 Attorney General of Canada, and I'm going to be asking
21 you the questions on cross-examination today.

22 A Okay.

23 Q There are two volumes of material
24 that you'll need in front of you. The first is a green
25 one. It's volume 11 of the Joint Book of Documents.
26 And I will at times refer you to that. It contains some
27 documents that I'll be putting to you.

28 A I'm already lost here.

1 Q It's just if you have volume 11 in
2 front of you. That's the one you're looking at right
3 now. Perfect.

4 A Okay.

5 Q And there is also a grey book.

6 A Oh.

7 Q And that's your affidavit.

8 A Okay.

9 Q Okay.

10 A I'm good now.

11 MS. WRAY: And for the court, his
12 affidavit is volume 1.

13 JUSTICE: Yes.

14 MS. WRAY: Of the expert reports.

15 Q Mr. Colasanti, just to begin, I
16 noted that when you began your testimony today, and you
17 were referring to your affidavit, you used the pronoun
18 "we", and you said, you kept saying, "we are saying
19 here," and "we are saying here." I just want to clarify
20 this is your own personal affidavit, you have written
21 this affidavit yourself?

22 A Yes.

23 Q Thank you. I understand that you
24 have been a producer of medical cannabis under the *MMAR*
25 since 2001?

26 A That's correct.

27 Q And you have had an authorization
28 to possess since that time as well?

1 A Correct.

2 Q And you have a personal production
3 licence, yes?

4 A I do.

5 Q You have never had a designated
6 person production licence?

7 A No.

8 Q Okay. Now, over the years, the
9 amount of marijuana you have been authorized to consume
10 has increased, hasn't it?

11 A It has, but actually the amount of
12 cannabis I smoke hasn't really changed. Just my licence
13 increased. Initially my first doctor gave me a 5 gram
14 licence, and I told him, "Hey, I smoke way more than 5
15 grams" and he said "Well, that's all I'm comfortable
16 with giving you at this time." And it got increased as
17 years went by, as we educated the doctor about the
18 benefits of using cannabis.

19 Q So, you were using more than 5
20 grams a day of medical marijuana when you were first
21 authorized for only 5 grams?

22 A That's correct. Some days I would
23 have high pain days, and 5 grams was not enough
24 medication to deal with my pain, so I needed more.

25 Q And where would you obtain that
26 extra marijuana from?

27 A I grew it.

28 Q Well, we'll get to this a little

1 bit later on, but I'm sure you are familiar that the
2 *MMAR* sets out the number of plants that you may grow --

3 A Yes.

4 Q -- depending on how many grams you
5 are authorized to consume.

6 A Okay.

7 Q So, can I assume you were over
8 producing then at that point?

9 A No, I was not over producing. You
10 don't have to harvest all your plants, and there is
11 nothing laid out about the size of your plants. So, I
12 would just use what I would consider what I needed. I
13 did not wish to break any laws.

14 Q So you could grow extremely large
15 plants to service your needs then?

16 A Yeah, I prefer extremely large
17 plants, it's a lot less work, they don't need as much
18 attention. I only water the big plants every two or
19 three days, as opposed to small plants which usually
20 need water every day.

21 Q Okay, so just to clarify, you were
22 at 5 grams, but now you are at 20 grams a day, you have
23 been authorized to use?

24 A That's correct.

25 Q Okay, and that works out to 98
26 plants that you are currently authorized to grow?

27 A Yeah, and this is the funny thing
28 is, I actually don't grow all of my 98 plants at once.

1 Q How many do you grow at once?

2 A Usually a couple dozen, 24.

3 Q And that is because you grow them
4 extraordinarily large so you don't need to grow 98?

5 A Well, yeah. I feel my needs are
6 being taken care of with that. I don't need to grow any
7 more.

8 Q Now, you are not a commercially
9 Licenced Producer under the new system, are you?

10 A I'm not, but I do consult for a lot
11 of LP applicants.

12 Q So, your current licence entitles
13 you to grow marijuana just for your personal
14 consumption?

15 A That is correct.

16 Q And your licence doesn't allow you
17 to sell your marijuana?

18 A No.

19 Q And it doesn't allow you to share
20 your marijuana with others?

21 A Well, that is a grey area. If
22 you've seen our community, everybody shares medication.

23 Q How many hours a week do you think
24 you spend cultivating or tending to your plants?

25 A I've never counted the hours up.
26 It is a full time job. Usually the first half of my day
27 is taken up with my plants, and then the second half of
28 my day I go to my business, and I do my business. So,

1 that is how I divide my life up.

2 Q So a half of every day is spent
3 tending to your plants?

4 A Dedicated to my plants. That's
5 seven days a week, because it is not like working a job
6 where you go home Friday night at 6 o'clock and come
7 back Monday at 8:00 A.M. It is not like that. It is a
8 full time endeavor. And the thing about growing
9 cannabis, is if you drop the ball, anywhere along the
10 line here, plants die, you don't get a harvest, you have
11 to start all over again. And when you are growing
12 bigger plants, it usually takes four to five months to
13 do a crop, as opposed to two months, so you want to be
14 on it.

15 Q Now, you discussed the topic of
16 mould in your affidavit and you went over that this
17 morning as well.

18 A Yeah.

19 Q I just want to ensure that I'm
20 clear. You don't have a degree in botany.

21 A I don't have a degree in botany,
22 no.

23 Q Or plant science.

24 A No.

25 Q Or chemistry.

26 A No.

27 Q No degree that has anything to do
28 with mould.

1 A No.

2 Q And you haven't conducted any
3 clinical research into the development of mould on
4 marijuana plants?

5 A No.

6 Q And you haven't published any
7 articles on mould in marijuana plants?

8 A No. I haven't had problems with
9 mould, so.

10 Q But you would agree, and in fact
11 you've said this today, that mould is not desirable in a
12 medical marijuana cannabis production facility.

13 A Absolutely. I went into a place
14 called Tweed which is an LP and I've seen powdery mildew
15 on their plants, which I don't have any on my plants.
16 So I think that's important, that these LPs, I really
17 feel couldn't grow better cannabis than myself, from
18 what I've witnessed.

19 Q And you would definitely agree then
20 that the building structure itself should be free from
21 mould.

22 A Absolutely.

23 Q So I take it that it's important as
24 a cultivator to control the level of humidity in your
25 growing operation.

26 A Yes. We use commercial
27 dehumidifiers for that.

28 Q And that as a general proposition,

1 the more marijuana plants you have the more humidity
2 will be produced.

3 A Well, that really depends on size,
4 strain. There's all kinds of factors.

5 Q Okay.

6 A And actually the amount of foliage
7 even will produce humidity. So yeah, there's a lot of
8 factors in that one.

9 Q So you really have to keep tabs on
10 the humidity.

11 A Absolutely.

12 Q And you use quite a complex system
13 to do that, don't you?

14 A I don't think it's complex at all.

15 Q Do you want to explain that to me?

16 A I just use dehumidifiers. That's a
17 -- you can buy these dehumidifiers at Canadian Tire, set
18 them up in your room, and now you're taking humidity out
19 of the air. That's not complicated at all.

20 Q And you measure the levels of
21 humidity.

22 A Yeah, that's again a very simple
23 thing. You can get a thermometer and humidistat, put
24 that on your wall and you know what's going on. And
25 actually a lot of them will record highs and lows of a
26 temperature and humidity which, when you're not there,
27 you can know if there is was a problem. So it's a good
28 thing.

1 Q When you harvest the marijuana bud
2 you have to dry it, right?

3 A That's correct.

4 Q And when the bud is drying it loses
5 a significant amount of its weight in water, doesn't it?

6 A Yeah. Cannabis is about 80 percent
7 water.

8 Q Right. So I've heard figures about
9 60 to 80 percent of the weight of cannabis is lost in
10 the drying process due to the water?

11 A That'd be closer to 80.

12 Q Closer to 80?

13 A At 60 percent your cannabis would
14 be soaking wet and you'd have trouble burning it.

15 Q Okay. And if you don't dry the
16 marijuana properly are you at risk of mould developing
17 on that marijuana?

18 A Yes, you are, and for this I've
19 actually got in line the proper way to trim and dry your
20 cannabis, and it's available to anybody online. If
21 you'd like to watch it it's there for you.

22 Q Yeah. That's right, and you teach
23 cultivators how to dry their marijuana properly, don't
24 you?

25 A I try to teach people how they can
26 do this themselves so they can save a lot of money and
27 not be taken advantage by big companies who want to
28 charge them 10 and 12 dollars a gram. That's

1 ridiculous. That's not compassion. That's not helping
2 anybody.

3 Q I take it you wouldn't want to have
4 a risk of mould developing on your own marijuana.

5 A No.

6 Q And you would want to only ingest
7 marijuana that is free from mould and other
8 contamination.

9 A Yeah, with that being said, I have
10 a friend in this courtroom right now who's purchased
11 from an LP who got a bunch of mouldy weed.

12 Q Now, is mould the only contaminant
13 that can occur on marijuana bud?

14 A Yeah. There's other contaminants,
15 that you can have what's called spider mites. You can
16 have other kinds of bugs, aphids, all kinds of things.
17 Pesticides I think are a problem as well. And I choose
18 myself not to use pesticides or mildewcides because I
19 end up making extracts, and if you're concentrating with
20 THC, if a plant is covered with pesticides now you're
21 making a concentrated pesticide as well.

22 Q What about -- yeah, I think you
23 mentioned insects maybe, mites?

24 A Mites. Spider mites.

25 Q Yeah, okay. What about also heavy
26 metals or other types of contaminants?

27 A Usually those are from cheaper
28 plant foods.

1 Q Okay.

2 A Yeah.

3 Q Have you ever -- sorry, go ahead.

4 A Okay. The plant food that I use
5 and I produce can be easily used on food crops. And
6 actually I just took out a proof of my cloning gel via
7 the Canadian Food Inspection Agency as -- we got the
8 green light, we're good.

9 Q You'd agree that it is possible to
10 test mould, of course -- test marijuana, of course, for
11 mould and other contaminants.

12 A Yes.

13 Q And I'm just curious if you've ever
14 had anything from your crops tested. Have you had your
15 marijuana tested?

16 A Tested some of my cannabis, but not
17 for mold, because we didn't have mold.

18 Q Have you taken it -- sorry, have
19 you taken it to a lab for testing?

20 A Yes.

21 Q Okay, and what were the results of
22 that?

23 A They just gave us THC amounts.
24 Actually we took it, the first time I did it, I took it
25 to BCIT and they had a forensic crime lab set up there,
26 and it is the first time they've actually tested patient
27 cannabis, it was very interesting.

28 Q And were they testing also for the

1 contaminants, such as mould, et cetera?

2 A They tested for -- not for moulds
3 and contaminants, just for heavy metals and --

4 Q Levels of THC --

5 A -- for -- and for potency, that was
6 it, and cannabis profile, all the THC, CBD, CBN, et
7 cetera.

8 Q And did you have a cost associated
9 with that? Or was it something that was done for free?

10 A It was done for free in the
11 interest of research.

12 Q I see. Are you aware of other
13 facilities that do testing for marijuana to either
14 ascertain the level of THC or to ascertain whether there
15 are contaminants?

16 A Yeah, actually, I know of three
17 other labs. Actually, four I think about it, in the
18 Lower Mainland.

19 Q I take it they run on a business
20 model and they actually charge people to test their
21 marijuana?

22 A Yes, you can pay \$75 to \$100 to get
23 a sample tested.

24 Q Would it be ideal, in your opinion,
25 to have the marijuana tested after each crop?

26 A In a perfect world, sure. I don't
27 think a lot of patients could afford to do that, but I
28 don't think it is a bad idea. But you do realize when

1 you do a THC test, you can take a plant, the buds at the
2 top, the buds in the middle, and the buds at the bottom,
3 that is three different readings. It is not going to be
4 -- it is not monolithic.

5 Q I see, so you'd have to have
6 testing of each different level in order to know the
7 different levels in one plant?

8 A Yeah, you know, most desirable buds
9 of course are going to be at the top, and the least
10 desirable are going to be at the bottom, and actually
11 the bottom parts of my plants, this will make you laugh,
12 I just end up cutting them off and throwing them away
13 while they are flowering. We call it lollipopping.
14 This much is missing from the bottom of my plant.

15 Q Right.

16 A And what that does is put all the
17 energy to the tops, and makes better tops.

18 Q Let's just turn now to your
19 discussion of the fire risks associated with growing.

20 A Yes.

21 Q You also have this set out in your
22 affidavit. And I take it that it is your opinion that
23 the risk of fire can be minimized by constructing to
24 building code levels and using certified electricians
25 and things like that?

26 A Yeah. Absolutely.

27 Q Yeah, I mean this seems very
28 commonsensical to me, that if you use the proper

1 equipment and you install it properly with the proper
2 permits and the proper inspections, then the fire risk
3 would be lower?

4 A Yeah. Actually, at the beginning
5 of my cannabis growing experience, we called the city,
6 and they didn't want to issue a permit, the trade people
7 didn't want to take any permits. They just did the
8 work. Then when I sold my house, and I moved to the
9 next one, we demanded our city have some sort of permits
10 and frameworks in, because of me, we got the first one
11 in the Lower Mainland. The first grow-op permit, or
12 cannabis production permit in a residence. And we were
13 inspected all the way along, until the end, and were
14 given the green light. And actually it's funny. They
15 waited for final inspection a year after the building
16 was complete. And the inspector actually came while we
17 were flowering cannabis, and stood in the building and I
18 asked him, "do you smell anything?" He said "no". "Do
19 you smell anything outside the building?" He said "no."
20 And that was our goal, and I passed.

21 Q Now, I take it you had these
22 inspections done, because you yourself are not a
23 certified electrician?

24 A I am not. I prefer calling an
25 expert in.

26 Q Yes.

27 A Power can kill you. I am not
28 comfortable with that, so.

1 Q You don't have formal training in
2 installation of electrical panels or other wiring?

3 A No, I don't.

4 Q So, the views in your affidavit
5 about minimizing the risks of fire, they are really,
6 they're common sense?

7 A Absolutely. Actually, I think I
8 have more knowledge than the average layman, because
9 I've been around this equipment and using it for an
10 extended period of time, and I am more familiar with it
11 than the average person.

12 Q I take it you'd also agree that
13 regular inspections of growing operations would help to
14 ensure that the marijuana is being produced in a safe
15 environment?

16 A Actually I get an annual electrical
17 inspection which I pay for, and they come annually, just
18 to inspect the lines and all the electrical is fine, and
19 they leave. So, I do that already, but they don't
20 inspect the cannabis plants.

21 Q Now that wouldn't be their
22 expertise.

23 A The city doesn't do that, yeah.

24 Q No. That would be another type of
25 inspection that would take place.

26 A I have never seen one of these
27 inspectors, but, you know, I think the cannabis
28 community would welcome one. I don't think it's a bad

1 thing. I don't think people want to do a bad job, or
2 break the law, and having an inspector would be a really
3 good thing. It would actually prevent people from
4 abusing the system.

5 Q Security-wise, you've also talked
6 about the security systems that you've set up at your
7 growing operation. And you've testified in your
8 affidavit that security is indeed a concern because of
9 the -- well, I guess just the value of cannabis.

10 A Well, it's funny. Cannabis today
11 isn't as valuable as it once was, and I think from -- if
12 you've noticed, in the past, there was a lot of grow
13 rips. People used to -- bad people, I'd say, used to
14 victimize other cannabis growers. Because usually
15 cannabis growers don't call the police, and it's an easy
16 crime to do. But what's happened is, the value of
17 cannabis has decreased a lot, that I think most of these
18 thieves have stopped ripping off grow-ops and
19 victimizing patients, and it's easier for them to steal
20 an item like a TV or a car than to grow -- take a grow-
21 up.

22 The problem is when you steal cannabis,
23 okay, now, you can just invite a whole bunch of work.
24 Now you've got to take that somewhere and you've got to
25 process and cut it all. So now you've got a team of
26 people working for hours and hours and hours, and then
27 you've got to dry it, which takes a week, which smells.
28 If you're not -- if you don't have charcoal set up, so

1 it -- there's a lot of problems associated with stealing
2 it and then trying to market it.

3 So it's not as easy a thing to steal as,
4 say, a TV. The TV, if you're going to steal it, I guess
5 you could sell that instantly. There is no processing,
6 there is no nothing. Stealing cannabis, I think, is not
7 a good idea.

8 Q Are you familiar --

9 A We don't like people that steal
10 cannabis either.

11 Q Are you familiar with the current
12 black market price for marijuana?

13 A Oh --

14 Q The range of price.

15 A Yeah.

16 Q And what would you say that is?

17 A Oh, it's about 33 percent less than
18 it was years and years ago, at the beginning of this
19 program. It's fallen to under \$2,000 a pound.

20 Q If you buy in bulk.

21 A So I've heard.

22 Q Mm-hmm.

23 A Which, for me, I still don't want
24 to buy any at \$2,000 a pound. I'd rather produce my
25 own.

26 Q Now, you still, though, have taken
27 steps to ensure that your growing facility is secure.

28 A Absolutely. I think that's just

1 common sense.

2 Q Yes, I agree. And today, you've
3 also said that you would think it's reasonable to have
4 there levels of security.

5 A Sure.

6 Q And --

7 A Or more.

8 Q Or more.

9 A Yeah.

10 Q And your property is fully fenced,
11 it's gated.

12 A Yeah, I live on an acreage. I've
13 got an eight-foot fence all the way around the thing.

14 Q You have security cameras.

15 A I've got security cameras. My DVR
16 records everything for up to a year.

17 Q Mm-hmm.

18 A So we can go back and look at stuff
19 if you want. But I've never had the need to.

20 Q And a monitored alarm system.

21 A We have a monitored alarm system,
22 and we took the extra step, we have a panic button.

23 Q Yes.

24 A So if there is a problem, you hit
25 that panic button, everything goes in alarm. It's like
26 a key fob on your keys. So you press that and help is
27 coming.

28 Q So generally you would certainly

1 agree that people who are growing medical marijuana
2 should take these types of security precautions.

3 A I think that would be common sense.
4 Actually, I think you're required to by Health Canada,
5 to list the security that you have, when you make the
6 application. So even Health Canada suggests you do
7 this.

8 Q Now, we talked about this very
9 briefly at the beginning of your cross-examination. I
10 want to go back to it. It's about the number of plants
11 that get authorized when you get licensed to produce.

12 A Yeah.

13 Q So under the old legislation, the
14 *MMAR*, the number of plants you could produce as a
15 personal producer was tied to your daily authorized
16 amount of marijuana.

17 A Oh, I wouldn't say it was -- you
18 know, I'm a very good grower. Other people might not be
19 able to produce the same amount of cannabis with the
20 same amount of plants, because they're not as good a
21 grower. I think the number that they picked was kind of
22 arbitrary.

23 Q So what you're referring to is that
24 there was actually a formula in the old regulations that
25 determined the number of plants you could grow, based on
26 the amount of marijuana you were authorized to consume
27 every day.

28 A And that formula made very little

1 to no sense to me, okay?

2 Q Okay. And would you agree
3 generally that under that formula the higher your daily
4 dose of marijuana the higher the number of plants you'd
5 be authorized to grow?

6 A Yes.

7 Q I'm not sure if you're aware of the
8 specifics of the formula, so I'll just ask you. Are you
9 aware that that formula was based on an expected 30 gram
10 yield from each plant?

11 A Well, I'd say that's very low.

12 Q Okay, so you are not aware that
13 that is what the formula was based on?

14 A No, but you've realized that these
15 guys are probably doing a crop every two months. I
16 prefer to have a longer cycle, four or five month cycle
17 to produce my medicine. It just works better for me.
18 It is easier in the long run. Like I said earlier, it's
19 harder to care for a lot of smaller plants than fewer
20 big plants. But you have to nail it, because if you
21 have a mistake, if you're only growing 24 plants and a
22 few die, that's a lot of cannabis you're losing.

23 But not all plants produce the same
24 either. There are plants that are very productive, and
25 there are plants that you know, that are very potent but
26 produce very little. I found myself that works for
27 myself, it's usually these plants that don't produce
28 much are the ones I like. So, because of that, I keep

1 trying new, different -- I keep trying new different
2 seeds and different cannabis, just try to be more
3 efficient.

4 Q Well, that is an interesting point
5 about the cycles, because the formula from the old
6 legislation is also of course based on three growing
7 cycles a year as well.

8 A Yeah.

9 Q So, a 30 gram yield per plant, and
10 three growing cycles, that was the old formula.

11 A You know what, those must be really
12 bad growers, if they are taking three months to grow 30
13 grams of a plant, they should just buy it, they should
14 quit now.

15 JUSTICE: This isn't a comedy show.

16 MS. WRAY:

17 Q So, in your case, you are currently
18 authorized to consume 20 grams a day, that's what your
19 licence says?

20 A Yes, but I use way more than that
21 some days.

22 Q Yes. And under the Health Canada
23 formula, your personal production licence has authorized
24 you to cultivate 98 plants?

25 A That's correct.

26 Q Okay, but we've already heard from
27 you that of course the size of plants can vary
28 dramatically.

1 A Yes, and how much the yield can
2 vary as well.

3 Q Exactly, so --

4 A And actually even the lengths of
5 flowering time. Some plants are done in six/seven
6 weeks, some take 16 weeks, just to flower, not including
7 vegetative time. So I think the guideline that Health
8 Canada put out doesn't really work, especially if you
9 are growing Sativas.

10 Q Let me take you to one of the
11 documents in the green book.

12 A Okay.

13 Q Okay? This is at tab 17, it's
14 about third of the way through the book, Tab 17?

15 A I'm sorry, BJ, I can't find it.

16 MS. WRAY: Maybe Christian could
17 assist? Thank you.

18 JUSTICE: Call out a page?

19 A Here is 16, but no 17.

20 MS. WRAY: It is tab A; 17 - A. There
21 are no pages -- 4081 is the page number.

22 A Okay, it's not just me, you're
23 having trouble too.

24 MS. WRAY: 4081.

25 JUSTICE: Okay.

26 MS. WRAY:

27 Q Thank you. Now, Mr. Colasanti,
28 this I take it is a screen shot of one of your websites

1 called Urbandgrower.com?

2 A Yeah, actually, that is not my
3 website, but it is a screen shot of me.

4 Q Okay, you are the Urban Grower?

5 A I have been referred to that, yes.

6 Q And this is not your website,
7 Urbangrower.com?

8 A Not my website, no.

9 Q Okay. But that is a photo of you
10 in the left-hand side?

11 A That is a photo of me, yes.

12 Q And with the -- underneath the
13 words "the urban grower", you see there is a smaller
14 caption?

15 A Yeah.

16 Q And that says, "The only grow show
17 that teaches you to grow 2 plus pounds per light".

18 A That's correct.

19 Q Could you explain to the court what
20 that means?

21 A Well, I think people should try to
22 grow as efficiently as they can. And if you can get
23 bigger yields with, you know, less resources and you can
24 maximize your gram per watt, great. But as I said
25 earlier, what I found out is that these -- because this
26 statement is from a long time ago. This is from 2004.
27 What I've learned since then, that not all plants
28 produce the same, and the ones that I actually choose to

1 smoke, the high potency ones, they are not productive.
2 So, yeah, I do believe in being as effective and
3 productive as you can. I don't see a problem with that.

4 Q And that is something that in fact
5 I would assume you pride yourself on being able to teach
6 others --

7 A Yes.

8 Q -- is how to grow those amounts.

9 A Yeah.

10 Q Yes. I'm wondering --

11 A Just to grow, period. You know,
12 really, amounts are irrelevant. I think it's -- I want
13 to show people how to grow.

14 MS. WRAY: I'm wondering if we should
15 be now marking these as exhibits as well. I don't think
16 we've marked any of these documents from the joint book
17 that are being put to witnesses yet. I'm not sure how
18 the court wants to deal with that, but I would suggest
19 it would be the next exhibit.

20 A Here's a challenge, trying to get
21 two pounds out of one of those grow boxes. Not
22 physically possible.

23 JUSTICE: Do you have any --

24 MR. CONROY: I think of what we've
25 done in the past -- we've overlooked putting them in
26 then in each --

27 MS. WRAY: No, I don't think we've
28 actually encountered a situation where anyone has had to

1 go in yet.

2 JUSTICE: Everyone stayed with their
3 own documents.

4 MS. WRAY: Yes.

5 JUSTICE: And so that was a little
6 easier. This is taking somebody else's document and
7 putting it to the witness. Now, presumably everybody is
8 going to be called. This will be in evidence. But if
9 you want to mark it so that it's a little easier to
10 follow, I'm content with that.

11 MS. WRAY: Well, my understanding is
12 that these documents are actually not in evidence at
13 this moment, until we mark them as exhibits, because
14 they are documents that are being put to other
15 witnesses.

16 JUSTICE: All right. We'll make it
17 simple. We'll mark that one as an exhibit, then.

18 MR. CONROY: The only point I'd make
19 is that it's not his website. But it has been put to
20 him, and he has answered some questions.

21 JUSTICE: Yes. And so that way we'll
22 be able to identify in the record --

23 MR. CONROY: Thank you.

24 JUSTICE: -- what it was that was put
25 to the witness, specifically.

26 MR. CONROY: But it doesn't
27 necessarily make the entire document evidence.

28 JUSTICE: No. I would -- all it shows

1 is what was here and what he commented upon.

2 MR. CONROY: Yes, that's good. All
3 right.

4 JUSTICE: So we'll make that an
5 exhibit and we're, what, up to Exhibit 8?

6 **(PAGE 4081 OF TAB 17 MARKED EXHIBIT 8)**

7 MS. WRAY: Exhibit 8. Thank you.

8 Q Now, in your affidavit, and today
9 in your testimony as well, you have said that the
10 primary determinants for the overall yield of a plant
11 are the lighting and the physical space.

12 A Well, those are only two
13 parameters. I think there's more to it. There is
14 strain, whether it's an *indica* or *sativa*, genetics,
15 plant food, growing style. There's a lot of factors.

16 Q Well, let me just take you to your
17 affidavit. That again is in the joint book of experts,
18 volume 1, tab 2. And I'm looking specifically at
19 paragraph 10 of your affidavit. Do you have that, Mr.
20 Colasanti?

21 A Yeah.

22 Q Okay. And at the outset of
23 paragraph 10, you talk about the primary determinants
24 being lighting and physical space, and then you discuss
25 exactly what you just did --

26 A Yeah.

27 Q Which is, it depends on the
28 strains. And then you carry on to say, "for example,

1 assuming a production site that is 200 square feet with
2 6,000 total watts of lighting" --

3 A Mm-hmm.

4 Q -- "it is possible to produce the
5 same overall quantity of cannabis from 6 plants as it is
6 from 600."

7 A That's correct. I've seen that
8 with my own eyes.

9 Q So hypothetically, then, an
10 individual who has a production licence for six plants
11 could be growing as much marijuana as you could produce
12 with a licence for 600 plants.

13 A Yeah, but the growing styles are
14 completely different. See, what they're doing with the
15 600 plants is, you're doing what's called a quick flip.
16 They just take clones, they plant them, they flip them
17 two months later. You get a crop. You're getting six
18 crops a year. I don't prefer to grow this way. It's a
19 lot of work. I prefer to grow bigger plants. It's way
20 less work. And you get the same outcome. So it's --
21 that's just -- as a patient, because I haven't hurt
22 back, it's a lot easier for me to do that.

23 Q And you do agree with the general
24 proposition that someone with a licence for six plants
25 could grow enough marijuana as if they had 600 plants.

26 A Depending on the strain, yeah. And
27 the size of plants. Plant size has a lot to do with it.

28 Q Well, talking about plant size,

1 I've heard the term "monster plants" used in the past.

2 A Yeah.

3 Q And these very very large marijuana
4 plants, is that -- we could describe them as monster
5 plants?

6 A If you like. I don't think it's
7 illegal to grow a big plant, is it?

8 Q Tell me how tall some of these
9 plants can grow.

10 A Well, in my own space I've had them
11 hit the ceiling and start growing buds along the
12 ceiling.

13 Q How tall is your ceiling?

14 A Nine feet.

15 Q And as you've already said, these
16 monster plants can produce quite significant yields of
17 marijuana.

18 A Yeah. And you know what I've
19 learnt? Each and every time I've grown something that's
20 that big, I don't usually like the cannabis. The last
21 time I did was a Kali Mist. I took photographs of it
22 growing on my ceiling. This is a long flower sativa.
23 After the 12 weeks of flowering was done I tried the
24 cannabis. It didn't work for me. I had to make an
25 extract out of it and throw the rest away. It was just
26 not suitable. But I'm not saying that it would work for
27 another patient. Another patient might use that and get
28 a lot of pain relief from it, but for myself it didn't

1 work.

2 Q Do you think it's -- I know this
3 will be variable, but could you quantify on average the
4 amount, or like the number of grams of marijuana you
5 could get from one of these 9-foot tall plants?

6 A Well, personally I've seen up to 3
7 pounds and I've seen as little as a quarter pound. So
8 it really depends on strain.

9 Q Variable.

10 A Yeah.

11 Q Now, we've already talked a little
12 bit about the growing cycle, and I take it of course
13 that growing cycles can be manipulated by growers. You
14 can use lighting to manipulate the length of time it
15 takes for a plant?

16 A How so? A plant usually --
17 different strains require different amounts of flowering
18 time. You can't really manipulate it. You just, you
19 know, if the plant needs 12 weeks you give it 12 weeks.
20 You don't speed it up.

21 Q The growing cycle is dependant on
22 the strain now.

23 A Absolutely. If you're growing a
24 sativa they have a tendency to take a lot longer to
25 flower out.

26 Q Now, you've already testified that
27 you use your experience as a marijuana grower to help
28 others to grow their marijuana.

1 A That's my duty.

2 Q Okay. So I take it a lot of people
3 have come to you for advice about how to grow their
4 marijuana?

5 A Hundreds.

6 Q And you've provided them with
7 instructions?

8 A I've given them instructions, made
9 videos for them. I've given them plant nutrients. I've
10 given them the best support they can get. I've done a
11 lot of coaching. And a lot of these people that I've
12 coached, you can see them on my website and on YouTube.
13 I've made videos of them and you can see there's
14 patients out there growing safely and growing their own
15 cannabis at home. No problem.

16 Q It can take some time to learn how
17 to grow efficiently and properly and safely, can it not?

18 A I can speed that up a lot. If
19 somebody is there to show you, you learn a lot faster.
20 You don't learn through trial and error. I had to learn
21 myself through trial and error. I tried things, didn't
22 work out all the time. So we can minimize that with a
23 new grower.

24 Q So if they have a mentor like you
25 it could be minimized.

26 A I think so. You know what? I wish
27 I had somebody like me when I started growing. It would
28 have helped.

1 Q And there is, as you have just
2 said, there can be a lot of trial and error when it
3 comes to the right strain for you.

4 A Yeah. Actually most patients
5 usually go on a journey of finding the right cannabis
6 for pain relief. It's different strains for different
7 brands. What works for myself may not work for you or
8 for somebody in the back of the courtroom. Some people
9 have similar tastes in cannabis but a lot of it really
10 depends on the person.

11 Q And for you, if you've grown a
12 particular strain, you said that if it doesn't work then
13 that's a loss to you. You'll get rid of those plants.

14 A Yeah, usually what I do is I'll
15 tumble it to reap the triclones.

16 Q Sorry, can you explain that? I
17 don't know what that means.

18 A We have a tumbler with a mesh
19 screen on it, and just by agitating it all the triclones
20 fall off so it's not a waste. So we're taking the
21 medicine from it. Or we can make water hash from that.
22 We could bake. So it's not a complete waste.

23 Q You won't grow those again.

24 A I won't. I usually at that point,
25 if I have any clones I'll just throw them away. And you
26 know what? This is something that every patient goes
27 through. They'll try different strains until they find
28 the one they like.

1 Q Let's go back to the green book,
2 same place we were before, tab 17. I believe this time
3 it's 17B, which is page 4082.

4 A Yes. This is from my website
5 *urbangroweronline*, I do recognize it.

6 Q Okay, so this is indeed your
7 website, and your website is called
8 *urbangroweronline.com*.

9 A That's correct.

10 Q Okay. And so this is actually an
11 image then, a screenshot of many products that are sold
12 -- or a few products that are sold on your website?

13 A Yeah.

14 MS. WRAY: Could we have this then
15 marked as Exhibit 9?

16 JUSTICE: Yes.

17 **(URBANGROWERONLINE.COM WEBSITE DOCUMENT MARKED EXHIBIT 9)**

18 A I think my cloning gel is on here
19 too.

20 MS. WRAY:

21 Q Yeah. No, I have looked around, of
22 course, on your website to look at all the products that
23 you're selling, and I looked over -- you see on the
24 left-hand side of the page you have a list of the types
25 of products that you sell?

26 A Actually I don't personally sell
27 these products. What these are are vendors that are on
28 the website that sell them.

1 Q I see.

2 A I don't have a problem with any of
3 these products being sold. The one product is produced
4 by me, that Rainless Roots. But again I'm not the end
5 seller. It's being retailed by somebody else, on my own
6 website, though. So I don't take care of shipping or
7 anything like that.

8 Q And in order to become a vendor on
9 your website then, do they pay you a portion of their
10 profits, or how did that work?

11 A No, no, they just contact me and
12 you can sell things on a website. I've got no problem
13 with that.

14 Q Okay, and so they just do that for
15 free?

16 A Yeah.

17 Q Great.

18 A You know, my website is actually
19 put up for the community. It's not something I make
20 money from. I try to provide a place for other like-
21 minded people to share things, and that's what
22 *urbangroweronline* is. They can share pictures, they can
23 blog, they can chat amongst themselves.

24 Q Okay.

25 A And actually I have an app which
26 you can take a picture of your cannabis plant if you
27 think you have a problem. I'm the only person in the
28 world that has this app, and you can put it on my

1 *urbangroweronline* and within minutes you'll probably
2 have two dozen people, you know, give you their opinion
3 on what's wrong with your plant. So it's like a
4 communal resource.

5 Q So am I correct then that the only
6 product you sell personally on your website is Remo
7 Nutrients?

8 A Remo nutrients is what I own.

9 Q Remo, sorry.

10 A Yeah. But I don't personally sell
11 them on my website. I let one of my retailers do it.

12 Q You make a profit from the sale of
13 those nutrients?

14 A I do. So that's one item on this
15 page. Nothing else.

16 Q Okay. You have described briefly
17 when you were showing us the grow box, that your
18 nutrients are designed to help clones to root? Is that
19 correct?

20 A The cloning gel is for --

21 Q The cloning gel.

22 A Yeah, that's for rooting.

23 Q So you also sell cloning gel.

24 A Yeah.

25 Q And that's your own product?

26 A That is my product.

27 Q So in addition to the nutrients you
28 have is cloning gel that you also sell.

1 A Yeah, I have eight plant products
2 that are now available to anybody if they want them.

3 Q Have you seen that business grow
4 over time, your business of selling these plant
5 products?

6 A Pardon me?

7 Q Has your business grown over time?

8 A Yes. Yeah, from last year to this
9 year the growth has just been crazy. I went from
10 working in my basement at my house to an 11,000 square
11 foot manufacturing facility in Maple Ridge, which
12 hopefully by the close of the year I can hire 40 people.
13 Right now we're at five.

14 Q Do you know how many users of
15 medical marijuana, or how many cultivators of medical
16 marijuana are using your product?

17 A Well, all the stuff I personally
18 sold went to medical marijuana cultivators. However, I
19 have no control of what's sold in a store. If that went
20 to a medical marijuana or non-medical marijuana guy I
21 have no idea.

22 Q Would you agree that a significant
23 portion of your products are sold to medical marijuana
24 cultivators?

25 A That was the intent of the product.

26 Q And if more individuals were
27 allowed to cultivate at home, if the old legislation
28 continued, you would have more potential customers for

1 your products?

2 A Sure, but cannabis isn't my main
3 target market. It's actually America.

4 Q I see.

5 A They have way more population and
6 away more demand for our products than here in Canada.

7 Q You have candidly testified that
8 you do have a personal interest in these proceedings
9 because you do have a personal production licence under
10 the old regulations.

11 A Sure, but I'm here as a capacity as
12 an expert witness today, not to advocate legalization or
13 promoting. It's just to be an expert witness to assist
14 the court here.

15 Q I'm just wondering if it's also
16 fair to say that in addition to your interest as a
17 cultivator, you also have an interest as a business
18 person in the continuation of the old legislation.
19 These are the people who are buying your products.

20 A Sure I do. But I also -- I'm
21 trying to actively get the LPs to buy our product, and
22 I've sold a lot of equipment and nutrients to LP
23 applicants. My product's for growing cannabis, at the
24 end of the day.

25 MS. WRAY: I think this might be a
26 good time to take the morning break.

27 JUSTICE: All right.

28 THE WITNESS: Sounds good to me.

1 JUSTICE: We'll take 15 minutes.

2 MS. WRAY: Thank you.

3 **(PROCEEDINGS ADJOURNED AT 10:49 A.M.)**

4 **(PROCEEDINGS RESUMED AT 11:09 A.M.)**

5 MS. WRAY:

6 Q Mr. Colasanti, I'd like you to turn
7 to the green book again. Tab -- that's right, just
8 where you are, tab 17C. It's at page 4083.

9 A Okay. I'm with you.

10 Q Now, this again is a screen shot of
11 your website, *urbangroweronline.com*, is it not?

12 A Correct.

13 Q And it's a screen shot of you
14 interviewing Mr. John Conroy, who is a lawyer for the
15 plaintiffs in this case.

16 A Yeah, that's correct.

17 Q And the caption underneath the
18 screen -- the actual shot of the video says, "We talk
19 with lawyer John Conroy about the *MMAR* Coalition Against
20 Repeal and our constitutional challenge".

21 A Okay.

22 MS. WRAY: So, if we could have that,
23 please, marked as the next exhibit, I believe we're at
24 10.

25 **(PAGE 4083 OF TAB 17C MARKED EXHIBIT 10)**

26 MS. WRAY:

27 Q Are you a supporter of the *MMAR*
28 Coalition Against Repeal?

1 A I am absolutely, but I'm not here
2 today for that, or to -- for legalization. I'm here
3 just as an expert witness today.

4 Q What is the Coalition all about?

5 A The *MMAR* Coalition Against Repeal
6 is -- well, we got the injunction, and we're fighting
7 the government to help preserve -- you know, medical
8 marijuana grows in your house.

9 Q So the Coalition is funding or
10 raising money to fund this litigation?

11 A Yeah.

12 Q And are you a financial supporter
13 of the Coalition?

14 A I have donated, yes.

15 Q And you've supported events that
16 the Coalition has organized?

17 A I attend the majority of the
18 events, yes.

19 Q Do you know how much money the
20 Coalition has raised for this litigation?

21 MR. CONROY: Well, is that relevant?

22 JUSTICE: What would be the relevance
23 of it?

24 MS. WRAY: Well, I'm interested in the
25 extent of the witness's knowledge of the Coalition and
26 its status with respect to funding this litigation.

27 JUSTICE: Well, I would think that the
28 funding of the litigation would be a matter that's

1 between the client and the lawyers, and we're not going
2 to get into that. Questions about his interest, so
3 forth, that goes to his objectivity are perfectly
4 appropriate. This is too far.

5 MS. WRAY: Thank you, Justice Phelan.

6 Q I want to turn to ask you about
7 grow boxes.

8 A Okay.

9 Q You have demonstrated a grow box
10 here today, and you have attested to how grow boxes work
11 in your affidavit as well.

12 A Yes.

13 Q Now, a grow box, as I understand
14 it, is -- and we've seen it here today, for growing a
15 fairly small number of plants.

16 A Correct.

17 Q And the one that we've seen here
18 today could grow a total of 9 plants that would produce
19 bud, or potentially produce bud.

20 A Yes.

21 Q Would you agree that that is a
22 typical number of plants for a grow box to hold?

23 A I'm not entirely sure. I haven't
24 seen other people's grow boxes. But I assume, yeah.
25 You can't put 100 or 600 plants in that thing. It's
26 kind of limited space.

27 Q You couldn't even put dozens of
28 plants in that space.

1 A Well, including clones, yes. But
2 that particular machine is made for nine plants. I
3 suppose larger ones are available. But, you know, at
4 some point it would probably be more cost-effective and
5 easier just to build a room.

6 Q I would assume -- again, this is
7 just my own assumption, that the price of the grow box
8 increases as the size of the grow box increases. Is
9 that a fair assumption?

10 A That would be a fair assumption,
11 yeah.

12 Q And the cost of the grow box you've
13 shown us here today was about \$3300?

14 A Yeah, that's the retail price.

15 Q For nine plants.

16 A Yeah. That's a good solution for
17 somebody that doesn't live on an acreage, or doesn't,
18 you know, have a big house.

19 Q Because you don't use grow boxes,
20 obviously, do you?

21 A Well, there was no grow boxes
22 available when I first started growing.

23 Q Would you use grow boxes now for
24 your facility?

25 A Well, now that I've built my
26 facility, I think that would be going in reverse. I've
27 built a facility that's already been passed by the city.
28 Why would I spend any more money at this point?

1 Q Would your plants fit inside a grow
2 box?

3 A At clone stage, yes.

4 Q But certainly not the nine feet
5 tall plants?

6 A I don't grow my plants that big.
7 Actually, I find big plants, when they are that big,
8 cumbersome to work with, because I like them to be about
9 the size of me, so I can reach the top, pick leaves and
10 service them. So I personally don't really like, big,
11 big, big plants.

12 Q So, you've testified earlier that
13 you have indeed had some plants in your grow operation
14 go to the ceiling, which you said was about 9 feet high?

15 A Yeah. And you know the funny thing
16 about that is, when we trigger the plant, or induce
17 flowering, there is only a few feet, like three feet
18 tall, and it tripled in size, which really surprised me.
19 The majority of the indicas that I like to grow, usually
20 get 30 to 40 percent bigger, and I was expecting maybe
21 double in size, not triple. So, if, you know, if you
22 can appreciate this, if you are in a grow box, that
23 would just overgrow in a grow box. So, some genetics do
24 different things.

25 Q Mm-hmm. So, the number of plants
26 you're authorized to grow certainly would not fit inside
27 a grow box?

28 A I imagine if I was going to go with

1 that route, I'd have to have a series of grow boxes.

2 Q Yes, you would. Have you visited
3 other medical marijuana sites? Growing sites?

4 A Hundreds, internationally,
5 everywhere. There is so many videos -- I have got the
6 largest collection of indoor grow-ops on the internet
7 right now as it stands. I've got 1900 videos. And of
8 those 1900 there is hundreds of grow rooms, doing it
9 correctly, I might add, without mould issues or fire
10 issues or security problems.

11 Q And how many individuals at those
12 sites have you seen using grow boxes?

13 A None -- oh, pardon me. One. I
14 have -- no, two, I have two videos of grow boxes.

15 Q Okay. I'm not sure if you're aware
16 of this, but you may be. Under the old legislation, the
17 average number of plants that a person was allowed to
18 produce was 89 plants.

19 A That is the average number?

20 Q Yeah.

21 A I've heard that. I guess the
22 average licence is about 17 grams, we include all the
23 large licences, and all the small licences?

24 Q Yeah, it is getting up there.

25 A Yeah, so 17 grams, I have a 20 gram
26 licence, so I guess I'd be considered average.

27 Q So, you'd agree then, that the
28 average grower under the *MMAR* would probably need about

1 10 or so of these grow boxes like you've demonstrated
2 today, if they were going to be growing their total
3 number of plants?

4 A True. I'm not sure how many
5 patients could afford to buy 10 of those. You can --
6 maybe this is one thing that you know, the LP should
7 consider, is that they should allow people that, you
8 know, grow their own cannabis under the *MMAR* to also
9 purchase stuff from Licence Producers. Because there is
10 crop failure, things happen, power failures, stuff like
11 that. But see, the hydroponic bucket in that thing
12 leaks all the water out, and your plants die, you are
13 going to have a need for cannabis, so. That's the one
14 thing that is wrong with our system that doesn't allow
15 people from the *MMAR* to buy from LPs. As soon as you
16 buy from an LP you have to give up your licence to grow.
17 Which it shouldn't be like that.

18 Q Well, I'd like to move now to
19 discuss you as an online video personality. I believe
20 that is how you've described yourself?

21 A Sure.

22 Q I've already asked you before that
23 you're aware your Health Canada production licence
24 authorizes you to grow just for your personal use?

25 A Yes.

26 Q Your website again,
27 Urbangroweronline has a section in it called Urbangrower
28 media?

1 A Okay.

2 Q Okay? And I'm going to take you to
3 a screenshot from that section. It is again at the
4 green book, tab 17, F.

5 A Where --

6 Q When I was on your website, and I
7 clicked -- oh sorry, it's Tab F.

8 A F, okay.

9 Q So, when I was on your website and
10 I clicked on your media links --

11 A Yes.

12 Q I got taken to your YouTube
13 channel.

14 A Okay.

15 Q Okay? Is this your YouTube
16 channel, this screenshot, it says Urban Remo online?

17 A This is one of my YouTube channels,
18 yes.

19 Q Okay.

20 Can we have this marked then as the next
21 exhibit please? I think we are at 12? No, 11. 11,
22 thank you.

23 JUSTICE: Yes. 11.

24 **(TAB 17F, SCREENSHOT FROM YOUTUBE CHANNEL MARKED EXHIBIT**
25 **11)**

26 MS. WRAY: Thank you.

27 Q So, these are videos, or at least
28 these are a handful of the videos I would say, that are

1 available for viewing on your YouTube Channel?

2 A They are.

3 Q And there is a second page to this
4 exhibit as well, at 4097, and it is the same type of
5 shot, again, the same shot of more videos that are on
6 your website?

7 A Yeah.

8 Q Okay.

9 A Actually it's not my website. It's
10 YouTube.

11 Q Your YouTube, yeah, your YouTube
12 channel. I'm sorry, thank you for correcting me.

13 Now, I noted that some of these videos
14 you're providing advice to other marijuana cultivators?

15 A Mm-hmm. Yes.

16 Q And some of these videos show you
17 attending marijuana related events?

18 A Yes.

19 Q I wonder if you could describe for
20 me, because this comes up in a number of the videos in
21 terms of the titles, what an Expoweed is. It says -- I
22 note for instance in the second row on the first page,
23 "Expoweed Chile 2014 supercharged joint." What is an
24 Expoweed?

25 A Expoweed is the biggest cannabis
26 show in South America. I attended and 30,000 people
27 were there in Chile. It was great actually. I find
28 that Chile is ahead of us when it comes to medical

1 marijuana and I'll tell you how so.

2 What they've chosen to do is that all the
3 patients in Chile, they've hired some -- they get their
4 cannabis for free and this is how they get it. The
5 government has hired some really good growers similar to
6 myself to cultivate the cannabis for them, and all that
7 cannabis is given at no cost straight to the patients.
8 They have two grows and I think they service 5,000
9 people. I think this would be a great model for here, I
10 honestly do.

11 And actually I've voiced this before to
12 John Conroy awhile ago. I don't know if people are of
13 different opinions here in Canada, but I think that's a
14 great model. Maybe that's the Canadian in me, because I
15 feel that everybody should be helped and they should be
16 helped for free, but that's how I feel.

17 Q And what do you do, what kinds of
18 events take place at these Expoweed?

19 A Expoweed, there's a lot of seed
20 vendors selling their seeds. Nutrient companies are
21 there. There's people with paraphernalia, pipes,
22 vaporizers, that kind of thing. Entertainment is there.
23 Like you'll see rock bands and things like that. It's
24 basically for the cannabis culture if you will, our
25 people.

26 Q And just going back to the title of
27 that particular video, could you explain what the phrase
28 "supercharged joint" means?

1 A Sure. What I do is I have a glider
2 and it's got a keif collector at the bottom. Whenever I
3 go to one of these events I grind all my cannabis, and
4 the very last joint I smoke is what I call a
5 supercharged joint. And that's all the keif from all
6 the different cannabises that I've tried for the whole
7 event, and I dump it in the one joint and usually that's
8 the most desirable cannabis cigarette and it has the
9 most pain relief for myself, most effective.

10 Q It's a mixture of basically the
11 leftovers? Is that --

12 A No, the keif. That's not leftovers
13 at all.

14 Q The keif, okay.

15 A That would be the tricloners.

16 Q Yes.

17 A And that's where the active
18 ingredient THC is. So if you want a significantly
19 stronger cannabis cigarette, you would dump this keif
20 into it and you'll get a lot of symptom relief from
21 that.

22 Q So it's a particular strong joint,
23 if you will.

24 A Well, it's hash. Hashish is made
25 out of tricloners or keif. So it's just hashing a joint
26 if you will.

27 Q Okay, and that has for you
28 particular medicinal qualities.

1 A Well, you know, if each and every
2 joint I could smoke would be a supercharged joint, I'd
3 be very happy because of the symptom relief, but I'd
4 certainly have to smoke a lot less cannabis, but that's
5 not the deal at all. You only get one of those after a
6 few days of smoking.

7 Q What symptoms does it relieve?

8 A For myself I have muscle spasms,
9 and nothing works better for muscle spasms. I have
10 sciatica. I have disc herniations at C3. I've got them
11 at L4, L5 and I'm pinched down the S1 nerve root. It
12 helps me to eat, helps me to sleep, helps me to feel
13 comfortable, helps me with a range of symptoms. And
14 actually this morning, just so you know, I medicated way
15 before this proceeding. I haven't medicated at all, so
16 as soon as we're done here I'm going to medicate. I'm
17 already hurting in the neck. I'm uncomfortable just
18 sitting here.

19 Q I noticed in your video collection
20 that you've also attended Cannabis Cups.

21 A Yes, many of them. I actually won
22 a Cannabis Cup.

23 Q What is a Cannabis Cup?

24 A Cannabis Cup is a competition where
25 people or companies enter their strains of cannabis and
26 the best one wins.

27 Q Maybe I could take you to tab G,
28 17G, that's at page 4098.

1 A Yes.

2 Q And this is a screenshot, I take
3 it, of you holding up two of the trophies that you've
4 won at a Cannabis Cup.

5 A Those aren't Cannabis Cups.

6 Q Okay.

7 A Cannabis Cup is only from High
8 Times Magazine. This is a Treating Yourself Cup from
9 Treating Yourself Magazine.

10 Q That's a different type of cannabis
11 competition.

12 A Entirely different. That's a
13 Canadian version of it, and this particular shot shows
14 me winning first and second place two years ago.

15 Q And what are you winning for?

16 A Private grower, best cannabis,
17 first and second place.

18 Q So, you are submitting the cannabis
19 that you're growing to these competitions and then it is
20 judged?

21 A How else are you going to find out
22 if you're the best?

23 Q I'm not sure, I've never attended
24 one. So I'm just trying to get a sense of --

25 A That is how you find out, it is
26 just like racing a car or like any other competition.
27 So, it is the only way to find out.

28 Q So, this is, I can assume,

1 marijuana that you've grown under your personal
2 production licence?

3 A Yeah.

4 Q Okay, and you are submitting it to
5 these competitions for judging?

6 A Absolutely.

7 MS. WRAY: Could we please have G
8 marked as exhibit 12?

9 JUSTICE: Yes.

10 **(TAB 17G PAGE 4098 MARKED EXHIBIT 12)**

11 A Just so you know, I've won 14 of
12 them. It is not one or two, it is quite a few.

13 JUSTICE: Sir, just answer the
14 questions that are posed.

15 A Okay.

16 MS. WRAY:

17 Q Now, you have just stated that you
18 consume marijuana because you do have medical
19 conditions.

20 A Yes.

21 Q And the marijuana helps to relieve
22 the symptoms of those conditions?

23 A Absolutely.

24 Q What I understand is that initially
25 you obtained an authorization to possess because your
26 doctor recommended marijuana for treating a spinal cord
27 injury?

28 A Yes, I broke my back.

1 Q Right. And that's what your
2 personal production is to help you produce marijuana for
3 treating that spinal cord injury?

4 A That's correct.

5 Q I'd like to show actually one -- or
6 at least a portion of a video from your website.

7 A Okay.

8 Q Sorry, it is actually from the
9 YouTube Channel, UrbanRemo. And I am wondering if I can
10 get assistance to have that video started This is going
11 to be the video that is at Tab 17I, which is page 4099,
12 and this is a video entitled "Worlds Largest Joint".

13 MR. CONROY: We object to the playing
14 of this video, and we ask again what relevance is it.

15 MS. WRAY: This video is entirely
16 relevant, and I will say that these videos have actually
17 already in effect been put into evidence by this
18 witness, because he has mentioned in his affidavit and
19 in his CV, several times, that he is an online video
20 personality, and this is indeed part of his online video
21 persona. In fact, that's one of the things he lists as
22 a qualification to be an expert in these proceedings.
23 This is just one video taken out of that.

24 I also say that what this video
25 demonstrates is that the witness is using marijuana -- I
26 would like to ascertain how the witness is actually
27 consuming his marijuana for medical purposes with
28 respect to what takes place on this video, and discuss

1 that with the witness.

2 JUSTICE: This video is in the experts
3 volume.

4 MR. CONROY: Well, it's in the joint
5 book. It's not in the experts --

6 JUSTICE: It's in the -- yes, it is in
7 the joint book. So, you've agreed that it is relevant
8 presumably, or you wouldn't have put it in front of me.

9 MR. CONROY: No, my understanding is
10 that you had to put them in if you intended to put them
11 to the witness, but that doesn't mean we accept them as
12 evidence, or -- whatsoever. So we think that this is
13 just an attempt by my friend to play a video that is an
14 entertainment in order to try and show further that he
15 is an advocate, which is what -- which he admits.

16 He is not here to give you evidence of
17 some entertaining thing that he did on a video, and we
18 say what relevance is it? He admits that he is an
19 advocate outside of court, he has admitted that several
20 times in terms of what he does. What relevance is it to
21 what you have to decide, and how does it -- going to add
22 to these proceedings if he has admitted his advocacy and
23 his doing entertaining things for other people? So, how
24 does that affect his objectivity, how does that affect
25 the evidence that he is giving you here as an expert.

26 So, we say it is simply not relevant, and
27 shouldn't be admitted.

28 MS. WRAY: Well, I think that just

1 goes to weight, and what this video will demonstrate is
2 really just to give the court a sense of how this
3 witness is using marijuana as medicine, and I think it
4 is very important to see that. And to --

5 JUSTICE: Are you attempting to
6 impeach the witness?

7 MS. WRAY: Absolutely not.

8 JUSTICE: Are you using it to
9 challenge his testimony?

10 MS. WRAY: What I'm using it to do is
11 to further show that this witness is -- it's not just
12 that he is an advocate, it's that he is extremely
13 invested as a marijuana enthusiast if you will, that
14 marijuana is his lifestyle, marijuana is his recreation.

15 JUSTICE: Well, it does go to the
16 weight that I would give to his evidence as an expert,
17 and so I will allow you to play it.

18 MS. WRAY: Thank you. And I will just
19 be playing a portion this, just in the interest of time.
20 It will be the first portion and then we will skip to
21 the end.

22 MR. CONROY: I will just also put on
23 the record that he is (a) not a plaintiff, and (b) his
24 medical use therefore isn't relevant in the way it was
25 for the various plaintiffs. Just so that's --

26 JUSTICE: I understand your objection.
27 *[Video playing]*

28 URBAN REMO: Hey folks it's Urban Remo

1 with Chives.

2 CHIVES: Hey everybody.

3 URBAN REMO: It's time now to roll the
4 world's biggest joint and for that we have this world's
5 biggest bud. This is something somebody gave me. It's
6 called last year's forgotten outdoor and I couldn't
7 think of anything better to do except this.

8 So there it is. That's our product and
9 we got these special rolling papers called The Vancouver
10 Sun, only available in Vancouver and check it out,
11 they're double wide. And we have this special adhesive
12 right here called utility masking tape and we put all
13 three of these things together and we're going to have
14 the world's biggest joint. You ready Chives?

15 CHIVES: I'm ready.

16 URBAN REMO: Okay let's rock it. I
17 don't think there's going to be a whole lot of breaking
18 up required.

19 No puppy, no kill. You're going to have
20 to hold Cujo back.

21 CHIVES: I think so.

22 URBAN REMO: I'll just put this down.
23 I'll grab one of the rolling papers and our giant bud
24 and will this go around? No, we're going to have glue
25 two of these together.

26 CHIVES: I think we're going to have
27 to laminate the papers together.

28 URBAN REMO: Okay, I've never done

1 this before. This is out first attempt, probably our
2 only attempt at ever doing something like this.

3 It's a good thing you came by because
4 it'd be difficult to hold this without too many extra
5 hands.

6 CHIVES: Okay, so I think we should
7 probably do one on each side to make sure it doesn't
8 come off, kind of like we're doing, we're doing a large
9 joint.

10 URBAN REMO: That's a good plan.
11 Yeah, I like it when a plan comes together. It's like
12 the A-Team. Yoah.

13 CHIVES: Except for I think we're
14 having much for fun than they ever had.

15 URBAN REMO: We're definitely a lot
16 higher than those guys ever were.

17 CHIVES: They seemed way to aggressive
18 to be having fun.

19 URBAN REMO: Except of Mr. T.

20 CHIVES: Yeah he --

21 URBAN REMO: I think that guy's a
22 stoner for sure.

23 CHIVES: I think he was high.

24 URBAN REMO: He just kind of hang out
25 with the white people, the crackers.

26 CHIVES: Yeah.

27 URBAN REMO: Those guys definitely
28 didn't smoke weed but I think Mr. T did.

1 CHIVES: I think he might have laughed
2 at the white lunatics.

3 URBAN REMO: He's the only stoner.
4 It's the only way he could put up with those guys.

5 CHIVES: Okay.

6 URBAN REMO: Should we make two of
7 these?

8 CHIVES: I think you should.

9 URBAN REMO: Or should we just wrap
10 this around first to see where we're at?

11 CHIVES: Well you can see what we're
12 working with here, but I think we're going to have to --

13 URBAN REMO: Okay.

14 CHIVES: So that will work but we're
15 going to have to go one --

16 URBAN REMO: Okay, no problems.

17 CHIVES: -- two --

18 URBAN REMO: Let's get this one, let's
19 get this one done first.

20 CHIVES: Okay.

21 URBAN REMO: Just crunch it down.
22 Compression is important.

23 CHIVES: Compression is important.

24 URBAN REMO: Oh, look we ripped the
25 paper.

26 CHIVES: We got a little bit of
27 ripping going there.

28 URBAN REMO: That's okay.

1 CHIVES: Make sure it's still got seal
2 on the wrapper.

3 URBAN REMO: Okay.

4 CHIVES: Okay.

5 URBAN REMO: And we'll get our
6 sealant.

7 CHIVES: This is emergency resin.

8 URBAN REMO: You know what? We should
9 -- this in retrospect, we should have got some of that
10 black oil and use that to, you know hold the rolling
11 paper together. What do you think people? Would that
12 be a good idea? It probably would be really nasty to
13 smoke.

14 CHIVES: It would terrible taste but
15 it might be effective.

16 URBAN REMO: Okay. We need more
17 rolling papers. This is just a single.

18 CHIVES: That's okay, we got lots of--

19 URBAN REMO: That's a dud. Another
20 rolling paper, please. Yeah, this is what we do in our
21 spare time, just so you know. We come up with shit like
22 this to do. It's very entertaining, for me.

23 Uh-oh, here comes the dogs.

24 CHIVES: She wants to be part of the
25 action.

26 URBAN REMO: She is part of the
27 action. No, no doobie for you.

28 CHIVES: No.

1 URBAN REMO: Flip that over.

2 CHIVES: I don't remember the other's
3 doctor's name in the video that they did for the power
4 of raw cannabis, but they say in there that humans are
5 the only species to experience the euphoric aspects of
6 it so.

7 URBAN REMO: Oh boy.

8 CHIVES: You're wasting you time.

9 URBAN REMO: I don't know, I've seen
10 my dog eat some brownies and --

11 CHIVES: That's because they --

12 URBAN REMO: He, he wasn't grooving,
13 he was puking in the driveway. He was not having a good
14 time. I think he overdosed.

15 CHIVES: Yes, cooked, cooked green is
16 always bad for dogs.

17 URBAN REMO: Okay, here we go. This
18 thing is going to look like the bomb, folks. Like
19 literally like a bomb.

20 CHIVES: Like a bomb. We're going to
21 have drug agencies coming after us and they're not going
22 to --

23 URBAN REMO: I think that happens
24 anyway.

25 CHIVES: It does.

26 URBAN REMO: You know what? I'm going
27 to --

28 CHIVES: Twist the top? Yeah.

1 URBAN REMO: Put some around there
2 just to hold that in place.
3 CHIVES: You got it. I think we had
4 the same idea there, that's good. And then twist it
5 around.
6 URBAN REMO: Another dog gone crazy.
7 Now we're going to need one around there I think.
8 CHIVES: Yeah, -- been there.
9 URBAN REMO: Let's put one tape.
10 Let's get the seams taped up here. I'll spin the joint
11 while you tape.
12 CHIVES: Perfect, awesome.
13 URBAN REMO: Okay, here we go. It's
14 team effort.
15 CHIVES: Well, when it's this big it
16 has to be a team effort.
17 URBAN REMO: Team Kush.
18 CHIVES: Right. Beautiful. That was
19 perfect. Here we go.
20 URBAN REMO: It's like we did that
21 before.
22 CHIVES: And we haven't, so.
23 URBAN REMO: We haven't.
24 CHIVES: That's pretty good.
25 URBAN REMO: We're coming up with the
26 method right here, right now folks.
27 CHIVES: You're seeing it live. You
28 always say that marijuana is the -- one of the root of

1 inventions.

2 URBAN REMO: Oh yeah. You know what?
3 You give a stoner a job like "Hey man, you got all this
4 stuff in the kitchen, make a bong." And they're *toock,*
5 *toock, toock,* they can make a bong out of anything.
6 They're the most creative folks on the face of the
7 plant.

8 CHIVES: I think you are right. It
9 might have something to do with the opening of all those
10 connectors that the THC seems to have. Improves the
11 synapse firing in the brain and receiving of the
12 information.

13 URBAN REMO: Absolutely.

14 MIKE: Stop being so hyper.

15 URBAN REMO: Okay.

16 CHIVES: Okay, so we got another one?

17 URBAN REMO: Yeah.

18 CHIVES: -- rolling paper over here
19 and -- rolling paper.

20 URBAN REMO: This is going to be the
21 world's largest joint, Mike. Oh my god I just broke a
22 chunk of it.

23 CHIVES: Oh, we broke -- that's okay.
24 I think it'll handle it. It was -- that was the version
25 trimming for --

26 URBAN REMO: I need to move this down
27 a ways.

28 CHIVES: Yeah, little bit. There we

1 go.

2 URBAN REMO: I got to roll it.

3 CHIVES: Yeah.

4 URBAN REMO: Carefully.

5 CHIVES: No rips on that one,
6 excellent, okay. Okay.

7 URBAN REMO: You know what? This
8 isn't the most symmetrical joint I've ever rolled in my
9 life. Probably resembles the first joint I ever rolled
10 when I was a youngster. Probably looked like this but
11 on a smaller scale.

12 CHIVES: Slightly smaller. But
13 knowing you, probably not a lot smaller.

14 URBAN REMO: Okay. I'll just roll
15 that around and we'll get that sealed. Oh, I think the
16 dog wants a toke.

17 CHIVES: I think she does. We almost
18 need like a cardboard tube for a large filter to stick
19 over the end.

20 URBAN REMO: That's a good idea. I'll
21 be right back with a cardboard tube.

22 CHIVES: All right.

23 URBAN REMO: Are you ready, Swan? I
24 have returned with our cardboard tube which is currently
25 a Dominoes Pizza box, but we're going to turn it into a
26 cardboard tube.

27 CHIVES: From munchie carrier to
28 doobie smoke. The circle of life. Awesome, all right.

1 URBAN REMO: Look at that filter.
2 CHIVES: I think it's going to work --
3 URBAN REMO: Filta.
4 CHIVES: -- perfect. Okay, turn a
5 little, that's it. I think that's it. So let's do it--
6 URBAN REMO: That is it. Got lots of
7 tape, giv'r man.
8 CHIVES: Lots of tape. Oops.
9 URBAN REMO: I feel like I'm making a
10 mummy. We should call this thing the Egyptian Doobie.
11 CHIVES: Egyptian doobie.
12 URBAN REMO: Okay, I think it's fine.
13 CHIVES: You think it's right?
14 URBAN REMO: Oh yeah that's sealed.
15 CHIVES: There you go.
16 URBAN REMO: We'll just put a little
17 bit around the end here. Sounds like the dogs are
18 having a good time.
19 CHIVES: Showing --
20 URBAN REMO: They're playing.
21 CHIVES: -- Egyptian joint, would that
22 be like joint puff-in common?
23 URBAN REMO: Yeah, it would be. Okay,
24 I think we're finished. Holy shit. Oh my god. This is
25 the first joint I've ever rolled that's just as tall as
26 me.
27 CHIVES: As tall as you. I'm
28 impressed.

1 URBAN REMO: Yeah, look at that. It's
2 just as tall as me. That is a big mother-fucking joint.
3 What do you think?

4 CHIVES: I, I think that's definitely
5 ready.

6 URBAN REMO: See that's what we need
7 to bring to the protest is one of these.

8 CHIVES: One of these, yeah.

9 URBAN REMO: You know, you know, they
10 throw those old joints out to the crowd. Just roll one
11 of these and pass it around. Here. Do a toke. It's
12 your turn to toke.

13 Well, you know what you got to do now.

14 CHIVES: We have to do?

15 URBAN REMO: We got to light it up.
16 Maybe we should go to the fire pit for that.

17 CHIVES: I think we should.

18 URBAN REMO: We're going to go to the
19 fire pit, just for safety. We've got a hose and shit.
20 You know never know. Okay, you've a lighter, right?

21 CHIVES: I do. Okay, here we go.

22 URBAN REMO: We're at the fire pit and
23 we have the world's biggest lighter right here. Check
24 this thing out. Chives, light it up. It'll spark up
25 the world's biggest joint.

26 CHIVES: I'm not thinking a normal
27 lighter would cut this one so.

28 URBAN REMO: No.

1 CHIVES: There we go.
2 URBAN REMO: Big joint, big lighter.
3 CHIVES: Very big lighter. Go big or
4 go home, that's they way it goes. All right. I think
5 that worked quite well.
6 URBAN REMO: You want a puff?
7 CHIVES: Oh I do.
8 URBAN REMO: I do. Here man.
9 CHIVES: This is going to be heavy.
10 Hold on. This is --
11 URBAN REMO: Here I'll hold it for
12 you.
13 CHIVES: Thanks buddy, okay.
14 URBAN REMO: This thing is fucking
15 insane. This is the biggest joint I've even smoked,
16 ever.
17 CHIVES: Oh my god.
18 URBAN REMO: What do you think,
19 Chives?
20 CHIVES: I think it tastes like what
21 it is but it's fucking fun to smoke.
22 URBAN REMO: That's fucking insane
23 man, insane. I think we're setting a Guinness Book
24 World Record right here right now.
25 CHIVES: Oh.
26 URBAN REMO: This is. And look at the
27 smoke coming off the end of that. That is just like a
28 thick dense shit. Oh yeah, try this at home people.

1 The world's biggest joint.
2 Here, I think it's my turn.
3 CHIVES: I think it's your turn too.
4 URBAN REMO: Here you might want to
5 grab it --
6 CHIVES: I will, let me hold that for
7 you.
8 URBAN REMO: Okay, here we go.
9 CHIVES: Okay, I got it. Look at the
10 cherry on that thing. That's awesome.
11 URBAN REMO: So smooth.
12 CHIVES: I think even the neighbours
13 are getting high on this one. You know, they always
14 say --
15 URBAN REMO: The birds, the squirrels,
16 everybody.
17 CHIVES: You got to share. It's all
18 about the love.
19 URBAN REMO: Everybody's getting some.
20 CHIVES: Right.
21 URBAN REMO: Well that was awesome
22 shit. What to do think, Chives?
23 CHIVES: Think that was definitely
24 worth that. Definitely worth the effort.
25 URBAN REMO: Definitely. We're going
26 to finish smoking this joint. In the mean time keep
27 watching Urban Remo for more weed videos.
28 [END OF VIDEO]

1 MS. WRAY: Thank you, Sandra, that's
2 fine.

3 A One thing I'd like to mention --

4 JUSTICE: Don't say a word until
5 you're asked a question. Is there a question?

6 MS. WRAY: There are several questions.

7 Q Could you please tell the court,
8 because I don't think it was audible in that video,
9 where this marijuana came from?

10 A I grew it, but it was a male plant.
11 And it is not suitable for smoking. Actually, the video
12 is a fake. If you look at the camera angles, we are not
13 smoking that, this was a way to get rid of it. And I
14 decided to make a video that was entertaining to get rid
15 of it. If you look at -- if you watch the whole video,
16 we're not smoking, we've got something else we're
17 smoking beside it, it is all camera angles. It's smoke
18 and mirrors. I don't think it would be recommended to
19 smoke newspaper, masking tape, and a giant male plant
20 with all the stock in it, so. You just watched
21 entertainment, that was pure entertainment, nothing
22 else.

23 Q You never smoked any of that joint?

24 A Not the actual joint. There is a
25 smaller item beside it, and it's camera angles, if you
26 watch the whole video, you'll see that. We're not
27 actually smoking the joint. And if you look at the
28 comments, everybody bought it, they thought we were

1 really smoking it. But we weren't.

2 Q So, you are just using the
3 marijuana that you've grown for entertainment purposes?

4 A Well, straight up, that was a male
5 plant, and it was just garbage. And this is one thing
6 when you crack seeds, occasionally, you get a male, and
7 it is not good for consumption at all. You have to chop
8 it down, and throw it away.

9 MS. WRAY: Could we please have this
10 marked as the next exhibit? I believe it is Exhibit 12?
11 13?

12 MR. CONROY: Sorry, which one is it?

13 MS. WRAY: 13.

14 JUSTICE: Wait a minute. I think it
15 is 12.

16 MS. WRAY: Oh, 12.

17 JUSTICE: That's the video that is on
18 page 4099?

19 MS. WRAY: 4099, yes. It's actually
20 the video that is at 4100.

21 JUSTICE: 4100.

22 MS. WRAY: Tab I.

23 JUSTICE: Okay, got it, thank you.

24 MS. WRAY: And I'm sorry, was that 12
25 or 13? 13, thank you.

26 **(VIDEO FROM PAGE 4100 TAB 17I, MARKED EXHIBIT 13)**

27 MS. WRAY:

28 Q Mr. Colasanti, I am interested in

1 how you are consuming marijuana for medical purposes and
2 also your involvement on social medial.

3 A Mm-hmm.

4 Q And so I did take the liberty of
5 visiting your Twitter account to see what some of the
6 posts were.

7 A Yeah.

8 Q And also your Instagram account,
9 and I'd like to take you to Tab K, it's page 4102. Now,
10 this is your screenshot of a post that you did on
11 Twitter?

12 A Yes.

13 Q And your twitter handle is
14 "TheUrbanGrower"?

15 A Correct.

16 Q And at the bottom of this image you
17 see that this photo was posted to your Twitter feed on
18 July 19th, 2013. It's in very, very light print at the
19 bottom left-hand corner?

20 A Okay.

21 Q Do you agree with that?

22 A Yeah.

23 Q Did you take this photograph?

24 A I believe my wife took this
25 photograph.

26 Q And did you post it to your twitter
27 account?

28 A She posted it for me.

1 MS. WRAY: Okay, can we please have
2 this marked as Exhibit 14?

3 MR. CONROY: I assume on the basis of
4 the same position before? We again question the
5 relevance.

6 JUSTICE: Yeah, I understand that.

7 **(TAB 17K PAGE 4102, SCREENSHOT, MARKED EXHIBIT 14)**

8 MS. WRAY:

9 Q You will see that the caption that
10 goes along with this photograph says, "My desk when I'm
11 editing, oh my" is that referring to you as the editor?

12 A I am the editor, and my desk looks
13 very messy because I'm busy.

14 Q And when you mentioned editing,
15 what are you editing?

16 A I am a video editor. I video edit
17 everything you see.

18 Q Now, when I look at this photo on
19 the left-hand side, I see a large baggie of dried
20 marijuana bud?

21 A Yes.

22 Q And how many grams would you
23 estimate are in that baggie?

24 A 200.

25 Q Is this how you typically store
26 your medical marijuana?

27 A One of the ways.

28 Q What are the other ways?

1 A C-vault, we put them in coolers
2 sometimes. Just so we don't have the air. Because the
3 air has a tendency to break it down, release the
4 tripenoids, flavenoids, makes it go stale, makes it dry
5 out.

6 Q Do you label your baggies?

7 A Sometimes.

8 Q What would you put on the label?

9 A Whatever strain it would be.

10 Q And how much it weighs? Or do you
11 just know that because of the size of the baggie?

12 A I'm just estimating for the size of
13 the baggie. That bag can only hold maybe 250 grams
14 maximum, and it doesn't look like it is entirely
15 stuffed, that is why I estimated 200 grams.

16 Q Right, so yeah, I take it you
17 haven't weighed this particular baggie?

18 A Probably not.

19 Q Do you happen to know the THC level
20 of the marijuana in that baggie?

21 A No, not by looking at this picture.

22 Q And I also see that there is dried
23 marijuana on the desk itself?

24 A Yes.

25 Q Sort of scattered about?

26 A Yes.

27 Q Do you have any idea how many grams
28 are loose on the desk?

1 A Looks to me, by your picture, a few
2 grams are loose on the desk.

3 Q And what is in the pink container
4 at the forefront of the photograph?

5 A That is my ashtray. And those
6 would be the remainder of my cannabis cigarettes.

7 Q Okay. Can I assume that this is
8 marijuana that you've grown under your personal
9 production licence?

10 A Yeah.

11 Q How many day's worth of medical
12 marijuana would be in the baggie, do you estimate?

13 A That would probably be good for
14 about a week. Typically I go through about one of those
15 bags a week. They hold between seven and eight ounces.

16 Q Mr. Colasanti, I understand you do
17 have another -- well, maybe it is in fact your only
18 company, it is called Remocanabrands?

19 A Yes.

20 Q Is that correct?

21 A Mm-hmm.

22 Q Do you have other companies besides
23 that one?

24 A That is our main company.

25 Q That is the primary one. And I
26 read that that company has recently set up an
27 arrangement with a venture capital company called Gold
28 Finder Explorations?

1 A That's correct. We are planning on
2 taking our company public to be traded on the TSX.

3 Q And what is Remocanabrand intending
4 to sell?

5 A Remocanabrand sells plant
6 nutrients. We are a branding company. So anything we
7 can stick my brand on, we are going to attempt to do
8 that. Currently all we have is seven nutrient products,
9 the cloning gel. I have got grinders, hoodies, shirts,
10 and that is it at this time.

11 Q And will you also -- I guess this
12 is a future question, do you intend in the future to
13 produce marijuana infused edibles and tinctures and so
14 forth with Remocanabrands?

15 MR. CONROY: I object to that --

16 JUSTICE: Asking for a business plan.

17 MS. WRAY:

18 Q What I'm asking for is, where is
19 the source of this marijuana coming from?

20 A Well, first of all -- we haven't
21 made any --

22 MR. CONROY: Not the marijuana -- he
23 didn't say he was -- excuse me.

24 JUSTICE: Don't -- don't say anything.

25 MR. CONROY: He didn't say he was
26 selling any marijuana. He said he was selling the
27 nutrients and so on. So, maybe my friend could clarify.

28 JUSTICE: I'm having trouble -- I'm

1 having trouble understanding the relevance of what he
2 intends to do in the future. He's here as an expert in
3 the growing of marijuana. He has a particular view of
4 marijuana and the lifestyle, which you've raised as an
5 issue. But what he wants to do with his business in the
6 future has little or nothing to do with the
7 constitutional validity of the regulations.

8 MS. WRAY: Well, he has testified that
9 he grows under a personal production licence at present.
10 And that he has not applied to become a licensed
11 producer. The only -- I am assuming, then, that the
12 only access to cannabis he will have if this
13 constitutional challenge is successful is through his
14 own personal production. And I'm -- I am aware of
15 future plans for Remo Cannabis, and that is what I
16 intended to ask him about.

17 JUSTICE: I can't see that there is
18 any relevance to the business of this witness or anybody
19 else. The plans -- insofar as it -- the case here has
20 to do with the accessibility issues with respect to the
21 current regime, and whether or not it's *Charter-*
22 *compliant.*

23 MR. CONROY: That's right.

24 JUSTICE: The plans that one
25 individual may have if things go their way are of little
26 or no interest.

27 MS. WRAY: Thank you.

28 Q One final question for you, Mr.

1 Colasanti.

2 A Sure.

3 Q You've testified here today that
4 you have no problem with inspections of marijuana
5 growing operations. That in fact those could assist in
6 keeping those operations safe.

7 A Yeah. I currently get inspected.
8 Never by Health Canada, but just by my own municipality.
9 I think inspections are a good thing.

10 Q And I'm just curious if you would
11 take any issue with unannounced inspections at your
12 growing facility.

13 A I wouldn't take any issue. I'm no
14 plant -- no problem with that whatsoever.

15 Q Thank you.

16 **RE-EXAMINATION BY MR. CONROY:**

17 Q A number of questions, Mr.
18 Colasanti, to do with numbers of plants and how many you
19 can grow at once and so on. And you took us through the
20 bloom box. I just wondered if you could make it clear
21 to us, to the court, we've talked about clones, and then
22 numbers of plants.

23 A Yes.

24 Q So, and maybe using the bloom box
25 as an example. First of all, if we went to the exhibit
26 on the bloom box, at page 17, but if we move to page 20,
27 it talks about a size and yield there, in that exhibit.
28 Do you see that? It's in the expert book.

1 A I'm sorry, but I can't find it.

2 Q What size yield can I expect? The
3 page numbers, top, is 20 at the top of the page.

4 A Okay.

5 Q And it's tab 2, which is your
6 affidavit, I believe.

7 A This is tab 2?

8 Q Did you find it? Your affidavit is
9 tab 2.

10 A Yeah.

11 Q And then if you go past the
12 affidavit to the exhibits --

13 A Mm-hmm.

14 Q -- and look at the page -- numbers
15 are in the top left or right of the page. Got that? Do
16 you have page 20?

17 A Page 20.

18 Q If you go down to -- it's the
19 heading, "What size yield can I expect?"

20 A Yeah.

21 Q From a bloom box. And it sets out
22 there, half to a full pound of yield every six to eight
23 weeks. Correct?

24 A Yeah.

25 Q All right. So if we take that as
26 an example. My friend asked you about having to have a
27 number of boxes, or you have to have a number of them in
28 order to meet your numbers of plants and so on. Am I

1 right that this says you can do every six to eight
2 weeks? So if you have a licence, your licence is for
3 the year, is it?

4 A Yeah.

5 Q So does that mean you can grow some
6 of the plants for six to eight weeks and have a harvest
7 and then another one and then another one and another
8 one to get to your total?

9 A Correct, yeah.

10 Q And when you're doing that, you
11 talk about clones, and then what are the stages in
12 between? This is a -- is it all done in the six to
13 eight week period.

14 A Well, in essence that unit there
15 was a net so you can flower and do your clones and start
16 vegging, so that you can switch them over to the other
17 side. So you can veg and clone in the same unit, take
18 the out crop every two months.

19 Q Some of us and the court in
20 particular may not know some of these terms you're
21 using. You've explained clones.

22 A Yes.

23 Q Then you say vegging. Is that the
24 next stage?

25 A Yeah, that'd be vegetive growth
26 stage.

27 Q And then what's the next stage?

28 A And there'd be flowering stage, and

1 that's where you change the photo cycle 12/12, so that
2 the plant produces a hormone and starts making its own
3 flowers or buds.

4 Q And those are the three stages
5 then?

6 A Yes.

7 Q Okay. And you can do all of that
8 in this type of a box or in the type of room.

9 A Absolutely.

10 Q And depending on a number of
11 variables, if I'm understanding correctly, you can make
12 so many crops per year in that year that you have your
13 licence, depending on strains and other things you've
14 explained to us.

15 A Correct.

16 Q Okay. So you wouldn't need, if I'm
17 understanding you then, you could have one bloom box to
18 produce your 98 plants over the year. It wouldn't be as
19 big as you might like.

20 A No.

21 Q No. But you could, if you had a 98
22 plant licence you could do that.

23 A In theory you could do it with a
24 bloom box, but if you have a 98 plant licence you're
25 going to be running out if that's all the space you have
26 to grow.

27 Q Right. So again, and I think my
28 friend asked you about that as well, she referred to

1 your affidavit at paragraph 10 and the reference to the
2 six plants to 600, and you said six plant -- or
3 hypothetical of a six plant licence you can produce as
4 much as 600. And I think you agreed with my friend that
5 that could be done, but there were variables depending
6 upon --

7 A Absolutely, strain, et cetera.

8 Q And I'm not sure if these were the
9 variables put, but space and lighting and plant size.

10 MS. WRAY: I'm just going to object at
11 this point. It seems that we've been having a number of
12 leading questions throughout this re-examination. My
13 understanding is we are just seeking clarification from
14 this witness.

15 MR. CONROY: I am seeking
16 clarification because there was no reference made to
17 space and lighting relative to plant size when my friend
18 asked that.

19 JUSTICE: I'm sorry, but the subject
20 matter was space and lighting, and you're saying that he
21 wasn't asked that question.

22 MR. CONROY: The subject matter was
23 that -- no, no, the subject matter was the comment in
24 paragraph 10 of his six plants to 600 plants. That you
25 could grow enough cannabis from six plants as 600.

26 JUSTICE: Right.

27 MR. CONROY: And so I think my friend
28 put that to him, a six plant licence can produce as much

1 as a licence of 600 and depending upon variables. And
2 so I'm just clarifying that the critical variables are
3 space, lighting, and plant size.

4 JUSTICE: Well, you can ask him what
5 are the variables.

6 MR. CONROY: All right.

7 JUSTICE: You can't give him the
8 answer.

9 MR. CONROY: Okay.

10 Q What are the variables, Mr. --

11 JUSTICE: Despite the fact that we now
12 have the answers.

13 MR. CONROY: It may be in his --

14 JUSTICE: We won't do that again, will
15 we?

16 JUSTICE: All right.

17 A I agree.

18 MR. CONROY:

19 Q You were questioned about your
20 number of plants and you say you grow 24 at once.

21 A Correct.

22 Q Because they're large.

23 A Yes.

24 Q And, but you have a 98 plant
25 licence.

26 A Mm-hmm.

27 Q So does that include from clones
28 right to completion, the 24?

1 A Actually that's 24 flowering. I do
2 have clones and vegging plants, but I don't use my full
3 98 up by any means. I only have room to flower 24
4 inside my room.

5 Q That's what I'd like you to
6 explain. You have a 98 plant licence but you've got to
7 have clones, you said vegging, and flowering.

8 A Yeah.

9 Q So when you say you grow 24 at
10 once, do you grow -- is that in addition to the clones
11 and vegging, or are they all included in the 24?

12 A Maybe I should clarify. That would
13 be 24 flowering currently.

14 Q All right.

15 A I've got 24 clones and then I have
16 24 vegging.

17 Q I see. So within your 98 plant
18 licence you have, 24 of each basically, but you're only
19 actually working on the flowering of the 24 is what your
20 answer was there, correct?

21 A Yeah.

22 Q Okay, now I understand. My friend
23 asked you questions about moulds. You live in Maple
24 Ridge?

25 A I do live in Maple Ridge.

26 Q Is it part of the West Coast rain
27 forest?

28 A Yes. Very rainy.

1 Q Do you get lots of mould, despite
2 your plants?

3 A I don't get mould in my building
4 because of -- I don't have any drywall in there. It's
5 all concrete, and plywood, and all the plywood has been
6 treated with Zinsser mildew and mould resistant paint.

7 Q Okay.

8 A And I run UVC. That takes care of
9 any moulds. And in addition, it's also a very dry
10 environment. That's about 40 percent humidity in my
11 grow room at all times.

12 Q But outside of your grow room, in
13 and around Maple Ridge --

14 A Oh, it's considerably higher.

15 Q Okay. Thank you.

16 A Actually inside my own residence
17 it's probably way higher -- you know, way more humid
18 than in my grow room.

19 Q Okay. You talked about ways of
20 dealing with that, and again, it depended on various
21 factors, but you talked about equipment that records the
22 highs and lows, in terms of the humidity, as I
23 understood it.

24 A Yeah.

25 Q Do you know -- you may have
26 mentioned the name, but what is the device that you use
27 to determine the humidity levels?

28 A I think it's called a hydrostat.

1 Yeah, it comes in a combination with a thermostat and I
2 might have the wrong word, is a hydrometer? I'm not
3 sure.

4 Q What does it do exactly?

5 A It just tests -- shows you the
6 percentage of humidity in your air.

7 Q And then does it do anything else
8 after that?

9 A No. Well, there's one side that's
10 for a thermometer, it shows you your temperatures and
11 your highs and lows, and the other one just shows you
12 humidity.

13 Q Is it connected to your
14 dehumidifier?

15 A Dehumidifiers have them built in
16 automatically. And they're internally built. And you
17 can just set them for, you know, whatever desired
18 humidity you want. So I have them set 35 to 40 percent.

19 Q Okay. So you don't have to be
20 there to turn it on. It will automatically do this? Or
21 not.

22 A It automatically works, and it
23 actually has an internal pump, and it pumps any of the
24 residual water back in the reservoir.

25 Q Okay. My friend asked you about
26 tests for moulds, and you mentioned BCIT, and I think
27 you said this was a special sort of thing being done.

28 A It's a one-time thing, yeah.

1 Q But then you mentioned three or
2 four other labs.

3 A Absolutely.

4 Q And they're here in British
5 Columbia?

6 A Yes, in Vancouver. They're in the
7 Vancouver area here.

8 Q But do they advertise that they're
9 -- have you seen advertisements for --

10 A No.

11 Q Do you know if -- when -- you went
12 to these labs, did you?

13 A Two places, yes, that do testing.

14 Q And are -- did they say, or did you
15 have information that they're lawfully allowed to do the
16 testing for this type of thing? Or was there any
17 discussion of that?

18 A I never asked. I just assumed
19 that they were doing it lawfully. And, you know, the
20 size of sample you provide is so small anyway, it's
21 minuscule.

22 Q Okay.

23 A You know, for the knowledge that
24 you receive, I think it's worth it.

25 Q Apart from that, you have no idea
26 whether they're allowed to do this. You just went,
27 assumed, and they did it for you. Is that --

28 A I assume that they're allowed.

1 Q Okay.

2 A Well, actually the first time they
3 only had so many -- so much time to deal with the
4 product, and whatever product they had left over, they
5 had to destroy, and had to sign all these crazy papers,
6 and --

7 Q Okay. My friend asked you about
8 the value of the crop, and you said not as valuable as
9 it once was. Marijuana, you're referring to, right?

10 A Yeah.

11 Q And you referred to grow-rips and
12 bad people. Are you talking about medical grow, or
13 illegal grows, or both?

14 A Just grows in general. I think for
15 thieves it's probably less desirable to go after a
16 medical grow, because there's going to be less there.
17 And these people will phone the police, and the police
18 will attend. So, I actually welcome police to my house,
19 if there is a problem. I wouldn't have a problem with
20 them attending.

21 Q You said something about growers
22 don't call police. Were you referring there to --

23 A Illegal growers don't phone the
24 police. They don't take out permits either, or hire
25 trades people. They just do what they do, and they do
26 it in secrecy.

27 Q Okay. Because you talked also
28 about victimizing patients. Are you aware of grows that

1 have involved medical -- grow-rips that have involved
2 medical grows?

3 A In the past, but as of late, it's
4 just become something of the past. People just don't do
5 it any more.

6 Q Okay.

7 A That I'm aware of. I haven't heard
8 of one grow-rip in the last year, which is incredible --
9 which is good.

10 Q You said that the --

11 A Or fires, for that matter.

12 Q Market -- black market price my
13 friend asked you, you said 33 percent less, under 2,000
14 a pound. Do you not -- are you knowledgeable about what
15 the cause of this reduction is?

16 A Well, legalization, I assume, in
17 the United States has a lot to do with this. It's not
18 illegal in Washington, Colorado, Oregon, it's legal. I
19 know Washington DC, you're allowed to smoke cannabis.
20 So they're producing their own cannabis, which -- people
21 -- there is no demand for our black-market cannabis any
22 more, which I think increased the price. It's a supply
23 and demand thing. Once the demand is no longer there,
24 the price plummets. And that's where we're at right
25 now.

26 Q Is there a glut in this market in
27 Canada? Do you know?

28 A There might be an oversupply, which

1 would keep the price low as well. Not a bad thing.

2 Q But you said your market was -- for
3 your products is mostly the United States. Do you know
4 if that was the main target or main destination for
5 illegal marijuana?

6 A Maybe at one point in time, that's
7 -- so legend has it, and word on the street. A lot of
8 B.C. Bud was showing up all over the United States. But
9 as of late, I don't think it's happening anymore.

10 Q Okay. My friend asked you about
11 the formula under the *MMAR*. So, to your knowledge, that
12 is the formula that is right in the regulations?

13 A Yeah, I have never reviewed this
14 formula myself.

15 Q You said it made no sense. What
16 did you mean by that?

17 A The number of plants that they want
18 you to grow versus how much cannabis you are allowed to
19 store. None of it makes sense to me.

20 Q In what way? It is too much? Too
21 little?

22 A Well, they don't -- I think plant
23 numbers are wrong. They should give you square footage
24 and an amount of lights, and make plant numbers
25 irrelevant, because there is different styles of growing
26 as you know.

27 Q Okay. But the formula as you
28 understand it, and as I think my friend explains it, the

1 doctor and the patient determine how many grams and then
2 it is plugged into this formula that then comes out with
3 a number of total plants you can produce? Is that
4 right?

5 A Yeah, I think that is how it works.

6 Q You talked about if a strain
7 doesn't work, you tumble it to make tricrones --
8 trichomes is that the right --

9 A Just remove the trichomes, which
10 are the crystals, if you will, on the cannabis.

11 Q Its trichomes?

12 A Trichomes.

13 Q And you said that is the medicine
14 and you said something about make bubble hash. Can you
15 just explain that?

16 A Well, bubble hash would be a way to
17 make yourself an extract, just using water and ice, no
18 solvents, no machines, or anything, and basically you
19 are just separating the plant material from the
20 trichomes. The trichomes are a lot denser than the
21 plant material, and will fall through gravity, and the
22 plant material will float. So, we're just separating it
23 so you can salvage what you can from the plant.

24 Q And what does the final product
25 look like? Is it soft? Hard?

26 A You end up with a sandy blonde
27 substance, and that is hashish, if you will, water hash,
28 bubble hash, isolator hash. There is several names for

1 it.

2 Q The app that you said you had, and
3 I think you said it was the only one, or you're the only
4 one who had it, did I get that right?

5 A To my knowledge it's the only one
6 on the planet right now.

7 Q And so, explain exactly what it
8 does?

9 A It's an app you can get for your
10 phone, and you can take a picture of your cannabis plant
11 --

12 Q And anybody can get this app and do
13 this?

14 A Yeah, and it's for the members, I
15 have 12,000 members on a private member site, called
16 UrbanGrowerOnline, and there is people on there all the
17 time, growers, and other people in our community. And
18 if you were to post a picture and say "I have a problem"
19 you'll get response within minutes, and people say,
20 "Hey, you've got spider mites, you've got powdery
21 mildew, there is this problem," or "you're lacking
22 nitrogen, or whatever your problem is.

23 Q All right.

24 A So it's a growers' resource.

25 Q Now, I think you talked at one
26 point about wanting big plants, but then you also talked
27 about these plants that were nine foot that hit your
28 ceiling. So, is there an optimum size?

1 A For myself, I don't like the plants
2 to be any bigger than myself, because I want to be able
3 to reach the top, and I have a disc, C3 that is not
4 good, and it's herniated, and so looking up is not a
5 good thing for myself. So that's a personal thing for
6 myself.

7 Q Because I thought you also then
8 talked about it not being very good. Does that relate
9 to the size or something else?

10 A What I found is that these strains
11 that tend to be your heavy producers, the amount of THC
12 and the quality of the cannabis is not to my liking.
13 One such example is a strain that was around in the
14 early 2000, 2001, 2002, called Jamaican. Made these big
15 frosty buds, I could grow footballs with it. It looked
16 sugary, I'd smoke it, you might as well smoke a hemp
17 shirt. It didn't do anything for me. It looked great
18 for pictures though.

19 Q My friend asked you about all of
20 the videos you have, and you said you -- or the number
21 of grows you have been to, and I think you talked about
22 the videos, that you've made all of them -- of various
23 grow rooms, I think you said, hundreds of grow rooms,
24 and you have been internationally.

25 A Yes.

26 Q Does that include the Netherlands?

27 A I've been in grown rooms in
28 Netherlands, Spain, Chile, all kinds of -- Australia.

1 Q Have you been to Israel?

2 A I've not been to Israel yet.

3 Q Okay.

4 A I'm not ruling it out. I'd go.

5 Q Okay. I think we've covered the
6 grow box and the numbers.

7 The point you made, you said you're not
8 allowed to buy from a -- you were saying a patient can't
9 allow to buy from an LP because you have to give up your
10 licence to grow. Can you explain that?

11 A Well, that's how they put it to us
12 when they introduced the program. I think that's
13 absolutely wrong.

14 Q Just explain what you're saying
15 there.

16 A Yeah, you have to give up your
17 right to grow-op if you wish to purchase LPs' medicine.
18 And there's a problem with that. Most of these LPs run
19 out of cannabis right away. For example Tilray, they
20 announced they had cannabis for sale for patients and
21 within hours it was sold out. So that wouldn't be a
22 reliable source of cannabis if you were a patient, if
23 they're selling out. They shouldn't sell out.

24 Q But were you talking about a
25 patient running out of their own and being able to buy
26 from an LP? Was that --

27 A That would be -- if the program was
28 better, that's the way it should be. But it's currently

1 not like that.

2 Q So you're just saying you can't do
3 that.

4 A You can't do that, but it would be
5 good if we could do that. I think a lot of patients
6 that are on the *MMAR*, if they have a crop failure or if
7 they don't like their cannabis, they could then access
8 cannabis legally instead of using one of these
9 dispensaries.

10 Q My friend put to you what she
11 thought was a Cannabis Cup because of the exhibit that
12 showed you holding up some --

13 A Treating Yourself.

14 Q Now, that's *treatingyourself.com*.
15 Is that a -- you said it -- is that Canadian?

16 A Yeah, it's a Canadian magazine that
17 talks about patients growing cannabis for themselves and
18 treating themselves.

19 Q And what's the Cannabis Cup?

20 A Cannabis Cup is something put on by
21 High Plans Magazine. The first one was in Amsterdam.
22 Now they're all over the United States.

23 Q Okay. And is it the similar sort
24 of a thing to this TY one that you --

25 A Similar kind of thing. People
26 enter cannabis. Actually the one in Amsterdam was a lot
27 more commercial because most of the people who are
28 competing are seed vendors, which are million dollar

1 companies. So they have an interest in winning because
2 if you win and have the best strain, of course your
3 seeds are going to sell and --

4 Q Okay. On this issue of bigger
5 plants and smaller plants, do some people prefer big
6 ones and some people prefer small ones?

7 A Yes.

8 Q And is space a factor?

9 A Absolutely. You need the space in
10 order to grow any plants.

11 Q Is there a need -- we've heard of
12 different periods of time to sort of complete the
13 process. Is it important to do it quickly or does it
14 matter, in terms of turnaround on your growing?

15 A I'm not sure what you mean.

16 Q Well, when you're growing, is it
17 better to grow it faster? Less risk of a loss or can
18 you grow it slower, or does it matter?

19 A Well, for myself I like to take my
20 time and that's why I have bigger plants. It's less
21 work to make fewer plants in a year and water fewer
22 plants. Less clones I'm making, less plants I'm taking
23 care of. It's just easier all the way around.

24 Q So is that less risky in terms of
25 loss of crop or --

26 A Well, actually maybe more risky
27 because I'm relying more on these individual plants for
28 my crop. One crop, like I said, it's taking four or

1 five months, so if I'm only getting two, maybe three
2 crops a year, yeah, I'm relying quite heavily on those
3 plants.

4 Q So are there various different
5 methods for various different individual situations?

6 A For growing? There is so many
7 different ways to grow. What I show is just what I
8 consider easiest for me. Some people grow in beds.
9 Some people grow hydroponically. Some people use
10 aeroponics. There are so many different styles of
11 growing.

12 MR. CONROY: That's all I have, thank
13 you.

14 JUSTICE: Thank you very much.

15 (WITNESS ASIDE)

16 JUSTICE: Okay, we'll come back 1:30
17 for the next witness.

18 **(PROCEEDINGS ADJOURNED AT 12:10 P.M.)**

19 **(PROCEEDINGS RESUMED AT 1:36 P.M.)**

20 MR. TOUSAW: Thank you, Justice
21 Phelan. Our next witness is Dr. David Pate. Dr. Pate,
22 if you could take the stand please.

23 **DAVID PATE, Affirmed:**

24 THE REGISTRAR: Please state your
25 name, occupation and address.

26 THE WITNESS: My name is David Pate
27 and I'm a scientific consultant and I'm at 2459 Pauline
28 Street, Abbotsford.

1 MR. TOUSAW: Justice Phelan, Dr.
2 Pate's affidavit appears in the Consolidated Book of
3 Expert Reports, Volume 1, at tab 3. I'd ask that that
4 be marked as the next exhibit in sequence, which I
5 believe might be Exhibit 14.

6 JUSTICE: 15?

7 MR. TOUSAW: 15.

8 **(DR. PATE'S EXPERT AFFIDAVIT MARKED EXHIBIT 15)**

9 **EXAMINATION CHIEF BY MR. TOUSAW:**

10 Q Dr. Pate, you're a botanist, is
11 that correct?

12 A Combination of botany and
13 chemistry.

14 Q Yes, and a pharmacologist, is that
15 accurate?

16 A Technically my background is in
17 pharmaceutical chemistry and plant biology in two
18 separate tracks.

19 Q Thank you. You've attached a copy
20 of your *curriculum vitae* as Schedule B to your
21 affidavit, is that right?

22 A I believe it's in here somewhere.

23 Q Dr. Pate, what are the --

24 A I see on page 14.

25 Q Yes, thank you. Dr. Pate, what are
26 the primary, in your opinion the primary medicinal
27 compounds in cannabis?

28 A Well, generally you can say there's

1 four of significance, but two of real practical concern
2 and that's THC and CBD. In the plant, native plant
3 they're found as their carboxylic acid forms, but they
4 soon convert upon the normal usage in a heated
5 circumstance.

6 Q And the other two compounds?

7 A Oh, cannabichromene, cannabigerol.
8 They're pretty minor.

9 Q And those are all in a family of
10 compounds as I understand it known as cannabinoids, is
11 that right?

12 A Yes, that's true.

13 Q Where are the cannabinoids found in
14 the cannabis plant?

15 A Primarily they're in the trichomes,
16 which are small glands on the surface of the weed. Some
17 of them are erect on a pedestal or what's called a
18 stype, and those are the capitate ones. There are some
19 more sessile ones, which are very short styped and look
20 like they're resting on the surface of the leaf. And
21 there is a few that appear on the surface of the leaf
22 sort of as blisters. But for the most part the capitate
23 trichomes are predominant.

24 Q In these trichomes where are they
25 predominantly found on the cannabis plant, female
26 cannabis plant?

27 A Well, they're found all over the
28 plant, but it has to do with how dense the population

1 is. The population is most dense on the perigonal
2 bract, or the bracteal, which is a small cup-shaped
3 leaf-like structure that immediately surrounds the ovary
4 of the frond.

5 Q Colloquially put, would it be fair
6 to say that you find the most trichomes on the buds or
7 the flowers of the female plant?

8 A Correct.

9 Q We've heard testimony in these
10 proceedings of various witnesses refer to things that
11 they've described as crystals or resin. What's your
12 understanding what those terms mean?

13 A Trying to decipher vernacular is
14 always hazardous, but it seems to be pretty
15 straightforward that the crystal material, what they
16 call the crystals are the trichome reservoirs. By
17 analogy, the golf ball on top of a golf tee. The little
18 heads that get knocked off, sometimes with the stype,
19 with the golf tee, and sometimes apart from it.

20 Q Does the plant matter itself,
21 absent the trichomes -- the trichomes are removed. Does
22 the plant matter itself in your opinion have medical
23 utility?

24 A I think mostly not. There may be
25 -- if you're asking, is there a hundred percent
26 efficiency in removing these things, the answer is no.
27 But if there were a hundred percent efficiency in
28 removing these trichomes, what would be left is

1 chlorophyll and wood, and a few of the usual sort of
2 plant compounds that, for the purposes of this study, is
3 not relevant.

4 Q How does one separate these
5 trichomes from -- let's just have you assume someone's
6 grown some cannabis, female plants, and they've taken
7 some flowering tops off of those plants when they're
8 mature. How does one then separate the trichomes from
9 the plant material?

10 A Well, there's a lot of different
11 ways. Going -- starting from the most primitive, which
12 has been employed in traditional societies, which rubs
13 them, basically, and scrapes the residues off their
14 hands. And going through more and more sophisticated
15 processes. For example, another technique employed is
16 sieving, where they sieve the trichomes. And they
17 separate the residues from the material which falls
18 through the sieve. And those are the -- usually the
19 trichomes with some degree of the stipes as well.

20 Q So you've discussed the method
21 where you sort of rub the female flowers in your hands
22 and you get this residue, and that's essentially
23 trichomes, yes?

24 A It's smashed up, usually.

25 Q And then you can -- as I understand
26 it, you take them and you drop them on like a screen, or
27 a sieve, or something like that, and what falls through
28 is the trichomes.

1 A Yes.

2 Q Can you also extract those
3 trichomes using an ice water bath?

4 A Yes. Basically it's an aqueous
5 sieving process where you mix it with ice water, and the
6 ice serves to freeze the contents of the trichome heads.
7 And then you simply sift it through an aqueous medium,
8 and the materials that you desire fall through the
9 screen.

10 Q One of the witnesses early in this
11 proceeding referred to something called "bubble hash",
12 or "ice hash".

13 A Mm-hmm.

14 Q Is that the process you're
15 describing?

16 A Yes. Yes, that's it.

17 Q Can you also remove the trichomes
18 using oils? Fats?

19 A Yeah. Yes, you can. The contents
20 of the trichome heads, which are the spherical
21 reservoirs of the cannabinoids produced by the rosette
22 itself at the base. These are soluble in fats. They're
23 called lipophilic. And they can be extracted by any
24 number of lipophilic solvents -- fats, butter,
25 glycerine, alcohol, hydrocarbons. These are all various
26 classes of solvent that would be amenable to that
27 extraction process. Something like water itself is not
28 a good solvent.

1 Q Perhaps you could describe for the
2 court, if you're going to extract trichomes into, say,
3 olive oil, what's one way of doing that?

4 A Well, the crudest way, probably the
5 worst way, is to take the material and throw it in the
6 olive oil and let it steep. A better way would -- a
7 more efficient way would be to reduce the bulk involved
8 by sifting the materials through a screen, dry,
9 preferably, and then taking those sifted materials and
10 dissolving them in the olive oil. This could be done
11 hot or cold, depending on the desired outcome.

12 Q You just mentioned something about
13 reducing bulk, so just to make sure I am clear. If you
14 say you started with 20 grams of dried marijuana, dried
15 flowering tops of marijuana plant, and put it through
16 this dry extraction, this sieving process that you talk
17 about, how much, ball park, in weight of trichomes would
18 you have at the end of that process?

19 A Well, biology is not physics, so it
20 is within certain wide latitudes of the individual
21 specimen you are dealing with. But a ball park
22 benchmark would be about 10 percent.

23 Q And so just to make sure we've -- I
24 don't think we need a calculator for this one, but if
25 you have 20 grams, and you put it through this dry
26 sieving process, ball park you are going to have about
27 two grams of the usable compounds left, is that it?

28 A Probably so, in the trichome form,

1 yeah.

2 Q Would there be pharmacological
3 reasons why a patient, a medical cannabis patient might
4 want to consume trichomes themselves, via smoking or
5 vapourization, as opposed to dried marijuana, the plant
6 and the trichomes combined, via smoking or
7 vapourization?

8 A Essentially you are trying to
9 maximize the absorption of the media that you are
10 dealing with, and minimizing the pyrolitic products. In
11 other words, you want to inhale the sought after active
12 ingredients, with the minimum amount of cost in terms of
13 inhaling smoke.

14 Q So, if I understand it, you
15 essentially smoke less to get the same dosage?

16 A Yeah, why inhale 10 or 20 times
17 when you can inhale once or twice?

18 Q Similar question, would there be a
19 reason for a medical cannabis patient to consume
20 trichomes that have been extracted into oil, for
21 example, consume them orally, instead of smoking those
22 trichomes?

23 A Well, this gets into the chemistry
24 of cannabinoids a bit, in that the plant produces for
25 its own purposes the, what is called the carboxylic acid
26 forms of cannabinoids. They are not the, what is
27 usually termed the phenolic forms. And if you heat
28 these materials, then it undergoes a process called

1 decarboxylation in which the carboxylate acid group
2 flies off as carbon dioxide.

3 Now, that might seem terribly academic,
4 but the practical ramifications are that if you heat the
5 materials, let's say THC in particular. If you heat THC
6 acid, and make it into THC, you've made it into a
7 powerful psychoactive drug. If you don't heat the
8 materials, then it remains THC acid, and there is still
9 some medical utility for THC acid, but the interesting
10 virtue is that you can take many times the normal dose
11 of THC acid than you can take THC. 20 milligrams or so
12 is a significant dose of THC, but THC acid can be taken
13 at doses maybe 10 times that. So then you can get
14 significant utility in, for example, anti-inflammatory
15 effects by upping the dose, without being laid out on
16 the floor, basically, by that huge, huge dose.

17 Q So, you can minimize the perhaps
18 unwanted side effect?

19 A That is the understated part of it,
20 yes.

21 Q Is there a difference in how the
22 cannabinoids have onset of effect, or duration of
23 effect, orally versus smoked? And if so, what is it?

24 A Well, assuming you've
25 decarboxylated these materials before hand, to make it a
26 level playing field, for example through a cookie or a
27 brownie versus smoking, then you're left with a route of
28 administration difference. And if you inhale these

1 materials, you're going to get a very quick and high and
2 sharp peak which diminishes reasonably fast. It tails
3 off reasonably fast. If you eat these materials orally,
4 you're going to get a slower onset, a longer plateau,
5 and a much longer trail-off.

6 Each has its place in the classic
7 pharmacological sense, depending on what the malady is
8 that you're trying to address. If it's something like
9 migraine, where you need an action right now, and it
10 doesn't have to be too long-lasting, then smoking would
11 be a virtue. But if you have something like glaucoma,
12 which is a chronic problem, then eating would be
13 preferred, because maintenance of blood levels would be
14 sustained.

15 Q At page 5 of your affidavit, which
16 is Exhibit 15, it's tab 3 in the book in front of you.
17 Page 5, paragraph 15, about halfway through the page,
18 you're asked about qualifications. And you say the
19 study of cannabis, cannabinoids, is ongoing, and new
20 information about the medicinal value of these
21 compounds, positive, is being discovered regularly.
22 You're reasonably confident information known about
23 cannabis and cannabinoids at the present time, which
24 will support my opinions will not change in a way that
25 undermines the factual or scientific basis for my
26 opinions.

27 And I see you've dated that October 29,
28 2014. Do you see that there?

1 A Mm-hmm. Yes, sir.

2 Q Are you aware of any developments
3 in the scientific literature that -- from October 29 to
4 the present day undermining any of the opinions in your
5 affidavit or the accompanying exhibits?

6 A No, I'm not. I would say that in a
7 broad sense recent discoveries have indicated that there
8 may be more positive values than I've elucidated there.
9 But again, that's -- we're only talking about a year,
10 and science moves more slowly than that.

11 Q I'd like you to turn to the very
12 last page of tab 3. Page 28.

13 A Just before the signature?

14 Q Just before the signature. And
15 particularly H. You express a conclusion there, or an
16 opinion, at least. Do you still hold that opinion, and
17 what is that opinion?

18 A Basically restated, the opinion is
19 that the active ingredients are concentrated within
20 these glandular structures, and that the rest of the
21 plant is for the most part superfluous.

22 Q Would you please answer any
23 questions that my friend might have?

24 A Certainly.

25 Q Thank you.

26 **CROSS-EXAMINATION BY MS. NICOLLS:**

27 Q Dr. Pate, my name is Melissa
28 Nicolls. I'm a counsel for the defendant. I'm going to

1 be asking you some questions on your affidavit.

2 Now, you have in front of you a copy of
3 your affidavit. Is that correct?

4 A Mm-hmm. Yes.

5 Q Okay. And just to clarify what
6 we're looking at here, Schedule C to that affidavit,
7 that starts on page 17, that's the report that you
8 submitted to the Supreme Court of British Columbia --

9 A Yes.

10 Q -- in the case of *R. v. Smith*,
11 correct?

12 A Correct.

13 Q And that report is dated January
14 6th, 2012. Correct? I think you can find that on the
15 last page.

16 A I'll take that on faith.

17 Q I'll have you turn to the last page
18 of your affidavit which is page 28.

19 A It says 29 October? Is that
20 correct?

21 Q I'm asking you for the date of the
22 report, not the date of your affidavit in this
23 proceeding.

24 A I'm sorry, could you help me find
25 it?

26 Q Yes. So if you'd turn to page 28
27 of your affidavit.

28 A I see it.

1 Q And you see on that document --
2 A Yes.
3 Q There are two dates. The top one
4 says, "Executed the 6th day of January, 2012."
5 A Ah.
6 Q You see that?
7 A Yes, I do.
8 Q That's the date of that report.
9 A Thank you.
10 Q Is that correct?
11 A Yes, that's correct.
12 Q Okay. And if you would turn to
13 page 5 of your affidavit. I see that your affidavit was
14 commissioned in San Francisco, is that correct?
15 A Yes.
16 Q You live in California?
17 A I go back and forth, but
18 predominantly over the last year or so I've been in
19 California.
20 Q You go back and forth between
21 British Columbia and California?
22 A Yes, ma'am.
23 Q Now, Doctor, you obtained your
24 Ph.D. in 1999, correct?
25 A Yes, ma'am.
26 Q And you obtained it from the
27 University of Kuopio in Finland, correct?
28 A Kuopio, yes.

1 Q And Doctor, just to confirm, you
2 are not a medical doctor, correct?

3 A That's correct. The degree was
4 earned within the pharmacy school, the School of
5 Pharmaceutical Sciences.

6 Q Your Ph.D.

7 A Yes, ma'am.

8 Q Now, Doctor, you are currently the
9 director of the Canadian Advanced Studies Institute
10 Limited, correct?

11 A Yes, ma'am.

12 Q Now, I'm going to be asking you
13 some questions about the Canadian Advanced Studies
14 Institute and in doing so I will refer to it as the
15 Institute. When I do so you'll understand what I mean,
16 right?

17 A Sure. I refer to it as CASIL,
18 which is the acronym.

19 Q Okay, well, I can refer to it as
20 CASIL if you'd prefer. Now, Doctor, are you an employee
21 of CASIL?

22 A Basically it's my consultancy.
23 It's the legal framework with which I operate.

24 Q So it's your company.

25 A Basically, yes.

26 Q Does CASIL employ anyone other than
27 yourself?

28 A No.

1 Q And you've been operating CASIL
2 since about 2004?

3 A Something like that, yes.

4 Q And CASIL is a limited company,
5 correct?

6 A That's right.

7 Q So it's a commercial enterprise.

8 A Yeah, it falls under that
9 jurisdiction.

10 Q Now, the address set out on the
11 first page of your affidavit, which is on West Fourth
12 Avenue in Vancouver, that's the address of CASIL,
13 correct? So if you turn to page 1 of your affidavit.

14 A Ah, yes, I see.

15 Q Is that the address of CASIL?

16 A Yes, ma'am.

17 Q Okay. And what's located at that
18 address?

19 A It's a place to basically send and
20 receive communications.

21 Q It's a mailbox.

22 A Yes, ma'am.

23 Q Now, Doctor, you described CASIL as
24 a consulting business.

25 A Mm-hmm.

26 Q What type of consulting does CASIL
27 do?

28 A Primarily I deal with cannabis

1 related matters, which is my background.

2 Q So CASIL is retained by clients, is
3 that right?

4 A That's right.

5 Q And the clients pay CASIL for
6 certain services, correct?

7 A That's right.

8 Q And so what is CASIL providing to
9 those clients?

10 A Basically what I'm providing here.
11 Knowledge of the subject area.

12 Q And do you provide that knowledge
13 in written form?

14 A I would say --

15 MR. TOUSAW: Justice Phelan, I've
16 given my friend some latitude. It strikes me as a
17 situation much like this morning, where I'm not sure
18 that this has any relevance to the reason Dr. Pate is
19 here.

20 MS. NICOLLS: Mr. Justice, it's not
21 clear from -- based on Dr. Pate's *curriculum vitae* it
22 appears he's not currently affiliated with the
23 university or other academic organization, and as such
24 it appears that his primary job at the moment is running
25 this company. There are no details about the company in
26 his affidavit or in its attachments. And I am curious
27 as to what exactly he's currently doing and how he's
28 staying apprised of developments in his field.

1 MR. TOUSAW: I think my friend can ask
2 how he stays apprised of developments in the field, but
3 her curiosity about his business doesn't appear to me to
4 be relevant, I didn't hear any relevance.

5 JUSTICE: Well, this is cross-
6 examination, she can come at it from 13 different sides.
7 Cumulatively or individually. Go ahead.

8 MS. NICOLLS: Thank you.

9 Q So, Dr. Pate, I had asked you if
10 you provide your services to CASIL clients in written
11 form?

12 A I think that occasionally so, but
13 not predominantly so.

14 Q So, predominantly is it oral, in
15 oral form?

16 A Most of the time, yes.

17 Q So, can you provide me with an
18 example? Is it in the context of a meeting? Or in the
19 context of a telephone call?

20 A That as well.

21 Q And you said that the topics on
22 which CASIL consults is limited to cannabis, is that
23 correct?

24 A That would be a fair statement.

25 Q Okay. Does CASIL require any
26 equipment or products in order to carry out its work?

27 A Just me.

28 Q So it doesn't require marijuana in

1 order to carry out its work?

2 A No, that would be awkward.

3 Q Okay. What types of clients retain
4 CASIL?

5 A It depends. One example is what
6 we're doing at this moment, in terms of forensic
7 opinions. Other types have to do with people who are
8 involved with cannabis or cannabinoids, in terms of
9 needing technical expertise. If you want an example I
10 can give you that too.

11 Q Is CASIL affiliated with any
12 organizations?

13 A No.

14 Q And how do prospective clients find
15 out about CASIL, do you know?

16 A That is an afterthought, really, it
17 is I who am contacted.

18 Q And how do prospective clients know
19 to contact you, do you know?

20 A Apparently I am known enough that
21 people contact me, as somebody who might be able to help
22 with what they're doing.

23 Q So, CASIL doesn't do any marketing,
24 or anything like that?

25 A No, no.

26 Q Is CASIL retained by commercial
27 organizations?

28 A Sometimes yes.

1 Q And when clients approach CASIL,
2 they approach with a specific question for which they
3 are seeking advice or consulting on?

4 A Yes. That is either in a short
5 framework or a longer term product.

6 Q Now, Dr. Pate, would you please
7 turn to schedule A of your affidavit, that begins at
8 page 6?

9 A Page 6, yes.

10 Q Doctor, this is a list of your
11 publications, correct?

12 A Correct.

13 Q Okay, and it seems to me that they
14 are listed in -- or they are categorized by type, and
15 then listed in chronological order, is that right?

16 A Or reverse chronological order.

17 Q Okay. So, looking at the first
18 page of schedule A, it appears you published a primary
19 research publication in each of 2001, 2002, and 2003.
20 Is that right?

21 A Yes, in reverse order, yes.

22 Q And Doctor, were these publications
23 in 2001, 2002, and 2003, were they based on work that
24 you did for your PhD. dissertation?

25 A Yes.

26 Q Now, looking at this list, it
27 appears that your most recent original research paper
28 was published in 2003, is that right?

1 A Yes.

2 Q And when I look at the list of your
3 research publications on pages 6 and 7, it appears to me
4 that none of them concern clinical trials, is that
5 right?

6 A That's true. I'm in a pre-
7 clinical specialization.

8 Q Thank you. Doctor, are you
9 currently affiliated with a university or college?

10 A No.

11 Q Are you currently affiliated with
12 any other academic organization?

13 A Not, not in an official capacity.

14 Q Are you currently affiliated with
15 any organization other than CASIL?

16 A No.

17 Q So Doctor, how do you stay up-to-
18 date with current developments in your field?

19 A Usually it's in an on demand
20 basis. That people want something known and I find out.
21 Usually from the extant literature. It's a matter of
22 chasing down leads in libraries, in computers. The
23 usual sort of *modus operandi* in terms of academic
24 search.

25 Q Now, Doctor, would you please turn
26 to page 3 of your affidavit. And looking at paragraph 9
27 of your affidavit.

28 A I see.

1 Q This paragraph summarizes the
2 opinions you've given your affidavit and in the attached
3 report, is that right?

4 A Yes, ma'am.

5 Q Okay. Would you please turn to
6 paragraph 13 of your affidavit, which is located on page
7 5.

8 A 13?

9 Q Yes.

10 A Oh, it says "Not applicable."

11 Q Right, so it says "Not applicable"
12 that's in response to the question that you are asked to
13 list literature or other materials specifically relied
14 on in support of the opinions. Is that right?

15 A Yes, ma'am, that's what it says.

16 Q Now, please turn back to page 3,
17 paragraph 9(b).

18 A Yes, ma'am.

19 Q Now Doctor this paragraph states:

20 "The cannabis plant is harvested for the
21 medicinal resin compounds found inside the
22 glandular trichomes of the plant."

23 Is that what that paragraph says?

24 A Yes, ma'am.

25 Q Okay. And it's your opinion that
26 the primary therapeutically active compounds of the
27 cannabis plant are found in the resin, is that right?

28 A Yes, ma'am.

1 Q So looking at paragraph 9(c) it
2 states here, "There's no medical utility to the dried
3 plant matter." That's what it states, correct?

4 A Yes, ma'am.

5 Q Now, in this paragraph 9(c) you're
6 referring to dried cannabis plant matter, correct?

7 A Yes, of course.

8 Q And dried cannabis plant matter
9 generally contains resin unless it has been extracted,
10 correct?

11 A Yeah, it's inherent in the plant.

12 Q Okay, so in referring to dried
13 plant matter in paragraph 9(c), you're referring to
14 dried cannabis plant matter that remains after the
15 extraction of the medicinal resin compounds, right?

16 A Yes, yes.

17 Q Now, Doctor, please turn to page 4
18 of your affidavit, paragraph 9(e).

19 A I'm sorry, what was the --

20 Q Sub (e).

21 A (e).

22 Q This paragraph states:

23 "There are negative effects associated with
24 ingesting whole cannabis plant matter, either
25 orally or by smoke inhalation, which can
26 range from minor to serious."

27 That's what it states, correct?

28 A Yes.

1 Q Now would you please turn back a
2 page to paragraph 7. And paragraph 7 starts at page 2.
3 And it states:

4 "I understand that the government of Canada
5 in the *Marijuana for Medical Purposes*
6 *Regulations (MMPR)* and by amendments to the
7 *Narcotic Control Regulations (NCR)* is
8 limiting possession and distribution of
9 cannabis, marijuana, to its dried form and
10 therefore precluding the use of this
11 substance in less harmful and more effective
12 ways through the use of it in forms other
13 than dried, such as in its natural form as a
14 green plant, or extracts such as oils and
15 tinctures and concentrates."

16 That's what it says, correct?

17 A That's accurate.

18 Q Okay. So, Doctor, you state in
19 paragraph 9(e) that there are negative effects
20 associated with ingesting cannabis plant matter. You
21 state at paragraph 7 that a less harmful and more
22 effective way to use cannabis is in its natural form as
23 a green plant. Now, these two statements appear to me
24 like they might be inconsistent.

25 A Would you like an explanation?

26 Q Yes.

27 A There is a reasonable development
28 wherein people take green plant matter, that is fresh,

1 and they juice it, and they find that by doing this
2 cold, there is an extract of the acid forms of the
3 cannabinoids. And these acid forms are efficacious for
4 anti-inflammatory purposes. Examples of that might
5 involve irritable bowel syndrome, or Crohn's disease.
6 And they even go to the extreme of freezing the juice in
7 little ice cubes, and keeping it, so that they can pop
8 it into small drinks.

9 As I had mentioned earlier, this form is
10 not psychoactive, or minimally psychoactive. So that
11 these doses can be relatively high for increased
12 efficaciousness. Again, in this fresh-squeezed
13 scenario, you probably have a ratio of about 95 to 98 to
14 -- of the acid form to 2 to 5 of the decarboxylated
15 form. So it's a very high ratio. These matters --
16 these materials are produced in a carboxylic acid form,
17 but in the field or in just the ambient circumstances,
18 there is some tiny bit of decarboxylation which occurs.
19 It's not a hundred percent cannabinoid acids.

20 Q So, Doctor, just to clarify, is it
21 your opinion that whole dry cannabis plant matter is
22 problematic, but whole fresh is not? Is that your
23 opinion?

24 A It depends entirely on the
25 application. I would say that if you're wanting to have
26 predominantly carboxylic acid forms, then fresh is
27 better than dried, because dry -- drying process
28 promotes some degree of decarboxylation. Certainly if

1 you extract the dried material with any of a number of
2 safe solvents, food solvents like vegetable oils,
3 butter, alcohol, glycerine, those kind of things, then
4 you -- it's fine. If your application is such that the
5 dried matter is smoked, and you are going for the
6 decarboxylated compounds, for example with a migraine
7 application, then that's fine.

8 But generally speaking, you don't want to
9 eat sticks and leaves.

10 Q Whether it's in dried form or in
11 fresh green.

12 A Generally, yes.

13 Q Generally.

14 A Yeah. But dried is even more work.
15 I mean, it's more aversive than fresh.

16 Q Now, Doctor, are you aware of any
17 clinical trials that have compared the use of dried
18 marijuana to its use in natural form as a green plant,
19 and determined that its use in its natural form is a
20 less harmful and more effective than its use in dried
21 form?

22 A No, ma'am, these kind of trials are
23 not fundable by the government.

24 Q Have you published any research
25 papers reaching that conclusion?

26 A No, because those trials are not
27 fundable. And funding controls the direction of
28 research.

1 Q Doctor, would you please turn to
2 page 4 of your affidavit at paragraph sub (h).

3 A I see it, yes.

4 Q This paragraph states:
5 "Topical application of the compounds in the
6 resin by way of salves or oils produces less
7 or no psychoactive side effects, while also
8 being more effective for the appropriate
9 conditions."

10 You see that?

11 A I see that, yes.

12 Q That's what it says.

13 A Yes, ma'am.

14 Q So, Doctor, are you aware of any
15 published scientific research that supports your
16 statement that topical application can be more effective
17 for the appropriate conditions?

18 A Specific to cannabinoids?

19 Q Yes.

20 A No. No. That's just a general
21 principle of pharmacy.

22 Q Now, Doctor, please turn to page 23
23 of your affidavit.

24 A I have it.

25 Q Yes. Paragraph 25. This paragraph
26 states:

27 "This is because plant matter can contain a
28 variety of harmful or unwanted compounds,

1 which may include heavy metals, fertilizer,
2 residue, pesticides, moulds, and insect
3 remnants."

4 Is that what that says?

5 A Yes, ma'am.

6 Q Now, Doctor, if plant matter did
7 contain such compounds, is it possible these compounds
8 could also be present to some degree in the trichomes?

9 A Yes, ma'am. Do you want a full
10 answer?

11 Q No, thank you. Now, Doctor, please
12 turn to page 26 of your affidavit, paragraph 36.

13 A I'm sorry, could you repeat that?

14 Q Yes, page 26, paragraph 36.

15 A I have it.

16 Q Okay. Now, you see in this
17 paragraph:

18 "By way of example, inhalation would be
19 preferable to oral ingestion to treat the
20 acute pain and other symptoms associated with
21 migraine headaches."

22 Do you see that?

23 A Yes, ma'am.

24 Q Okay. Now, Doctor, I assume you
25 make this statement because inhalation is, in your view,
26 preferable over oral ingestion in order to address acute
27 pain. Is that right?

28 A Yes, ma'am.

1 Q Okay. But you're not suggesting
2 that cannabis is necessarily recommended to treat
3 migraine headaches, are you?

4 A It's one method that does treat
5 migraine headaches, yes.

6 Q Are you aware of any published
7 scientific research to support your statement to that
8 effect?

9 A I couldn't cite it spontaneously
10 here, but yes.

11 Q And what's the citation?

12 A I just mentioned that I couldn't
13 spontaneously cite it here.

14 Q Oh, I'm sorry, I thought you said
15 you could.

16 A No.

17 Q Doctor, are you aware of the review
18 of the literature carried out by Campos, Oat, Cult and
19 Rosales for the Arizona Department of Health Services in
20 2012?

21 A No, ma'am.

22 Q That review of literature concluded
23 that no conclusions can be drawn about the benefits or
24 harms of marijuana use for the treatment of migraines.
25 You're not aware of that publication?

26 A No, ma'am.

27 Q Now Doctor, you speak in your
28 report about various methods to ingest marijuana,

1 correct?

2 A This affidavit you're speaking of?

3 Or?

4 Q Yes, so if you turn, for example,
5 to paragraph 29 at -- which is page -- starts at page
6 23.

7 A Mm-hmm. Yes, ma'am.

8 Q You agree that you speak here
9 about various methods to ingest marijuana, right?

10 A Yes, that's true.

11 Q Okay. And one of these methods is
12 oral ingestion?

13 A Yes, ma'am. On the second -- on
14 the next page.

15 Q And you have already testified
16 today that oral ingestion of marijuana has a slower
17 onset time than other forms?

18 A Yes, ma'am.

19 Q And one way to orally ingest
20 marijuana is to incorporate it into a food product,
21 correct?

22 A Yes, that's one way.

23 Q And if marijuana were incorporated
24 into a food product, such as a cookie, one wouldn't
25 necessarily be able to tell it had been incorporated
26 just by looking at the cookie, right?

27 A No, ma'am.

28 Q That's not right?

1 A It's always difficult to answer a
2 negatively asked question.

3 JUSTICE: Yes.

4 A If done carefully it's difficult
5 to ascertain if the cookie is spiked with cannabinoids
6 other than perhaps a greenish tint, depending on the
7 methodology used.

8 MS. NICOLLS:

9 Q So you agree that just by looking
10 at you wouldn't necessarily know it had been
11 incorporated?

12 A Not necessarily.

13 Q Okay. Now, it's possible that a
14 cookie, for example, that contained marijuana might have
15 a distinctive smell, correct?

16 A It could, yes.

17 Q Yes, but not necessarily, correct?

18 A It depends on the preparation.

19 Q But you agree that it's possible
20 that a cookie containing marijuana may not smell any
21 different than a cookie without marijuana, correct?
22 It's possible?

23 A It is possible, as I understand
24 it. Most of the smell is involved with the terpene
25 fractions, which are volatile. Sometimes they're lost.
26 However, taste may be another matter.

27 Q And now turning to taste, it's
28 possible that a cookie that contains marijuana may have

1 a distinctive taste, correct?

2 A It's more than possible. I
3 believe it's probable.

4 Q But it's possible it might not?

5 A Questions relating to the
6 impossibility of anything is a hazardous kind of
7 speculation, but I would say that cannabis cookies do
8 seem to have a characteristic taste.

9 Q Generally?

10 A I'll have to concede that. If
11 it's -- if otherwise, I would have to say impossible in
12 the other direction, yes.

13 Q And in order to determine how much
14 THC, for example, is present in a baked good such as a
15 cookie, would require some sort of laboratory analysis
16 or experimentation, correct?

17 A Yes. If -- by what you mean
18 experimentation, I'm not sure whether that's in a
19 clinical sense or in an experiential sense.

20 Q Why don't I -- I'll just stick
21 with laboratory analysis, correct?

22 A The general methodology with an
23 unknown is to take the minimum conceivable and work your
24 way up from there by doubling. But from a laboratory
25 sense it's straight forward.

26 Q But you -- I mean you agree that
27 in order to determine how much THC is in a baked good
28 precisely --

1 A Objectively.

2 Q Objectively, it requires
3 laboratory analysis, correct?

4 A Yes. Yes.

5 Q Okay. Now I would like you to
6 turn to a document. Do you have in front of you this
7 volume with the green page?

8 Oh, Mr. Registrar.

9 JUSTICE: Is that 11?

10 MS. NICOLLS: Yes, it's -- Mr.
11 Justice, it's volume 11.

12 JUSTICE: Okay.

13 MS. NICOLLS:

14 Q And Dr. Pate, I'd like you to turn
15 to tab 19(c).

16 MR. TOUSAW: Justice Phelan, before my
17 friend gets into her questions on this document, I just
18 want to make sure that we are confirming that putting
19 this document to the witness is not entering it into
20 evidence for the truth of the matters asserted unless he
21 adopts those for the purposes of his --

22 JUSTICE: That is right. If this is
23 being put to him as a "have you ever seen this before",
24 then he's identified it, that is all. We have to go
25 much further before I'll start reading it.

26 MR. TOUSAW: Thank you.

27 A This is a formidable volume.
28 Unfortunately named "Joint Book of Documents."

1 MS. NICOLLS:

2 Q Doctor, are you at tab 19(c)?

3 A I think so. One -- I see it, okay,
4 I have it. It starts with "implications of marijuana
5 legalizations in Colorado"?

6 Q Yes, page 4202. Now, Doctor, have
7 you seen this document before?

8 A Only very recently.

9 Q Okay, what is this document, do you
10 know?

11 A I believe it is a letter to the
12 editor -- or a short publication to JAMA, Journal of
13 American Medical Association.

14 Q Okay. Now, Doctor, would you
15 please turn to the second page of this document.

16 A I have it.

17 Q And looking at the left-hand
18 column, the third paragraph under the heading
19 "challenges of edible marijuana products"?

20 A I see it.

21 Q Yeah. This paragraph states, 10 to
22 30 milligrams of THC. Are you with me?

23 A The first --

24 Q It's the very bottom paragraph in
25 the left-hand column.

26 A Okay, that is the fifth paragraph.

27 Q It begins, "10 to 30 milligrams",
28 do you see that?

1 A That's the third paragraph under
2 that heading.

3 Q Yes. And it says,
4 "10 to 30 milligrams of THC is recommended
5 for intoxication depending on the experience
6 of the user. Each package, whether it is a
7 single cookie, or a package of gummy bears,
8 theoretically contains 100 milligrams of THC.
9 Because many find it difficult to eat a tenth
10 of a cookie, unintentional overdosing is
11 common. Furthermore, manufacturing practices
12 for marijuana edible products are not
13 standardized. This results in edible
14 products with inconsistent THC
15 concentrations, further complicating dosing
16 for users. According to a report in the
17 *Denver Post*, products described as containing
18 100 milligrams of THS actually contained from
19 0 to 146 milligrams of THC."

20 Now, Doctor, do you agree that this
21 paragraph of the article, or the editorial suggests that
22 there is a risk of unintentional overdosing with edible
23 marijuana products?

24 A That's the inference, I believe.

25 Q Doctor, do you agree that there is
26 a risk of unintentional overdosing with edible marijuana
27 products?

28 A Yes, generally, I think that there

1 is -- the only virtue involved with that circumstance is
2 that no one is going to die over it. It's one of the
3 few drugs which it is not possible to overdose to the
4 point of death, but overdose to the point of "wish I
5 hadn't done that."

6 Q Right, some side effects of
7 overdosing can be extremely unpleasant, is that right?

8 A Yes.

9 Q So, still looking at the left-hand
10 column of that article, the second full paragraph on
11 this page, that starts, "The most concerning health
12 effects..." are you with me?

13 A Yes.

14 Q Okay, so, it states,
15 "The most concerning health effects have been
16 among children. The number of children
17 evaluated in the ED from unintentional
18 marijuana ingestion at the Children's
19 Hospital of Colorado increased from 0 in the
20 five years preceeding liberalization, to 14
21 in the two years after medical
22 liberalization..."

23 And so on. I'll leave you to read the
24 rest of the paragraph.

25 A Yes.

26 Q So, we don't read along with me.
27 And if you just look over to the right-hand column, the
28 second paragraph down that starts "Initially," you see

1 that?

2 A "Edible or capsule" --

3 Q "Initially, non-medical edible
4 products"?

5 A Oh, the first full paragraph, okay.

6 Q Yes.

7 "Initially non-medical edible products were
8 required to be sold in a childproof package.
9 Although medical marijuana did not have this
10 requirement, childproof packaging
11 requirements are now consistent across both
12 retail and medical products, but there is no
13 dosing recommendation for medical marijuana."

14 And I'll let you read the rest of that
15 paragraph.

16 A Onwards, yes. Do you want comment?

17 Q So, Doctor, these two paragraphs
18 suggest that there is a risk of children unintentionally
19 overdosing from edible marijuana products, and that as a
20 result they may become ill. Is that right?

21 A That's right, but I believe there's
22 a small mistake in that paragraph, in that to quote
23 verbatim, this -- excuse me, let me have one moment,
24 please.

25 It says, relating to 100 milligram dose,
26 it says:

27 "This dose is unlikely to cause respiratory
28 arrest, which may occur in children at this

1 dose."

2 I believe that's quite erroneous, because
3 there are no THC receptors in the areas of the brain
4 that control respiration, unlike, for example, opioids,
5 which are notorious for killing people in that manner.

6 Q But Doctor, do you agree that
7 there's a risk to children of -- unintentionally
8 overdosing from marijuana edibles?

9 A How do you define risk? A lethal
10 risk or a risk of experiential trauma? Or how would you
11 --

12 Q A risk of becoming very ill from
13 unintentionally consuming marijuana edibles.

14 A I believe there's risk of great
15 distress. I'm not sure of the illness in a physical
16 sense that's involved.

17 Q Okay. Thank you.

18 May I please have this documentation
19 marked for identification only. I believe the exhibit
20 we are on is Exhibit 16.

21 JUSTICE: For ID, identification
22 purposes only.

23 MS. NICOLLS: Thank you.

24 **(TAB 19, PAGE 4202 MARKED EXHIBIT 16 FOR IDENTIFICATION)**

25 MS. NICOLLS:

26 Q Now, Doctor, in your affidavit you
27 speak about extracting the resin from the cannabis plant
28 material using -- is that right?

1 A Do you want to cite the specific or
2 just generally?

3 Q Just generally. You speak about
4 extracting the resin from the plant material, correct?

5 A Yes, in mechanical and solution
6 methods, yeah.

7 Q And one way to do this is to use a
8 chemical solvent, correct?

9 A It depends on what you define as
10 chemical. Even olive oil is a chemical in a sense, but
11 if you can be more specific that would help.

12 Q Would you please turn to paragraph
13 21 of your affidavit located at page 21.

14 A I have it.

15 Q Okay, and if you turn page 22, the
16 first line on page states:

17 "And with the use of petrochemical solvents,
18 e.g. petroleum, ether, that are then
19 evaporated."

20 A Do you see that?

21 Q Yes, ma'am.

22 A So you're referring there to using
23 petrochemical solvents to extract resin from cannabis
24 plant matter, correct?

25 Q Yes.

26 A The thought was predominantly
27 hydrocarbons.

28 Q And, Doctor, petroleum ether is one

1 such petrochemical solvent, correct?

2 A Yes, ma'am. It's a fractional cut
3 of various hydrocarbons.

4 Q And butane is another?

5 A Yes, ma'am.

6 Q Now, doctor, I'm going to ask you
7 to turn to a second document.

8 A In the big book?

9 Q Yes. And it is at tab 19B, so it
10 should be just before the *JAMA* editorial.

11 A Yes. That's a *New York Times*
12 article.

13 Q Doctor, have you seen this document
14 before?

15 A Yes, ma'am, briefly.

16 Q Please turn to the second page of
17 this document. And the second paragraph, or the first
18 full paragraph on this page.

19 A Yes, ma'am.

20 Q First paragraph states:

21 "The explosions occur as people pump butane
22 fuel through a tube packed with raw marijuana
23 plants to draw out the psychoactive
24 ingredient, tetrahydrocannabinol or THC,
25 producing a golden, highly potent concentrate
26 that people sometimes call 'honey oil',
27 'earwax' or 'shatter'. The process can fill
28 a room with volatile butane vapours that can

1 be ignited by an errant spark or a flame."

2 Is that what that paragraph says?

3 A Yes, ma'am.

4 Q Okay. Now this paragraph is
5 referring to the extraction of resin -- the extraction
6 of resin from marijuana using a chemical solvent.
7 Correct?

8 A Using a hydrocarbon solvent, yes.

9 Q Okay. Doctor, I'm going to ask you
10 to turn back to the *JAMA* article which has been marked
11 as Exhibit 16.

12 A All right.

13 Q And would you please look at the
14 last paragraph in the right-hand column?

15 A Of the last -- under "Conclusions"?

16 Q No, on the first page.

17 A All right. "The University of
18 Colorado ..."

19 Q Yes.

20 A Yes.

21 Q So this states:

22 "The University of Colorado Burn Centre has
23 experienced a substantial increase in the
24 number of marijuana-related burns. In the
25 past two years, the Burn Centre has had 31
26 admissions for marijuana-related burns. Some
27 cases involve more than 70 percent of the
28 body surface area."

1 I'll let you continue reading the rest of
2 that.

3 A Yeah. It's --

4 Q And you see at the last sentence of
5 that paragraph, it says:

6 "The majority of these were flash burns that
7 occurred during THC extraction from marijuana
8 plants using butane as a solvent."

9 A Yes.

10 Q So, Doctor, these paragraphs that
11 we've just reviewed suggest that extracting resin from
12 cannabis using what I'll refer to as a chemical solvent
13 has the potential to cause an explosion. Do you agree
14 with that?

15 A Yes, ma'am.

16 Q And these paragraphs suggest that
17 that explosion has the potential to cause serious burns.
18 Do you agree?

19 A It's akin to -- or worse than,
20 using gasoline.

21 Q So you do agree that the explosions
22 can cause burns.

23 A Yes, ma'am.

24 Q Okay. And, Doctor, do you agree
25 that the risks of extracting oil from cannabis using a
26 chemical solvent includes the risks of explosions and
27 burns?

28 A Within the context of chemical

1 solvents being volatile hydrocarbon solvents, certainly.

2 Q Now, Doctor, if a chemical solvent
3 has been used to extract the resin from cannabis, is it
4 possible that that solvent won't completely evaporate,
5 and byproducts of that solvent might remain in the
6 extracted resin?

7 A I would say it's even probable.

8 Q Now, Doctor, would you please turn
9 to page 25 of your report, or your affidavit, and
10 looking at paragraph 32.

11 A Starting with "Another benefit ..."?

12 Q Yes.

13 A All right.

14 Q And in the first sentence in that
15 paragraph, it states:

16 "Another benefit of oral ingestion is that it
17 produces longer-lasting therapeutic effects
18 than inhalation."

19 That's what it says, right?

20 A Yes, ma'am.

21 Q And, Doctor, we've already
22 discussed that orally ingesting cannabis has a slower
23 onset time than inhalation. So, this slower onset time
24 means that it will take a patient who is orally
25 ingesting marijuana more time to determine if the
26 desired level of effect has been reached, than the
27 patient who is inhaling marijuana. Is that right?

28 A Yes, ma'am.

1 Q Okay. And would you agree that
2 this lower onset time means that it's possible it may be
3 more difficult for patients who are orally ingesting to
4 manage their dosing?

5 A If they're impatient, that can
6 happen.

7 Q Now, looking at paragraph 31 on
8 that same page, here, Doctor, you state that a benefit
9 of orally ingesting cannabis-based medicines is that is
10 provides the benefit of direct therapeutic action that
11 can be more effective and require lesser dosages. Did I
12 get that right?

13 A I'm sorry, was that paragraph 31?

14 JUSTICE: 31?

15 MS. NICOLLS:

16 Q Yeah, so I've compressed your --
17 I've taken your first sentence, and combined it with
18 your last. So, looking at paragraph 31, the first
19 sentence says,

20 "A primary benefit of orally ingesting
21 cannabis based medicines..."

22 And then if you move to the last sentence, it says,

23 "...This provides the benefit of direct
24 therapeutic actions that can be more
25 effective and require lesser dosages thus..."

26 And on it goes, do you see that?

27 A Ameliorating potential unwanted
28 side effects, yes, ma'am.

1 Q Okay. Now, by "...lesser dosages..."
2 in this paragraph, you mean that patients who are orally
3 ingesting marijuana may need less marijuana than they
4 would need if they were ingesting it by some other
5 means, is that right?

6 A In this particular instance, we are
7 talking about delivering a drug to the site of action.
8 So, in this case, I would say yeah. Yes, this is
9 probably true.

10 Q Do you know if what you've stated
11 here is a commonly held scientific view?

12 A I'm afraid this whole field of
13 endeavor of medical cannabis is not well researched,
14 purposefully, probably, through funding priorities of
15 the government for research.

16 Q Now, Doctor, if a patient is used
17 to, for example, smoking marijuana that has a 10 percent
18 THC content, but then one day smokes marijuana that has
19 a 20 percent THC content, that patient will most likely
20 obtain a different effect from the 20 percent THC
21 marijuana than he or she obtained from the 10 percent
22 THC marijuana. Would you agree with that?

23 A Not necessarily, because there is
24 such a phenomenon called auto-titration, in which the
25 feedback, the subjective effects experienced, provide a
26 governing action for subsequent dosing. In other words,
27 the feedback loop is short enough, a matter of seconds
28 to minutes, so that if you are inhaling something that

1 is extra strong, you'll probably find that that's
2 enough, and if it is not strong enough, you'll proceed
3 again until you reach the level at which you find it
4 satisfactory.

5 Q So, what you are saying is in this
6 hypothetical I've provided, the patient may have less of
7 the 20 percent THC marijuana, is that right?

8 A I'm sorry, could you --

9 Q What you're suggesting is that the
10 patient may have less of the 20 percent THC marijuana?

11 A Consume less.

12 Q Yes.

13 A Intentionally consume less, based
14 on effect achieved.

15 Q Okay. Thank you.

16 I apologize, Mr. Justice, may I please
17 have that *New York Times* article we were looking at, Tab
18 19(b), marked as exhibit 17 for identification, please?

19 JUSTICE: Now I have got to find it
20 again. It was in 18, was it?

21 MS. NICOLLS: It was in 19(b).

22 JUSTICE: 19(b).

23 MR. TOUSAW: 17 for identification
24 only, is that the --

25 JUSTICE: Yes, 17-ID.

26 MR. CONROY: So we are using the same
27 sequence of numbers whether they are true or just for
28 identification?

1 JUSTICE: Yes, we'll just keep the
2 numbering, because at some point, it may be that
3 something that has been entered for identification
4 actually becomes identified and becomes a proper
5 exhibit.

6 MR. TOUSAW: Yes, thank you.

7 **(NEW YORK TIMES ARTICLE, TAB 19(b), MARKED EXHIBIT 17**
8 **FOR IDENTIFICATION)**

9 JUSTICE: Not that there is anything
10 improper about the *New York Times*. I mean, it's all
11 true, isn't it? It's like the *Globe and Mail*.

12 MS. NICOLLS: And Mr. Justice, I also
13 wonder if this might be a good time for the afternoon
14 break?

15 JUSTICE: Okay. All right, let's take
16 10 minutes only. I want to make sure we finish today.

17 **(PROCEEDINGS ADJOURNED AT 2:48 P.M.)**

18 **(PROCEEDINGS RESUMED AT 3:03 P.M.)**

19 JUSTICE: Go ahead.

20 MS. NICOLLS:

21 Q Dr. Pate, I'm going to ask you to
22 turn to another document. It's located at tab 19E in
23 the big book.

24 A I see it.

25 Q What is this document, Doctor?

26 A The title?

27 Q Yes.

28 A "Medicinal Use of Cannabis and

1 Cannabinoids, et cetera".

2 Q Okay, and have you see this
3 document before?

4 A Briefly, yes.

5 Q Have you read this article before,
6 Doctor?

7 A Before this morning?

8 Q Yes.

9 A No.

10 Q Okay. Would you please turn to
11 page 4244 in the lower right-hand corner of the
12 document. I'm going to ask you to read the paragraph
13 under "Methodology". I'll just give you a moment to
14 read that.

15 A Okay. I see.

16 Q Okay. So my understanding is that
17 this article sets out the results of a survey done to
18 obtain information about patients' perceptions of
19 different modes of administration of marijuana for
20 medical purposes. Do you agree with that?

21 A Apparently, yeah.

22 Q Would you please turn to page 4247
23 of the article.

24 A I have it.

25 Q And looking at the right-hand
26 column, the only full paragraph. This paragraph states:
27 "Within Group 1, the different administration
28 forms required very similar amounts daily.

1 The daily dose reported seemed to be slightly
2 higher among those who used edibles, mean 3.4
3 grams per day, median 1.5 grams per day,
4 compared to those using cannabis as tea, mean
5 2.4 grams per day, median 1.5 grams per day.
6 This may be remarkable given the fact that
7 cannabinoids are only sparingly soluble and
8 cannabis tea has a comp 2007. Vaporizing and
9 smoking both require similar amounts of
10 cannabis with mean values of 3.0 grams daily
11 each, median 2.0 and 1.5 grams per day
12 respectively."

13 Is that right?

14 A That's right.

15 Q Or that's what it says.

16 A That's accurate.

17 Q Yes. Would you please turn to the
18 next page, which is 4248, and looking at the left-hand
19 column, the first full paragraph. It starts with the
20 title that's bolded and italicized, "Number of Intakes".
21 Do you see that?

22 A I see it, yeah.

23 Q Okay. And four lines down a
24 sentence begins. It says, "Oral use of cannabis in the
25 form of tea..." Do you see that?

26 A Yes, ma'am.

27 Q Okay. So it says:

28 "Oral use of cannabis in the form of tea,

1 together with baked products or tincture,
2 require the fewest intakes with low less than
3 two administrations daily. Smoking and
4 vaporizing cannabis required a higher number
5 of intakes with an average of five to six
6 administrations daily. Oral cannibinoids are
7 known to have a longer although more erratic
8 duration of effect."

9 Is that what it says there?

10 A Yes.

11 Q Okay. Would you please turn to the
12 previous page, and looking at Table 2 on this page, you
13 see that?

14 A Yes, ma'am.

15 Q Okay. Now, it seems to me that the
16 results we just discussed in this chart, so specifically
17 if we look down where it says "Tea", do you see where
18 I'm looking?

19 A Yes, I believe so.

20 Q Okay. And you see it says the
21 mean, or it shows that the mean daily use amount of tea
22 was recorded to be 2.4 grams. The mean daily frequency
23 times per day for tea was 1.9 grams, and the mean first
24 onset of effects, minutes was recorded to be 28.9
25 minutes of tea. You see that?

26 A Yes, ma'am.

27 Q Okay. So based on what we've
28 reviewed, it appears that patients reported using

1 marijuana for medical purposes in the form of tea.

2 Would you agree with that?

3 A Sometimes, yes.

4 Q And you agree that that's the case
5 in respect of this paper.

6 A Yes.

7 Q Yeah. And it also appears, based
8 on this paper, that patients reported obtaining a
9 therapeutic effect from using the tea. Would you agree
10 with that?

11 A Yes, ma'am.

12 Q Okay. So just looking at this
13 table again, looking at daily use amounts, and comparing
14 the smoking to the food tincture, the smoking -- the
15 mean amount of the smoking was 3.0 grams, and the mean
16 amount for the food tincture was 3.4 grams. Do you see
17 that?

18 A Yes, I see.

19 Q Yeah. So these amounts appear to
20 be fairly comparable, 3.0 and 3.4 grams. Is that --
21 would you agree with that?

22 A Yes.

23 Q Okay. Now, Doctor, I just want to
24 go back to one thing we discussed earlier today, which
25 is baked goods, edibles. And we had discussed how a
26 cookie, for example, containing marijuana, how you would
27 know it contains marijuana. And one question that I
28 wanted to ask was, how do you know by looking at a baked

1 good such as a cookie, how many grams of marijuana are
2 in that item?

3 A That would be very difficult to
4 determine, especially since marijuana *per se* may not be
5 in the cookie, but it's extractive.

6 MS. NICOLLS: Mr. Justice, may I
7 please have this article that we just referred to as
8 Exhibit 18 for identification, please?

9 JUSTICE: Well, I've got a little
10 problem with this. You read brilliantly from it, he
11 agreed with you that you had read brilliantly from it,
12 and so far I haven't seen what utility is to be made of
13 it.

14 MS. NICOLLS: So I did ask the witness
15 three questions about this. Specifically, that patients
16 reported obtaining an effect from tea --

17 JUSTICE: Mm-hmm.

18 MS. NICOLLS: -- as well as that there
19 were comparable amounts reported in terms of use. That
20 table that is -- that we discussed is in evidence in
21 another affidavit that's been filed in this court. If
22 you would prefer -- I mean, you certainly don't have to
23 have --

24 JUSTICE: Well, I don't mind something
25 coming in for identification purposes, if you can see
26 that it's got -- it's going to take you some place where
27 I can understand it. But we might as well at this rate,
28 you can read from the phone book and come in for

1 identification purposes. So, tell me what's the utility
2 of this.

3 MS. NICOLLS: Oh. So, the utility of
4 this was, Mr. -- Dr. Pate agreed that patients did
5 report obtaining an effect from the tea. And he also
6 stated that that was his understanding, that patients
7 can obtain an effect from the tea. And he also agreed
8 that the 3.0 grams and 3.4 grams are comparable.

9 JUSTICE: He called them comparable,
10 yes.

11 MS. NICOLLS: So --

12 MR. TOUSAW: I think I hear, Justice
13 Phelan, where your confusion arises, because I have the
14 same confusion. My friend read aloud passages of the
15 paper and the witness agreed that she had read those
16 passages of the paper, and the paper says those things.
17 But I'm not sure what evidentiary value that has.

18 JUSTICE: I will let it in, but I'm
19 going to caution you that we can't just keep going
20 through this and marking things for identification
21 purposes, because I will at the end of this, if we keep
22 doing this, require that whatever documents you use for
23 identification purposes be excised out, and the only
24 thing that we will have in it will be the part that you
25 referred to, even though it's for identification
26 purposes. Because it is not unusual, when a matter such
27 as this moves up the judicial ladder, that the document
28 that went in for purposes of this comment over here

1 suddenly becomes the truth of the content of the
2 document over there. And I don't want any of that kind
3 of thing with this record. Okay?

4 So it will come in, but I caution you.

5 MS. NICOLLS: Thank you, Mr. Justice.

6 JUSTICE: Now, where are we on
7 exhibits, Christian? 18?

8 **(TAB 19(e) MEDICAL USE OF CANNABIS AND CANNABINOIDS,**
9 **MARKED EXHIBIT 18 FOR IDENTIFICATION)**

10 MS. NICOLLS:

11 Q So, Dr. Pate, just turning back to
12 that article that we were just discussing. Do you agree
13 that it is possible that patients using marijuana for
14 medicinal purposes in tea can obtain a therapeutic
15 effect from that tea?

16 A Yes.

17 Q And, Doctor, do you agree that it
18 is possible for patients to use comparable dosage
19 amounts for smoking, for inhaling and orally ingesting
20 marijuana for medical purposes?

21 A It is difficult to say, because it
22 really depends on the case at hand. Are you applying
23 this for a locus that is in the intestine for example?
24 Or are you using the intestines as a portal to the
25 systemic circulation for other purposes?

26 To put it in a little more simple terms,
27 are you applying the medicine to a problem at the
28 intestine? Or are you just using that as a way to get

1 it to the site of action otherwise. I don't know if I
2 have made that more simple or not. Have I made that
3 clear at all?

4 Q Yes, thank you, Doctor.

5 A Okay.

6 Q Okay, so Doctor, just to clarify,
7 you are saying that if the patient ingests the
8 marijuana, orally ingests it in order to apply it
9 directly to the site at which they require the
10 therapeutic effect, it is more likely that that dosage
11 will be comparable to the amount that they will require
12 if they are inhaling, is that your point?

13 A No, no, the comparison is between
14 oral dosing to the site of action which is intrinsic to
15 the digestive process, versus a similar amount orally
16 taken for transport to other parts of the body.
17 Comparing what you had suggested is apples and oranges,
18 and is difficult to generalize.

19 Q Okay, so I take your point then to
20 be really dosing can be -- is really dependant on a
21 variety of factors. Would you agree with that
22 statement?

23 A Yes. Yes.

24 Q Okay, thank you, Doctor. So,
25 Doctor, in light of what we discussed, would you find it
26 surprising that in the HAZACOMP Study that we were just
27 looking at, patients reported using comparable amounts,
28 mean amounts, for inhaling versus ingesting orally?

1 A It puts me in a similarly difficult
2 situation, because unfortunately, and I believe they
3 mention this, they fail to specify for what reasons
4 these were taken. And so, and also these are cumulative
5 data among all patients for all reasons. So, I think it
6 is a little bit meaningless. It is tough. It is tough
7 to make a judgment of that kind of specific conclusion
8 based on generalized data --

9 Q So, again we go back to your point
10 that dosing is, at the end of the day, dependant on a
11 variety of factors, is that right?

12 A Yes, route of administration,
13 effect you want to achieve, individual patient
14 tolerance, there is many factors.

15 MS. NICOLLS: Thank you, Doctor, those
16 are my questions.

17 JUSTICE: Thank you. Re-exam?

18 **RE-EXAMINATION BY MR. TOUSAW:**

19 Q You mentioned, doctor, in response
20 to my friend's questions, something that I think you
21 referred to as a general principle of pharmacy in
22 relation to topical application. I wondered if you
23 could just elaborate on that, and explain what do you
24 mean by that?

25 A Hmm. Could you quote me on -- or
26 could you refer to the written literature here?

27 Q I'll take you to paragraph 31 of --
28 it's on page 25.

1 A I'm on it, yes.

2 Q Exhibit 3.

3 A Yeah.

4 Q Paragraph 31, you speak of an
5 application of therapeutic compounds directly to the
6 site of the pathogenicity.

7 JUSTICE: I see that.

8 A Is this page 25?

9 Q Page 25, in the upper right corner.

10 And now they've got --

11 A I see a primary benefit of orally
12 ingesting --

13 Q Yes.

14 JUSTICE: That's the paragraph.

15 MR. TOUSAW:

16 Q Yes. So the second sentence talks
17 about direct application to the site of pathogenicity.

18 A Yes.

19 Q Okay. What's "pathogenicity" mean?

20 A Well, it's the site of problem.

21 You know, a lesion or whatever it is.

22 Q Maybe an example is easiest. As I
23 understand it, if you have arthritis, sometimes you get
24 an arthritis cream, steroid cream, is that right? And
25 you apply that to your site where it hurts.

26 A Yes, direct application to the
27 problem, to address it.

28 Q Or you could take pills --

1 A That too.

2 Q -- which is a systemic application.

3 A That too.

4 Q Okay. And so when you say a
5 general principle of pharmacy is direct application to
6 the site of pathogenicity, is that true for just
7 cannabis, or medicine in general?

8 A It's a general principle. You want
9 to apply the least amount of drug for the most amount of
10 effect to the site where it's most relevant.

11 Q Now, at one point, you were asked
12 about paragraph 25, which is at page 23 of your
13 affidavit. And I think you were asked about these
14 various unwanted compounds. My friend asked you if the
15 plant matter contains them, is it possible to -- in some
16 degree they are present in the trichomes, and you said
17 yes, and then you asked her, "Do you want a full
18 answer," and she said, "No." Can you give the full
19 answer, please?

20 A Well, if the plant has these
21 materials in it, chances are that parts of the plant
22 will have these materials in it. But if you separate
23 out the parts that are relevant from the parts that are
24 irrelevant, and the part -- the latter is much larger in
25 bulk than the former, that is, the trichomes, will have
26 a disproportionately smaller amounts of these
27 contaminants. For example, if nine-tenths of the bulk
28 of the plant is discarded, then nine-tenths of the bulk

1 of the contaminants, all else being equal, would be
2 discarded.

3 Q My friend asked you about a cookie;
4 just looking at a cookie, you can't tell how much THC is
5 in it. Do you remember that question and answer?

6 A I believe so, yes.

7 Q And just looking at a bud of what
8 purports to be marijuana, you can't tell how much THC is
9 in it, can you?

10 A I can't tell how much
11 acetylsalicylic acid is in an aspirin tablet, for that
12 matter. So, I mean, there is no way to look at anything
13 in that realm and find out how much is in there. You're
14 just simply taking it at face value.

15 Q My friend asked you some questions
16 about the risk of overdose. And she was very specific
17 to cannabis edibles. The risk of overdose is, to adults
18 or children, exists with all medicines. Is that fair to
19 say?

20 A Yes. There is doses which are
21 inaccurate, doses which are optimal, and doses which are
22 too large.

23 Q Is the worst downside risk to
24 overdosing on prescription drugs -- well, what is the
25 worst downside risk to overdosing on prescription drugs?

26 A I presume death is the worst, is as
27 bad as you can get for most people.

28 Q Is another risk permanent mental or

1 physical damage?

2 A Yes. That's debatable as to
3 whether that's worse or better than death, but there are
4 many problems that can happen from overdoses or even
5 long-term effects of normal doses of normal prescribed
6 drug.

7 Q In your opinion is there risk of
8 death in overdosing on cannabinoids?

9 A No.

10 Q In your opinion is there a risk of
11 permanent physical damage overdosing on cannabinoids?

12 A No. Certainly not on a one-time
13 basis.

14 Q Is there any risk of explosion in
15 extracting trichomes with the dry sieve method you
16 discussed?

17 A Zero.

18 Q Is there any risk of explosion in
19 extracting with the ice water method you discussed?

20 A Zero.

21 Q Is there a risk of explosion if you
22 extract cannabinoids into olive oil?

23 A Near zero.

24 Q Sometimes oil catches on fire?

25 A Yes, indeed. Almost anything can
26 be done with enough effort.

27 Q If you forget to turn off your
28 burner and it goes out on your stove, your house can

1 blow up.

2 A Yes. I'm speaking within what's
3 normally accepted as reasonable hazards, for example, in
4 a kitchen.

5 Q It's rare to blow up your kitchen
6 when you're making cookies. Is that fair?

7 A That's fair. Unless you leave the
8 gas on. I'm speaking humorously in terms of the natural
9 gas explosions that occur in kitchens sometimes.

10 Q There was a lot of discussion
11 between you and my friend on the issue of dosing, and
12 you talked about a concept that you called
13 autotitration, I think. And earlier you'd said
14 something about taking a little and then doubling it.
15 Do you remember saying that?

16 A Yes.

17 Q What did you mean by that?

18 A Well, it applies to almost
19 anything. Certainly in terms of a drug realm,
20 especially natural products realm, that you take a dose
21 of an unknown in as small a conceivable amount out of an
22 abundance of caution, and if it fails to have an effect
23 that's fine. You just simply double it the next time
24 after a reasonable period and see if that works, and if
25 that doesn't you double it again. And you continue in
26 that fashion until you begin to get an effect, and then
27 you know you're within the range of estimation for a
28 reasonable titration of dose.

1 Q And this is true of cannabis and
2 other medicines.

3 A Yes, just about anything that you
4 don't know some of the parameters of. In other words,
5 it's rare that you're going to get a drug that has no
6 effect at one dose, and a seriously problematic dose at
7 double that dose. It's a means basically of
8 proximation, initial proximation.

9 Q Thank you, Dr. Pate, I have no
10 further questions.

11 Thank you, Justice Phelan.

12 JUSTICE: Thank you. Free to go, sir.

13 (WITNESS ASIDE)

14 JUSTICE: I guess the next order of
15 business is Monday at 9:30?

16 MR. BRONGERS: I think that's right.

17 MR. CONROY: I can just say that
18 because of this procedure, you've now heard from all of
19 the witnesses that were originally tendered by the
20 plaintiffs as part of their case except Professor
21 Baumann, who my friends decided they didn't want to
22 cross-exam.

23 So we're now moving into the next phase
24 under this procedure whereby my friends filed 13 expert
25 reports, and we filed then some rebuttal expert reports
26 to those, and then subsequently received the defendant's
27 evidence. So just so -- so I think Monday is the Brown
28 and Dunn discussion, which relates primarily to those

1 experts and the rebuttal experts as I understand it.

2 JUSTICE: And I think probably we can
3 take from your witnesses' affidavits that aren't being
4 cross-examined on, we'll enter them in as exhibits so
5 that they form part of the record, and we'll take care
6 of that housekeeping as well on Monday. But primarily
7 it's a Brown and Dunn matter.

8 MR. CONROY: We thought what we might
9 try and do for you for Monday is to have just brief
10 summaries of each of those so --

11 JUSTICE: Each one of the affidavits?

12 MR. CONROY: Yeah, the rebuttal
13 affidavits of ours, simply so that we -- hopefully that
14 simplifies this issue of Brown and Dunn.

15 JUSTICE: Okay.

16 MR. BRONGERS: Justice Phelan, just
17 one item of clarification. There is actually one more
18 plaintiff's witness, who has not been cross-examined
19 yet, Mr. Nash.

20 MR. CONROY: Oh, sorry, yes.

21 MR. BRONGERS: So, the plaintiffs
22 haven't finished their case.

23 JUSTICE: They haven't finished their
24 case.

25 MR. CONROY: I forget, he is both an
26 expert and a fact witness, and he is the last witness.

27 JUSTICE: He's at the tail end.

28 MR. BRONGERS: I think because he

1 wasn't available this week was the main reason, and I'm
2 not -- I just wanted to clarify that.

3 JUSTICE: I don't think we are
4 worrying too much about closing cases. I doubt that
5 there is going to be a motion for a non-suit. Okay.

6 MR. CONROY: I just wanted you to know
7 that our case is about that high of paper, and we've
8 added now a whole bunch more.

9 JUSTICE: Forestry products, we are in
10 British Columbia, good heavens.

11 MR. BRONGERS: Thank you.

12 JUSTICE: Okay, so we'll see you
13 Monday, 9:30.

14 MR. CONROY: 9:30.

15 JUSTICE: Thank you very much.

16 **(PROCEEDINGS ADJOURNED AT 3:30 P.M.)**

17

18

IN THE FEDERAL COURT
(Before the Honourable Justice Phelan)

Vancouver, B.C.
March 2, 2015

T-2030-13

BETWEEN:

NEIL ALLARD, TANYA BEEMISH, DAVID HEBERT
and SHAWN DAVEY,

Plaintiffs;

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,

Defendant.

PROCEEDINGS

Mr. J. Conroy, Q.C.,

Mr. K. Tousaw,

Ms. T. Grace,

Mr. B. Vaze,

Mr. M. Jackson,

Appearing for the Plaintiffs;

Mr. J. Brongers,

Ms. B.J. Wray,

Mr. C. Januszczak,

Mr. P. Alma,

Ms. M. Nicolls,

Appearing for the Defendants.

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VANCOUVER, B.C.

March 2nd, 2015

Volume 5

(PROCEEDINGS COMMENCED AT 9:36 A.M.)

JUSTICE: Good morning.

MR. JANUSZCZAK: Good morning.

JUSTICE: All righty. Next up, next issue. *Browne v. Dunn*, mysteries of that concept. Right? Yes, sir.

SUBMISSIONS BY MR. JANUSZCZAK:

MR. JANUSZCZAK: Justice Phelan, to begin, I think one of the reasons why we're here is that in terms of the communications between counsel prior to the hearing, when we were trying to come up with the wording of the stipulation, there was, I guess, questions regarding lack of clarity in those communications. And it appears that we're probably much closer if not on the same page, and the purpose of us being here today is to get it all sorted out and clarified, of course, to your satisfaction.

The difficulty in terms of clarity appears to have continued on in the submissions that the plaintiffs have provided in response to our memorandum of argument. And if you look at the plaintiffs' memorandum of argument, which is just the cover and two pages, over on the second page, paragraph 8, there are some examples given regarding the expert testimony. And then if you get down towards the bottom, you'll see the

1 sentence that begins, "Consequently in some cases ...".

2 JUSTICE: Mm-hmm.

3 MR. JANUSZCZAK: It was difficult to
4 understand what this sentence meant. If you read it
5 verbatim, it says:

6 "Consequently in some cases the expert
7 rebuttal reports supply evidence that's not
8 dealt with by the defendant, either in a
9 rebuttal report, nor by way of cross-
10 examination, and that portion can be assumed
11 to be accepted by the defendant, and the
12 plaintiff can argue that portion to be
13 unchallenged or uncontradicted by any other
14 evidence or cross-examination."

15 The defendant's concern is that if the
16 plaintiffs are suggesting that by not cross-examining
17 that the defendant accepts that additional evidence, and
18 is unable to otherwise challenge or take issue with it,
19 either by way of referring to other evidence that's part
20 of the record or by making submissions in closing
21 argument that may focus on, for example, the expertise
22 of the particular person offering the facts or the
23 opinion, going to weight, then the defendant has some
24 difficulty with that, and would say that that is not the
25 state of the law.

26 Now, another possible reading -- because
27 when you go back and you read the submission from the
28 beginning, it appears that another possible reading of

1 that is, "Consequently in some cases the expert rebuttal
2 reports supply evidence that is not dealt with by the
3 defendant either in a rebuttal report nor by way of
4 cross-examination." And with respect to that portion,
5 it can be assumed to be accepted by the defendant that
6 the plaintiff can argue that portion to be unchallenged
7 or uncontradicted by any other evidence on cross-
8 examination.

9 And if that's the case, so, the -- what's
10 accepted by the defendant is that the plaintiffs are not
11 precluded from pointing out to you, in argument, that
12 there is no cross-examination on that specific fact, and
13 you may accept it, and that's one of the factors that's
14 taken into account in terms of weighing the evidence,
15 then the defendant has absolutely no difficulty with
16 that proposition. That reflects the law.

17 The other point -- so, we'll obviously
18 require some clarification from the plaintiffs on that
19 particular point. In terms of the application of *Browne*
20 *v. Dunn* itself, in the context of this case and the
21 experts, there are -- when you look at *Browne v. Dunn*
22 and the speeches that are made, and then what has
23 happened since then, both at the Supreme Court of Canada
24 and other comments that are made by other judges in
25 other courts, it seems that there's three elements when
26 you look at those principles, and the first is that
27 *Browne v. Dunn*, the principle or principles in that case
28 relate to situations where credibility is being

1 challenged. So the truthfulness of what an ex- -- or
2 any witness is saying. That's obviously quite a serious
3 matter.

4 In the expert context, one would expect
5 issues of credibility to be quite rare. They could
6 certainly arise. If the accusation was that an expert
7 had falsified results or something like that, then
8 obviously credibility would be an issue. That doesn't
9 appear to be the case at all in the case that you're
10 hearing. So with respect to an expert opinion and
11 expert evidence, the question of truth or credibility,
12 it's not arising.

13 And the defendant's position in that
14 regard is that the principles of *Browne v. Dunn* simply
15 do not apply. It's just a question of this court
16 looking at the expert evidence and assuming that the
17 preconditions to it being acceptable, proper and
18 necessary expert evidence have been made, then the usual
19 weighing exercise takes place. And it may be that a
20 decision not to cross-examine is indeed a factor for the
21 court to take into account in trying to assess the
22 weight to be given to one opinion over another.

23 The second point I'll make about the
24 principle or principles in *Brown v. Dunne* is that it's
25 also clear that the evidence that's of concern is
26 contradictory evidence that is led or presented after
27 the witness has testified. So it's something that's
28 presented after the fact. And again, in this case by

1 situation of credibility.

2 MR. JANUSZCZAK: Yes.

3 JUSTICE: The second is that the
4 concern is centred on evidence that is put in after the
5 witness has testified. And your third point, I must
6 have missed it.

7 MR. JANUSZCZAK: So, and then in terms
8 of assessing the weight, it's the weight of that
9 evidence that would have been presented after the fact.

10 It would appear that what we're dealing
11 with here is really not a *Browne v. Dunn* type situation.
12 And as I pointed out at the beginning, if the
13 plaintiffs' concern is that they want to ensure that
14 they have the ability where new facts or new evidence is
15 presented through rebuttal witnesses -- and of course
16 that's all contingent upon it being proper rebuttal
17 evidence, that's an entirely different issue. But for
18 them, because that witness is not cross-examined on that
19 point, to be able to say to you there was no cross-
20 examination, that's one of the factors you should take
21 into account in accepting that testimony at face value,
22 again the defendant doesn't quibble with that. That
23 reflects the law.

24 From the defendant's perspective, the
25 concern relates to a witness like Professor Susan Boyd,
26 for example. And I'm not sure that this is a problem,
27 because when you look at the top of paragraph 8 of my
28 friends' submissions, they talk about the -- or it's in

1 I don't think the plaintiffs are
2 asserting that that is not how it should be, and that
3 the defendants should be precluded from making those
4 arguments. But from the defendant's perspective, that's
5 our concern here. That if they are suggesting that,
6 that the law, and the principle in *Browne v. Dunn*
7 specifically, does not preclude the defendant from
8 making that argument, and indeed referring to any other
9 evidence that's before the court that could contradict
10 the opinion as she's expressed it.

11 JUSTICE: As I take it, your concern
12 is that you want to be able to argue without cross-
13 examining that the court should give minimal, or certain
14 weight to un-cross-examined evidence.

15 MR. JANUSZCZAK: Yes.

16 JUSTICE: Your concern here is, you
17 don't want any suggestion that you must be -- to have
18 taken as true the opinion expressed, if you haven't
19 cross-examined on it.

20 MR. JANUSZCZAK: That's correct.

21 JUSTICE: That's really the -- is that
22 the nub of this argument?

23 MR. JANUSZCZAK: It is.

24 JUSTICE: Okay.

25 MR. JANUSZCZAK: So in other words,
26 nothing -- and the larger point is that nothing
27 automatically flows from a decision not to cross-
28 examine.

1 JUSTICE: No. You want to have the
2 freedom, the tactical freedom, to cross-examine or not
3 cross-examine without being taken as accepting as true
4 the statements made.

5 MR. JANUSZCZAK: That's correct.

6 JUSTICE: Or the conclusions made.

7 MR. JANUSZCZAK: And in particular
8 opinion evidence.

9 JUSTICE: Yes.

10 MR. JANUSZCZAK: Yes. Yeah.

11 JUSTICE: Okay. I understand, at
12 least, the debate. Or beginning to understand the
13 debate.

14 MR. JANUSZCZAK: So subject to any
15 other questions you might have --

16 JUSTICE: All right.

17 MR. JANUSZCZAK: -- that's what I have
18 to say.

19 JUSTICE: Well, I know Mr. Conroy is
20 going to clarify it all.

21 **SUBMISSIONS BY MR. CONROY:**

22 Hopefully.

23 Well, I think my friend has stated it and
24 as he quoted from our paragraph 8, we were trying to
25 illustrate the point from the various witnesses. As
26 you'll recall, this is how this transpired. If you have
27 the Book of Expert Reports, just the index, it has a
28 list of all of the witnesses.

1 JUSTICE: Right.

2 MR. CONROY: Or the experts. And so
3 you'll see, and we did prepare a little summary of the
4 rebuttals.

5 JUSTICE: Yes, you said you were going
6 to hand that up to me.

7 MR. CONROY: Just so that we have
8 that. The first one on top is Professor Baumann, who is
9 plaintiffs' witness, you'll see, number 1. And so he is
10 the one that my friends chose not to cross-examine.
11 Now, again, there's no credibility issue. It's nothing
12 like that. Our assumption is that it's simply not
13 contested if they're not cross-examining or not
14 challenging, not calling any rebuttal. That doesn't
15 mean that they can't in argument suggest that maybe his
16 evidence is irrelevant or whatever, but I can still
17 submit to the court, look, they didn't challenge him,
18 they didn't file rebuttal, they didn't cross-examine, so
19 that is a factor for you to take into account.

20 JUSTICE: "So, My Lord, you have
21 nothing in front of you that says he's wrong."

22 MR. CONROY: Exactly.

23 JUSTICE: "And so now all you've got
24 is a lawyer's argument that says he's wrong." Well.

25 MR. CONROY: Exactly.

26 JUSTICE: Okay. So that's --

27 MR. CONROY: Now, that's the one who's
28 -- that's the plaintiff witness who's not cross-

1 examined.

2 JUSTICE: Yes.

3 MR. CONROY: But then what happened
4 after we filed our plaintiffs' expert reports, it's
5 because of the procedure, this simplified action
6 procedure, my friends then filed 13 defence experts.

7 JUSTICE: Yes.

8 MR. CONROY: So we looked at that and
9 said, well, either we're cross-examining or we're doing
10 rebuttal experts or maybe both. So we scrambled and
11 filed rebuttal experts and have them starting at 18.

12 JUSTICE: Yes.

13 MR. CONROY: And then it was after
14 that that I think my friends then said, and my
15 recollection it was a pre-trial management conference,
16 it may have been a telephone, but they had decided not
17 to cross-examine all of those rebuttal experts. They
18 are cross-examining three of them, or possibly four, but
19 they aren't going to cross-examine. So we say, well, if
20 they're not going to cross-examine the rebuttal experts
21 that are rebuttal experts to their experts, then, again,
22 there are things in our rebuttal that's akin to a cross-
23 examination. So what's the point of us cross-examining
24 those experts? We filed rebuttals.

25 So to the extent that principles arising
26 out of *Browne v. Dunn* arise, it's simply we have put
27 them on notice, through our rebuttal experts, that we
28 take issue with this or that, either factually or an

1 opinion or often it's a matter of adding in facts that
2 we say aren't there in their report. And that's why --

3 JUSTICE: So you want to be able to
4 say, "I filed rebuttal evidence. I don't have to do
5 anything further. I have told you now that I join the
6 issue on whether or not fire arises."

7 MR. CONROY: Yes.

8 JUSTICE: "And Your Lordship can sit
9 there and weigh one versus the other, and that's it, I
10 don't have to do anything more."

11 MR. CONROY: That's right.

12 JUSTICE: I don't think your friends
13 disagree with that.

14 MR. CONROY: Well, you think there
15 was, as my friend said, a miscommunication about --

16 JUSTICE: I know, we're -- fortunately
17 we're all speaking the same language. It's English, but
18 we seem to be having trouble.

19 MR. CONROY: My memory was, I said
20 what are the consequences of them not cross-examining,
21 and I think it was the court that raised *Browne v. Dunn*.

22 JUSTICE: I'm sorry I did.

23 MR. CONROY: So we went to look at it
24 and I think had different interpretations of it, and we
25 found it difficult certainly to stipulate because we
26 were of the view that the stipulation my friends wanted
27 included all other principles of evidence or rules of
28 evidence. And so our concern was, well, we can't agree

1 to that. We agree that if we're going to challenge the
2 credibility or truthfulness of any witness, the cases
3 seem to suggest good practice is to put your case to
4 that witness and then you're calling the other evidence.
5 If you don't --

6 JUSTICE: Based on what -- doesn't
7 that depend on what the challenge to the credibility is?

8 MR. CONROY: Exactly. Exactly.

9 JUSTICE: If they went to a terrible
10 university and you want to say, "You went to a terrible
11 university and it's right there in the CV," you don't
12 have to do much. If you want to say, "On a dark, stormy
13 night of March the 2nd you were out smoking up," and
14 there's no evidence in front of the court, you've got to
15 put that to the witness.

16 MR. CONROY: Yeah. Yeah.

17 JUSTICE: Pretty much --

18 MR. CONROY: It's a totally, I think,
19 different situation. What's unique here though, and it
20 isn't dealt with in any of the cases, is because of the
21 procedure here where you file your rebuttal expert, it's
22 unlike -- all the cases suggest the solution if you
23 don't follow the rule in *Browne v. Dunn* is you can
24 always call rebuttal evidence.

25 JUSTICE: Evidence.

26 MR. CONROY: Where here we've already
27 called the rebuttal.

28 JUSTICE: Yes.

1 MR. CONROY: And then the other
2 evidence gets put in. So I think that's what led to
3 possibly some of the confusion. So we say on the
4 rebuttal experts, we've filed, we've put you on notice
5 as to the issues in the dispute or where the conflict --
6 as my friend says, in a case like Professor Boyd, well,
7 it's entirely open to them to suggest maybe that her
8 qualifications aren't A or B or that they opinion -- but
9 when you come to say Jason Shoot, who is rebuttal
10 expert, for example, 25, he rebuts specifically
11 Professor Miller. Professor Miller is my friend's
12 expert on -- is a chemist that talks about mould.

13 But he doesn't talk about how you deal
14 with the mould, how you can -- how easy it is to solve
15 the problem. And that's what Shoot talks about. So
16 Shoot decides you can get the humidistat, or then the
17 dehumidifier, and so on. And for a couple of hundred
18 dollars, you can take care of any concerns about mould.

19 And so, my friends have decided not to
20 cross-examine Jason Shoot. So we say, well, surely
21 there we've added facts that your expert hasn't put in
22 at all, or addressed at all. And so we take your
23 decision not to cross-examine, or to call any rebuttal,
24 that you really don't take any issue with that.

25 So it may be that if my friends are
26 taking issue, they should give us some notice at some
27 point, or otherwise we're going to hear in defence
28 argument, and have to do an extensive rebuttal there, if

1 they are actually challenging Mr. Shoot, for example, on
2 that type of evidence. If he expresses an opinion, and
3 he doesn't, but if he said, "Oh, Professor Miller's
4 wrong, you don't get any mould," well, fair enough,
5 that's a direct conflict between the opinions.

6 We don't have that. Shoot says, "Sure,
7 you put plants in your house, you're going to have more
8 moisture, you're going to have more mould. But here is
9 the way to deal with it." So --

10 JUSTICE: But if your friend says to
11 me, "Doesn't matter what Shoot says about mould, and how
12 you can ameliorate it, it's irrelevant to the
13 consideration here."

14 MR. CONROY: Yeah, he can say that.

15 JUSTICE: He can say that.

16 MR. CONROY: Sure.

17 JUSTICE: He just can't say, well, in
18 fact, mould should have been taken care of not by
19 humidifiers but by some other gizmo.

20 MR. CONROY: Yes.

21 JUSTICE: Because there is no evidence
22 in front of the court for that.

23 MR. CONROY: Yeah. Yeah.

24 JUSTICE: But wouldn't that be a point
25 that you would bring out in argument, that counsel for
26 the defendants are making this up as they go along.
27 There is no evidence in front of the court that there is
28 anything other than a dehumidifier that works.

1 MR. CONROY: Yeah.

2 JUSTICE: You've got to, on the
3 balance of probabilities, agree that it's a dehumidifier
4 that works, because there is nothing else.

5 MR. CONROY: And in this case, we know
6 that it's the defendants that have raised the mould
7 issue by presenting that defence expert, and therefore
8 we provide the rebuttal, so --

9 JUSTICE: You provide the rebuttal,
10 and you say there is something further that you can do
11 with respect to mould. And if your friends don't
12 challenge the evidence, on that there is something
13 further, then the court is left with, yes, mould is a
14 problem but it can be taken care of by that.

15 MR. CONROY: Yes.

16 JUSTICE: Isn't that really the
17 situation we have?

18 MR. CONROY: I think so. Now, there
19 is a bit of a twist to it, it seems to me, because
20 again, the nature of the proceedings. You file the
21 rebuttal expert report. The usual process in terms of
22 an expert, the first issue is, is the expert qualified,
23 and what are the areas of expertise?

24 JUSTICE: Right.

25 MR. CONROY: And so, none of those --
26 that issue hasn't been challenged by no cross-
27 examination and no rebuttal. So, can we assume that the
28 expertise is accepted? Or can the defence still

1 argue --

2 JUSTICE: But does it really matter
3 whether the Crown in this case accepts it or not? There
4 is no evidence to the contrary that the person is
5 qualified as they are, and that in their opinion, those
6 qualifications are relevant to this case. The court has
7 nothing else in front of it from which to draw.

8 MR. CONROY: And that's -- so we want
9 to make sure we're not precluded from making that
10 argument, that, hey, you didn't cross, you didn't call
11 any rebuttal, therefore that's our --

12 JUSTICE: So your -- you're estopped
13 with --

14 MR. CONROY: That's our submission to
15 the court in terms of weight to be given. Yeah.

16 JUSTICE: Yes. I --

17 MR. CONROY: So, you know, in the case
18 of -- I guess Mr. Colasanti. My friends cross-examined
19 him to some extent in terms of his adversity or
20 advocacy, that sort of situation.

21 JUSTICE: Yeah.

22 MR. CONROY: We will do the same, no
23 doubt, to Cst. Holmquist.

24 JUSTICE: Sure.

25 MR. CONROY: And maybe Mr. Garis. So,
26 you will have that to be able to decide weight in terms
27 of qualifications and so on. Whereas in these others,
28 where they haven't been cross-examined, we just wanted

1 to be absolutely clear that we have given you notice of
2 what we say the issues are with the report, and if you
3 choose not to cross-examine or to call rebuttal, that's
4 a strategy decision you make, and there may or may not
5 be consequences, depending upon the court.

6 JUSTICE: Well, it does strike me that
7 this whole debate, to some extent depends on what you
8 want to tell the court in final argument as to what I
9 should take --

10 MR. CONROY: That's right.

11 JUSTICE: -- from the fact that there
12 has been no cross-examination. So I'm not sure that the
13 court can do much other -- today.

14 MR. CONROY: No, no. That's right.

15 JUSTICE: Other than to sort of flesh
16 out where there is agreement or disagreement. And
17 frankly, from where I sit, there isn't really
18 fundamental disagreement on this.

19 MR. CONROY: No.

20 JUSTICE: I think we all agree that if
21 you don't cross-examine, you're not taken as accepting
22 the truth of the opinions expressed. You're still
23 entitled to argue that it is irrelevant, badly founded,
24 whatever you want to say about it.

25 Well, once you come to that conclusion,
26 then, it really depends on what you want to say in final
27 argument, Your Lordship, they didn't cross-examine on
28 this point, there is nothing other than dehumidifiers at

1 work, you have nothing else in front of you, you have to
2 take that as good evidence.

3 And I assume that the defendants, having
4 not cross-examined or called rebuttal, can't really
5 stand up and say, "Well, that person's evidence wasn't
6 admissible," or "That person's evidence, he's not
7 properly qualified." If they were going to do that,
8 they should have done that.

9 JUSTICE: No, they don't have -- yes.
10 They would have to do that now, and I don't think your
11 friends and I notice from the nods, they're not
12 challenging that.

13 MR. CONROY: So I think if that's
14 clear, I don't think, you know, we really have a *Browne*
15 *v. Dunn* issue. It's not a *Browne v. Dunn* issue, because
16 --

17 JUSTICE: That's why I -- I'm even
18 sorry I ever raised it.

19 MR. CONROY: Well, I think it's helped
20 us to make sure we know what we're doing in this
21 procedure, because it is a different procedure. As I
22 say, you're calling your rebuttal experts before you're
23 filing your plaintiffs' affidavits.

24 JUSTICE: It is one of the problems
25 with a simplified action, for an action which isn't
26 simple.

27 MR. CONROY: Right.

28 JUSTICE: So, I appreciate why we end

1 up with these conundrums. I don't know whether my
2 comments have helped the debate or anything.

3 MR. CONROY: I was going to take you
4 through each one just to show you the differences, but I
5 think that should be done at the end, as you suggest --

6 JUSTICE: I do. I do.

7 MR. CONROY: -- is the proper place to
8 do that. So, I think we're -- let me just check,
9 because I've -- I think we're --

10 JUSTICE: Okay.

11 MR. CONROY: I think we're at
12 agreement unless there is something else.

13 JUSTICE: Mr. Brongers? Are you going
14 to shed light on this, or are you just going to cloud
15 the issue?

16 **REPLY BY MR. BRONGERS:**

17 Well -- I don't want to over-promise.
18 But, Justice Phelan, I think that the court has
19 identified indeed the genesis for what has occurred
20 here. The court asked the parties to come up with a
21 stipulation on the applicability or the non-
22 applicability of *Browne v. Dunn*. If Your Lordship could
23 turn to page 11 of our submissions.

24 JUSTICE: Yes.

25 MR. BRONGERS: This was our proposed
26 stipulation that we sent to our friends. And they have
27 never clearly explained to us why this is unacceptable.
28 And I'll just read it out loud.

1 where the court then rules, "I must accept Susan Boyd's
2 opinion because it was not cross-examined. I conclude
3 that there in fact is no public safety concern with
4 respect to home cultivation because the Crown has not
5 cross-examined." So that was our fundamental concern.

6 So our hope is that since the court did
7 ask the parties to come up with a stipulation regarding
8 the applicability or the non-applicability, that this
9 would be a stipulation that the court will at least
10 agree with. My friend has again, even today, not
11 clearly explained why this is unacceptable. But really
12 the issue here is whether the rule in *Browne v. Dunn*
13 applies to force the court to accept an opinion which,
14 of course, the court never has to accept an opinion from
15 an expert. And that's all we wanted to get clear.

16 JUSTICE: Okay.

17 MR. CONROY: Well, just one little
18 point. The letter that I have from my friends, January
19 22nd, setting out their proposed stipulation, includes in
20 the middle of what's here in the paragraph 17, "nor any
21 other principle of Canadian evidence law". And that's
22 what concerned us. So that's why we said we can't agree
23 to that. That's too broad.

24 JUSTICE: Okay. If you took that --

25 MR. CONROY: Take that out --

26 JUSTICE: If you took that out, is
27 what here in --

28 MR. CONROY: Insofar as *Browne v. Dunn*

1 is concerned, which doesn't seem to be arising, yes.

2 JUSTICE: You agree with it?

3 MR. CONROY: That's right.

4 JUSTICE: Okay. Now, another -- the
5 two of you agree. What do you want from the court? Do
6 you want an order that says, that stipulate the parties
7 can operate under this stipulation? Something as simple
8 as that?

9 MR. BRONGERS: That would be
10 wonderful, My Lord.

11 JUSTICE: Mr. Conroy?

12 MR. CONROY: As long as it's not taken
13 to preclude us from making the arguments we discussed
14 before.

15 JUSTICE: You know my view on that.

16 MR. CONROY: Yes.

17 JUSTICE: So what I'll do, I'll issue
18 an order that for purposes of common basis of
19 understanding with respect to the evidence, this
20 stipulation will apply and we can go from there. To me,
21 at the end of the day, it depends on what you want to
22 say about expert evidence. If you haven't cross-
23 examined on it there's only certain things you can say.
24 One of them is you can't say that the person is a dirty
25 rotten scoundrel who's been skulking around in the
26 bowels of old ships and carrying on in an unseemly way
27 without having put that to him.

28 MR. CONROY: That's right.

1 JUSTICE: And since I doubt that we're
2 going to get there, I think the rest of this is getting
3 terribly academic.

4 MR. CONROY: Yes, I think so.

5 JUSTICE: All right. So with that on
6 *Browne & Dunn*, what else do we have to deal with?

7 MR. CONROY: Well, I guess Professor
8 Baumann should be marked as an exhibit as a plaintiffs'
9 witness. Again if we have that list, because you'll see
10 he was the only plaintiffs' expert that was not called
11 because my friends didn't want to cross-examine him.

12 JUSTICE: Okay.

13 MR. CONROY: Now, then --

14 JUSTICE: No problem with that. So at
15 least we get Baumann's evidence in as an exhibit.

16 MR. BRONGERS: Yes.

17 JUSTICE: Okay, so Baumann --

18 MR. CONROY: Now, there is also then,
19 are there not, experts --

20 JUSTICE: Let's just take it one at a
21 time.

22 MR. CONROY: Okay.

23 JUSTICE: Baumann is in. What exhibit
24 are we at?

25 MR. CONROY: 19?

26 JUSTICE: Exhibit 19. Okay.

27 **(AFFIDAVIT OF PROFESSOR BAUMANN MARKED EXHIBIT 19)**

28 JUSTICE: Next?

1 MR. CONROY: Now, there are a number
2 of other plaintiffs' witnesses that my friends decided
3 not to cross-examine: Wilcox, Lukiv, King, and Shaw.
4 And they are all fact witnesses and therefore appear in
5 the Joint Book. The first one, Mike King -- did I
6 mention King?

7 JUSTICE: Yes, you mentioned King.

8 MR. CONROY: Okay.

9 JUSTICE: So four of the five --

10 MR. CONROY: In order of what's in the
11 Joint Book, Mike King is at tab 7, so would he be --

12 JUSTICE: Exhibit --

13 MR. CONROY: -- 20?

14 **(AFFIDAVIT OF MIKE KING MARKED EXHIBIT 20)**

15 MR. CONROY: And Lukiv is next, would
16 be 21.

17 JUSTICE: 21.

18 **(AFFIDAVIT OF DANIELLE LUKIV MARKED EXHIBIT 21)**

19 MR. CONROY: And then Shaw is at tab
20 10.

21 JUSTICE: 22.

22 MR. CONROY: 22.

23 **(AFFIDAVIT OF JAMIE SHAW MARKED EXHIBIT 22)**

24 MR. CONROY: Wilcox 11, 23.

25 **(AFFIDAVIT OF JASON WILCOX MARKED EXHIBIT 23)**

26 MR. CONROY: I think that does it.
27 The others are being cross-examined and we'll deal with
28 them, I take it, at that point.

1 JUSTICE: Okay, that's effectively got
2 all of your evidence to date plus any uncross-examined
3 evidence in as exhibits, evidence in this trial.

4 MR. CONROY: That's right, and so I
5 think that takes care of all the fact witnesses except
6 Nash.

7 JUSTICE: At the very end.

8 MR. CONROY: -- expert, yeah. He is
9 the only one who is fact in relation to the LP process
10 and expert rebutting some of the other --

11 JUSTICE: So he's, I think, a week
12 Friday, is he not? The last witness?

13 MR. CONROY: That's right, he's the
14 last one. So I think we're dealing this week with my
15 friends' fact witnesses.

16 JUSTICE: Right.

17 MR. CONROY: And into their experts on
18 Thursday and into Monday, so.

19 JUSTICE: Yes.

20 MR. CONROY: I think those are the
21 only housekeeping things I can think of, unless my
22 friends have something.

23 JUSTICE: Do you have anything?

24 MR. BRONGERS: Nothing from us.

25 JUSTICE: Okay, well, in which case I
26 guess we're done for today. Another hard day in the
27 litigation trenches.

28 MR. CONROY: Lots of things to do

1 outside of court.

2 JUSTICE: Yes, there is a tad of
3 reading to do, isn't there?

4 MR. CONROY: Ritchot is seven volumes,
5 My Lord.

6 JUSTICE: A simplified action. In any
7 event -- all right, well, have a good day off. I hope
8 the golfing is good for you.

9 MR. CONROY: Thank you.

10 JUSTICE: We'll see you tomorrow
11 morning.

12 **(PROCEEDINGS ADJOURNED AT 10:18 A.M.)**

13

14

IN THE FEDERAL COURT
(Before the Honourable Justice Phelan)

Vancouver, B.C.
March 3, 2015

T-2030-13

BETWEEN:

NEIL ALLARD, TANYA BEEMISH, DAVID HEBERT
and SHAWN DAVEY,

Plaintiffs;

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,

Defendant.

PROCEEDINGS

Mr. J. Conroy, Q.C.,

Mr. K. Tousaw,

Ms. T. Grace,

Mr. B. Vaze,

Mr. M. Jackson,

Appearing for the Plaintiffs;

Mr. J. Brongers,

Ms. B.J. Wray,

Mr. C. Januszczak,

Mr. P. Alma,

Ms. M. Nicolls,

Appearing for the Defendants.

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VANCOUVER, B.C.

March 3rd, 2015

Volume 6

(PROCEEDINGS COMMENCED AT 9:29 A.M.)

JUSTICE: Good morning.

MS. WRAY: Good morning, Justice

Phelan.

JUSTICE: How are you?

MS. WRAY: The next witness is Ms.

Jocelyn Kula. Ms. Kula, if you could take the stand,
please.

MR. CONROY: Just before Ms. Kula does
that, Justice Phelan, I just wanted to draw your
attention to admissions that were made -- or read-ins, I
should say, that we've listed in the joint book. When
we marked all the exhibits the other day, I neglected to
tell you about the read-ins that are in Volume 13. Just
so that you know. I don't -- do we need to mark those
as exhibits?

JUSTICE: We might as well mark the
read-ins, and then they're all --

MR. CONROY: And then that's there.
So it's --

JUSTICE: Volume 13.

MR. CONROY: -- Volume 13, tab 29.

JUSTICE: Tab 29, read-ins, okay.

MR. CONROY: And the admissions are
the same.

1 JUSTICE: Are these read-ins or
2 admissions?

3 MR. CONROY: The read-ins are Volume
4 13, tab 29.

5 MR. TOUSAW: What exhibit is that?

6 JUSTICE: Okay, that's the read-ins.

7 MR. CONROY: And so that would be
8 Exhibit 24.

9 JUSTICE: Exhibit 24? Okay.

10 **(READ-INS FROM VOLUME 13, TAB 29 MARKED EXHIBIT 24)**

11 MR. CONROY: And I don't know if you
12 wanted to do the same with the admissions.

13 JUSTICE: Admissions? Yes, please.

14 MR. CONROY: Which are next in the
15 same Volume, tab 30. So they could be Exhibit 25.

16 JUSTICE: Okay.

17 **(ADMISSIONS FROM VOLUME 13, TAB 30 MARKED EXHIBIT 25)**

18 MR. CONROY: Just thought you should
19 know that before the witness is cross-examined tomorrow.

20 JUSTICE: Thank you. No, we'll clean
21 that up. Perfect. All righty.

22 MS. WRAY: And while we're marking
23 exhibits, Ms. Kula's affidavit --

24 JUSTICE: Yes.

25 MS. WRAY: It's at Volume 3, tab 13 of
26 the joint book.

27 JUSTICE: Okay.

28 MR. TOUSAW: Before that's marked,

1 Justice Phelan, I just have a couple of comments about
2 the exhibit itself.

3 JUSTICE: Mm-hmm?

4 MR. TOUSAW: The plaintiffs' position
5 is that the exhibits to that document have some level of
6 problems to them. Those are, in particular, Exhibits B,
7 C, and D, which are essentially some back and forth
8 between the Government of Canada and the International
9 Narcotics Control Board, as well as a report in 2013
10 from the INCB. I just want to make sure, this isn't an
11 expert witness, it's a fact witness, and I just want to
12 make sure -- I don't know if the materials in those
13 exhibits are offered for the truth of their assertions,
14 but if they are, the plaintiffs would object to them
15 coming in for the truth. The INCB report contains a
16 number of various suggestions about different things
17 that I don't think are proven on the facts of the case.

18 If they're in to show why the Government
19 of Canada has done some of the things it's done, no
20 problem with that. Obviously That's not a hearsay use.
21 But if they're in for the -- if they're intended to be
22 in for the truth of the factual assertions therein, then
23 we'd object to those things.

24 There is also, it appears, a letter
25 missing from C. Exhibit C is -- contains a letter from
26 the INCB to Canada, talking about various estimates of
27 consumption.

28 JUSTICE: Yes.

1 MR. TOUSAW: Of various drugs. And
2 there is a response -- sorry, maybe that's not the one I
3 was thinking of. It's -- I think it's B, actually.

4 There is a reference to a further
5 response to come, and you'll see it. Sorry, C, the last
6 page of C, which is 128, "Finally your letter referred
7 to an estimated" --

8 JUSTICE: Hold, hold up, now. Are you
9 talking about Exhibit C --

10 MR. TOUSAW: Exhibit C.

11 JUSTICE: Yes.

12 MR. TOUSAW: The first page is just
13 the exhibit stamp. The second two pages, next two
14 pages, 126 and 127, are a letter to Canada.

15 JUSTICE: You say 126 -- I've got 1070
16 and --

17 MR. TOUSAW: Oh, sorry, I'm looking at
18 a different -- yes, I'm looking at a different version,
19 sorry. Yes, 1070, 1071 is the letter to Canada.

20 JUSTICE: Right.

21 MR. TOUSAW: 1072 is the response.
22 But the second-to-last sentence of the response says,
23 "Your letter referred to estimated
24 consumption of cannabis in 2013. We are
25 responding to this inquiry in a separate
26 letter."

27 And that separate letter doesn't appear
28 to be attached. So I don't know if that was an

1 oversight, or what's gone on with that. But certainly
2 it seems to be an omission.

3 JUSTICE: Okay, well, let's --

4 MS. WRAY: It's not an admission.

5 There is no letter. There is no letter because those
6 discussions actually took place in person. And Ms. Kula
7 can explain that if you ask her about it.

8 MR. TOUSAW: Okay, I wondered if that
9 was the reference to in-person meetings. Thank you.

10 JUSTICE: Okay, so that takes care of
11 the potential something missing. The next, the
12 objection was as to proof of the contents, or the truth
13 of the contents of the letters. I take it --

14 MS. WRAY: The doc -- sorry.

15 JUSTICE: I take that what's being
16 offered is an explanation, the information upon which
17 the government acted.

18 MS. WRAY: Correct.

19 JUSTICE: As opposed to whether or not
20 those things said by somebody else were necessarily
21 true.

22 MS. WRAY: Correct. These are
23 background documents that go to the development of the
24 regulations.

25 JUSTICE: So I take it there's no
26 objection.

27 MR. TOUSAW: That satisfies my
28 concern.

1 JUSTICE: Okay.

2 MR. TOUSAW: And I think that that
3 probably also satisfies, but I'll raise it for purposes
4 of the record anyway, a concern that I have that there
5 are some what appear to be opinions expressed in the
6 affidavit. I think we can probably deal with that
7 during oral submissions, but in particular there's an
8 opinion in paragraph 45 regarding the effects of
9 cannabis when one takes it. I'd object to the extent
10 that that's coming in as an opinion on that, that those
11 are the actual effects of cannabis.

12 JUSTICE: Okay.

13 MR. TOUSAW: Similarly there's a quote
14 from the INCB report of I think paragraph 19, that talks
15 about how at least the INCB thinks it's a positive
16 development, the phasing out of personal production.
17 And again, to the extent that that's an opinion being
18 adopted by this witness, we'd object to that coming in
19 as an opinion.

20 JUSTICE: But if it's merely an
21 indication that that was the opinion of the
22 organization.

23 MR. TOUSAW: Correct.

24 JUSTICE: Well, okay.

25 MR. TOUSAW: Correct. Thank you.

26 JUSTICE: I think we can handle all of
27 that.

28 MR. TOUSAW: Thank you.

1 JUSTICE: All right.

2 MR. TOUSAW: All right, so I suppose,
3 did you want to mark the exhibit?

4 JUSTICE: Yes, better mark her --

5 MS. WRAY: So yes, we're at Volume 3,
6 tab 13, Jocelyn Kula's affidavit. I believe that's
7 Exhibit 26.

8 **(AFFIDAVIT OF JOCELYN KULA MARKED EXHIBIT 26)**

9 **JOCELYN KULA, Affirmed:**

10 THE REGISTRAR: Please state your name
11 and occupation and address for the record.

12 THE WITNESS: My name is Jocelyn Kula.
13 I work as a policy manager at Health Canada. The
14 address is 150 Tunney's Pasture Driveway, Ottawa,
15 Ontario.

16 MS. WRAY: Ms. Kula, if I could just
17 ask you to move a little bit closer to the microphone so
18 it's amplified for the court. Thank you.

19 THE WITNESS: Is that better?

20 MS. WRAY: That's great.

21 Justice Phelan, just for the benefit of
22 the court, Ms. Kula is being tendered as the first of
23 four lay affiants from Health Canada.

24 JUSTICE: Right.

25 MS. WRAY: She is the policy manager
26 in the Office of Strategic Policy at the Controlled
27 Substances and Tobacco Directorate of Health Canada.

28 JUSTICE: Right. Mr. Tousaw?

1 MR. TOUSAW: Thank you, Justice
2 Phelan.

3 **CROSS-EXAMINATION BY MR. TOUSAW:**

4 Q Ms. Kula, I'll take you to page
5 946, which is the third page of your affidavit, the
6 numbering at the bottom right corner. It's Exhibit 26
7 in these proceedings. It's titled "Canada's
8 International Law Obligations for Controlled
9 Substances". Do you see that?

10 A Yes, I do.

11 Q And you collectively refer to three
12 United Nations Drug Control Conventions at paragraph 7
13 and you call them collectively The Conventions. Is that
14 correct?

15 A Yes, that's correct.

16 Q So I'm going to use that same
17 terminology and you'll understand what I mean.

18 A Yes, that's correct.

19 Q Thank you. Generally speaking
20 those Conventions, as it relates to cannabis for medical
21 purposes, require the Government of Canada to set up a
22 national cannabis agency, isn't that correct?

23 A In particular the 1961 Convention
24 on Narcotic Drugs does require that, yes.

25 Q And Canada has not organized
26 something it calls a National Cannabis Agency, has it?

27 A No, that is correct.

28 Q And the Conventions require, in the

1 case of medical cannabis, for example, the Government of
2 Canada, for all licensed cannabis producers to
3 essentially deliver their crops to that national
4 cannabis agency. Isn't that the effect of the
5 Conventions?

6 A I think that the paragraph in the
7 Convention suggests that the government or the competent
8 authority should have knowledge and control of the crops
9 of cannabis being produced in the country.

10 Q And under the *MMARs*, the former
11 cannabis regulatory scheme, the system by which persons
12 could purchase cannabis medically from a private
13 company, that went through Health Canada, correct?

14 A Under the *Marijuana Medical Access*
15 *Regulations*, there were three ways in which people could
16 obtain cannabis. They could either produce it for
17 themselves under a personal production licence; they
18 could obtain it from another individual, who had a
19 designated person production licence; or they could
20 purchase it from Health Canada.

21 Q And Health Canada had a contract
22 with a private company to supply that cannabis that was
23 then purchased from Health Canada?

24 A That is correct.

25 Q And you reference -- and we talked
26 about it a bit before you took the stand, a meeting in
27 2013, an in-person meeting in 2013 with representatives
28 from the International Narcotics Control Board. Is that

1 correct?

2 A Yes. In 2013, and particularly in
3 May, the International Narcotics Control Board came to
4 Canada for the purposes of doing a country visit.

5 Q And that's referenced at paragraph
6 17 of your affidavit, which is page 948?

7 A Yes, that's correct.

8 Q And so the discussion we had
9 regarding Exhibit C to your affidavit, and a letter that
10 was to follow, the letter from Health Canada that's
11 included at Exhibit C on page 1072, the information
12 requested by the INCB was provided during that in-person
13 visit, is that right?

14 A Yes, that's correct. There were
15 extensive discussions about the reforms to the program
16 during that country visit.

17 Q And was there an alteration of the
18 estimated consumption of cannabis of 42,000 kilograms
19 that appears to be set out at Exhibit C to your
20 affidavit?

21 A I was not a participant -- I did
22 not participate in the entire visit. It took place over
23 a number of days. So I was not present during any time
24 when there was discussion of estimates.

25 Q Were there reports or notes
26 generated by Health Canada summarizing the results of
27 those in-person meetings?

28 A I do not believe so.

1 Q And certainly you've produced
2 nothing in your affidavit detailing what occurred during
3 those in-person meetings with the INCB.

4 A That's correct.

5 Q I notice at Exhibit C, this United
6 Nations letter, it's a letter to the director, which I
7 assume is the director of Health Canada?

8 A Sorry, let me just find the page.

9 Q Yes, it's page 1070, tab C.

10 A Sorry. The way that the system of
11 correspondence works for the International Narcotics
12 Control Board is that they direct their correspondence
13 to the head of the competent authority in the country of
14 its interest. So, in Canada the competent authority is
15 the Controlled Substances and Tobacco Directorate. But
16 within the Controlled Substances and Tobacco
17 Directorate, the organization that is responsible for
18 administering the licensing and permit scheme that is
19 the fundamental machinery that is required under the
20 Conventions is run by the Office of Controlled
21 Substances. So this piece of correspondence, and
22 typically all INCB correspondence, is directed to the
23 director, meaning the director of the Office of
24 Controlled Substances. That person is an employee of
25 Health Canada, however.

26 Q And that's not you?

27 A That's correct.

28 Q Who is that? Who was that, at the

1 time that this letter was written in September, 2012?

2 A It would have been Joanne Beaulieu.

3 Q Thank you. And this letter from
4 the INCB asks some questions about estimates made by
5 Health Canada of consumption of codeine. And it seems
6 here that the INCB is saying, well, Canada has estimated
7 that the consumption of codeine in 2013 would be 26,531
8 kilograms. And they describe that as very high. Do you
9 see that, at page 1070?

10 A Yes, I do.

11 Q And in fact that estimate was
12 incorrect. It was too high, wasn't it?

13 A Yes. There was an error made in
14 that letter.

15 Q And similarly, there is an estimate
16 here for manufacture of codeine, and that estimate was
17 too low, isn't that right?

18 A Yes, that's correct.

19 Q And so it looks like just sort of a
20 transposition, really, manufacture of codeine should
21 have been the 26,000 kilograms, and consumption should
22 have been the 2,700 kilos. Is that the error that
23 occurred?

24 A I believe that's right.

25 Q Similarly there's a question about
26 estimates for quantity of Remifentanyl, 200,000 grams
27 held in stocks at the end of 2013, and the INCB says,
28 "Well, that seems very high. We think it's 200 grams."

1 Do you see that?

2 A Yes, I do.

3 Q And in fact it was 200 grams. Is
4 that correct?

5 A Yes, that's correct.

6 Q The Conventions all, generally
7 speaking, have an exception to their requirements for
8 countries whose domestic constitutional obligations may
9 conflict with the requirements of the Conventions.
10 That's correct, isn't it?

11 A I'm not sure I would phrase it as
12 the Convention states that there's an exception. I
13 think that there is -- signatories to the Convention are
14 permitted some flexibility in the interpretation of the
15 provisions of the Convention when it comes to meeting
16 their domestic policy or needs.

17 Q Domestic obligations.

18 A Domestic obligations.

19 Q Domestic constitutional obligations
20 essentially will trump requirements in the Conventions.

21 MS. WRAY: I hesitate here to
22 interrupt, but this does call for a legal opinion on
23 behalf of this witness, and she is not being tendered in
24 a legal capacity.

25 JUSTICE: No, but she can speak to
26 what she understands is the regime under which they
27 work. We know, as a matter of law, what the effect of
28 an international convention is versus a domestic law.

1 The court doesn't need much of an education on that.
2 But this witness is perfectly able to speak to what she
3 understands the regime is.

4 MS. WRAY: Thank you.

5 MR. TOUSAW:

6 Q Is that what you understand the
7 regime to be?

8 A As I've said, there is some
9 flexibility afforded to the competent authority in
10 interpreting the provisions of the Convention.

11 Q The next topic in your affidavit,
12 and I'll just take you to the page that that topic
13 begins, appears at 949, page 949, paragraph 20, just
14 above paragraph 20. It's "Drug Regulation in Canada".
15 Do you see that?

16 A Yes, I do.

17 Q And in this section, generally
18 speaking, between paragraphs 20 and 28, you talk about a
19 variety of acts and regulations that deal with drug
20 regulation in Canada. That's a correct assessment,
21 isn't it?

22 A Yes, that's correct.

23 Q The *Food and Drug Act* and the *Food*
24 *and Drug Regulations* which, if I refer to as *FDA* and
25 *FDR*, you'll know what I mean, correct?

26 A Yes.

27 Q The *FDA* and the *FDR* are fairly
28 comprehensive legislative schemes, correct?

1 A Yes.

2 Q And those are comprehensive schemes
3 that are primarily concerned with the commercial sales,
4 manufacture and sale of drugs and food products, isn't
5 that correct?

6 A They speak to the manufacture,
7 distribution and sale of pharmaceuticals, yes.

8 Q And that's reflected at paragraph
9 21 of your affidavit where you say:

10 "With respect to therapeutic products, the
11 FDA applies to all food, drugs, cosmetics,
12 natural health products, and medical devices
13 sold in Canada."

14 Correct?

15 A Yes, that's correct.

16 Q And again at paragraph 23 you talk
17 about Part C of the *Food and Drug Regulation*, the *FDR*,
18 you talk about that indicating that all drug products
19 sold in Canada must be approved by Health Canada prior
20 to sale. Do you see that?

21 A Yes, I do.

22 Q And similarly you reference,
23 paragraph 23, something called the *Natural Health*
24 *Product Regulations* or *NHPR*, which are also promulgated
25 under the authority of the *Food and Drugs Act*, correct?

26 A Yes, I do.

27 Q And again, the *NHPR* is a
28 comprehensive regulatory scheme designed to govern the

1 manufacture and sale of natural health products that are
2 intended for therapeutic or medical purposes in Canada,
3 correct?

4 A Yes, that's correct.

5 Q You then go on to discuss the
6 *Controlled Drugs and Substances Act*, paragraph 24, which
7 is at page 950 of the Joint Book, Exhibit 26, and you
8 indicate at paragraph 24 that "substances that can alter
9 mental processes and that may produce harm to health and
10 to society when diverted or misused are regulated under
11 the *CDSA*." Do you see that?

12 A Yes, I do.

13 Q The *CDSA*, of course, does not apply
14 to all substances that alter mental processes. That's
15 correct, isn't it?

16 A It

17 A It governs the substances that are
18 listed in the Schedules to the *Act*.

19 Q And there are substances that are
20 not within the *Act* that can alter mental processes,
21 correct?

22 A That is possible, yes.

23 Q And that can include substances
24 that are part of the *NHPR*, correct?

25 A I suppose so, yes.

26 Q And that can include substances
27 that aren't regulated at all in Canada, isn't that
28 correct?

1 A I'm sorry, could you clarify your
2 question?

3 Q The *CDSA*, on its terms, only
4 applies to what's scheduled within the *CDSA*, correct?

5 A That is correct.

6 Q And there are substances in Canada
7 that are available that alter mental processes that are
8 not captured by the *CDSA*, the *FDA*, or the *FDR*, or the
9 *NHPR*. Isn't that correct?

10 A Well, I'm not an expert in the
11 functioning of the *National Health Product Regulations*,
12 but yes, that is possible, that there are substances
13 like that.

14 Q For example, alcohol is not
15 governed by the *CDSA* or the *FDA*. That's correct, isn't
16 it?

17 A Yes.

18 Q And tobacco, similarly, not
19 governed by either of those statutes.

20 A Yes.

21 Q Different control mechanisms for
22 those substances.

23 A That's correct.

24 Q And it's true, isn't it, that some
25 pharmaceutical drugs that are sold pursuant to the
26 *Controlled Drugs and Substances Act* and the *Food and*
27 *Drugs Act* can produce harm to health when misused,
28 correct?

1 A Yes. Some substances that are
2 subject to the *Controlled Drugs and Substances Act* can
3 cause harm when diverted or misused. That's the reason
4 for their control.

5 Q And even some substances controlled
6 by either the *CDSA* or the *Food and Drugs Act* can produce
7 harm to health when used properly, isn't that correct?

8 A Yes, that's possible.

9 Q In the medical context, those types
10 of risks are balanced between a patient and a doctor,
11 isn't that correct?

12 A Typically, yes.

13 Q You say at paragraph 25 of your
14 affidavit, and that's also at page 950 of Exhibit 26,
15 that "the *Natural Health Product Regulations* are
16 intended to regulate relatively benign substances that
17 occur in nature separately from those that present
18 higher level of risk to public health and safety." Do
19 you see that?

20 A Yes, I do.

21 Q And you would agree, would you not,
22 that cannabis is a substance that occurs in nature?

23 A Yes, that is correct.

24 Q And you're aware, are you not, that
25 cannabinoids, the active ingredients in cannabis,
26 actually occur naturally in the human body. Isn't that
27 correct?

28 A Yes, that is correct.

1 Q Not all substances regulated by the
2 *Natural Health Product Regulations* are relatively
3 benign, are they?

4 A As I've said, I'm not an expert in
5 the administration of those *Regulations* or in natural
6 health products. So I really can't comment on the
7 entire scope of all natural health products.

8 Q From a policy perspective, what
9 goes into determining whether or not a product is
10 relatively benign?

11 A I don't -- I'm not responsible for
12 making those determination. That determination would be
13 made by the Natural Health Products Directorate at
14 Health Canada.

15 Q And despite referencing the
16 national *Natural Health Product Regulation*, and
17 indicating the intent of that regulatory scheme, you're
18 saying that that's really outside your area of
19 expertise. Is that right?

20 A I am saying that I am responsible,
21 or have been involved in, the identification of
22 substances that are deemed to be controlled substances
23 and should be regulated under the *Controlled Drugs and*
24 *Substances Act*. I am not responsible for making
25 judgments about what may or may not be considered to be
26 a natural health product. With the exception of
27 understanding the key exceptions set out in the *National*
28 *Health Products Regulation*, which is in Section 2, or in

1 -- sorry, in Schedule 2, that states that no natural
2 health product can contain a controlled substance.

3 Q And there is also an exception in
4 Schedule F for items available via prescription. That's
5 correct, in the *NHPR*?

6 A That's correct, yes.

7 Q *Natural Health Product Regulations*
8 generally apply, however, to plants. Isn't that
9 correct? Plants intended for medical purposes or
10 therapeutic purposes? That's right, isn't it?

11 A They can apply to plants, yes.

12 Q And the *NHPR* are, as you said, as
13 you agreed a moment earlier, I think, generally speaking
14 applicable to natural health products that are
15 manufactured and held out for sale to the public,
16 correct?

17 A That's correct, yes.

18 Q The *NHPR* don't govern the behaviour
19 of consumers in their own gardens, that that doesn't
20 fall into the rubric of the *NHPR*, correct?

21 A That's right. If there is no
22 intention of selling a commercial product to Canadians,
23 then *Natural Health Product Regulations* would not apply.

24 Q At paragraph 26 of your affidavit
25 you indicate that:

26 "Together the *FDA*, the *CDSA*, and the
27 regulatory regimes help to ensure that drugs
28 sold in Canada are safe, effective and of

1 high quality."

2 Do you see that?

3 A Yes, I do.

4 Q It's more fair to say, wouldn't you
5 agree, that those regulatory schemes attempt to ensure
6 that. That's a more fair statement, don't you think?
7 Ensure is quite definitive, isn't it?

8 A Well, the wording in my affidavit
9 is "help to ensure", so I believe that that's of a
10 similar intonation as what -- the words that you used.

11 Q Because, after all, there are some
12 drugs that are sold in Canada that have been approved
13 pursuant to the *FDA* and *CDSA* for manufacture and sale in
14 Canada that may not be safe. Isn't that right?

15 A Yes, that is correct.

16 Q Sometimes drugs get out into the
17 general population, become more widely used, and have
18 effects that maybe were unanticipated by the
19 manufacturer and by Health Canada before approval.
20 That's right, isn't it?

21 A Well, that's correct, but there are
22 provisions in the *Food and Drug Regulations* regarding
23 post-market surveillance. So again, the intent of the
24 framework is to prevent those instances from happening
25 through careful review prior to market approval, and
26 then ongoing monitoring post-distribution in the
27 marketplace.

28 Q You'd agree, generally speaking,

1 that the *Food and Drug Regulation* is about controlling a
2 wide range of activities in relation to foods and drugs
3 that are intended for sale, not about imposing direct
4 controls on consumer behaviour, isn't that right?

5 A I'm not an expert in the *Food and*
6 *Drug Regulations*, but again, going back to what I said
7 previously, the intent of the framework is to apply --
8 set in place controls that would attempt to ensure the
9 safety, quality and efficacy of drug products that are
10 being provided for Canadians to use in their health
11 care.

12 Q Someone that's authorized by the
13 Government of Canada to possess dried marijuana pursuant
14 to the *MMPR*, for example, isn't expected to go through
15 the *FDA* and *FDR* approval process if they want to take
16 that dried marijuana and make it into tea, are they?
17 That's not the intent of the *FDA* and *FDR*, is it?

18 A Well, if they wanted to sell that
19 tea to other people, then yes, that is the intent of the
20 *FDR*.

21 Q But I'm asking about individual
22 consumer behaviour. If they wanted to take their
23 lawfully possessed dried marijuana and bake it into a
24 cookie and eat it at night so they could sleep better,
25 the Government of Canada's position isn't that they need
26 to go through the *FDA* or *FDR* approval process to do
27 that, correct?

28 A Yes, that is correct.

1 Q With respect to the *Controlled*
2 *Drugs and Substances Act*, there are various schedules
3 there too, listing the substances that are government by
4 that Act, correct?

5 A That's correct.

6 Q And they're in numerical order
7 starting at 1 and going downwards, correct?

8 A That's correct.

9 Q That numbering system isn't ranged
10 according to risk to health, is it?

11 A I'm not sure that I would say that
12 conclusively. The way that the substances are organized
13 into the schedules is typically by sort of chemical or
14 pharmacological nature. But having said that, the
15 schedules themselves are associated with penalties and
16 offences that do change by schedule. So the substances
17 that are in Schedule I are associated with the highest
18 level of offences and the highest level of penalties
19 applicable to those offences.

20 Q And is that consistent working its
21 way downward through the *CDSA*? In other words, for
22 example, LSD, lysergic acid, is in Schedule III,
23 correct?

24 A That's correct.

25 Q And cannabis and its preparations
26 and extracts is Schedule II, correct?

27 A That's correct.

28 Q Does that represent a judgment by

1 the Government of Canada that lysergic acid is more
2 benign and less harmful to health than cannabis?

3 A I think that it represents a
4 consideration on the part of the government of the
5 breadth of offences that can occur in that substance,
6 and the severity of the penalties that should apply for
7 offences involving those substances. To be clear, the
8 penalties that apply to offenses involving substances in
9 Schedule II are the same as those for Schedule I.

10 Q There is a section in your
11 affidavit commencing at page 952, paragraph 37, that's
12 titled "Scheduling under the CDSA." Do you see that?

13 A Yes, I do.

14 Q And that continues through
15 paragraph 45, correct?

16 A Yes, that's correct.

17 Q So with respect to that description
18 of scheduling that you provide at paragraphs 37 to --
19 particularly at paragraph 44, generally speaking, that
20 -- the process of scheduling that you describe would be
21 applied to new drugs that are intended to be scheduled
22 in the CDSA, correct?

23 A I'm not sure if I know what you
24 mean by a new drug.

25 Q Well, the CDSA when it was
26 promulgated had a number of schedules to it at its
27 inception, correct?

28 A Yes, that's correct.

1 Q And cannabis, in Schedule II, was
2 included at the *CDSA*, so it's at its inception, correct?

3 A Yes, that's correct.

4 Q And so the process that you
5 describe from paragraphs 37 through 44 of your
6 affidavit, regarding scheduling of substances, that
7 process was not undertaken with respect to cannabis.
8 Isn't that correct?

9 A Yes, that is correct.

10 Q In fact you say at the start of
11 paragraph 45 of your affidavit, "In the case of
12 cannabis, it was primarily included in the schedules to
13 the *CDSA* because of its inclusion of Schedule IV of the
14 Single Convention." Do you see that?

15 A Yes, I do.

16 Q And that's the Single Convention
17 that was promulgated in 1961, correct?

18 A That's correct.

19 Q That was some 54 years ago,
20 correct?

21 A Yes.

22 Q You would agree that the state of
23 knowledge regarding cannabis, its risks, benefits,
24 harms, potential harms, has advanced significantly since
25 1961? You would agree with that, wouldn't you?

26 A Well, I'm not a pharmacologist and
27 I'm not an expert in cannabis, but I think it's safe to
28 say that, yes, more information does exist.

1 Q Even just here in Canada there was
2 a fairly comprehensive analysis of cannabis done in the
3 19 -- early 1970s that we colloquially refer to as the
4 Le Dain Commission report. You're aware of that, aren't
5 you?

6 A I have heard of the title of the
7 report, yes.

8 Q And then in 2002 there was another
9 comprehensive report on cannabis that was published by a
10 special committee of the Senate. You're aware of that
11 report as well?

12 A Yes, that's correct.

13 Q And in and around that time, the
14 House of Commons also published another report on
15 cannabis and its impacts on society. You're aware of
16 that as well, aren't you?

17 A I don't know. I'm not sure.
18 Unless you have the title of the report, I'm not
19 familiar.

20 Q Now, you mentioned you're not a
21 pharmacologist, not an expert on the effects of cannabis
22 on the human body, correct?

23 A That's correct.

24 Q And I take it, then, when you say
25 in the last full sentence of paragraph 45,
26 "Cannabis is also regulated as a controlled
27 substance in Canada because regular long-term
28 use is associated with a high potential for

1 psychological dependence, and also can cause
2 memory loss, harm one's ability to
3 concentrate, and/or the ability to think and
4 make decisions."

5 You're not expressing that as an opinion
6 on the actual effects of cannabis, the pharmacological
7 effects of cannabis. That's outside your expertise,
8 isn't it?

9 A I'm stating those words as extract
10 from publicly-available material published by the
11 Department.

12 Q But you yourself, sitting here
13 today, in terms of your own knowledge, pharmacological-
14 based knowledge, you don't know whether or not those
15 statements are true or not, do you?

16 A Like I said, they're a re-statement
17 of publicly-available material, published by the
18 Department.

19 Q At paragraph 48 of your affidavit,
20 which is on page 955, you discuss the development of the
21 MMARs in 2001. Do you see that?

22 A Yes, I do.

23 Q And you indicate in the last
24 sentence,

25 "Promulgated in 2001, the MMAR enabled
26 seriously ill Canadians to produce and to
27 possess dried marijuana for their own medical
28 purposes."

1 Do you see that?

2 A Yes, I do.

3 Q And those *MMARs* also allowed
4 persons to produce marijuana under a designated person
5 production licence for the medical purpose of someone
6 else, correct?

7 A Yes, that's correct.

8 Q Now, you say "seriously ill
9 Canadians", but in fact the *MMARs*, as they were written
10 in 2001 and as they existed in -- at the end of the *MMAR*
11 regime, they did not restrict either the possession or
12 production of marijuana to just persons that are
13 seriously ill, correct?

14 A Well, in order to obtain an
15 authorization to possess under the *Marijuana for Medical*
16 *Access Regulations*, you had to have an authorization
17 from your doctor certifying that you had certain
18 conditions that made you eligible to have marijuana.

19 Q And there was, at the inception of
20 the *MMARs*, there were three categories of applicants.
21 That's correct, isn't it?

22 A I believe that's the case.

23 Q And at the conclusion of the *MMARs*
24 and just a couple of years ago there were two categories
25 of applicants, correct?

26 A That is correct.

27 Q And in Category 1 there were
28 certain designated symptoms and conditions for which a

1 general practitioner could provide authority to then
2 possess dried marijuana, correct?

3 A That's correct.

4 Q And Category 2 required the support
5 of not just the general practitioner but a consultation
6 with a specialist in order to qualify, correct?

7 A That is correct.

8 Q And Category 2 had no limitations
9 on either of the conditions or symptoms for which
10 cannabis could be authorized, correct?

11 A I would have to see a copy of the
12 Regulations in order to confirm that.

13 Q At paragraph 49 of your affidavit
14 which is on page 955 as well, you discuss a 2003
15 amendment to the *MMAR*, as well as the promulgation of
16 the *Marijuana Exemption Food and Drug Act Regulations* or
17 the *MER*. Do you see that?

18 A Yes, I do.

19 Q The *MER, Marijuana Exemption*
20 *Regulation*, applied to production of dried marijuana by
21 Her Majesty the Queen, correct?

22 A Yes, that's correct.

23 Q And that was the contract with the
24 private company that we discussed at the beginning of
25 your testimony, correct?

26 A Yes.

27 Q And it also applied to production
28 of dried marijuana pursuant to a designated person

1 production licence, correct?

2 A Yes, that's correct.

3 Q And it was necessary to pass the
4 *MMA -- MER*, excuse me. It was necessary to pass the *MM*
5 -- let's try that for a third time.

6 It was necessary to pass the *MER* in order
7 for Her Majesty the Queen to sell cannabis to authorized
8 persons without violating the *Food and Drug Act*,
9 correct?

10 A Yes, that's correct. In addition
11 there could potentially be a relationship between a
12 designated person and the authorized person they were
13 producing for that involved some kind of consideration,
14 and so that was also considered to be sale.

15 Q Yes, and that allowance for
16 consideration to be exchanged between a patient and
17 their designated producer also came about as a result of
18 the 2003 court decision you mention at paragraph 49,
19 correct?

20 A No. The original *Marijuana for*
21 *Medical Access Regulations* allowed for persons, an
22 authorized person to arrange for a designated person to
23 grow on their behalf.

24 Q But it did not, prior to 2003, the
25 *MMARS* did not permit the patient to compensate the
26 designated producer for that activity, correct?

27 A I would have to again see a copy of
28 the Regulations. I don't believe there is reference to

1 the term "compensation" in the Regulations themselves.

2 Q What is the Government of Canada's
3 position then on why designated -- I thought you said
4 just a moment ago that the reason the designated
5 producers were included in the *MER* was because they
6 could sell cannabis to their patients. That's what you
7 said, isn't it?

8 A Yes, that's what I said, and I
9 meant there was the possibility of that happening.

10 Q Yes. And so in order to exempt
11 that exchange, that commercial sale between the
12 designated producer and the patient from the application
13 of the *Food and Drug Act*, the designated producer was
14 included in the *MER*, correct?

15 A That is correct, yes.

16 Q Thank you. The *MERs* did not apply
17 in 2003 and did not include marijuana produced for
18 personal consumption under a Personal Use Production
19 Licence, correct?

20 A That's correct.

21 Q And that's because the Government
22 of Canada did not consider in 2003 that situation,
23 personal production of dried marijuana for one's own
24 personal consumption, to require an exemption from the
25 *Food and Drug Act*, correct?

26 A Correct.

27 Q Wasn't for sale. January 1, it's
28 just being used by oneself in a personal use situation,

1 correct?

2 A Correct.

3 Q At paragraph 50 of your affidavit,
4 you mention -- and again, that's at page 955. You
5 mention the intent of the *MER* was to provide a means by
6 which -- you say seriously ill Canadians could access a
7 supply of dried marijuana, an unapproved drug, without
8 being in breach of the clinical trial and special access
9 mechanisms set out in Part C of the *FDR*. Do you see
10 that?

11 A Yes, I do.

12 Q The special access provisions --
13 that's something called a special access program,
14 correct?

15 A Yes, that's correct.

16 Q And so the *Marijuana Exemption*
17 *Regulation* made it possible for patients to access dried
18 marijuana without going through a clinical trial or
19 without going through a special access program type
20 process, correct?

21 A Well, again, the marijuana that's
22 the subject to the *Marijuana Exemption Regulations* was
23 that produced under contract to Her Majesty the Queen,
24 and that produced by designated persons on behalf of an
25 authorized person.

26 Q And those, the intention of the *MER*
27 was to say that marijuana produced by Her Majesty or by
28 a designated person under licence, issued by Health

1 Canada, there is no need to go through the special
2 access program or a clinical trial process in order to
3 access that marijuana, correct?

4 A That's correct. It was to
5 facilitate access by those persons.

6 Q That's a recognition by the
7 Government of Canada, is it not, that the special access
8 program mechanism and the clinical trial mechanism
9 program, those aren't intended to be used by patients
10 directly, correct?

11 A That is correct.

12 Q Those are mechanisms that are used
13 by researchers or commercial entities to take drugs to
14 market or to make drugs available to the public for
15 sale, correct? Or research.

16 A Yeah. The special access program
17 is not about commercialization. It's about providing
18 access to a medicine that is not approved in Canada that
19 a doctor feels is important for his patient to have
20 access to.

21 Q And so it's intended for
22 practitioners to go through that process, correct?

23 A Yes. It is -- it's a means by
24 which practitioners can get authorization to provide a
25 certain drug to their patients.

26 Q And those processes, the special
27 access program and the clinical trial program, I think
28 you said, agreed a minute ago, but I'll just make sure.

1 Those are unsuited for patients to go through
2 themselves, correct?

3 A I'm not sure I would use the word
4 "unsuited". I think it's important to clarify that the
5 -- for the special access program, the requirement set
6 out in the *Food and Drug Regulations* require that the
7 request be submitted by a physician on behalf of a
8 patient. And in the context of the clinical trial
9 provisions, the wording in the *Regulations* talks about a
10 sponsor of a trial. So a sponsor of a trial is
11 typically a pharmaceutical company, a medical
12 researcher, a contract clinical research firm. It could
13 be an individual. But generally the regulations are
14 oriented -- they use the term "sponsor". So it's
15 whoever is going to be responsible for running the trial
16 in Canada.

17 Q And clinical trials are generally
18 run by either large companies or research institutions,
19 correct?

20 A Yes, that's correct.

21 Q And so it's -- with respect to a
22 person authorized by Health Canada to produce dried
23 marijuana for their own personal consumption, and
24 possess it for their own personal medical consumption,
25 who then takes that drug, marijuana, and makes a tea out
26 of it, that process that I've just described, that
27 scenario and fact pattern, that's not the type of thing
28 that the government of Canada expects people to go

1 through a clinical trial process to do for themselves,
2 correct?

3 A Well, as I've already said, unless
4 there is an intention of the individual to sell the tea
5 to other individuals, then, no, they would not be
6 required to follow those processes.

7 Q And you recognize that at paragraph
8 51 of your affidavit, which commences on page 955 and
9 carries over to the next page. You recognize that basic
10 fact when you say that any person wishing to
11 manufacture, sell, or distribute a drug product made
12 from marijuana, marijuana oil capsules, marijuana cream,
13 must demonstrate safety, efficacy, and quality in
14 accordance with the *FDA* and *Regulations*. That
15 recognizes that this is a process for people that want
16 to manufacture and sell to the public, correct?

17 A Yes, that's correct.

18 Q Now, the *MERs* were -- there's a new
19 set of *Marijuana Exemption Regulations* currently
20 operative, correct?

21 A Yes, that's correct.

22 Q And that exempts marijuana produced
23 pursuant to the *MMPR* regulatory scheme, correct?

24 A Yes, that's correct.

25 Q And dried marijuana only, correct?

26 A Yes, that's correct.

27 Q The *MMARs* did not impose rules upon
28 how a personal producer would construct a production

1 location, did they?

2 A That's correct.

3 Q There was no mandate on how one
4 designed one's electricity or humidity controls or any
5 of those kinds of things, correct?

6 A Correct.

7 Q And similarly the *Food and Drug Act*
8 and *Food and Drug Regulations* that are applicable to
9 manufacturers of drug products, they don't impose
10 requirements other than security and perhaps good
11 manufacturing practices, but they don't impose
12 requirements on how one builds a building or how one
13 wires the building for electricity or any of those kinds
14 of things, do they?

15 A Well, actually the requirements for
16 good manufacturing practices are quite exhaustive and do
17 cover the construction of the building to the extent
18 that it must be a clean and safe environment for
19 pharmaceutical manufacturing, and that could include the
20 safety of the personnel working in the facility, the
21 safety and quality of the substances being made therein.

22 Q And that's why I say other than
23 good manufacturing practice type things, things like
24 getting an electrical permit or how you run your wiring,
25 how you put in a fan, those things aren't detailed in
26 the *Food and Drug Act* or *Food and Drug Regulations*.

27 A That's correct, yes.

28 Q That's because those types of

1 things are traditionally matters within the jurisdiction
2 of either the provinces or municipalities, correct?

3 A Correct.

4 MR. TOUSAW: If I could just have a
5 moment, Justice Phelan.

6 Q I asked you, Ms. Kula, a bit ago
7 about regulations governing alcohol, and you said that's
8 outside your field, correct?

9 A I believe the question you asked me
10 was whether they were subject to the *Food and Drug*
11 *Regulations* or the *Controlled Drugs and Substances Act*.
12 And what I said was that is correct, they are not
13 subject to those regulations.

14 Q Is the regulation of tobacco in
15 Canada something that's within your expertise?

16 A Other than that it's regulated by
17 the *Tobacco Act*, no.

18 Q Are you familiar with the
19 provisions of the *Tobacco Act*?

20 A No.

21 MR. TOUSAW: If I could have just
22 another moment please.

23 Q At tab B to your affidavit, which
24 begins at page 1069 -- I'm sorry, 1064, we see again a
25 letter from the INCB to Canada, and that's dated July
26 27th, 2012, and then a response, October 16, 2012. Do
27 you see that?

28 A Yes, I do.

1 Q And then Health Canada's response
2 dated October 16, 2012, and now I'm looking at page 2,
3 which is 1068. Page 2 of the letter, 1068 in terms of
4 the joint book. The response -- part of the response is
5 "Given the proposed *MMPR* are not yet in
6 place, we are unable to provide you with
7 further information at this time. We are
8 pleased to respond to specific requests for
9 information once the proposed *Regulations*
10 have been published in the *Canada Gazette*."

11 Do you see that?

12 A Yes, I do.

13 Q Are you aware of whether there was
14 a specific written response that followed this letter of
15 October 16, 2012?

16 A I do not believe there was.

17 Q Any further information would have
18 been provided during these in-person meetings in May of
19 2013?

20 A Yes. And in addition there would
21 have been conversations with the INCB during the annual
22 meeting of the Commission on Narcotic Drugs, which takes
23 place typically in March of every year.

24 MR. TOUSAW: Thank you, Ms. Kula.
25 Those are my questions at this time.

26 MS. WRAY: I don't have any re-direct.

27 JUSTICE: No re-direct? Okay.

28 MR. TOUSAW: Thank you. Justice

1 Phelan, we -- my friends and I had a brief discussion
2 about whether the next witness, Mr. Ormsby, might be
3 available to come after the break and just get started
4 on him --

5 JUSTICE: Yes.

6 MR. TOUSAW: -- rather than waiting
7 till the afternoon. I think they're going to need some
8 time to possibly track him down.

9 JUSTICE: Track him down?

10 MS. WRAY: He's old school.

11 JUSTICE: Oh, you didn't put a collar
12 on him, eh?

13 MS. WRAY: Exactly. We will endeavour
14 to do that, though. What's the best way to --

15 JUSTICE: Well, just communicate with
16 the Registrar, and it would be good if we get him in and
17 get rolling as soon as we can.

18 MS. WRAY: Thank you.

19 JUSTICE: Okay. Thank you very much.

20 MR. TOUSAW: Thank you.

21 JUSTICE: You're free to go, ma'am.

22 Thank you.

23 THE WITNESS: Thank you.

24 (WITNESS ASIDE)

25 JUSTICE: Okay. Till we hear from
26 you.

27 MR. TOUSAW: Otherwise, 1:30?

28 JUSTICE: Otherwise, 1:30. Just let

1 me know, like -- we don't have him here by, say, 11:30,
2 quarter to twelve, I think we'll --

3 MS. WRAY: I'll do my best.

4 JUSTICE: Till 1:30. That's fine.

5 MR. TOUSAW: Thank you.

6 **(PROCEEDINGS ADJOURNED AT 10:22 A.M.)**

7 **(PROCEEDINGS RESUMED AT 1:28 P.M.)**

8 JUSTICE: Yes, Ms. Wray.

9 MS. WRAY: Justice Phelan, the next
10 witness is Mr. Eric Ormsby. Mr. Ormsby, if you could
11 please take the witness stand.

12 Mr. Ormsby's affidavit is at Volume 4 of
13 the joint book, tab 14.

14 **ERIC ORMSBY, Affirmed:**

15 THE REGISTRAR: Please state your
16 name, occupation and address for the record.

17 THE WITNESS: Eric Ormsby. I'm a
18 manager of the Office of Science for the Bureau of
19 Policy, Science, and International Programs. It's at
20 1600 Scott Street in Ottawa.

21 **EXAMINATION IN CHIEF BY MS. WRAY:**

22 MS. WRAY: I would ask that Mr.
23 Ormsby's affidavit be marked as Exhibit 27.

24 JUSTICE: Twenty-seven, did you say?

25 MS. WRAY: Yes.

26 **(AFFIDAVIT OF ERIC ORMSBY MARKED EXHIBIT 27)**

27 MS. WRAY: Mr. Ormsby is the second of
28 four Health Canada witnesses. He is the manager of the

1 office of science, Bureau of Policy, Science, and
2 International Programs at the Therapeutic Products
3 Directorate at the Health Products and Food Branch of
4 Health Canada.

5 **CROSS-EXAMINATION BY MR. TOUSAW:**

6 Q Mr. Ormsby, I'm going to use some
7 acronyms when I ask you questions. *FDA for Food and*
8 *Drug Act, FDR for Food and Drug Regulations, and NHPR*
9 *for Natural Health Product Regulations, as well as CBSA*
10 *for Controlled Drugs and Substances Act. You'll*
11 understand what I mean when I say that, right?

12 A That's fine, yeah.

13 Q At paragraph 4 of your affidavit,
14 you begin by saying,

15 "As in all developed countries around the
16 world, prescription and non-prescription
17 drugs are subject to government regulatory,
18 pre-market assessment, and marketing
19 processes."

20 Do you see that? That's page 1196.

21 A Yes, that's correct.

22 Q You're not here as an expert in
23 legal systems throughout the world, though, isn't that
24 correct?

25 A That's correct.

26 Q And you're aware of states, for
27 example in the United States, that have approved access
28 to cannabis for medical purposes by direct democratic

1 action, rather than the pre-market regulatory approval
2 process you describe in this paragraph, correct?

3 A Correct.

4 Q So it's not entirely accurate to
5 say, in all developed countries throughout the world
6 this process is the exclusive way that drugs and health
7 products have become approved for patient consumption.
8 Correct?

9 A Correct.

10 Q You then attach and reference at
11 paragraph 4, you attach an exhibit, Exhibit A, to your
12 affidavit, which is at page 1,216 of Exhibit 27. And
13 you describe that document, a one-page document, as a
14 publication that accurately summarizes answers to common
15 questions regarding our mandate with respect to drugs.
16 Is that correct?

17 A That's correct.

18 Q And that document, at page 1216,
19 Exhibit A, that document is titled "Safe effective high-
20 quality pharmaceuticals", correct?

21 A Correct.

22 Q And that's because the *Food and*
23 *Drug Act*, generally speaking, concerns itself with
24 pharmaceutical substances, correct?

25 A Any substance that is defined to be
26 a drug.

27 Q And generally speaking, however,
28 substances that have gone through *Food and Drug Act*

1 approval, not including the *Natural Health Product*
2 *Regulations*, but *Food and Drug Act*, *Food and Drug*
3 *Regulation* approval, those are generally speaking
4 pharmaceutical substances, correct?

5 A Well, there's biologicals and
6 pharmaceuticals. Both from natural sources and also
7 synthetic.

8 Q And when you say "biologicals"
9 you're talking about medicines that are derived from
10 natural substances, correct?

11 A Correct.

12 Q You're not talking about plants as
13 plants themselves, correct?

14 A They could be.

15 Q You're not aware, however, of any
16 plants that have gone through the *FDR* regulatory
17 approval process as plants, are you?

18 A Correct. Currently not.

19 Q That's never occurred.

20 A It did in the old days, in the
21 early, early days. Such as foxglove for digitalis, was
22 essentially a plant that at that time -- until they
23 actually found out what the active substance was, and
24 then from there they either extracted and purify it, or
25 made a synthetic copy of the active substance.

26 Q And when you say "they" in your
27 response that you've given me just now, you mean drug
28 manufacturers, correct?

1 cannabis and cannabis extracts would be included in the
2 *NHPR*, correct?

3 A Could be. Again it depends what
4 claim they make. If it meets the prescription claim
5 which is in regulation, depending what drug -- or what
6 disease state it's treating, if it was cancer it would
7 definitely be a prescription drug and exempt from the
8 *Natural Health Product Regulations*.

9 Q And that's because drugs available
10 by prescription are specifically exempted from the *NHPR*,
11 correct?

12 A Correct.

13 Q Cannabis is not, however, available
14 by prescription in Canada, correct?

15 A Not currently, no.

16 Q In plants, I think you referenced
17 this in your answer about digitalis, but often plants
18 will have medicinal compounds in them, and those
19 compounds are extracted or purified, I think you said,
20 by sponsors who then take them through the *FDR* approval
21 process, correct?

22 A That's correct.

23 Q And that process takes a fair bit
24 of money to get through, doesn't it?

25 A There's the substantial costs, yes.

26 Q Those costs are outside the reach
27 of individual patients, generally speaking. You'd agree
28 with that, wouldn't you?

1 A I would say yes.

2 Q And the *NHPR* process, natural
3 health product process, that's a regulatory scheme
4 that's intended to apply to natural health products that
5 are going to be manufactured for sale to the public,
6 correct?

7 A Correct.

8 Q It's not a regulatory scheme that's
9 intended to govern direct consumer behaviour, correct?

10 A I'm not sure what you mean by that.

11 Q Well, for example, echinacea is a
12 plant that, if manufactured and sold for medicinal
13 purposes in Canada, would have to meet the *NHPR*,
14 correct?

15 A Correct.

16 Q But echinacea if you want to grow
17 it in your back yard and make a tea out of it, that
18 doesn't have to make the *NHPR*.

19 A For your own use, yes, that's quite
20 true.

21 Q And you in fact mention at
22 paragraph 54 of your affidavit, and I'll take you there
23 right now if you don't mind, that's at page 1212 on the
24 bottom right corner of Exhibit 27.

25 JUSTICE: What page number again?

26 MR. TOUSAW: It's 1,212 in the bottom
27 right corner. There's also numbers in the top right
28 corner but we'll ignore those, My Lord.

1 Q Paragraph 54.

2 A Yes, okay.

3 Q Do you have that?

4 A Mm-hmm.

5 Q And here you reference -- this is
6 where you reference again this digitalis extracted from
7 the foxglove family of plants, correct?

8 A Correct.

9 Q And foxglove plant as a plant has
10 not gone through the *Food and Drug Regulation* drug
11 approval process, correct?

12 A No.

13 Q But digitalis, which is a compound
14 extracted from that plant, that's been brought through
15 the regulatory approval process and brought to market in
16 Canada, correct?

17 A That's true, yes.

18 Q And it's used to treat cardiac
19 issues.

20 A Cardiac problems, yes.

21 Q The plant itself, the foxglove
22 plant, that's perfectly lawful to grow in Canada,
23 correct?

24 A That's correct.

25 Q And it's even lawful for a home
26 gardener to take the foxglove plant and to make a tea
27 out of and drink that tea if they want to, correct?

28 A Yes, they certainly can.

1 Q Probably not a great idea from a
2 health benefit standpoint though, because it's quite
3 toxic, isn't it?

4 A It is very toxic.

5 Q It's got a very narrow range of
6 appropriate dosing.

7 A Correct.

8 Q In fact it can kill you if you take
9 too much of it.

10 A Very quickly, yes.

11 Q It can cause nausea, vomiting,
12 diarrhea, abdominal pains, hallucinations, delirium, and
13 headaches, can't it?

14 A I'm not an expert, that's for sure.
15 But it will cause heart failure, that's for sure.

16 Q Consumer beware.

17 A Yes.

18 Q Another example of a biologically
19 derived drug is something known as Reminyl. Are you
20 familiar with that drug?

21 A No, I'm not.

22 Q The active compound is galantamine.
23 Are you familiar with that compound?

24 A No.

25 Q Are you familiar with medicinal
26 compounds derived from the bulbs of the narcissus plant,
27 more commonly known as daffodils?

28 A No.

1 Q Another example of something that
2 you could grow and use for medicinal purposes without
3 having to go through any of the regulatory approval
4 processes that you describe in your affidavit is a
5 willow bark tea. That wouldn't be required to go
6 through the *NHPR*, would it? If you were going to
7 extract it from a willow tree in your back yard?

8 A For your own purpose? No.

9 Q And willow bark is essentially the
10 source of aspirin.

11 A Aspirin.

12 Q And aspirin, too, has potential for
13 serious long-term or even short-term negative
14 consequences. That's correct, isn't it?

15 A Yes.

16 Q Aspirin as a single compound drug,
17 for sale on the market in Canada, that's something that
18 the *FDR* would be concerned about, correct?

19 A Correct.

20 Q It's fair to describe the *FDA* and
21 *FDR* regulatory scheme as a comprehensive regulatory
22 scheme imposing strict controls on manufacturers of
23 drugs intended for sale in Canada, correct?

24 A That's correct.

25 Q But despite the intent of that
26 regulatory scheme, and those strict controls, drugs do
27 end up on the market and consumed by patients in Canada
28 that cause harm. That's correct, isn't it?

1 A They can, yes.

2 Q And in fact they can either cause
3 harm when used as intended -- that's correct, isn't it?

4 A They can, in certain populations,
5 or patient populations, yes.

6 Q And they can use -- they can cause
7 harm when not used properly or as intended, correct?

8 A Oh, that's for sure, yes.

9 Q And in your affidavit you mention
10 thalidomide, which -- very serious situation involving
11 very serious consequences, as a result of a drug used
12 properly, correct?

13 A Correct.

14 Q Now, there are more recent examples
15 than that.

16 A Yes. And thalidomide was where we
17 put in a stricter regulatory requirements, data
18 requirements, to ensure that drugs were assessed for
19 their safety.

20 Q So, at paragraph 7 of your
21 affidavit, you indicate -- and I'll take you to that,
22 it's page 1197.

23 A Yes.

24 Q You indicate in the second
25 paragraph, speaking about the *FDA* and *Regulations*
26 promulgated thereto,

27 "It is designed to ensure that no drug will
28 cause major safety issues when used according

1 to approved labeling or accompanying
2 documentation."

3 Do you see that?

4 A Yes.

5 Q That's the goal, correct?

6 A That is the goal. At approval, we
7 feel that that's true. It's when the drug gets out into
8 the real world, then other issues can show up with the
9 drug use.

10 Q And you recognize this basic fact,
11 that when -- sometimes when drugs get into the wild, so
12 to speak, into the hands of the public, paragraph 56 of
13 your affidavit, you recognize there could be significant
14 unexpected harm as a result. Correct?

15 A Yes, there could.

16 Q And so Health Canada is engaged in
17 really a risk/benefit type of balancing when it comes to
18 approving new substances for making it to the market,
19 correct?

20 A In both the pre-market approval and
21 also the post-market. As these adverse reactions are
22 collected globally, the sponsor of that drug is required
23 to report to us annually the global adverse reactions.
24 So then all those adverse reactions are then put back
25 into the context of the risk/benefit analysis. And if
26 the risk/benefit analysis says that the risk is higher
27 than it should be, then either we try and label it
28 accordingly, like withdrawing contraindicating certain

1 populations from taking the drug, or actually removing
2 the drug from the market.

3 Q And the purpose of labeling is to
4 providing practitioners and patients with an
5 understanding of what the risks they might be
6 undertaking are.

7 A That's correct.

8 Q So that they can then engage in
9 their own balancing.

10 A That's correct.

11 Q It's only part of a concept known
12 as informed consent, isn't it?

13 A Partly, yes, yes.

14 Q You say at paragraph 18 of your
15 affidavit and I'll take you to that, it's at page 1201
16 of Exhibit 27.

17 A Yes.

18 Q You indicate that -- here you're
19 speaking of the promulgation of the MMAR, the *Marijuana*
20 *Medical Access Regulations*, correct?

21 A Correct.

22 Q And you're familiar with that
23 regulatory scheme?

24 A Not specific details of it, no.

25 Q You have general awareness of it
26 however.

27 A Generally, yes.

28 Q You talk about it in your

1 affidavit.

2 A Yeah.

3 Q You say at paragraph 20 of your
4 affidavit that:

5 "Because the Government of Canada was now
6 selling dried marijuana, it needed to be
7 exempt from the *FDA-FDR* scheme and so the
8 government developed the *Marijuana Exemption*
9 *Regulations, MER*, in 2003."

10 Do you see that at paragraph 20?

11 A Yes, I do.

12 Q And that came about as a result of
13 changes made to the *MMAR* in 2003 which enabled the
14 Government of Canada, Her Majesty, to actually sell
15 dried marijuana to patients directly, correct?

16 A That's correct. Since marijuana is
17 by definition a drug, it is captured under the *Food and*
18 *Drugs Act* and therefore had to be exempt in order to
19 have a legal sale by Health Canada.

20 Q And you say, continuing on, the
21 next sentence at paragraph 20:

22 "The *MER* only exempted dried marijuana
23 produced under contract and right to Her
24 Majesty, however."

25 Do you see that?

26 A That's correct.

27 Q That's not entirely accurate
28 though, is it, sir?

1 A Well, there was -- you could also
2 get it if you had a -- I believe if you could -- a
3 licensed grower.

4 Q A Designated Person Production
5 Licence.

6 A Yes, correct, yeah.

7 Q And that's because in 2003
8 designated producers became able to sell essentially the
9 cannabis they were producing to their patients, correct?

10 A Yeah.

11 Q I'm sorry?

12 A That's correct.

13 Q Thank you. And that *MER*
14 promulgation in 2003, that didn't include personal use
15 production marijuana that a patient would produce under
16 the *MMERs* for their own consumption, correct?

17 A I'm not sure, honestly.

18 Q Fair enough. It is fair to say, is
19 it not, that the *MER* exemption from the *Food and Drug*
20 *Act and Regulations* passed in 2003, prior to the
21 promulgation of the *MER* -- let's scratch that. That's a
22 terrible question. I've gone in about three circles on
23 it. I don't want to confuse you as much as I've been
24 confused by it.

25 You speak of, at paragraphs 15 and 16 of
26 your affidavit, of a -- well, at paragraph 15 you say:

27 "The *FDA* placed all foods, drugs, cosmetics,
28 natural health products and devices sold in

1 Canada, whether manufactured in Canada or
2 imported, by governing their sale and
3 advertisement. The *FDA* and its *Regulations*
4 prevent deception work to ensure the safety
5 of foods, drugs, cosmetics, natural health
6 products, and medical devices."

7 You see that, correct?

8 A Yeah, correct.

9 Q And then you describe at paragraph
10 16 that there's a general prohibition in the *FDA* and
11 various regulations, and that that's basically founded
12 on a precautionary approach. Do you see that?

13 A Yeah.

14 Q Those processes in the *FDA* and *FDR*
15 that you describe at paragraphs 15 and 16, those
16 processes were non-applicable to dried marijuana sold by
17 Her Majesty the Queen, correct?

18 A That's correct.

19 Q Nor were they applicable to
20 designated production marijuana sold by designated
21 producers, correct?

22 A That's correct.

23 Q And they're currently not
24 applicable to dried marijuana produced by licensed
25 producers under the *MMPR*, correct?

26 A Right.

27 Q And that's because in 2014 there
28 was a new *MER* that was passed that exempted the LPs from

1 the *Food and Drug Act and Regulations*, correct? For
2 dried marijuana.

3 A Just the *Regulations*, not the *Act*.

4 Q Yes. Now, paragraph 24 of your
5 affidavit, which is at page 1,203, and you begin to
6 discuss the authorization process for sale of products
7 that are derived from cannabis. Do you see that?

8 A That's correct, yes.

9 Q And the indication there is that if
10 there are drug products that are made from cannabis,
11 those should be accessed by Canadians through three
12 processes. And you set those out as a letter of
13 authorization issued under the special access program,
14 correct?

15 A Correct.

16 Q A clinical trial, to which the
17 Minister has not objected, correct?

18 A Correct.

19 Q Or authorization for sale by way of
20 a notice of compliance and a Drug Identification Number.

21 A Correct.

22 Q And those are -- all three
23 processes, are processes that are designed for industry.
24 Isn't that right?

25 A The majority would be for industry,
26 yes. But they apply to anyone.

27 Q It's not feasible to expect an
28 individual patient to sponsor a clinical trial for a

1 marijuana cookie, for example.

2 A Correct.

3 Q That's not a reasonable
4 expectation.

5 A No, it's not. No.

6 Q Similarly, it's not a reasonable
7 expectation to expect an individual patient to take a
8 cookie that they're baking out of their dried marijuana
9 that they're lawfully in possession of, through the
10 notice of compliance or Drug Identification Number
11 process. That's not reasonable, is it?

12 A No.

13 Q It would be out of their reach
14 completely.

15 A Well, if they wanted to sell it,
16 yes, it would. That's the way it has to be done. But
17 for their own personal use, it's up to them, I suppose.

18 Q Similarly, special access program
19 is geared towards practitioners, doctors, taking --

20 A Yes.

21 Q -- with a patient, yes.

22 A Yes.

23 Q At paragraph 55 of your affidavit,
24 it's at page 1,212, you discuss three non-dried cannabis
25 products that have been authorized for sale in Canada
26 under the *FDR*, correct?

27 A That's correct.

28 Q And the three you indicate are

1 something called Sativex, yes?

2 A Sativex.

3 Q Something called Cesamet, yes?

4 A Cesamet.

5 Q And then something called Marinol,
6 correct?

7 A Correct.

8 Q And Cesamet and Marinol are
9 synthetic THC analogues, correct?

10 A Correct.

11 Q So they're not derived from the
12 plant directly, correct?

13 A Correct.

14 Q Sativex, however, is an extract
15 from the plant itself, right?

16 A Correct, yes.

17 Q And do you know, that's an extract
18 that's been extracted into an alcohol solution?

19 A I'm not sure of the process.

20 Q That would be presumably listed in
21 the monograph for Sativex, correct?

22 A I'm not sure whether the monograph
23 even gets into the detail of the extraction process.

24 Q And Sativex has been issued what's
25 called a notice of compliance with conditions, correct?

26 A Correct.

27 Q And that -- what that essentially
28 means is, it's approved for a particular use, right?

1 A Yes.

2 Q And in this case, Sativex is
3 approved, in terms of a notice of compliance, for its
4 uses in adult patients with multiple sclerosis,
5 neuropathic pain, and with cancer pain. That's right?

6 A Correct.

7 Q But a physician could prescribe
8 Sativex to a patient off-label. That's right?

9 A That's correct.

10 Q And that would be for any condition
11 or symptom the physician, in consultation with the
12 patient, feels it would be appropriate.

13 A That's correct.

14 Q And so Sativex has been taken
15 presumably by its sponsor, G.W. Pharma Limited, or
16 Bayer, through the *FDR* regulatory process.

17 A That's correct.

18 Q And that then permits those
19 companies to market and to sell that product in Canada.

20 A Correct.

21 Q As you understand it, Sativex is
22 composed of two compounds derived from the whole plant,
23 cannabis, THC and CBD, right?

24 A Correct.

25 Q And that's the same THC and CBD
26 that's present in dried marijuana, correct?

27 A Correct.

28 Q And it would be the same THC and

1 CBD that's present in a cannabis tea made by a patient
2 from their own dried marijuana, correct?

3 A Correct.

4 Q Not a different compound. It's the
5 same compound.

6 A Oh, I expect, yeah, other examples
7 would have different other active ingredients found in
8 marijuana, not just specifically these two. They have
9 isolated these two and then formulated it. So I expect
10 the tea would have other compounds in it that may be
11 active.

12 Q Flavouring agents and terpenes
13 and things like that.

14 A And there may be other active
15 ingredients, yes.

16 Q Yeah. But at the very least the
17 THC and CBD, that's the same compound whether it's in
18 the tea you make yourself or the Sativex you get from
19 Bayer.

20 A Essentially the same, yes.

21 MR. TOUSAW: If I could just have a
22 moment, Justice Phelan.

23 Q Mr. Ormsby, in your role as the
24 Manager of the Office of Science, Bureau of Policy,
25 Science and International Programs, Therapeutic
26 Products, Director at Health Products and Food Branch at
27 Health Canada -- that's a mouthful. But in that role,
28 was it your responsibility or is it your responsibility

1 to stay up to date on the literature related to the
2 medicinal use of cannabis?

3 A No, it's not. No.

4 Q We spoke a little bit about
5 digitalis extracted from the foxglove plant. Digitalis,
6 I just want to make sure I'm clear. Extracts from
7 plants can go through the *Natural Health Product*
8 *Regulation* process, correct?

9 A That's correct.

10 Q And did digitalis go through that
11 process or did it go through the *Food and Drug*
12 *Regulation* process?

13 A No, digitalis is a novo drug, so it
14 was -- and for heart purposes it would be a prescription
15 drug, so it is under the *Food and Drug Regulations*.

16 Q So it's outside of the *NHPR* even
17 though that applies to extracts.

18 A Correct.

19 Q There's a great number of plants
20 that have been used as health care products for many
21 many years, correct?

22 A Yeah.

23 Q It wasn't so long ago that
24 virtually all medicines were plant based, isn't that
25 correct?

26 A Until chemistry caught up and they
27 could synthesize them, yes. The early development drugs
28 were all plant, either plant derived or plants

1 themselves.

2 Q And in fact in the natural health
3 care, *Natural Health Product Regulation*, there is a
4 variety of categories of natural health products,
5 correct?

6 A I'm not sure what you mean by
7 categories.

8 Q Well, NHPs can include vitamins and
9 minerals, correct?

10 A Yes.

11 Q They can include herbal remedies,
12 correct?

13 A Correct.

14 Q That can include traditional
15 medicines, correct?

16 A Traditional Chinese medicines, yes.

17 Q And they can include medicines for
18 which modern health claims are being made, correct?

19 A Correct.

20 Q And in fact there's two regulatory
21 approval processes under the NHP, one for traditional
22 medicines and one for medicines that make modern health
23 claims, correct?

24 A Well, they just require more
25 information than the traditional ones.

26 Q Just a matter of supplying the
27 government with additional information about the risks
28 and benefits.

1 A Correct.

2 Q And there are natural health
3 products -- I think we've established that foxglove --
4 that are -- that can be quite dangerous to human health,
5 correct?

6 A They're generally low-risk
7 substances. There are some that, if misused or you take
8 too much, they could cause problems. But generally
9 they're very safe.

10 Q And in fact there are three
11 categories of NHP. The NHP categorized risks of various
12 NHPs as we take it through the approval process as low
13 risk, medium risk, or high risk, correct?

14 A I believe that they've created a
15 new -- newer regime. More for what information is
16 known, and how long it takes to review, or assess the
17 submission.

18 Q And those -- those tracks for
19 approval are designed to ensure, as best as possible,
20 that products that go through that regulatory approval
21 process and that are manufactured for sale in Canada
22 meet the criteria of the regulatory scheme, correct?

23 A That's correct.

24 MR. TOUSAW: Thank you, Mr. Ormsby.

25 MS. WRAY: No re-direct. Thank you.

26 JUSTICE: Okay, you're excused.

27 THE WITNESS: Thank you.

28 (WITNESS ASIDE)

1 MR. TOUSAW: I think that concludes
2 our business for the day.

3 JUSTICE: No one ever said it was
4 overly productive. All right. We have two witnesses
5 tomorrow?

6 MS. WRAY: Yes, we do. Two more
7 Health Canada witnesses.

8 JUSTICE: The second witness will be
9 on stand-by. All right?

10 MS. WRAY: Okay. Absolutely.

11 JUSTICE: And if cross-examination is
12 short, we'll move right into that.

13 MR. CONROY: I should point out,
14 Judge, that the next witness is the one who has the
15 seven-volume affidavit. So she's not likely to be that
16 short.

17 JUSTICE: I was anticipating that it
18 might be a tad longer than today. Then again, almost
19 anything would.

20 So, all right. We will see you tomorrow.

21 **(PROCEEDINGS ADJOURNED AT 2:03 P.M.)**

22

23

24

IN THE FEDERAL COURT
(Before the Honourable Justice Phelan)

Vancouver, B.C.
March 4, 2015

T-2030-13

BETWEEN:

NEIL ALLARD, TANYA BEEMISH, DAVID HEBERT
and SHAWN DAVEY,

Plaintiffs;

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,

Defendant.

PROCEEDINGS

Mr. J. Conroy, Q.C.,

Mr. K. Tousaw,

Ms. T. Grace,

Mr. B. Vaze,

Mr. M. Jackson,

Appearing for the Plaintiffs;

Mr. J. Brongers,

Ms. B.J. Wray,

Mr. C. Januszczak,

Mr. P. Alma,

Ms. M. Nicolls,

Appearing for the Defendant.

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VANCOUVER, B.C.

March 4th, 2015

Volume 7

(PROCEEDINGS COMMENCED AT 9:31 A.M.)

JUSTICE: Good morning, Mr. Brongers.

MR. BRONGERS: Good morning, Justice Phelan. Today we will hear first from the third of the defendant's factual witnesses, who is being cross-examined by the plaintiffs. Her name is Ms. Jeannine Ritchot, and her current title is Senior Director of the Surveillance and Analysis Division in the Centre for Chronic Disease Prevention of Health Canada. But no reason to write that down.

JUSTICE: It's no doubt written down some place.

MR. BRONGERS: It is. And, more importantly, she is actually providing evidence in relation to her knowledge obtained from her previous position, which is a nice shorter title, Director of Medical Marijuana Regulatory Reform.

JUSTICE: Okay.

MR. BRONGERS: So perhaps Ms. Ritchot could be brought to the witness stand.

JUSTICE: And her material is found in 4?

MR. BRONGERS: It starts --

JUSTICE: I know it's 4. Probably 4 and continues.

1 MR. BRONGERS: It starts at Volume 4,
2 page 1435. And that's the body of the affidavit, the
3 text. The exhibits are found at Volumes 5 through 10.

4 JUSTICE: Yes. Go ahead.

5 **JEANNINE RITCHOT, Affirmed:**

6 THE REGISTRAR: Please state your
7 name, occupation, and address for the record.

8 THE WITNESS: My name is Jeannine
9 Ritchot. I'm currently the Senior Director of the
10 Surveillance and Analysis Division of the Health Agency
11 of Canada. And my address is 785 Carling Avenue,
12 Ottawa.

13 MR. BRONGERS: And, Justice Phelan, I
14 would just ask that Ms. Ritchot's affidavit be marked as
15 the next exhibit. I believe it might be 28.

16 JUSTICE: It is.

17 (AFFIDAVIT OF JEANNINE RITCHOT MARKED EXHIBIT 28)

18 MR. BRONGERS: And before my friend
19 begins with his cross-examination, there is one
20 housekeeping matter that I've already discussed with
21 him, a typographical error at paragraph 28 of Ms.
22 Ritchot's affidavit. If you could just bring that up.

23 JUSTICE: I'll find it. 28, okay.

24 MR. BRONGERS: Paragraph 28 sets out
25 the details of the authorization to possess of --

26 JUSTICE: Mr. Davey?

27 MR. BRONGERS: 38. 38.

28 JUSTICE: 38. Okay. This deals with

1 Mr. Davey?

2 MR. BRONGERS: Yes. And Ms. Beemish's
3 authorization to possess. We see the second sentence.
4 It reads, "Ms. Beemish's daily dosage was 3 grams per
5 day." In fact it was 5 grams per day.

6 JUSTICE: Sorry, did you say paragraph
7 30?

8 MR. BRONGERS: Thirty-eight.

9 JUSTICE: Oh, 38.

10 MR. BRONGERS: My apologies. So at
11 the second sentence --

12 JUSTICE: Yes. The 3 grams? Yes.

13 MR. BRONGERS: It should be 5 grams
14 per day. That was clearly established in Ms. Beemish's
15 cross-examination. That's what her licence says. And
16 in fact the other numbers there coincide with 5 grams,
17 so there is no dispute about that.

18 So I'm wondering if we can just correct
19 that on the record, or I could ask the question to a
20 witness. Or --

21 JUSTICE: Yes. We'll correct it.
22 We'll take it as read that it's 5 instead of 3. I have
23 made a note to my copy, and we'll make a note someplace
24 else.

25 MR. BRONGERS: Thank you, Justice
26 Phelan.

27 JUSTICE: Okay.

28 MR. BRONGERS: Ms. Ritchot, if you

1 could answer the questions my learned friend will pose
2 to you.

3 THE WITNESS: Thank you.

4 MR. CONROY: To further complicate
5 matters, Judge, I've also been working from the earlier
6 version. So my friend's going to help us to make sure
7 we get the page numbers right in the other volumes.

8 JUSTICE: It's a simplified action.

9 MR. CONROY: That's right.

10 **CROSS-EXAMINATION BY MR. CONROY:**

11 Q Ms. Ritchot -- I keep wanting to
12 say *ree-SHOW*, because your first name is Jeannine, but
13 it's *rit-SHOT*, I understand.

14 A That's correct. Thank you.

15 Q Thank you. You and I have met
16 before, I think, first of all in the injunction
17 proceedings, and you were also responsible for answering
18 questions on the written questions and answers for
19 discovery. Isn't that right?

20 A That's correct.

21 Q And your title, it's Public Health
22 Agency of Canada, which some of us just know as Health
23 Canada, correct?

24 A No, the Public Health Agency is
25 actually separate from Health Canada.

26 Q It's a separate agency.

27 A Yes.

28 Q How so?

1 year period being involved in the whole regulatory
2 reform as the title says, the transition essentially
3 from the *Marijuana Medical Access Regulations* to the
4 *Marijuana for Medical Purposes Regulations*, is that
5 fair?

6 A That's correct.

7 Q The *MMAR* to the *MMPR*, is that
8 right?

9 A Correct.

10 Q Okay. But before that, you were in
11 the office -- sorry, you were the Director of the Bureau
12 of Medical Cannabis from 2010 to 2011.

13 A Correct.

14 Q And that put you as the person in
15 charge essentially of the office, the Health Canada
16 Office, or was it Public Health Agency?

17 A It was Health Canada.

18 Q Health Canada Office in relation to
19 the *MMAR*, fair enough?

20 A Yes, the administration of the
21 program, yes.

22 Q Okay. And you were there -- when
23 did you start in 2010?

24 A March 2010.

25 Q Until you became the Director of
26 Regulatory Reform.

27 A That's right.

28 Q And that was?

1 A That was around June or July of
2 2011.

3 Q Okay. So you were the director for
4 approximately a year, a little more than a year.

5 A A little over a year, yes.

6 Q Now, that position was in something
7 called the Office of Controlled Substances, Controlled
8 Substances and Tobacco Directorate, is that right?

9 A Correct.

10 Q So that office would also deal with
11 tobacco issues, would it?

12 A Yes, it would deal with tobacco
13 issues as well.

14 Q And were you generally familiar
15 with what the situation is with respect to tobacco
16 federally?

17 A I have general familiarity with the
18 tobacco regulations.

19 Q You knew that a person could grow
20 and keep up to 15 kilograms of tobacco if they grow it
21 on their own?

22 A That I'm not aware of, no.

23 Q You didn't know that?

24 A No.

25 Q Okay. So you didn't know that a
26 person could grow on their own land, where they reside,
27 tobacco for their personal use and members of their own
28 family over the age of 18 years and as long as it didn't

1 exceed 15 kilograms for the individual and each member
2 of the family. You didn't know that?

3 A No, I'm not aware of that rule.

4 Q Okay. I've asked the Registrar to
5 put in front of you to start off Volume 13 of the Joint
6 Book of Documents. You have that.

7 A I have that, thank you.

8 Q At tab 29 we start the information
9 or the answers that you provided on the discoveries. I
10 just wanted to take you through those quickly to
11 establish --

12 JUSTICE: Do you have a page number?

13 MR. CONROY: I'm sorry, 4675 or 4676
14 in Volume 13, Judge Phelan.

15 JUSTICE: Okay, thank you.

16 track 4

17 MR. CONROY:

18 Q Now, these were provided at an
19 earlier time to your affidavit, and I think your
20 affidavit updates a little bit. Just quickly go through
21 them to just establish a base here.

22 The first question that is read-in is
23 number 6, at page 4676. So that's tab A. You have
24 that?

25 A Yes, I do.

26 Q Okay. So there you were asked the
27 numbers of patients that had valid ATPs, Authorizations
28 to Possess, and personal use production licenses, on

1 various dates. Correct?

2 A Correct.

3 Q And September 30th, 2013 is the
4 transition date in the *MMPR* for -- well, you stopped
5 accepting applications and so on. Is that right?

6 A That's correct.

7 Q March 21st, 2014, was the date of
8 Justice Manson's order. Fair enough?

9 A That's what I've been advised, yes.

10 Q And March 31st, 2014 was the date of
11 repeal of the *MMAR*, correct?

12 A Correct.

13 Q Okay. And so you gave us figures
14 of 25,809 individuals with ATPs on September 30th, 21,000
15 roughly on March 21st, 2014, and 20,000 on March 31st,
16 2014.

17 A Just to clarify, those are the
18 numbers of ATPs who held a personal use production
19 licence.

20 Q Yeah. So people who were able to
21 produce for themselves, and also had an authorization to
22 possess.

23 A Correct.

24 Q Okay. At the next tab, you provide
25 the same information with respect to designated growers,
26 people who were designated to grow for a particular
27 patient under the *MMAR*.

28 A Correct.

1 Q And again, the figures set out
2 there are 4,231 on September 30th, 2013, and then
3 declining, March 21st, 2014, 3,273; March 31st, 3,160.
4 Fair enough?

5 A Correct.

6 Q People with authorizations to
7 possess who had a designated grower.

8 A Yes.

9 Q So far fewer designated growers in
10 the program than people who held personal production
11 licenses.

12 A Correct.

13 Q And then over to the next one,
14 number 8, tab C, we have those dates set out again, and
15 the question there was how many with valid
16 authorizations to possess were purchasing from the --
17 what had become the government supply or source, Prairie
18 Plant Systems, as of those various dates. Correct?

19 A Correct.

20 Q And there you indicated that Health
21 Canada couldn't actually provide the data on how many
22 purchased without doing an impractical manual search,
23 and part of the problem, as I understand it, was people
24 would place orders and could place orders multiple
25 times. So that was one factor, correct?

26 A I just need a moment to re-read my
27 answer.

28 Q All right.

1 JUSTICE: While you're doing that, is
2 there something to the blacked-out parts of the answers?

3 MR. CONROY: I think that they are
4 simply other parts -- other questions and so on. My
5 friend maybe can speak to that.

6 MR. BRONGERS: No, we didn't black
7 them out. It was my friend who did.

8 MR. CONROY: Oh.

9 MR. BRONGERS: You indicated that you
10 only wanted certain read-ins from our discovery.

11 MR. CONROY: Oh, I see, yeah.

12 JUSTICE: Oh, okay.

13 MR. CONROY: So that's all it is.

14 MR. BRONGERS: You didn't want the
15 court to have all the read-ins.

16 MR. CONROY: I think it was simply
17 done because there was a part of another question on the
18 same page.

19 JUSTICE: Okay. No, that's fine.
20 Just didn't want to think I was missing something.

21 MR. CONROY: Right.

22 JUSTICE: At least, missing something
23 exciting.

24 MR. CONROY: We may come to something
25 like that later.

26 JUSTICE: Oh, okay. Yes, I'll hold
27 you to that comment.

28 MR. CONROY:

1 Q So basically you set out there what
2 the problem was in terms of trying to give us exact
3 figures for that question.

4 A Yes, that's correct. And indeed,
5 we did note that multiple orders was one of the
6 difficulties.

7 Q All right. The next, number 9, was
8 basically again providing us with some statistics based
9 on how many -- what Health Canada had authorized as of
10 April, 2013, in terms of production of cannabis under
11 the *MMAR*, under the various licenses. And then breaking
12 them down into grams per day. That was the question,
13 correct?

14 A Yes, that was the question.

15 Q But the answer clarified that there
16 is a difference between authorized production and
17 authorized possession. Fair enough?

18 A Yes. We noted that it was not
19 correct because the question referred to production as
20 opposed to possession.

21 Q And so the figures that we have in
22 the question relate to authorized as opposed to
23 possession? What was authorized by the government, is
24 that correct?

25 A I'm sorry, I'll need a moment to
26 re-read the answer.

27 Q All right.

28 A The numbers in the question as they

1 were put to Health Canada seem to refer to an *Access to*
2 *Information* request, and the request was about
3 authorized possession amounts and not about production
4 amounts.

5 Q Right. So the figures in the -- if
6 we go back to the question, for example the first one,
7 15,752.88 kilograms for patients using 5 grams a day is
8 with respect to the possession authorized as opposed to
9 what's allowed to be produced.

10 A That's correct.

11 Q And that's the same for all the
12 other.

13 A That's correct.

14 Q Okay. And data is only available
15 up to March 31st, 2014. We have no data available
16 thereafter because that was the date of repeal, correct?

17 A Correct.

18 Q And then if we go over to the next
19 page, there's a graph there breaking down the kilograms
20 per day authorized for 2012 and the kilograms per day
21 authorized in 2013?

22 A Yes, that's correct.

23 Q There seems to be a reduction
24 actually in 2013 in the total from 2012?

25 A Yes, there does.

26 Q Okay. And at the bottom of that
27 page the numbers as of March 31st for individuals with
28 personal production licences and designated production

1 licences, they were authorized to produce 123,187.305
2 kilograms of dried marijuana, correct?

3 A Correct.

4 Q Okay. Moving on, the next question
5 pertained to people who had large authorizations under
6 the *MMAR*?

7 A That's what the question is asking,
8 yes.

9 Q And it showed a reduction between
10 -- sorry, an increase between April 17th, 2013 and March
11 31st, 2014. So there were 158 individuals with medically
12 approved dosages over 150 grams per day, correct?

13 A Correct.

14 Q As of March 31st, 2014, the date of
15 repeal.

16 A Yes.

17 Q Now, at 13 we asked about debts
18 that people had to pay for the government product, and
19 there you set out the steps taken by Health Canada in
20 order to try and collect the debts. And on the next
21 page you actually set out the amounts that people were
22 in arrears, don't you?

23 A Yes, I do.

24 Q So as of July 31st, 2014, there were
25 896 individuals in arrears with a total amount owing of
26 \$1,448,219.67?

27 A That's correct.

28 Q And they owed between \$2.00 and

1 \$37,764.24.

2 A That's correct.

3 Q And you then set out in a draft or
4 table the various numbers of clients on the right side
5 and the debt amounts on the left that add up to those
6 totals we just went through, correct?

7 A That's correct.

8 Q And so what Health Canada did, for
9 those who were in arrears as of July 31st, 2014, stopped
10 accepting orders after March 12th, 2014, correct?

11 A That's correct.

12 Q Then at the next one we asked how
13 many patients were purchasing from Prairie Plant Systems
14 over the course of the program under the interim policy,
15 and how many were unable to afford the cost, and you
16 referred us back simply to the previous answer as
17 providing that same information.

18 A Yes, we did.

19 Q Tab H, you simply confirmed that
20 dried marijuana is not an approved drug for sale in
21 Canada and that it doesn't have a drug identification
22 number, correct?

23 A Correct. The response states that
24 it does not have a DIN, nor that it is an approved drug.

25 Q Yeah. And that is the procedure
26 under the *Food and Drug Act* where somebody has to make
27 an application to have a drug approved in order to try
28 and obtain a DIN.

1 A Correct.

2 Q Now, the next paragraph, we talked
3 -- or asked a question about the limitation in terms of
4 dried marijuana. And you set out that the responses in
5 the defence -- and essentially if we can just address it
6 for a moment. You know that the government of Canada
7 was essentially mandated by the decision of the Ontario
8 courts in the *Parker* case to develop this program as an
9 exception to the *Controlled Drugs and Substances Act*.
10 Fair enough?

11 A Yes, and my understanding of the
12 *Parker* case is that the court stated that Health Canada
13 had to provide access to dried marijuana for medical
14 purposes.

15 Q Is it your understanding that the
16 court actually used the word "dried", or just
17 "marijuana"?

18 A My understanding is dried.

19 Q Somebody told you that?

20 A In my years at Health Canada, I
21 have seen multiple documents about the history of the
22 program.

23 Q You are aware that under the
24 *Controlled Drugs and Substances Act* in Schedule II there
25 is no reference to "dried" marijuana, it simply says
26 cannabis and its derivatives, and then lists various
27 cannabinoids, and so on?

28 A I would have to see Schedule II to

1 confirm, because it's been a while since I've looked at
2 the schedule.

3 Q Right. Come back to that, then.

4 The next question, or still under the
5 same tab, 14 is the page -- sorry. 4694, bottom right,
6 is the page number. And the question there was with
7 respect to the extracts of active components, and what
8 the information was. And you simply say -- you simply
9 tell us the information that you received with respect
10 to extracts, and that it was never made clear whether
11 the concerns related solely to cannabis oil. Is that
12 fair?

13 A That is -- yes, we did say that --
14 whether the concerns related solely to extraction of
15 cannabis oil were not made clear during the
16 consultation.

17 Q Okay. At the next tab, J, and the
18 fifth page -- question 26. We asked you to provide
19 details of specific problems that arose during the
20 course of the program, and with respect to the use of
21 forms other than dried. And your answer was that the
22 *MMAR* did not authorize the use of marijuana other than
23 dried, and individuals who did convert their dried
24 marijuana to derivatives were doing so in contravention
25 of the *Regulations*. Correct?

26 A Correct.

27 Q And that Health Canada became aware
28 of some problems, mainly through media reports and law

1 enforcement information, and specifically the CACP
2 report that's referred to at the bottom there.

3 A That's correct.

4 Q And that's the Canadian Association
5 of Chiefs of Police report.

6 A Yes, it is.

7 Q You have appended as an exhibit to
8 your current affidavit.

9 A Yes, I have.

10 Q Right. Let's move to tab L. There
11 we asked you how many patients were attempted to be or
12 were in fact robbed or assaulted in order to steal the
13 marijuana they possessed on their person throughout the
14 history of the program. And your response was that
15 Health Canada did not collect and does not have this
16 information. Fair enough?

17 A Yes, that was my response.

18 Q And the reason for the 150-gram
19 limit in the *MMPR* was because of a concern that people
20 might be walking around with more than 150 grams on
21 them, and might be subjected to thefts or attempted
22 robberies, that sort of thing. Is that right?

23 A Public safety was one consideration
24 in establishing the cap, yes.

25 Q Were there other factors besides
26 public safety in relation to that cap?

27 A We considered how other -- how
28 regulatory bodies such as pharmacists' associations or

1 any advice that Colleges of Physicians, for examples,
2 give to professionals in the administration of other
3 drugs containing narcotics.

4 Q Well, if a person had a
5 prescription for oxycontin for example, would there be a
6 limit to how many oxycontin they could have on their
7 person at any given time?

8 A There isn't a limit established in
9 any federal regulations. However there are dispensing
10 guidelines that are used across the country, and a
11 person cannot have more oxycontin in their possession
12 than what is on the label, what is indicated on the
13 label of their prescription.

14 Q And so if a person had an Oxycontin
15 prescription and they wanted to go on a 30-day holiday,
16 they would still be able to go to their pharmacist or
17 doctor in order to ensure that they had enough supply,
18 wouldn't they?

19 A As long as they have a valid
20 prescription for 30 days, yes.

21 Q But in the case of the marijuana or
22 dried marijuana, you wouldn't be able to do that under
23 the *MMPR*, would you?

24 A If your 30-day supply would exceed
25 150 grams, you would only be able to receive your
26 shipments in 150 gram segments.

27 Q And the Licensed Producer couldn't
28 ship you more at your vacation destination, could he?

1 A The Licensed Producer, I do not
2 believe that there's anything in the Regs that would
3 prohibit the Licensed Producer from shipping to an
4 alternate address as long as you informed the Licensed
5 Producer. He would not -- the Licensed Producer would
6 not be able to ship more than 150 grams at a time, but
7 there should not be anything in the Regs that would
8 preclude him from shipping more than one shipment to a
9 vacation destination.

10 Q Even if the vacation destination
11 was outside the country?

12 A Outside the country I would have to
13 -- I can't quite remember but I do not think that he
14 could ship outside the country.

15 Q So the vacation destination would
16 have to be within Canada then, wouldn't it?

17 A And it would have to be an address
18 that is registered with the Licensed Producer.

19 Q And that wouldn't be the case with
20 respect to Oxycontin, would it?

21 A Not as far as I know. Oxycontin
22 wouldn't be shipped from a Licensed Dealer to a patient.

23 Q The person would simply take the
24 Oxycontin with them, wouldn't they?

25 A As far as I know.

26 Q But as far as the public safety
27 aspect is concerned, you say that was one of the factors
28 in relation to the cap, but you confirm that Health

1 Canada has no data of people being robbed or attempted
2 robberies in those types of circumstances. Isn't that
3 right?

4 A I did confirm that Health Canada
5 has no data about those types of circumstances that
6 Health Canada itself collects. But we did receive
7 significant information from other stakeholders
8 throughout the course of the program, in some cases
9 other stakeholders who have collected data related to
10 public safety issues.

11 Q But you can't give me any specifics
12 with respect to robberies or attempts in relation to
13 personal possession, can you?

14 A No, I can't give you any specifics.

15 Q And under the *MMAR*, the limit was a
16 30-day supply was the top limit. There was no lower cap
17 of 150 grams, was there?

18 A That's correct.

19 Q But you knew that as a result of
20 the injunction, Justice Manson imposed the 150 gram
21 limit on those grandfathered under the injunction?

22 A I did not know that until now.

23 MR. BRONGERS: I don't think that's a
24 fair characterization. Justice Manson was not a
25 legislator. The law provides for the 150 gram limit and
26 Mr. Justice Manson did not issue an injunction to set
27 aside the enforceability of that provision. So it's not
28 Justice Manson who imposed the cap.

1 MR. CONROY:

2 Q Well, in the *MMPR* there's a
3 legislated cap of 150 grams, isn't there?

4 A Yes.

5 Q In the *MMAR* there was no limited
6 cap of 150 grams. It was a 30-day supply, wasn't it?

7 A Correct.

8 Q But since the injunction, the 150
9 gram cap has been applied to those grandfathered under
10 the injunction, isn't that correct?

11 A I'm learning this today.

12 Q You never knew that?

13 A No.

14 JUSTICE: It's actually probably right
15 in the order, isn't it?

16 MR. CONROY: I think it is.

17 JUSTICE: I think we can figure that
18 out.

19 MR. CONROY: All right.

20 Q But a person under the *MMAR* could
21 have a residence, a different production site, and even
22 a different storage site, couldn't they?

23 A Yes.

24 Q And so if you're producing your
25 cannabis at your production site, you would have to move
26 it from the production site to the storage site after
27 you completed the production, wouldn't you?

28 A Yes.

1 Q And you would have to then, if you
2 were going to consume some or take some or have some on
3 your person, then take it from the storage site to go
4 wherever you're going to go, isn't that correct?

5 A Yes.

6 Q So, but the amounts that people
7 were allowed to have under the *MMAR* depended upon the
8 number of grams per day authorized by the doctor and
9 then put into the formula in the Regulations to come up
10 with the total figure in terms of how many plants and
11 how much storage, correct?

12 A I'm sorry, could you repeat the
13 question?

14 Q The *MMAR* provided that the doctor
15 and the patient, they would determine what the grams per
16 day would be?

17 A That's correct.

18 Q That would be put into a formula
19 set out in the *MMAR* which in turn would determine how
20 many plants the person could produce, and how much they
21 could store.

22 A Yes, that's correct.

23 Q And as we discussed, they could be
24 at differed locations.

25 A The storage and the production site
26 could be at different locations.

27 Q And the person could reside
28 somewhere other than the production site, or the storage

1 site.

2 A Yes, they could.

3 Q And so if there was a 150-gram cap
4 applied to those people, that would cause some
5 difficulties, wouldn't it, in terms of getting your
6 amount from the production site to the storage site, if
7 it was greater than 150 grams. Isn't that right?

8 A There was no 150-gram cap in the
9 MAR, but had there been, yes, that could have been a
10 problem.

11 Q All right. So, given that it's in
12 the current order, it would be a problem for those that
13 are grandfathered, wouldn't it?

14 A I suppose it could, yes.

15 Q Yeah. Okay. At the next tab, M,
16 we discuss the reasons why the government -- one of the
17 reasons why the government put forward the change and
18 the policy decision to try and treat cannabis like any
19 other prescribed drug. And we use the Oxycontin model.
20 Fair enough?

21 A Those were the words of the
22 question, not Health Canada's words, "Oxycontin model".

23 Q Health Canada's words were, "any
24 other prescription drug"?

25 A I believe that "any other
26 prescription narcotic" was the --

27 Q Like Oxycontin.

28 A Health Canada didn't include any

1 qualifiers in its policy statement.

2 Q But Oxycontin would fit within that
3 definition, wouldn't it?

4 A Yes.

5 Q Okay. And the concerns specified
6 there pertain to the production or growing of marijuana
7 in homes. Correct? And the reduction of public health,
8 safety, and security risks as a result of that? As well
9 as the other factors.

10 A I'm sorry, the second part -- could
11 you repeat the first part of the question?

12 Q The response was, you said it was
13 correct that that was a central policy objective, but
14 you also refer to the other objectives at the bottom of
15 your answer.

16 A That's correct.

17 Q Yeah. Okay. And so the concern
18 was growing in actual residences -- one of the concerns,
19 correct?

20 A One of the concerns was growing in
21 residences, which were not outfit for the growth of --
22 for such cultivation productions, yes.

23 Q No reference is made to persons
24 growing in barns out in agricultural areas, for example.
25 Fair enough?

26 A No reference was made where?

27 Q Concerns, in terms of these issues.
28 Your answer relates to homes, not barns, correct?

1 A My answer relates to the reduction
2 of public health, safety, and security risks associated
3 with growing marijuana in homes as being an important
4 objective, yes.

5 Q In other words, the concerns were
6 with respect to residences, not -- you didn't get
7 similar concerns expressed with respect to people
8 growing in an agricultural area out in a barn. In a
9 non-residential area, for example.

10 A No, that would not be true.

11 Q You had specific complaints and
12 concerns about other places besides residences or homes?

13 A Yes, I did.

14 Q You did?

15 A And Health Canada did. I took
16 personal meetings with municipalities who had concerns
17 with large grow operations that were not necessarily in
18 residential areas. As a Health Canada official, I took
19 those meetings and Health Canada did receive those kinds
20 of complaints as well.

21 Q But the concerns throughout the
22 materials is with respect to residences and residential
23 areas in particular, isn't that correct?

24 A That was absolutely a concern, but
25 to answer your question about were there other types of
26 production areas where concerns were also raised, yes,
27 there were. It wasn't -- we didn't specifically -- or
28 we didn't uniquely receive complaints about residences.

1 your affidavit as Exhibit -- let me just have a moment.

2 As Exhibit A, is that right?

3 A May I ask which volume?

4 Q The volume that you have there
5 should be 4, has your affidavit, and it should be the
6 last tab on 4. Sorry, there's a number of --

7 JUSTICE: Is something out of whack
8 here?

9 MR. CONROY:

10 Q Exhibit A to your affidavit is
11 actually the RIAS to do with the *MMPR*, isn't it? This
12 is a reference in this question is the earlier report --

13 A I'm sorry, I have to find my
14 affidavit. Pardon me. Exhibit A.

15 Q Right.

16 A Exhibit A is actually RIASs for all
17 of the *MMARS* over the years.

18 Q Right. And Exhibit F, I believe it
19 is. Exhibit F to your affidavit, which is in Volume 6,
20 page 2292. Do you have that?

21 A Yes, I do, thank you.

22 Q That's what you were referring to
23 in the response at question 36, page 4700 of the read-
24 ins?

25 A No, that is a cost/benefit analysis
26 which informed the RIAS.

27 Q Okay.

28 A But that is not the RIAS referred

1 to here.

2 Q All right, so the RIAS that you
3 were referring to is the one at Exhibit A then, is it?

4 A No, I believe --

5 Q It's a different one?

6 A It's in my exhibits. I believe it
7 might be the very last one or the second to last one. I
8 just can't remember the numbering.

9 Q Okay. Well, let's just -- what I
10 wanted to point out and I can do it now, if you still
11 have Exhibit F in front of you.

12 A Yes, I do.

13 Q That document says it's the final
14 report "Cost/Benefit Analysis of Regulatory Changes for
15 Access to Marijuana for Medical Purposes"?

16 A Correct.

17 Q And it's got a date of November 6,
18 2012.

19 A Correct.

20 Q And there was a later version of
21 that, December 2012, isn't that correct?

22 A I'm not aware of the later version
23 of this off the top of my head.

24 Q Was a later version not produced at
25 the injunction proceedings, or do you recall?

26 A I don't recall.

27 Q If we could have -- well, we're
28 going to have to dig up then the affidavit of Zackary

1 Walsh if we could. He will be in the experts book,
2 Volume 1, tab 4. If the witness could have that. It's
3 page 55 up at the top right corner.

4 REGISTRAR: Volume 1, Tab 4?

5 MR. CONROY: Of the expert's.

6 JUSTICE: Of the expert's. Yes. It's
7 Exhibit 6.

8 MR. CONROY:

9 Q 55, in the top right corner.

10 A Thank you.

11 Q See that?

12 A 110 in the top left, and 55 in the
13 top right, that page?

14 Q Mine just has 55 in the top right.
15 But in any event --

16 JUSTICE: You have page 55 at the top?
17 Benefit analysis.

18 A Okay.

19 JUSTICE: Do you see it? It's got the
20 December, 2012?

21 A Yes. Yes. Thank you.

22 JUSTICE: All right.

23 MR. CONROY:

24 Q So that one shows final report
25 December, 2012, doesn't it?

26 A It does, yeah.

27 Q And it's by the same people.

28 A It is.

1 Q And yet the one that your
2 affidavit, tab F, is the same people, and it says the
3 final report, November, 2012, doesn't it?

4 A It does.

5 Q And you've seen this December, 2012
6 report, haven't you?

7 A I haven't seen it in a while.

8 Q Well, I didn't discover the
9 difference myself until recently. And I notice there is
10 different page numbers and some things in one and not in
11 the other, and I wondered if you had any explanation for
12 that.

13 A I don't know what the difference
14 would be, no.

15 Q Okay. So you don't know why a
16 different final report of November, a month earlier, is
17 attached to your affidavit, as opposed to the other one
18 that's later in time, December, 2012.

19 A No, I can't speculate as to what
20 the difference is.

21 Q All right. Okay, let's go back to
22 volume 13 and continue there. At tab -- at the next
23 page, page 4701, you set out the objectives of the *MMPR*
24 as a whole, don't you?

25 A Correct.

26 Q And one of them is protecting
27 individual and public health, safety, and security.
28 Isn't that right?

1 A That's correct.

2 Q And that includes protecting
3 individuals from themselves, does it?

4 A I wouldn't characterize it that
5 way, no.

6 Q Okay. So only protecting
7 individuals from the acts of others. Is that fair?

8 A That's not how I would characterize
9 it, no.

10 Q You wouldn't characterize it either
11 way?

12 A I would say that the objective of
13 the *MMPR* as a whole is to protect individual and public
14 health, safety, and security.

15 Q And my question to you, does that
16 include protecting individuals from doing things for
17 themselves, as opposed to doing things for others.

18 A It includes protecting individuals
19 from the harms associated in their homes or in their
20 communities related to the production of marijuana in
21 places that are not outfitted for that production.

22 Q So it does include causing risks to
23 themselves as opposed to others, then. Isn't that
24 correct?

25 A I wouldn't define it as an
26 opposition statement.

27 Q Well, it includes both, doesn't it?

28 A It includes both, yes.

1 Q Okay. And the second point is the
2 principle where I used a different word earlier on here.
3 Treating dried marijuana for medical purposes as much as
4 possible like other narcotics that are used for medical
5 purposes?

6 A That's correct.

7 Q Fair enough?

8 A That's correct, yes.

9 Q A third point was to have Health
10 Canada come back to being a regulator and not being
11 involved in shipping and selling marijuana, and that
12 sort of thing?

13 A Yes. To return to our traditional
14 role as regulator and not as a producer and service
15 provider.

16 Q And then next, eliminating the need
17 for individuals to apply to Health Canada?

18 A For their authorizations, correct.

19 Q And this was the only drug where
20 patients had to apply to Health Canada for some sort of
21 authorization or approval, isn't that right?

22 A To my knowledge, yes.

23 Q It's not applied to any other
24 narcotics or natural health care products, isn't that
25 right?

26 A No, not to my knowledge.

27 Q Okay. And then the next one is the
28 cost. There is a substantial cost the government was

1 incurring in having Prairie Plant Systems be the
2 producer, supplier for the government, correct?

3 A As well as the administration of a
4 constantly growing program, yes.

5 Q Yeah. And so those latter items
6 all relate to costs that the -- that Health Canada was
7 incurring as a result of the *MMAR* program, or --

8 A The latter two points actually
9 refer to increasing choice for consumers to a variety of
10 strains, as there were no -- there was only one
11 available strain under the *MMAR*, and the last bullet
12 refers to ensuring that persons who have -- who have a
13 need to use marijuana for medical purposes have access
14 to a product that's produced under quality controls,
15 which was not necessarily the case under the *MMAR*.

16 Q You knew that people who are
17 producing for themselves were producing various
18 different strains, not just one strain like Prairie
19 Plant System?

20 A I had heard that yes, there were
21 other strains in production.

22 Q You don't have any statistics or
23 Health Canada doesn't have any statistics of people who
24 were producing their own marijuana getting sick from
25 their own marijuana, do you?

26 A Not to my knowledge.

27 Q Okay. At the next tab we dealt
28 with the problem of smell and the complaints about smell

1 during the period 2001 to 2013.

2 A Correct.

3 Q And you gave us an answer there at
4 page 4703, and I think you added some more later. We'll
5 come to it. Here you tell us about 177 written
6 complaints but between 2011 and 2013, correct?

7 A Yes, the response notes that Health
8 Canada received approximately 177 complaints between
9 2011 and 2013.

10 Q It wasn't possible to provide any
11 data prior to 2011, August of 2011, was it?

12 A No, it was not.

13 Q Okay. And the response by Health
14 Canada to that was to send a letter asking patients to
15 be discreet and also taking the position that you only
16 have the power to inspect for compliance, and that local
17 bylaw people should be contacted regarding the issue.
18 That would be to the complainants, I take it.

19 A Yes, Health Canada sent letters in
20 response asking for discretion by the producer and
21 noting that yes, we only had the power to inspect
22 compliance within the CDSA and its regulations, odour
23 and nuisance not being one of the areas for which Health
24 Canada had authority. And we also advised that local
25 bylaw enforcements should be contacted, yes.

26 Q So Health Canada took the position
27 that because there was nothing in the Regulations that
28 dealt with odour or smell, that it couldn't do anything

1 more about it other than telling the patients to be
2 discreet, is that right?

3 A Health Canada didn't have the
4 authority to oblige anybody to take measures to correct
5 the odour since there was no authority in the Regulation
6 for Health Canada. That is typically an area of
7 municipal or bylaw jurisdiction, and therefore the
8 Regulations would not have contained any authority for
9 Health Canada to take care of that issue.

10 Q There was nothing in the
11 Regulations with respect to setting up an expert
12 advisory commission or committee, was there?

13 A No.

14 Q And Health Canada did that in order
15 to advise the doctors or to better educate the doctors,
16 didn't it?

17 A Yes, we did.

18 Q And so just as you set up an expert
19 advisory committee for the doctors, you could have set
20 up an expert advisory committee for the patient
21 producers, couldn't you?

22 A I'm not sure I understand your
23 question.

24 Q Well, you're saying that because
25 there was nothing in the Regulations about smell, Health
26 Canada couldn't do anything. That's your evidence,
27 isn't it?

28 A I'm saying that Health Canada

1 didn't have the authority to oblige producers to take
2 measures. Our inspection capacity was for compliance
3 with the Regulations and with the licences only.

4 Q But you could have set up an expert
5 advisory committee to educate the patients on how to
6 produce without causing a smell, couldn't you?

7 A Yes.

8 Q And you didn't do that, did you?

9 A There was no such advisory
10 committee, no.

11 Q At tab P, question 41, page 4704,
12 questions were asked about the details of incidents of
13 diversion by *MMAR* licence holders and asking for
14 specifics in terms of convictions and so on, again
15 between the period 2001 and 2013, and to provide us with
16 details. And the answer was that that information
17 simply not -- wasn't currently available. Fair enough?

18 A I'm sorry, I'm just re-reading the
19 answer.

20 Q Sure.

21 A That's correct. It would appear
22 that PPSA, the Public Prosecution Service of Canada, had
23 advised us that they don't have that information.

24 Q Well, they have information with
25 respect to such convictions generally. They couldn't
26 break it down into ones involving the patients under the
27 *MMAR*, correct?

28 A Correct.

1 Q And the R.C.M.P. were asked to
2 search their databases to see if they could come up with
3 anything?

4 A Yes, they were.

5 Q And to your knowledge, they weren't
6 able to either?

7 A To my knowledge, there has not been
8 anything, no.

9 Q All right. So we don't have a
10 record of a conviction by any patient, licensed under
11 the *MMAR*, for unlawful possession, for example, do we?

12 A I'm sorry, could you repeat the
13 question?

14 Q We don't have a record of a
15 conviction under the *Controlled Drugs and Substances*
16 *Act*, of any patient licensed under the *MMAR* for
17 possession, do we?

18 A I'm actually not sure.

19 Q Unlawful possession, do we?

20 MR. BRONGERS: Justice Phelan, I'm
21 just wondering. He's -- my friend is asking, do we have
22 a record of these convictions. Is the question in
23 relation to the court record that is put before the
24 Federal Court here? Or are you asking whether Health
25 Canada is in possession of such records?

26 MR. CONROY: All right, let me
27 clarify.

28 Q There is something called a

1 criminal record that exists in Canada under the *Criminal*
2 *Records Act*. You're familiar with that?

3 A I'm generally familiar with the
4 *Criminal Records Act*, yes.

5 Q So we don't have -- Health Canada
6 doesn't have a record of any criminal record conviction
7 for any patient for either possession, possession for
8 the purpose of trafficking, trafficking, or unlawful
9 production by any such patient during the course of the
10 program. Isn't that correct?

11 A Health Canada is not a law
12 enforcement agency, so we would not have criminal
13 records on file. That does not mean that there has not
14 been a conviction, and I would not be able to confirm
15 whether or not there has been.

16 Q But you searched the records, and
17 you had the Public Prosecution Service of Canada search
18 their records, and the R.C.M.P. search their records,
19 and nobody was able to come up with such a record.
20 Isn't that right?

21 A I believe the answer notes that
22 there were limitations to the public -- to the PPSD
23 database that made it difficult for them to sort by *MMAR*
24 patients. But it does not say that it was not possible.

25 Q In the result, nothing was produced
26 to indicate such a record.

27 A I have not seen anything produced.

28 Q Thank you. The next paragraph, tab

1 Q, page 4706, we asked you how many incidents of fire in
2 the *MMAR* licensed production facilities were reported
3 during the period of 2001 to 2013, and how many were
4 linked to the marijuana production itself, and again to
5 provide details. And your response was that Health
6 Canada doesn't keep records of those incidents, correct?

7 A That's correct.

8 Q Okay. Now, in your affidavit -- in
9 Volume 5 of the joint book, tab A -- oh, sorry. Tab B.
10 We have from page 1626 right through to 2003 all of the
11 file for Mr. Allard, don't we?

12 A Yes.

13 Q And so a file like this exists for
14 each person under the -- that had an authorization under
15 the *MMAR*, is that correct?

16 A Correct.

17 Q And this would represent everything
18 in his file, all his applications, renewals, all that
19 sort of thing.

20 A Yes, that's correct.

21 Q Any correspondence with Health
22 Canada, between you and him or him and you. Fair
23 enough?

24 A Yes.

25 Q And if anything significant
26 happened in relation to his site, such as a fire, he'd
27 have to presumably apply to renew or change his site, or
28 something of that kind, wouldn't he?

1 A I wouldn't presume what a program
2 participant would do in case of a fire on their site,
3 and there were no -- there was nothing in the
4 regulations that compelled them to tell Health Canada if
5 there was a fire or something, other than a theft at
6 their site.

7 Q Well, if he had a fir and his place
8 burned down, he'd have to produce at a new site,
9 wouldn't he?

10 A I don't want to presume what
11 someone would do in that case. They may ask a
12 designated person. They may find a new production site.
13 I couldn't say with certainty what they would do.

14 Q In order to produce at a new site
15 they'd have to get Health Canada's permission, wouldn't
16 they?

17 A They would have to apply, yes.

18 Q And that would come to the
19 attention of whoever is handling the file then, wouldn't
20 it?

21 A It would come to Health Canada's
22 attention.

23 Q It would end up in this file if it
24 was Mr. Allard, wouldn't it?

25 A His reapplication would end up in
26 this file, but nothing more than that would necessarily
27 end up in this file.

28 Q So if somebody had a fire, Health

1 Canada never heard about that? Is that what you're
2 telling us?

3 A There was no obligation to report
4 it to Health Canada, so there was no -- so Health Canada
5 may not have heard about it, that's correct.

6 Q Well, I didn't ask about obligation
7 or whether you may. I'm saying -- you're telling us
8 that if a patient had a fire you didn't hear about it.
9 Is that right?

10 A Correct.

11 Q Okay. So we just dealt with the
12 fires. If we go to the next tab, R, the same question
13 was asked with respect to grow rips, wasn't it?

14 A I'm sorry, which tab?

15 Q Tab R.

16 A Okay.

17 Q Of the -- sorry, Volume 13 we're
18 back at.

19 A Okay.

20 Q Sorry.

21 A Of the question 43?

22 Q 43, that's right.

23 A Okay, thank you.

24 Q It's the same question essentially
25 but asking with respect to incidents of grow rips at
26 licensed *MMAR* facilities, correct?

27 A Correct.

28 Q And again Health Canada had no

1 records of such, as well.

2 A We don't keep records of these
3 incidents.

4 Q And just as with the fires, you're
5 telling us that if somebody did have a home invasion or
6 what they call a grow rip, that wouldn't necessarily
7 come to your attention and end up on the person's file.

8 A There was an obligation in the
9 *MMAR*, if my memory serves me, to report a theft, and
10 that should have ended up in the file.

11 Q And so if that occurred it would
12 end up in the patient's file and Health Canada would
13 have access to that information.

14 A Yes.

15 Q Okay.

16 A If it was reported it would end up
17 in Health Canada's file.

18 Q If it was reported. But no
19 tabulation has been made by Health Canada in relation to
20 those sort of statistics in relation to grow-ops -- or
21 grow rips I should say, for patients across the country,
22 isn't that correct?

23 A That's correct. The database
24 doesn't allow -- has its limitations and doesn't allow
25 it.

26 Q So while you were able to determine
27 through the database how many kilograms per day or per
28 year were being produced, or how many grams per day a

1 patient was authorized to have, the tables and so on
2 that we looked at earlier, you didn't have anything
3 similar for problems relating to public safety, fires,
4 grow rips, that sort of thing.

5 A No, the database was set up to get
6 the information required to issue authorizations,
7 licences, and to set the parameters for production.
8 That is the type of information that would have been
9 kept in the database.

10 Q And when concerns were raised by
11 some of the stakeholders, no effort was made to go back
12 through the files to determine what exact figures one
13 had in relation to specific patients and specific
14 provinces across the country in relation to grow rips,
15 for example.

16 A I wouldn't say that no efforts have
17 been made. I would say that the database just simply
18 didn't allow for that type of a search.

19 Q Well, you could search the file
20 just as Mr. Allard's, but it would require somebody then
21 to go through a large number of files, wouldn't it?

22 A There are a large number of files,
23 yes.

24 Q Okay. So it was a resource
25 limitation issue.

26 A It was a resource limitation issue
27 but we also received some of these types of data and
28 records from stakeholders who presented them to us.

1 Q Okay. But no tabulation was ever
2 done to total up amounts or anything like that.

3 A No.

4 Q Okay. Similarly with respect to
5 toxic chemicals, because if we go to the next tab, S,
6 page 4708, you were asked if you had any records in
7 relation to problems with toxic chemicals and specific
8 problems experienced by children, or either, from
9 licensed *MMAR* facilities between 2001-2013, and again
10 Health Canada has no records of any such incidents,
11 correct?

12 A Health Canada doesn't keep records
13 of this, no.

14 Q And your answers to the previous
15 questions in relation to fires and grow rips would be
16 the same in relation to these types of issues as well,
17 fair enough?

18 A To my recollection the only
19 requirement for reporting to Health Canada would have
20 been for theft product, so my answer wouldn't be exactly
21 the same for chemicals.

22 Q Right, you differentiate between
23 the obligation to report thefts but the lack of
24 obligation to report anything else.

25 A There was no obligation to report
26 the presence of chemicals.

27 Q And whether there was an obligation
28 or not, you're saying you have no records of what may

1 have been reported, whether obligated or not.

2 A We were not able to generate
3 records for the purposes of -- to generate an answer to
4 this response because we don't keep records of that.

5 Q Because the computer, the database
6 didn't allow for it at the time.

7 A Correct.

8 Q Okay. Question 53, page 4710. You
9 simply confirm that Health Canada can't -- under the --
10 let's put it this way. Under the *MMAR*, the patient is
11 authorized to -- because of the grams per day decision
12 between the patient and the doctor, that generated again
13 what the person could produce, what the person could
14 store, and what the person could have on their person at
15 any time. Correct?

16 A Yes, that's right.

17 Q And Health Canada, though, had no
18 way of determining how much of that amount was actually
19 being used by the patient for medical purposes, correct?

20 A That's correct.

21 Q Okay. At the next tab, V, we
22 talked about -- the question was in relation to the
23 decreasing the risk of diversion and preventing cross-
24 contamination as a result of outdoor production. You
25 see that?

26 A Question 70?

27 Q Yes.

28 A Yes.

1 Q And there was a discussion about
2 industrial hemp, and it looking like marijuana and that
3 sort of thing, initially.

4 A There were discussions about
5 industrial hemp crops, yes.

6 Q And you indicated that (a)
7 industrial hemp looks very similar to cannabis.
8 Correct?

9 A I'm sorry, you're referencing (a),
10 but I don't have an (a) here.

11 Q It's right -- sorry. It's right
12 under (b).

13 A Oh, okay.

14 Q 70(b), and there is a response --

15 A Okay, thank you.

16 Q Sorry. You see that?

17 A Yes.

18 Q And --

19 A Yes, that's what we said.

20 Q And Health Canada in the next
21 response was unaware of any documented incidents of
22 people stealing industrial hemp, thinking it was
23 cannabis, or trying to sell such hemp as marijuana into
24 the market?

25 A Correct.

26 Q And the risk of cross-contamination
27 to nearby crops, we asked, is that a risk or -- and if
28 so, what is the required distance between the crops to

1 prevent contamination. You said that was outside Health
2 Canada's expertise.

3 A Yes, that's right.

4 Q Okay. And what other crops were at
5 risk, that too was outside of Health Canada's expertise.

6 A Correct.

7 Q And what procedures, practices, or
8 devices or other requirements that exist in the
9 agricultural industry to prevent cross-contamination
10 between crops that are currently produced outdoors in
11 Canada, why they couldn't be applied to production of
12 marijuana. And again, this -- the answer was, this is
13 outside Health Canada's experience.

14 A Correct.

15 Q You were then asked what steps have
16 been or were considered to mitigate any concerns that
17 from the basis for this prohibition against outdoor
18 production. And the response was that Health Canada did
19 not consider steps to mitigate the concerns regarding
20 diversion to cross-contamination stemming from outdoor
21 production, in light of the fact that during the
22 consultations that preceded the promulgation of the
23 *MMPR*, very few potential Licensed Producers anticipated
24 that they would wish to grow outdoors. Fair enough?

25 A Yes, that's right.

26 Q So, a major factor in the decision
27 to not allow outdoor production in the *MMPR* was because
28 the Licensed Producers, very few of them expressed an

1 interest in doing so. Is that right?

2 A It was one factor, yes.

3 Q So you didn't have any specific
4 information about problems of cross-contamination, did
5 you?

6 A No.

7 Q Okay. The other concerns were as
8 indicated in your response, somebody advised that you
9 could grow better indoors than outdoors, essentially.
10 Is that right?

11 A We heard during the course of the
12 consultations that indoor cultivation would permit more
13 rigorous quality control system, and we heard that from
14 people that were quite interested in becoming licensed
15 producers. We also heard that it would be easier to
16 secure an indoor crop than an outdoor crop.

17 Q Okay. The next couple of questions
18 relate to -- tab W, relate to Licensed Producers and
19 numbers and so on. You haven't been involved with the
20 *MMPR* now for some years. Are you the person who can
21 answer those questions currently, or would Mr. Cain be
22 more appropriate to ask those questions?

23 MR. BRONGERS: It will indeed be Mr.
24 Cain who can answer those questions.

25 MR. CONROY: Right, thank you.

26 Q If you move then to AA, page 4726,
27 that was a question about receiving comments from
28 stakeholders to the effect that Health Canada should

1 permit the production and sale of cannabis resin or
2 cannabis-based medicines. And you provide a response at
3 the next page, and essentially as I understand it, if we
4 go to about the middle of that second paragraph, there
5 were insufficient responses regarding production and
6 sale of cannabis derivatives to tabulate?

7 A Yes.

8 Q And you've set out a table there
9 which was basically showing what the reactions were of
10 the -- first of all who you heard from, and then the
11 columns showing what various reactions were to various
12 different issues, correct?

13 A Correct.

14 Q And at the bottom of that page
15 there is a couple of stars that relates to the moderate
16 opposition of users, growers, and private citizens in
17 the column, the third column, "Introduction of
18 Commercial Market"?

19 A Yes.

20 Q And the concern expressed was
21 affordability of medication under the new system, is
22 what those stars represent? If you go to the bottom.

23 A The two stars related to commercial
24 market as only option.

25 Q Sorry, the three stars.

26 JUSTICE: Three stars.

27 A Oh pardon me, yes, concerns
28 expressed about affordability of medication under the

1 new system.

2 MR. CONROY:

3 Q Sorry, I had the wrong column.

4 A Oh, okay.

5 Q The column is "Elimination of
6 Health Canada Authorizations". It says -- I'm sorry,
7 that's four. I'm looking for the three. Oh, there it
8 is. So that was "Physicians", is that right? Or am I
9 misreading that?

10 A So the three stars are in the
11 second column, phased out of personal and designated
12 production.

13 Q But it's in the line with
14 "Physicians", correct?

15 A Yes.

16 Q So is it the physicians that
17 express concerns about affordability?

18 A That's how the table reads, yes.

19 Q Okay. So some physicians were
20 concerned about the ability of their patients to afford
21 cannabis under the new regime.

22 A I don't recall, I can't say with
23 certainty anything beyond what's on the page, which is
24 that they express concerns about affordability of
25 medication.

26 Q Okay. If we go to the next page,
27 the second paragraph -- sorry, let's drop down to the
28 last paragraph. The last paragraph says that there were

1 1,663 comments received, 139 referred to products in
2 general, and 73 referred to oils, lotions, edibles, and
3 that they preferred Health Canada make access to those
4 products available?

5 A That's what it says, yes.

6 Q And some of the potential Licensed
7 Producers were asking Health Canada to make extracts
8 available as well, weren't they?

9 A Yes.

10 Q As I understand it the decision by
11 Health Canada was to not make anything other than dried
12 marijuana available, and that anything other than dried
13 marijuana would have to go through this new drug
14 approval process under the *Food and Drug Act*.

15 A The *MMPR* is restricted to dried
16 only. Licensed Producers that are interested in
17 developing anything other than dried and marketing it
18 for sale are free to do so under the *Food and Drugs Act*
19 and the *Food and Drugs Regulation*, as with all other
20 marketed health products.

21 Q Okay. You knew that there was also
22 a similar procedure for extracts arising from natural
23 health care products?

24 A I'm not familiar with that regime.

25 Q Page 4735, tab EE.

26 A Thank you.

27 Q We dealt earlier on with the number
28 of people that owed debts to Health Canada as a result

1 of not paying for the Prairie Plant System supply. You
2 recall that?

3 A Yes. Yes, I do.

4 Q And here in this question, 22,
5 you're asked about coverage under provincial insurance
6 schemes for reimbursement of the cost of purchase,
7 correct?

8 A Yes, we're asked whether or not
9 patients can claim coverage.

10 Q And you say that essentially the
11 federal government doesn't determine that. It's up to
12 the provinces.

13 A That's correct. Provinces decide
14 what to cover under their insurance plan.

15 Q And you had consultations with the
16 provinces, quite a few consultations with the provinces,
17 in this transition from the *MMAR* to the *MMPR*, didn't
18 you?

19 A Yes, we did.

20 Q And one of the concerns of the
21 provinces was that they were maybe going to have to
22 subsidize, because people couldn't afford the medicine.
23 Isn't that right?

24 A That's not how I would characterize
25 their concerns. There were concerns that they would
26 receive pressures in this regard.

27 Q Patients would put pressure on them
28 to come up with something to help reimburse the cost of

1 --

2 A That they would feel pressures from
3 their constituents regarding coverage of dried marijuana
4 for medical purposes, yes.

5 Q Yeah. Because under the Prairie
6 Plant System supply that eventually Health Canada was
7 again, through court decisions, required to come up with
8 -- you agree with that much? That it was another court-
9 ordered process that led to Health Canada having to come
10 up with a supply?

11 A I would agree that in 2003 because
12 of a court case we had to come up with a legal supply of
13 marijuana for medical purposes, and we chose the
14 contract with Prairie Plant Systems.

15 Q And that then was supplied to
16 patients at a flat rate of \$5 per gram, wasn't it?

17 A Yes, it was.

18 Q With no shipping costs.

19 A I don't exactly recall, but I'm
20 fairly certain there were no shipping costs.

21 Q And it turned out that the
22 government was subsidizing these patients to the tune of
23 about another \$5. In other words, the total was around
24 \$10. It might have been a little bit more.

25 A My recollection is \$11, but yes,
26 that's --

27 Q Ten to twelve, somewhere in there.

28 A Mm-hmm.

1 Q So people who were purchasing the
2 government supply were being subsidized by the federal
3 government in that regard, in terms of the actual cost
4 of the medicine, requiring them only to pay the \$5 flat
5 rate.

6 A Yes. The production and
7 distribution of marijuana for the PPS -- for Health --
8 for the authorized persons who purchased from PPS was
9 being subsidized, yes.

10 Q And there is nothing in the *MMPR*
11 that addresses people who can't afford the cannabis
12 produced by the Licensed Producers, is there?

13 A Health Canada considered measures,
14 such as price regulation, and in the end chose not to.
15 So there is nothing specifically in the *MMPR*. However,
16 during consultations, many Licensed Producers or
17 prospective Licensed Producers talked to us about their
18 willingness to explore compassionate pricing. And I've
19 been made aware in recent days that some LPs are
20 providing compassionate pricing.

21 Q But Health Canada knew that many
22 patients who had been purchasing the Prairie Plant
23 System at \$5 a gram flat rate were not able to afford
24 it, and owed Health Canada a significant amount of
25 money. Isn't that right?

26 A I'm sorry, I didn't understand the
27 first part of your question.

28 Q Based on our earlier discussion

1 about the debts that people owed to Health Canada,
2 Health Canada, in coming up with the new program, knew
3 that there were a number of patients who could not
4 afford the \$5 a gram that Health Canada had authorized
5 through Prairie Plant.

6 A Health Canada knew that there were
7 a number of accounts in arrears.

8 Q And those accounts in arrears
9 represented people who couldn't afford to pay the \$5 a
10 gram, isn't that right?

11 A I wouldn't speculate what the
12 reason was for why accounts were in arrears.

13 Q I see. They bought dried marijuana
14 from Health Canada through Prairie Plant Systems and
15 they didn't pay for all of it, and you were trying --
16 Health Canada was trying to collect what they owed.
17 Isn't that right?

18 A We were trying to collect on
19 accounts in arrears, yes.

20 Q Yeah. They couldn't order any more
21 medicine unless they paid what they had previously
22 ordered, correct? Or what they owed.

23 A My recollection of the policy
24 change was that we would no longer ship until we
25 received a payment for the shipment in question. I
26 can't remember if we were collecting on arrears before
27 shipping.

28 Q So Health Canada knew in designing

1 the new program that there would be a number of patients
2 who would not be able to afford prices of around \$5 a
3 gram, isn't that right?

4 A Again, Health Canada is not
5 speculating on -- or did not speculate on what the
6 reason was that individuals were not paying their
7 arrears accounts. However, during consultations we did
8 hear -- we've talked about one of my responses already,
9 we did hear that affordability was a concern. And in
10 discussions with Licensed Producers or people who wished
11 to enter that market, we were advised that they would be
12 interested in exploring options that would allow, in a
13 free market setting, for compassionate pricing for
14 individuals who had a need for less expensive marijuana
15 for medical purposes.

16 Q In other words, you let the private
17 free market determine what they could do for these
18 patients, and it would no longer be the responsibility
19 of the government. Is that right?

20 A Health Canada decided to create a
21 free market, to create the conditions that would
22 establish a free market in this area. I would not
23 characterize it as Health Canada deciding to no longer
24 care for these individuals.

25 Q Well, Health Canada did nothing
26 legislatively to ensure that all medically approved
27 patients would be covered under the new regime. Isn't
28 that right?

1 A Health Canada doesn't do anything
2 similar to that for any other approved therapeutic
3 product. And in keeping with the principle of treating
4 marijuana as much as possible like other prescription
5 narcotics, we did not -- we do not deviate from that
6 policy statement in the design of the *MMPR*.

7 Q But you knew that other people who
8 were getting prescription narcotics had drugs that did
9 have DIN numbers or other requirements that would
10 qualify for insurance reimbursement through the
11 provincial insurance programs. You knew that, didn't
12 you?

13 A I know that not all DIN products
14 are approved under provincial insurance programs. I'm
15 not an expert in which ones are and which ones aren't,
16 but I do know that there are certain prescription
17 medications, even though they have a DIN, that are not
18 covered.

19 Q But you knew that none of those
20 programs applied to dried marijuana, didn't you?

21 A I'm sorry, none of those programs.

22 Q Those insurance programs.

23 A I knew at the time, yes, that there
24 were no insurance programs that covered dried marijuana.
25 I also knew that it would be up to provinces and
26 territories to decide whether or not they wished to do
27 so.

28 Q And so to that extent, this

1 particular drug was different to all those other
2 prescribed drugs in terms of the model that you were
3 trying to follow. Isn't that correct?

4 A Yes.

5 Q And you didn't -- Health Canada
6 didn't do anything to take into account that difference,
7 that dried marijuana would not be covered because it
8 hadn't gone through the process to be covered. You just
9 left it to the free market to determine whether these
10 people would be able to get their medicine or not.
11 Isn't that right?

12 A I wouldn't characterize it that
13 way. As I believe I said a little bit earlier, Health
14 Canada did consider options including price regulation.
15 In the end the decision was to not regulate the price,
16 but it was not a decision that was based on leaving
17 individuals to the free market. It was rather a
18 decision that was based on extensive consultations with
19 interested Licensed Commercial Producers who we knew
20 were going to be interested in exploring a variety of
21 price ranges and options for program participants.

22 Q So Health Canada did nothing to
23 legislate to ensure that all medically approved patients
24 were covered in the new program. Isn't that right?

25 A We considered it and we did not
26 implement it.

27 Q I mentioned earlier that you gave a
28 further answer to do with smell, and I think that's at

1 FF. So just so that you can update, we've referred to
2 the 177 before, and so at this page 4737, question 40,
3 simply updates that to add 173 complaints that went
4 directly to the Minister. Fair enough?

5 A That's -- yes, that's correct.

6 Q Okay. So that the total was 350
7 complaints between March of 2006 and 2013, roughly
8 seven-year period.

9 A That we had on record, yes.

10 Q 177 to the Bureau directly, and 173
11 to the Minister.

12 A Yes, that's right.

13 Q Were those compared to ensure there
14 was no duplication?

15 A I'm not sure.

16 Q Okay. And you continue on the next
17 page -- I don't know if we need to get into the detail
18 of it, but basically you refer -- you're asked the
19 number of complaints about smell relative to the total
20 number of authorized production sites, and it's
21 suggested that it's relatively small, and you weren't
22 able to answer that in terms of the relativity, in terms
23 of the number of complaints. Fair enough?

24 A We refer back to the response
25 provided in question number 40.

26 Q Yes. So if we were to say there
27 were 30,000 patients authorized as of, let's say,
28 December of 2013, you couldn't tell us what the

1 percentage of complaints was in relation to the totals,
2 could you?

3 A No.

4 Q And you're again not able to -- you
5 don't have the information. If there was a report or
6 complaint, it would end up on the individual's file, but
7 you don't have any statistics or data calculated as to
8 smells, complaints in each province, or town, or
9 anything like that, do you?

10 A No, I don't.

11 Q Okay.

12 A Health Canada does not.

13 Q Yeah. And Health Canada, in the
14 next tab, HH, didn't look into the question of any
15 filters or other devices available in the market to
16 patients to enable them to reduce smell. Correct?

17 A That's the question. And the
18 answer is that we were unaware of what existed or what
19 types of filters existed.

20 Q So when you got all these
21 complaints about smell, nobody was assigned to look
22 into, well, what's available to control this, and no
23 effort was made to communicate that to any of the
24 patients that were causing a nuisance to their
25 neighbours. Is that right?

26 A Could you repeat the question,
27 please?

28 Q All right. You got all these

1 complaints about smell from different places across the
2 country. Fair enough?

3 A We got complaints about smell, yes.

4 Q And Health Canada didn't do
5 anything to look into what devices or other equipment
6 might be available to assist patients to stop causing a
7 nuisance to their neighbours. Isn't that correct?

8 A No, we didn't look into what
9 equipment might be available.

10 Q You didn't tell the patients what
11 they could do or what was available to prevent the
12 problem you were getting a complaint about.

13 A I believe in one of my previous
14 responses we referenced talking to bylaw officials as
15 they would be the experts who would be able to provide
16 advice in this area. It's not an area of Health Canada
17 expertise or jurisdiction.

18 Q Right. You would expect local
19 government to do something about it. Is that what
20 you're saying?

21 A Local government has the authority
22 to enforce bylaws and odour is not a federal matter. It
23 would be a bylaw matter.

24 Q And you would expect the patient
25 producers to comply with those local bylaws, wouldn't
26 you?

27 A In fact, we did expect, and it was
28 explicitly written onto licenses, that you must comply

1 with local bylaws.

2 Q Not just to do with smell, but any
3 local bylaws.

4 A Any local bylaw, correct.

5 Q Okay. 54, the next one, the
6 formula, tab II, you were asked what the source of the
7 formula was that determined the number of plants a
8 person could produce depending upon their authorized
9 grams per day, and your answer basically was that it was
10 developed based on input from a number of sources. You
11 list them there and ultimately the formula incorporated
12 a conservative estimate for a yield of 30 grams of dried
13 marijuana per plant for indoor production and determined
14 -- estimated growing cycles of 3 rather than 4 for
15 indoor, and recognized that some people were
16 inexperienced cultivators, correct?

17 A That's correct.

18 Q But as a result of the formula, and
19 this formula was put in back in the original *MMAR* in
20 2001, isn't that right?

21 A Yes, that's right.

22 Q And thereafter you received some
23 complaints about large operations and so on, and
24 suggestions that they were a front for people who were
25 dealing and trafficking and that sort of thing?

26 A Well, we received evidence from the
27 police, police in particular, the CACP report for
28 instance, that demonstrated that plants were yielding

1 more than the 30 grams in the formula.

2 Q Now, when you say evidence, you're
3 saying the Canadian Association of Chiefs of Police or
4 the R.C.M.P. report for the Canadian Association
5 contained some references to various problems, including
6 suggestions that people were growing large amounts and
7 using it as a front for dealing, basically.

8 A That report contained data about
9 specific incidences, not just of what you're
10 referencing. Also specific incidences of people growing
11 in excess of their licences or fire hazards in the home,
12 and it did also include some references to specific
13 incidences of diversion.

14 Q Okay. And so I take it you realize
15 that it was the formula that -- so the patient and the
16 doctor come up with the grams per day, then you plug it
17 into the formula. This formula was allowing some
18 patients who had large dosage as approved by their
19 doctors, to have a large number of plants. Right?

20 A Yes, the more your daily amount,
21 the large the number of plants that you would have been
22 authorized to produce.

23 Q And it was the large number of
24 plants that some people could produce that was the
25 concern to these law enforcement officials, wasn't it?

26 A It was a concern to law enforcement
27 officials, yes.

28 Q Yeah. And I take it Health Canada

1 didn't look into changing that formula so that patients
2 would have less plants, did they?

3 A That's not true. We did in fact
4 look into not specific changes to the formula, but
5 simply capping the number of plants, for example, was
6 one policy option that was looked at.

7 Q So, and you received information
8 that a person could produce with six plants the same
9 amount of cannabis, depending upon their space, as 600
10 plants? Did you know that? Were you told that?

11 A No.

12 Q So when you were thinking of
13 capping the numbers, no information was provided that
14 patients could actually produce as much marijuana with
15 fewer plants? They didn't have to have these large
16 numbers?

17 A I wouldn't say no information was
18 provided. We had information provided to us. Again the
19 CACP report that you've referenced, as well as what we
20 heard from other police forces around the country and
21 from municipalities across the country, was all used in
22 the consideration of whether or not one of our options
23 should be to just cap the limit of plants.

24 Q Because you knew that in the United
25 States, for example, the various states that allow
26 people to produce -- cap the plants usually at around 15
27 plants, no more. You knew that, didn't you?

28 A No, I didn't know that.

1 Q Nobody ever told you that in the
2 whole process of your consultations and decisions with
3 respect to capping plants?

4 A I'm afraid I don't remember
5 everything that I was told during the consultations, but
6 I don't recall ever being told that specifically.

7 Q You did consider other countries
8 and what was happening in other countries, didn't you?

9 A Yes, we did.

10 Q Okay.

11 JUSTICE: Is this a good time for a
12 break?

13 MR. CONROY: I'm thinking it is. I
14 was hoping I would finish this off, but I think this
15 would be a good time.

16 JUSTICE: Fifteen minutes.

17 **(PROCEEDINGS ADJOURNED AT 11:02 A.M.)**

18 **(PROCEEDINGS RESUMED AT 11:23 A.M.)**

19 MR. CONROY:

20 Q Ms. Ritchot, just a point that
21 arose earlier, you told us that you put on the *MMAR*
22 licences to the patients that they were required to
23 comply with all local bylaws and so on, you remember
24 that?

25 A Yes. I am not sure that it was on
26 the licences though, specifically, but we advised in the
27 information package that went along with the licences,
28 yes.

1 Q And you expected the patients to
2 comply with the local bylaws, didn't you?

3 A It is an expectation that all
4 citizens comply with local bylaws.

5 Q Right. But you didn't require
6 proof of compliance before authorizing the licence, did
7 you?

8 A No.

9 Q But that is required under the
10 *MMPR* for Licenced Producers, isn't it?

11 A No.

12 Q Well, they have to consult and
13 notify the local government that they are intending to
14 apply for the licence. Isn't that right?

15 A They have to notify -- they have to
16 provide proof that they have notified law enforcement
17 and the local municipality, but they do not have to
18 provide proof that they comply with any bylaws.

19 Q But they had to -- they were
20 required to consult or put them on notice, the local
21 governments and have consultations with them before they
22 can move to the next stage of the LP process, isn't that
23 right?

24 A Yes, we must know that they have
25 consulted with their local municipalities.

26 Q That wasn't required under the
27 *MMAR*, was it?

28 A No, and under the *MMAR*, the

1 difference was individuals versus a licenced company or
2 a commercial entity.

3 Q But both, whether an individual or
4 a licenced company is required to comply with the local
5 bylaws, isn't that right?

6 A Yes, that's right.

7 Q 91, just to finish off in terms of
8 the read-ins, and again my understanding is, is that you
9 haven't been in this part of Health Canada now for what,
10 going on a couple of years at least.

11 A It has been 18 months.

12 Q Almost two years. And -- but, you
13 are familiar with the *MMPR* process, and so if we go to
14 91.

15 A What tab is that? Sorry?

16 Q Sorry, Tab MM.

17 A M-M, okay. Thank you.

18 Q So, we put the question to you, "if
19 an *MMPR* patient is unhappy with the product such as the
20 Licenced Producer being unable to produce a strain that
21 works for them, or the product is otherwise ineffective,
22 apart from complaining to the Licenced Producer, the
23 patient would have to re-attend on his medical
24 practitioner to obtain a new medical document in order
25 to attempt to access medicine from a different Licenced
26 Producer, is that correct?" And you indicate that
27 essentially, that that is correct, that the patient must
28 register with a new Licenced Producer, and that would

1 require going back to the doctor or health care
2 practitioner to get another medical document, correct?

3 A That's correct.

4 Q So, if a patient had an
5 authorization for a gram a day from his doctor, and he
6 goes to the Licenced Producer and registers, and that
7 Licenced Producer doesn't have the strain he wants, or
8 is out of the strain he wants, he can't just go to
9 another Licenced Producer, he's got to go back to his
10 doctor, get a new medical document to be registered with
11 a different Licenced Producer, is that right?

12 A It depends if he is registered with
13 the first Licenced Producer or not.

14 Q Okay.

15 A A registration can't be
16 transferable, but if the individual simply called a
17 Licenced Producer to ask for information about what they
18 had and took the decision that they did not like the
19 answer that they received, as long as they've not
20 registered with that Licenced Producer, they can go to
21 another one.

22 Q All right. Once you register, you
23 have got to go back and get a new medical document, and
24 register with someone else?

25 A That is correct, registrations are
26 not transferable from Licenced Producer to Licenced
27 Producer.

28 Q Unlike a prescription when you go

1 to a pharmacy?

2 A My understanding is that
3 prescriptions are also not transferable from one
4 pharmacy to another, that I would need to see my doctor
5 if I wanted to change my pharmacy.

6 Q Well, if you go to your doctor and
7 get a prescription, he doesn't tell you to go to a
8 specific pharmacy, does he?

9 A No.

10 Q And you can go to any pharmacy you
11 choose, can't you?

12 A Yes.

13 Q And you don't have to register with
14 that pharmacy, do you?

15 A No, I have to drop my prescription
16 off at that pharmacy.

17 Q But if that pharmacy says, "Sorry,
18 we're out," you can go to another pharmacy to try and
19 have them fulfill your prescription.

20 A Yes.

21 Q Okay. So, again, slight difference
22 compared to the -- what I'd call the Oxycontin model, as
23 opposed to dried marijuana. Fair enough?

24 A It's consistent with the notion
25 that, like, once I've filled a prescription from one
26 pharmacy, once it's been filled, it can't be transferred
27 to another pharmacy. So in that way, Health Canada
28 feels that it is consistent with the narcotic

1 prescription drug model.

2 Q Okay. Let me just ask you, one of
3 the things we've discussed is the program costs,
4 administration costs, and so on, when you were -- say,
5 in your capacity when you were director of the Medical
6 Cannabis office. People would have to, from time to
7 time, say, want to change their production site for one
8 reason or another. Did you have that happen during the
9 course of your time as the director?

10 A Yes, I did. Yes.

11 Q And that would involve somebody
12 filing a document with you, simply indicating a new
13 address, compared to the old address, and providing
14 details. Correct?

15 A I'd have to re-consult the *MAR*, as
16 it's been a while. I can't remember if it requires a
17 revocation at the original site and a reapplication or
18 not. It requires some kind of a regulatory change, I
19 just can't remember the details.

20 Q You don't remember that you simply
21 had to advise of a change of production site? And then
22 that would be approved by -- would have to be some
23 approval by Health Canada?

24 A There would have to be a licence
25 attached to that production site. So while I can't
26 remember the details, I know that there would have had
27 to have been more than simply advising, because
28 otherwise you'd be producing it at an address for which

1 you're not licensed.

2 Q Right. And you would maintain a
3 database, correct?

4 A Yes.

5 Q And this database, is this the SAM
6 database that you referred to?

7 A Yes, it is.

8 Q And so, when the police were
9 investigating a -- they've got an investigation going
10 on. They think that maybe there is a marijuana
11 production going on, they would phone Health Canada.
12 There's a hotline. Still exists, as I understand it. A
13 hotline to phone Health Canada to find out whether what
14 they're investigating is licensed or not. Correct?

15 A I'm not sure if it still exists,
16 but yes, there was a 24-hour phone number that could be
17 called.

18 Q And that -- so they would call the
19 line, and somebody would check the database, and
20 determine whether the person had a valid authorization
21 to possess, and either a personal production or
22 designated grow permit attached to that address. Fair
23 enough?

24 A Yes, that's fair.

25 Q And so it was for the benefit of
26 the police, so that it would assist them in their
27 investigation, to know whether they were investigating a
28 legal or not-legal operation. Fair enough?

1 A Yes, that's right.

2 Q Okay. And I understand that that
3 still goes on. We still have the police investigating
4 -- maybe not as much as before, but we still have the
5 police investigating potential illegal marijuana grow
6 operations, don't we?

7 A I wouldn't want to speak for
8 police, for law enforcement operations.

9 Q Well, I'm asking you to speak for
10 Health Canada and whether they still answer the calls
11 from the police because they're still engaged in that
12 type of investigations.

13 A I don't know. Since I've left the
14 employ of Health Canada, I'm not sure if that's -- if
15 that number is still available.

16 Q Do you know Christina McInnes?

17 A Not personally, but I know of her,
18 yes.

19 Q And she's the staff person, the
20 litigation support office at Health Canada, isn't she?

21 A I don't know her title.

22 Q You know that her duties include,
23 among other things, conducting record database and file
24 searches to locate, categorize, produce, and provide
25 documents in the ordinary course of litigation?

26 A I can't confirm that.

27 Q Eric Kosten is the executive
28 director of the Office of Medicinal Cannabis now. You

1 knew that, didn't you?

2 A Yes, I know that.

3 Q Okay. And the acting -- the staff
4 of the litigation support office report to Louise
5 Proulx, acting director of litigation support? Did you
6 know that?

7 A I believe it's Lou Proulx.

8 Q Sorry, Louis Proulx. So you're
9 aware of that as well.

10 A I'm aware that Louis is there, and
11 I'm afraid I'm not aware of all of the reporting
12 structures.

13 Q Okay. If you would turn to page
14 1439 of your affidavit.

15 A May I ask which volume? Is that
16 Volume --

17 Q It's Volume 4 of 13.

18 A Thank you.

19 Q Paragraph 18.

20 A Which tab? Which tab, sorry?

21 Q You start at 15, I think, of that
22 volume.

23 A 15. And which page? I apologize.

24 Q Page 1439.

25 A Yes.

26 Q Attached there, in your paragraph
27 18 you're referring to Mr. Allard, one of the plaintiffs
28 in these proceedings, aren't you?

1 A Yes, I am.

2 Q And if you look at paragraph 18 you
3 talk about correspondence received and retrieved, and
4 you refer there that it was a search by Christina
5 McInnis, Litigation Support Officer, Litigation Support
6 Office, Health Canada?

7 A Yes.

8 Q And so you were aware that she is
9 the person who is still the one, or who is the person
10 now who, if an inquiry comes in, searches the database
11 for information.

12 A I'm aware that she did it for the
13 purposes of this affidavit. I'm not aware what she does
14 outside of the confines of --

15 Q So if she is continuing to do it to
16 support the police when they make an inquiry in terms of
17 a database, do you know who would be the person who
18 would be able to confirm whether that still goes on?

19 A I don't know that it still goes on,
20 so I don't know what person would be able to confirm.

21 Q Mr. Kosten obviously would be a
22 person who should be able to confirm that, would you
23 agree?

24 A Perhaps.

25 Q You don't know?

26 A I don't know about the existence of
27 this number any more.

28 Q You would expect the Executive

1 Director of the Office of Medical Cannabis to know
2 whether that data, that line is still operational,
3 wouldn't you?

4 A That's reasonable, yes.

5 Q Thank you. So if I was to put to
6 you that I have actually received affidavits in the
7 course of investigations, that -- responding to the
8 police to provide them with information, and that the
9 deponent is Christina McInnes, would you be prepared to
10 accept that she continues to fulfill that role under
11 that hotline for the police?

12 A I can accept that it's a hotline.
13 I would be able to accept that she's provided
14 information for the context of an affidavit.

15 Q Right. That would indicate that
16 the database or somebody is still continuing to provide
17 information from the database, isn't that right?

18 A Could you repeat the question
19 please?

20 Q If Christina McInnis is one of the
21 people who's available in order to provide information
22 to the police when they call in the course of
23 investigations, that would indicate that somebody is
24 maintaining the database for the police, isn't that
25 right?

26 A I can't confirm that or agree with
27 that.

28 Q Okay. You don't know whether Mr.

1 Cain would know that information or not, do you?

2 A I don't know.

3 Q All right, let's go to the
4 beginning of your affidavit. We initially went through
5 what your roles were, and we had covered, I believe, the
6 first few paragraphs. The second paragraph indicates
7 that you were the Director of the Bureau of Medical
8 Cannabis and what your responsibilities were at the
9 time?

10 A That's correct, yes.

11 Q And then paragraph 3 deals with
12 your role when you were the Director of Medical
13 Marijuana Regulatory Reform, correct?

14 A Correct.

15 Q And I think you said you left that
16 position in 2013.

17 A Yes, September of 2013.

18 Q And you've been in this other
19 position as a Senior Director Surveillance and Analysis
20 Division since that time.

21 A Correct.

22 Q Okay. And so, ongoing complaints
23 by patients or others about what is going on either
24 under the *MMPR* or those grandfathered under the *MMAR*,
25 you'd have nothing -- no knowledge or information about
26 that since you left that position. Is that fair?

27 A That's a fair statement, yes.

28 Q Okay. In paragraph 4 of your

1 affidavit, you talk about marijuana being a drug under
2 the *Food and Drug Act*, and also a psychoactive
3 substance, and you refer to various legislation and
4 cannabinoids and so on, and I take it you are not
5 claiming to be an expert on these things, are you?

6 A No, I am not.

7 Q This is information that you have
8 been provided by others in your official capacity as
9 information that is relevant to the regulatory reform?

10 A Yes, this is information that I am
11 aware of because of the regulatory regime in the Canada.

12 Q Having been in that capacity.

13 A Yeah, absolutely.

14 Q Okay. You knew that three
15 cannabinoids that you refer to there, Sativex, Cesamet,
16 and Marinol, you knew that the only one that is not
17 synthetic is Sativex, isn't that correct?

18 A Yes, I did know that.

19 Q Okay. And at paragraph 6 of your
20 affidavit, you confirm your knowledge that the
21 government has a constitutional obligation to provide
22 reasonable access to marijuana for medical purposes when
23 their medical practitioner indicates that it is require,
24 and that that is as a result of court decisions?

25 A Yes, I -- yes, that's correct.

26 Q So, you knew in your capacity as
27 the director of regulatory reform, that on the one hand
28 you were dealing with coming up with a program that

1 would not put patients in a position where their
2 Constitutional rights would be violated, correct?

3 A I'm sorry, I didn't understand your
4 question.

5 Q In your capacity as director of
6 regulatory reform, you knew that the new program that
7 you were helping introduce had to take into account, or
8 had to ensure that it didn't put patients, medically
9 approved patients, in a position where their
10 Constitutional rights might be violated?

11 A I knew that in reforming the
12 marijuana for medical -- I knew that in designing the
13 marijuana for medical purposes regime, that Health
14 Canada had an obligation to ensure that individuals with
15 a need would have access to marijuana for medical
16 purposes, yes.

17 Q Well, you knew Mr. Parkers -- that
18 Mr. Parker was a person who had been approved by his
19 doctor to use cannabis, you knew that, correct?

20 A I don't know the circumstances
21 about Mr. Parker other than the result of the court
22 case.

23 Q So you don't know whether he was
24 approved then to use only dried marijuana or something
25 else, do you?

26 A I don't know.

27 Q No. Did you know that he grew his
28 own plants because he couldn't afford to buy from the

1 black market?

2 A No, I did not.

3 Q Okay. Did you know that the court
4 decision held that patients aren't to be put in a
5 position where they have to choose between breaking the
6 law on the one hand, and going without their medicine on
7 the other?

8 MR. BRONGERS: Justice Phelan, I am
9 not sure where this is going. The witness' personal
10 knowledge of that particular case would not be germane
11 to this proceeding.

12 JUSTICE: Well, I'm not sure that it
13 is not germane, because this is a program developed in
14 response, as is clear from the affidavit, in response to
15 court decisions. So, in designing the program, it would
16 be relevant to know, what did you understand your
17 obligations were and how does your program comply with
18 those obligations. And I can't see that that is a
19 problem.

20 MR. BRONGERS: My concern is the
21 questions are being posed personally to this witness. I
22 am comfortable if it is asked, "Was it Health Canada's
23 understanding that..." in general. But this witness is
24 not here in her individual capacity, she is here in her
25 representative capacity.

26 JUSTICE: All right. Well, perhaps
27 with that clarification, Mr. Conroy, you can proceed.

28 MR. CONROY:

1 Q When I asked you questions, you are
2 here to answer on behalf of Health Canada, aren't you?

3 A Yes, I am.

4 Q Not in your personal capacity.

5 A Not in my personal capacity.

6 Q So, if I put to you something, you
7 appreciate I am asking you as to when you were the
8 director of the office of medical cannabis, or --

9 A I understand that I am here today
10 as Health Canada, yes.

11 Q And you had two capacities, one
12 was as the director of the office for approximately a
13 year, and the other was the Director of the regulatory
14 reform, the new program that was to come into place,
15 correct?

16 A Those were my responsibilities,
17 yes, at Health Canada.

18 Q And in that latter capacity, which
19 I thought I had put to you as part of my earlier
20 question, in that latter capacity, you understood that
21 the program that you were proposing, or Health Canada
22 was proposing, was required to ensure that patients,
23 medically approved patients were not put in a position
24 where they had to choose between breaking the law on one
25 hand, in order to produce their medicine, or going
26 without, and impacting their health. You knew that,
27 didn't you?

28 A Health Canada understood that it

1 had to preserve access to marijuana for medical purposes
2 for individuals who had such a need, yes.

3 Q So on the one hand you were looking
4 at the potential violation of the Constitutional rights
5 of medically approved patients to try and ensure that
6 that wouldn't happen; and on the other hand you were
7 trying to come up with a new program that would balance
8 the other concerns that had been brought to your
9 attention throughout the stakeholder consultations and
10 so on.

11 A Health Canada understood that it
12 had to balance the right to access with the public
13 safety with its other obligations under the *CDSA* to
14 protect public health and public safety, yes.

15 Q At paragraph 5 of your affidavit
16 you refer to marijuana not having been approved as a
17 therapeutic product under the *Food and Drug Act* and so
18 on, and you refer to its efficacy and safety not having
19 been sufficiently demonstrated. Again, I take it that's
20 simply information that was given to you. You didn't
21 have someone in your office go and investigate the
22 science of medical cannabis or any of that sort of thing
23 in order to arrive at that conclusion or statement?

24 A It's known that because marijuana
25 does not have DIN or a Notice of Compliance, that it has
26 not demonstrated the level of efficacy and safety that
27 is necessary in order to be approved as a therapeutic
28 product under the *FDA*. That's something that's known,

1 that was known by me in my capacity at Health Canada.

2 Q But you also knew that there was no
3 lethal dose ratio for marijuana, didn't you? Do you
4 know what I mean by that?

5 A No, could you clarify please?

6 Q Okay. In the exhibit, one of the
7 exhibits to your affidavit you have the material from
8 the information provided to doctors, don't you?
9 Information for Health Care Practitioners?

10 MR. TOUSAW: Volume 7, tab G.

11 MR. CONROY:

12 Q Volume 7, tab G.

13 A Yes.

14 Q At page 2578.

15 JUSTICE: What volume would that be?

16 MR. CONROY: Volume 7 of 13.

17 Q Do you see the heading "8. Overdose
18 Toxicity"?

19 A Yes, I do.

20 Q And you see the first entry as "LD
21 50"?

22 A Yes, I do.

23 Q And so you know that that relates
24 to whether something has a lethal dose ratio or not? Did
25 you know that?

26 A No, I did not.

27 Q You didn't, okay. But you know, I
28 take it, in your capacity as the Director of the Medical

1 Cannabis Office or of Regulatory Reform, that marijuana
2 can't kill you. You knew that, didn't you?

3 A I know that it is in -- I know that
4 this paragraph is in a document that was prepared for us
5 by experts which was based on the evidence that was
6 available to them at the time that this was put
7 together.

8 Q You knew that marijuana can't kill
9 you, didn't you?

10 A I don't know. I'm not a
11 toxicologist or a pharmacologist, so I don't have any
12 personal knowledge, but I do know that in this document
13 there is evidence to that effect.

14 Q So from at least a potential
15 overdose death type situation that you know we have with
16 other narcotic prescriptions, you knew that that
17 couldn't happen with marijuana when you were the
18 Director of the Office of Medical Cannabis, didn't you?

19 A I don't feel that I can comment on
20 the legal overdose of other prescription narcotics as I
21 -- neither in my capacity at Health Canada nor my own do
22 I know what that would be.

23 Q Throughout the time that you were
24 with Health Canada in this capacity, you never had a
25 report of anybody dying from the use of cannabis, did
26 you?

27 A No, I did not.

28 Q Whether it was produced by

1 themselves or anybody else, isn't that correct?

2 A That's correct.

3 Q And you knew this program existed
4 for something like 13, 14 years, isn't that right?

5 A Yes, that's correct.

6 Q And over that entire period, you
7 never heard or received a report of anybody dying from
8 the use of cannabis, did you?

9 A No, I did not.

10 Q In fact, you never got a report of
11 anybody getting sick from the use of cannabis that they
12 produced. Isn't that correct?

13 A I'm not sure that that's correct.
14 I think there may have been some adverse reporting over
15 the course of my time, but I can't confirm without those
16 documents in front of me.

17 Q Nothing significant that sticks in
18 your mind, isn't that right?

19 A There is no particular case that
20 sticks in my mind, but I am aware that there was adverse
21 reporting.

22 Q Okay. So, from a safety point of
23 view, you're telling us you didn't know that there are
24 problems with opiate prescription overdoses, for
25 example, compared to none for cannabis? You didn't know
26 that?

27 A I'm sorry, I don't understand the
28 question.

1 Q All right. So you didn't know that
2 people who are prescribed or who use opiate type
3 narcotics are susceptible to dying from overdoses?

4 A I have a general understanding that
5 there are instances of prescription drug abuse, and that
6 there are potential risks involved, but I don't have any
7 more knowledge than that.

8 Q And over the course of the program,
9 you know that it went from -- I think you gave us the
10 statistics of a fairly small number in 2001 up to
11 38,000, I think it was, roughly, authorized to possess
12 by 2014.

13 A Correct.

14 Q And so there was a huge increase in
15 the number of people being medically approved by doctors
16 to use cannabis for medical purposes, wasn't there?

17 A There was -- I would characterize
18 it as, there was an increase in the number of
19 individuals who received support from their physician,
20 and were therefore eligible to apply for an
21 authorization to possess.

22 Q It was a substantial number, the
23 increase.

24 A Yes, absolutely.

25 Q In fact, that was one of the
26 problems for you at Health Canada, wasn't it? Was that
27 there were so many people getting approved by their
28 doctors that it became an unintended consequence of

1 trying to administer the program?

2 A Yes, the program grew much more
3 quickly than Health Canada expected.

4 Q And you knew from that, that that
5 meant that doctors were medically approving patients in
6 much greater numbers over the years than they ever had
7 before.

8 A They were signing the forms and
9 supporting the access, yes.

10 Q And you inferred from that that
11 there must be some efficacy to medical cannabis, didn't
12 you?

13 A No, I don't infer that. In fact,
14 many doctors, particularly during the consultations and
15 even outside of the confines of the consultations,
16 throughout the duration of the program, talked
17 extensively to Health Canada about their concerns that
18 they were expected to play a role of supporting access
19 to marijuana for medical purposes when the efficacy and
20 safety threshold that is normally met for other
21 therapeutic products had not been met for marijuana.

22 Q Notwithstanding those comments from
23 some doctors, you nevertheless concede that there had to
24 be at least 38,000 approvals by doctors to reach your
25 38,000 patients. Isn't that right?

26 A There were absolutely approvals by
27 doctors.

28 Q And by your own admission, that was

1 a huge increase since the beginning of the program.

2 A There was an increase in program
3 participants from the beginning, yes.

4 Q And Health Canada projected that it
5 was going to go up to something like 400,000 by 2025.
6 You knew that, didn't you?

7 A In the cost/benefit analysis, yes,
8 we made a prediction up to 2024, I believe was the year.

9 Q So, you, or your office, didn't go
10 back and look at, say, the Le Dain Commission report in
11 1972 when considering this question of safety or
12 efficacy, is that right?

13 A No, we did not.

14 Q Or the Nolin Senate report from
15 2002, Canadian Senate report.

16 A No, we did not.

17 Q Or any of the other Royal
18 Commissions dealing with marijuana going back to the
19 India Hemp Drug Commission in 1894.

20 A I'm not familiar with any others,
21 so we would not have looked at them.

22 Q Did you know that there was a whole
23 list of Royal Commissions in various countries that have
24 looked into cannabis/marijuana, since 1894?

25 A No.

26 Q You didn't know that?

27 A No.

28 Q And was there somebody in

1 particular in your office that was supposed to look into
2 this, to look into all the available science to do with
3 cannabis/marijuana, to determine its safety or efficacy?

4 A Typically, safety or efficacy is
5 something that is being brought forward as a drug or a
6 therapeutic product. It's not Health Canada's role to
7 verify that. If someone wants to bring a market -- or
8 someone wants to bring a product forward to market, they
9 conduct the research that would give us that
10 information. Health Canada facilitates that information
11 being made available to patients through its clinical
12 trial processes and through the *FDA/FDR*. But it's not
13 Health Canada's role to make the case for a therapeutic
14 drug to be brought to market.

15 Q Well, if we go to paragraph 10 of
16 your affidavit, you first of all take us through the
17 history, in terms of the court cases, right from
18 paragraph 10, you talk about Section 56.

19 First of all you refer at paragraph 10 to
20 1999, and that's when the original *Parker* decision came
21 out, isn't it? The lower court.

22 A I think that might correspond, yes.

23 Q Right. And then you continue on
24 because you refer to Section 56, and Section 56 is the
25 power in the *Controlled Drugs and Substances Act* that
26 the Minister has to exempt people from a section or to
27 exempt certain drugs and so on under the *Act*, fair
28 enough?

1 A Yes, for medical scientific
2 purposes. For medical or scientific purposes or public
3 interest purposes.

4 Q Then you refer to the *Parker* case
5 in paragraph 11 and the amendments that continued over
6 the years, responding in paragraphs 12 and 13, and it's
7 in paragraph 13 that you repeat the issue of lack of
8 efficacy and safety information. And so you say that:

9 "In responding to the *Parker* decision in the
10 years following, Canada, in the face of a
11 lack of evidence-based efficacy and safety
12 information related to the use of this
13 unapproved psychoactive substance, strove to
14 strike a balance between providing authorized
15 persons with reasonable access to dried
16 marijuana for medical purposes while
17 attempting to protect individual and public
18 health and safety to respect existing federal
19 legislation and to attend to obligations
20 under the *United Nations Drug Convention*."

21 Correct?

22 A Correct.

23 Q You knew, of course, that any of
24 these drug conventions were subject to the *Canadian*
25 *Constitution*, didn't you?

26 A I know that the government has the
27 flexibility to be able to operate within the confines of
28 its own domestic responsibilities in responding to the

1 Convention.

2 Q But you know that the Conventions
3 are subject to the *Canadian Constitution* in terms of
4 their applicability in Canada. You knew that, didn't
5 you?

6 A I'm not sure I understand the
7 nature of your question as I'm not sure that I
8 understand that international treaties can be subject --

9 Q Well, you know that the --

10 A -- to constitutions.

11 Q Sorry.

12 A No, I'm sorry. Go ahead.

13 Q You know that the Constitution is
14 the supreme law of the land of Canada?

15 A Yes.

16 Q And that anything else is subject
17 to it?

18 A I'm sorry, I'm not --

19 Q Laws have to comply with it? You
20 knew that?

21 A I'm not a legal expert, I'm sorry.

22 Q You didn't know that all laws have
23 to comply with the Constitution?

24 MR. BRONGERS: I think to be fair to
25 the witness, the suggestion is being made that these
26 international conventions need to be compliant with
27 Canada's Constitution. I think that's the confusion
28 that's being created here.

1 MR. CONROY:

2 Q Well, they are subject to it, that
3 they can't -- if they conflict with it they can't be
4 enforced. Did you know that?

5 MR. BRONGERS: And before the witness
6 can answer that, that's not a fair proposition.
7 International conventions are not subject to the
8 Canadian Constitution. They are international
9 conventions. Canadian laws enacted pursuant to these
10 international conventions do have to comply with the
11 Constitution, but there is an important distinction
12 between the two concepts.

13 JUSTICE: I think we probably have the
14 answer as to what --

15 MR. CONROY: I think so.

16 JUSTICE: -- the defendant's position
17 is with respect to the Charter and international
18 convention.

19 MR. CONROY: Okay.

20 JUSTICE: Move on.

21 MR. CONROY:

22 Q You referred there to respecting
23 existing federal legislation, but you knew that the
24 *Parker* case required the government to provide an
25 exception to that federal legislation, didn't you?

26 A I'm sorry, I've lost track of which
27 paragraph you're referring to.

28 Q 13.

1 A 13?

2 Q Second last line.

3 A Yes. And your question again?

4 Q You knew that the *Parker* case
5 required the government to come up with an exemption, a
6 constitutional exemption to the federal legislation,
7 didn't you?

8 A It required us to put in place a
9 framework that would allow access to marijuana for
10 medical purposes.

11 Q And you knew, as you said back at
12 paragraph 6, it was a Constitutional obligation, didn't
13 you?

14 A Yes.

15 Q Okay. So as you say at paragraph
16 13, you talked about balancing, striking the balance
17 between the substance on the one hand and reasonable
18 access on the other. You concede that you nor anybody
19 in your department went back and looked at the history
20 of the use of cannabis, these various Royal Commissions
21 in various countries and so on, to determine the safety
22 or efficacy of the product. You relied simply on
23 nobody's applied to have it put through as an approved
24 drug, is that your evidence?

25 A As I said, it's not Health Canada's
26 role to demonstrate the safety and efficacy of a product
27 that would be coming to market or that would be used for
28 therapeutic purposes. In the case of marijuana, because

1 of the findings of the court, we had to provide access
2 to marijuana for medical purposes regardless of the fact
3 that it did not fit into the framework for the *FDA* and
4 *FDR*, and that is what we did with the *MMAR*.

5 Q So, the answer is you didn't have
6 anybody go back and look at all of the history and so
7 on, in order to determine how to strike the appropriate
8 balance, did you?

9 A My answer is that it's not Health
10 Canada's role to demonstrate the safety and efficacy of
11 a drug.

12 Q Okay. Did you know that some
13 patients were getting approvals to possess cannabis
14 under regulation 53 of the *Narcotic Control Regulations*?

15 A No.

16 Q Okay. Your affidavit, paragraph 15
17 and 16, essentially sets out the process in terms of
18 personal production and designated production, and
19 refers to the formula that we talked about earlier? You
20 see that?

21 A I don't -- yes, I do, yes, that is
22 what it does.

23 Q Okay. All right, and then you have
24 a section that deals with the plaintiff's history, and
25 so from paragraphs 18 right through to 38, is all files
26 that you, or somebody on your behalf had dug up
27 pertaining to the individual plaintiffs, is that right?

28 A Correct.

1 Q And what we have produced as the
2 exhibit is the complete file for each of those people,
3 is it?

4 A Correct.

5 Q Okay. You then have a section of
6 the affidavit, 39, that deals with the unintended
7 consequences?

8 A Yes.

9 Q And so that is where, again you
10 say, that this -- you say,

11 "From the inception in 2001, and the many
12 amendments, the *MMAR* attempted to strike a
13 balance between providing legal access to
14 dried marijuana for medical purposes as
15 required by the courts, with managing access
16 to a controlled substance, and unapproved
17 drug, about which there is limited available
18 benefit and risk information combined with
19 known risk for diversion to the black
20 market."

21 Do you see that?

22 A Yes.

23 Q Again, you didn't do any
24 investigation or have anybody in your office do any
25 investigation about the available benefits and risks of
26 cannabis, did you?

27 A Again, that is not Health Canada's
28 role.

1 Q Okay, so when you say this in your
2 affidavit, you are just saying that is the basic Health
3 Canada position?

4 A Health Canada did what the courts
5 directed it to do, in that it created a regime by which
6 individuals could have access to marijuana for medical
7 purposes despite the fact that marijuana for medical
8 purposes had not been approved under the *FDA* or *FDR*.

9 Q So, again, your affidavit, while it
10 says "limited available benefit and risk information",
11 it is simply no investigation was made to determine the
12 available benefit and risk information at that time,
13 isn't that correct?

14 A It is not Health Canada's role to
15 do that, so we did not do it.

16 Q Okay. You then go on at the
17 following paragraph 40, to talk about the goals and how
18 they were compromised by the rapid expansion of the
19 number of individuals, producing large amounts of
20 marijuana. Most of which was grown in dwelling houses
21 not constructed to support such large scale production,
22 and in residential areas, correct?

23 A Yes.

24 Q And you then go on to talk about
25 nuisance and odors and so on, all of which was
26 information that came to you through the various
27 consultations I take it?

28 A Not only through consultations,

1 also through correspondence, program participants, as
2 well as neighbours of program participants, and other
3 stakeholder groups throughout the duration of the
4 program.

5 Q And you refer there to increasingly
6 large amounts of marijuana, don't you?

7 A Yes I do.

8 Q And most of which is grown in
9 dwelling houses, meaning homes, or residences, correct?

10 A Correct.

11 Q And in residential areas, correct?

12 A Correct.

13 Q You make no reference to industrial
14 areas, or agricultural areas, do you?

15 A Not in this paragraph, no.

16 Q You make no reference to patients
17 getting together and putting a garden, a collective
18 garden together, say, in a commercial or industrial
19 complex, do you?

20 A I don't make that reference in this
21 paragraph.

22 Q And you don't make any reference in
23 this paragraph to people, say, going into an
24 agricultural area and getting together and doing it out
25 in a barn or in a farm setting, do you?

26 A No.

27 Q You then set out -- well, you set
28 out the various issues in that paragraph in terms of

1 smell, and you list a number of others. The challenges
2 for the police, and what you call generally negative
3 impacts on public health, safety, and security, don't
4 you?

5 A Correct.

6 Q Can you -- when you -- so when
7 you're referring to public health, are you referring to
8 the health of the individual patient? Or you're
9 referring to the health of others?

10 A I'm referring to the health of the
11 public. So it could refer to both individuals who live
12 inside of a home where there is a production site. It
13 refers also to their neighbours, to their communities,
14 to the general population at large.

15 Q Okay. And the final thing is the
16 administrative and financial burden to the government
17 and cost to the taxpayers, correct?

18 A Correct.

19 Q In the Delsys report, it's made
20 quite clear that there is a substantial saving to the
21 government in no longer becoming the producer of
22 marijuana, and going back to just being a regulator.
23 Isn't that right?

24 A The CBA does point out that there
25 would be a cost savings to the government, yes.

26 Q Substantial saving to the
27 government, isn't it?

28 A I'd have to re-look at the number

1 before I could qualify it.

2 Q You don't remember that the major
3 beneficiary from the program was going to be the
4 government?

5 A Yes, I do remember that. I just
6 don't remember the amount of the cost savings without
7 referring to the document.

8 Q Do you remember that the persons
9 that were going to be most impacted were going to be the
10 patients?

11 A Yes, I remember that was the result
12 of the cost/benefit analysis.

13 Q And that the reason for that was
14 because of the increase in price.

15 A Yes.

16 Q You continue, then, in your
17 affidavit starting at 41 with the exponential growth
18 from 2002 right through to 2013. So over a lengthy
19 period. And information provided by Kayleen Funk,
20 correct?

21 A Correct.

22 Q And then continuing on further
23 information from Angela Ray in paragraph 42.

24 A Correct.

25 Q And at the end of 42, you point out
26 that while there were a number of users who said they
27 were applying to Health Canada intended to use the
28 Health Canada supply, ultimately they did not.

1 A Correct.

2 Q And you don't know what they did,
3 or how they accessed -- that group, how they accessed
4 medical marijuana.

5 A Correct.

6 Q Okay. And then in 43, you provide
7 us with the details of those who -- again, the debt
8 situation that we discussed earlier.

9 A Correct.

10 Q So this provides us with the
11 information as of July 31st, 2014, and basically how much
12 was owing and the figures are set out there, aren't
13 they?

14 A Yes, they are.

15 Q Okay. And then you continue on
16 with the data from the cost/benefit analysis in terms of
17 the exponential growth over that long period of time,
18 correct?

19 A Correct.

20 Q This -- the RIAS, or you refer to
21 there -- sorry, the cost/benefit analysis is Exhibit F.
22 But you also, at the next paragraph, talk about the RIAS
23 prepared for publication, and again that's a separate
24 document, correct? Or is it the same?

25 A No, it is a separate document.

26 Q A separate document. Okay.

27 So, it is the RIS [sic] at paragraph 45
28 that has the prediction of 433,688 persons wanting

1 cannabis for medical purposes by 2024?

2 A Yes, that number being based on
3 that same prediction that was made in the CBA.

4 Q Okay. So, the CBA, am I right that
5 after all of these consultations with different people
6 and the letters you've received and so on, that is
7 provided to Delsys, the research group, and as a basis
8 for them to do their calculations in terms of the
9 cost/benefit analysis?

10 A I wouldn't characterize that as the
11 basis. Cost/benefit analysis is a requirement for any
12 regulation, and every time there is a new regulation
13 that comes forward, such an exercise must be done,
14 Delsys was certainly provided with all of that
15 information, but we specifically hired them, because
16 they are economists who have much expertise in the area
17 of conducting cost/benefit analysis, and they conducted
18 their own very widespread literature review, and they
19 conducted their own research above what Health Canada
20 provided to them from the consultations.

21 Q But am I right that they are one of
22 the last steps in the regulatory reform process in the
23 sense that you've done all of these things, and received
24 all of this information before and then you hand it over
25 to them to do the cost/benefit analysis?

26 A There is no specific formula. The
27 CBA must be done so that you can write the RIAS, which
28 is one of the last steps, is it something that must go

1 along the Treasury Board --

2 Q Right.

3 A But we did a lot of the work
4 concurrently for this particular regulation. So while
5 we hired Delsys quite early on while we were still
6 having some of our own policy discussions.

7 Q Right, but the information, for
8 example, with respect to fires, or the police
9 information, the Canadian Association of Chiefs of
10 Police report, and so on, you had received all of that,
11 and then provided that to Delsys to do the cost/benefit
12 analysis?

13 A Yes, we provided that to them to
14 assist them in the production of the cost/benefit
15 analysis.

16 Q You told us earlier, you -- Health
17 Canada had no records in relation to fires or public
18 safety issues itself, in relation to specific patients,
19 and specific program, but it had that information from
20 the police and information from firefighters as well.
21 That's the information on those topics that was given to
22 Delsys, fair enough?

23 A Yes, I don't remember everything
24 that was given to Delsys, but everything that we had
25 available was made available to Delsys for the purposes
26 of the CBA.

27 Q Okay. All right, and just to try
28 to move ahead here a bit, the paragraphs from 44 right

1 through to 54, essentially you are providing us with
2 data or details that came out of the SAM database for
3 various periods of time, correct?

4 A Yes, that's correct.

5 Q To -- if you bear with me, 48 you
6 refer to the SAM database, and you give us an
7 explanation of its limitations and how it was improved,
8 fair enough?

9 A Yes. Yes.

10 Q And then you deal in the next
11 paragraphs, 49 through 54, specific information again
12 from -- at 49 from Kayleen Funk with respect to
13 authorizations to possess between 2001 and 2013? And
14 how it increased?

15 A Yes, these were the numbers that
16 she pulled from the SAM2 database on November 13th, 2014.

17 Q And you do that again for the -- at
18 paragraph 50 for the personal productions and designated
19 growers, and at 51 for breaking it down into provinces,
20 and at 52, breaking it down into numbers of plants
21 produced, fair enough?

22 A That's correct.

23 Q And at 53, the daily gram amounts?

24 A That's correct.

25 Q At 54, you discuss the daily gram
26 -- sorry, average daily dosages?

27 A Correct.

28 Q Now, at 54, you say, and you refer

1 to Exhibit G at page 25, Exhibit G, the information for
2 health care professionals, correct?

3 A I just want to double check that.
4 Yes, that's correct.

5 Q And you say there that it
6 indicates a typical joint contains .5 and point --
7 between .5 and 1 gram of cannabis plant matter?

8 A Correct.

9 Q But if you go to 57, there you had
10 information from the police, and they claim 1 gram of
11 marijuana produces three to five joints, don't they?

12 A That's what the R.C.M.P. provided
13 to us, yes.

14 Q So, according to the information
15 for health care professionals, one joint is between a
16 half and 1 gram, but according to the police information
17 you get three to five joints out of 1 gram, is that
18 right?

19 A Yeah, the difference pertains to
20 -- the document information for health care
21 practitioners is characterizing what would be typical in
22 the context of the research, evidence available about
23 the use of marijuana for medical purposes. So it's not
24 the same source as what the R.C.M.P. would have been
25 providing us with.

26 Q And it's somewhat less than what
27 the R.C.M.P. was estimating, isn't it?

28 A Based on the research and the

1 evidence available that forms the basis of that
2 document, Information for Health Care Practitioners,
3 yes, it is less than what the R.C.M.P. gave us.

4 Q And then at paragraph 59 -- sorry.
5 Just referring back to Exhibit G, at that paragraph 55,
6 I take you -- this 1 to 3 grams of cannabis a day that's
7 at the bottom of that paragraph, just before that you
8 talk about people using smoked or orally ingested
9 cannabis for medical purposes, reported using between 10
10 to 20 grams of cannabis per week, or approximately 1 to
11 3 grams of cannabis per day. And as I understand it,
12 this is international information that was gathered to
13 say that this was normally what people do, correct -- or
14 use?

15 A Yes, the Information for Health
16 Care Practitioners takes information from
17 internationally published studies about the use of
18 marijuana, and that's where that quote comes from.

19 Q So when it says "smoked or
20 orally", can you tell us what you mean -- what is meant
21 by orally or can you?

22 A I can't, no.

23 Q Okay.

24 A I'm sorry.

25 Q So you don't know whether these
26 figures take into account people doing cold press
27 juicing, for example?

28 A I don't, I don't know that, no.

1 Q Or other forms besides just
2 smoking.

3 A I know that it's orally ingested.
4 I don't know what your definition was for these studies.

5 Q All right, thank you.

6 A Where this information comes from.

7 Q Moving along, we're at 55. You
8 talk about the expert advisory committee that was
9 created, and as I think you told me before, that was for
10 the doctors in order to help educate the doctors in
11 terms of science and what was going on in terms of
12 cannabis?

13 A Yes, because there was no product
14 monograph as would be typically associated with a
15 prescription drug, doctors informed us that they would
16 like to have more information. So we brought together
17 the expert advisory committee, and the expert advisory
18 created this document in Exhibit G.

19 Q Page -- if we move along to 59.
20 I'm sorry, 59, there's some extrapolation conducted
21 based on the average daily dose of 18.22 grams a day as
22 of December 31st, 2013. And basically suggests that
23 because of courts allowing up to full production
24 licences in one location, that a person could have an
25 average of 356 plants being grown in a single dwelling.
26 Do you see that?

27 A Yes.

28 Q And of course, that -- the reason

1 for referring to that is because of the problems that
2 might arise in having so many plants in a single
3 dwelling -- or residential dwelling, correct?

4 A Yes.

5 Q And so those problems wouldn't
6 arise if those four people had a collective garden, say
7 out in the industrial or agricultural area, away from a
8 residential area, isn't that fair?

9 A I'm not sure that I would agree
10 with that. I think there could still be one of the
11 foundational reasons for Health Canada moving forward
12 with the *MMPR* was because it also wanted to ensure that
13 people had access to something that they were using for
14 medicinal purposes that was grown under quality-
15 controlled -- or in a way that had effective quality
16 controls, which was not the case under the *MMAR*.

17 So I wouldn't agree entirely with that
18 statement, because there were other -- there are
19 potentially other risks that may be involved with
20 growing in what you're referring to as a community
21 garden.

22 Q Well, there may be, but in this
23 paragraph, you only address the situation of four people
24 operating together in a single dwelling, don't you?

25 A I talk about a location in this
26 paragraph. And I do mention a dwelling, yes.

27 Q You say a single dwelling, don't
28 you?

1 A Yes. Yeah.

2 Q Yeah. So you don't address the
3 other types of situations where a person or a group of
4 persons could produce safely and securely, if they had
5 the proper space, out in an industrial or commercial --
6 or agricultural area, do you?

7 A Not in this paragraph.

8 Q Are you suggesting that you do in
9 another paragraph?

10 A I'm suggesting that there are
11 reasons that Health Canada -- there were other reasons
12 other than producing in dwellings that Health Canada
13 undertook the reform, one of which was making sure that
14 Canadians who require access to medical marijuana are
15 able to have quality controlled medical marijuana, and
16 even if that's -- whether that's grown in a dwelling or
17 in a large industrial site, if there aren't regulations
18 that require certain quality control measures, that
19 would still continue to be a problem.

20 Q I take it you know that people can
21 produce their own natural health-care products for
22 themselves, do you?

23 A I am generally aware that people
24 can, yes.

25 Q And they're not subject to these
26 quality control concerns when they produce them for
27 themselves. You knew that, didn't you?

28 A Natural health products aren't

1 typically controlled substances. Marijuana is a
2 controlled substance, and it's also a highly divertible
3 controlled substance, and so there are other
4 considerations, I believe, and Health Canada believes,
5 with respect to marijuana.

6 Q But you knew that people could
7 purchase seeds or whatever for natural health care
8 products, and go and produce them in their single
9 dwelling, or elsewhere that -- for their medical
10 purposes, without having to go through any further
11 regulatory process. Isn't that right?

12 A As long as they're not selling or
13 trying to market --

14 Q Right.

15 A -- then I'm not aware of anything
16 that would prohibit them from doing that.

17 Q The same with food, right? A
18 person in Canada can grow their own food for themselves,
19 can't they?

20 A Yes. But food is not a controlled
21 substance.

22 Q Yeah, but they're -- it's a
23 substance that people are growing and putting into their
24 bodies, and it could be contaminated and could cause
25 them ill-health, couldn't it?

26 A It could, yes.

27 Q And it's not regulated in this way,
28 is it?

1 A It's not a controlled substance.

2 Q So, your position is it's simply
3 because cannabis is a controlled substance, that's the
4 need for making sure that people don't do it in a
5 dwelling, a single dwelling?

6 A My position is that because -- or
7 Health Canada's position is that because marijuana is a
8 controlled substance, it should not be treated in the
9 same way as food or natural health products.

10 Q But your concern in paragraph 59
11 has nothing to do with that. It's simply indicating how
12 many plants a person might be able to grow in a single
13 dwelling. Isn't that right?

14 A It was demonstrative of the
15 potential number of plants in a single dwelling, yes.

16 Q And somebody could do that with
17 food or they could do that with a natural health-care
18 product, couldn't they?

19 A I suppose.

20 Q Or they could do it in an
21 agricultural area or an industrial area, couldn't they?

22 A I suppose.

23 Q And Health Canada didn't, under the
24 new program, address limitations on where people could
25 grow, such as saying, not in a dwelling house. It
26 simply took the position that patients shouldn't be able
27 to grow for themselves whatsoever, wherever. Isn't that
28 correct?

1 A Health Canada's position was that
2 this should be a regulated commercial market, and Health
3 Canada did take the position to remove personal and
4 designated production, whether it be in dwellings or
5 whether it be in agricultural, for a variety of reasons.

6 Q But you appreciated that
7 regulations from government could be amended without
8 having to go through Parliament in order to achieve
9 reasonable limitations for any concerns that were
10 arising. You understood that, didn't you?

11 A I understand that the government
12 can amend existing regulations. Is that what you --
13 yes, I understand.

14 Q Without having to go through
15 Parliament, right?

16 A You do not have to go to Parliament
17 for regulations, no, only for legislation.

18 Q So other options that were
19 available to the government would have been to amend the
20 regulations in order to limit issues of concern that
21 were arising from these consultations. Isn't that
22 correct?

23 A We could have amended the *MMAR*, and
24 indeed Health Canada did amend the *MMAR* multiple times
25 over the course of its existence. And Health Canada was
26 doing piece-meal amendments to the *MMAR*. At the end of
27 the day when we did the analysis of what the problems
28 were with the *MMAR*, we realized that that constant

1 piecemeal approach to amending that regulation was no
2 longer going to work.

3 The bottom line is that Health Canada
4 doesn't normally regulate individuals and under the
5 *MMAR*, it was. And it simply wasn't able to regulate
6 that many individuals. It did not have the inspection
7 capacity, it did not have the inspection authority. It
8 didn't have the teeth in the *MMAR* that it would need to
9 ensure that those problems would not persist with only
10 simple amendments.

11 Q So you agree that there were other
12 options available in terms of the *Regulations*, but the
13 decision was made to -- instead of looking at those
14 other regulatory amendments, in relation to dwelling
15 houses, for example, limiting production in dwelling
16 houses, the government instead chose to simply abolish
17 the ability of any patient to produce for themselves, or
18 have a caregiver do so for them. Isn't that right?

19 A I disagree with your statement.
20 Health Canada looked at a number of options before
21 deciding that it would adopt the *MMPR*, including looking
22 at continuing with piecemeal amendments to the *MMAR*.

23 Q Well, it knew that there were
24 people who couldn't afford the \$5 a gram subsidy from
25 Health -- through Prairie Plant, isn't that right?

26 A We knew that there were accounts in
27 arrears. Again, I did not know the personal financial
28 situation of those individuals.

1 Q You knew that the cost/benefit
2 analysis predicted that the major impact was going to be
3 on the patient producers, because of the price?

4 A Yes.

5 Q So you knew that affordability was
6 going to be a significant problem for patients under any
7 regime which you came up with, that took away their
8 ability to produce for themselves, didn't you?

9 A We knew that there were concerns in
10 that regard, yes.

11 Q You knew that people could produce
12 cannabis much cheaper than a licensed producer or
13 anybody else producing it for them, didn't you?

14 A Yes, but we also knew that there
15 were risks that resulted over years of allowing that to
16 happen.

17 Q And so you knew that there were
18 going to be some patients who would not be able to
19 afford the Licensed Producer prices who would be put in
20 a position where they would have to choose between
21 whether to continue to produce unlawfully or go without
22 their medicine. Isn't that correct?

23 A I disagree with that statement. We
24 all -- we knew that there were Licensed Producers or
25 interested at the time Licensed Producers who wanted to
26 offer compassionate pricing.

27 Q Whether they wanted to offer
28 compassionate pricing or not, you didn't know what the

1 details of that compassionate pricing would be, and
2 whether it would cover all medically-approved patients,
3 did you?

4 A No, we did not.

5 MR. CONROY: This would be a good
6 time, Justice Phelan.

7 JUSTICE: Okay. Thank you.

8 MR. CONROY: Unlike yesterday, we're
9 going to be continuing for a while, but we don't expect
10 we'll be long with the next witness, so we're still
11 hoping to get done today.

12 JUSTICE: Okay. And we have tomorrow
13 as well.

14 MR. CONROY: Yeah.

15 JUSTICE: And Friday.

16 MR. CONROY: Well, in terms of
17 tomorrow, what -- well, we can maybe address it.

18 JUSTICE: Okay.

19 MR. CONROY: If we get to the problem,
20 only because there is another witness scheduled, and so
21 on. But we have Friday.

22 JUSTICE: And we have Friday.

23 MR. BRONGERS: Both of our witnesses
24 have other commitments, so our concern is that we very
25 strongly would prefer if possible to get the cross-
26 examinations of both Ms. Ritchot and Mr. Cain done
27 today. Indeed, my friend estimated half a day for each.
28 He estimated a full day for Mr. Holmquist yesterday.

1 So some significant thought must have
2 been given to how long it would take for these cross-
3 examinations. And --

4 MR. CONROY: Well, I did say to my
5 friend, Ms. Ritchot's been here for two days watching.

6 JUSTICE: Mm-hmm.

7 MR. CONROY: And I did say, if she was
8 available yesterday, I was prepared to start yesterday.
9 But my friend wasn't prepared to have that happen, so --

10 MR. BRONGERS: We are prepared --
11 we're certainly prepared to have Ms. Ritchot continue on
12 into the afternoon. And Mr. Cain done after that. But
13 it is our concern that this should not be an
14 interminable cross-examination.

15 JUSTICE: Well, no. But the cross-
16 examination hasn't been interminable. It's been highly
17 relevant. I'm not going to preclude cross-examination.
18 This is an absolutely critical area for the
19 justification under your Section 1 and under Section 7
20 from my friend. So we're not going to short-change that
21 by any means. And if it's inconvenient for witnesses,
22 so be it. They will stay. They will be available. I'm
23 prepared to sit later tonight if that facilitates. But
24 we are not doing this for the convenience of witnesses.
25 We are going to finish this case properly.

26 So -- with that, ma'am, just to let you
27 know, it's not that your counsel has become suddenly
28 rude, but they're not allowed to speak to you while

1 you're under cross-examination, nor is anyone else.

2 THE WITNESS: Thank you, sir.

3 JUSTICE: We'll see you in an hour.

4 MR. CONROY: Thank you, Justice
5 Phelan.

6 **(PROCEEDINGS ADJOURNED AT 12:30 P.M.)**

7 **(PROCEEDINGS RESUMED AT 1:33 P.M.)**

8 MR. CONROY:

9 Q On that issue that we touched on
10 before lunch, Ms. Ritchot, the business about problems
11 in private residence or residential areas versus out in
12 an agricultural or industrial area, and your reference
13 to large and I think I put to you what would also be
14 smaller operations, I assume Health Canada doesn't have
15 any records specifically in terms of problems in places
16 other than dwelling houses, just like you have no
17 records of the fires or mould, et cetera.

18 A That's correct.

19 Q Okay. So you can't point us to
20 problems, a list of problems of smaller operations in
21 agricultural or industrial areas for example, that were
22 a problem.

23 A To a specific list, no, I cannot.

24 Q Okay. Or for large operations or
25 industrial or agriculture, if we broke them all down.

26 A Not to a specific list, no.

27 Q Okay, thank you. There was a
28 reference on to do inspections. We talked about local

1 bylaw, local government doing inspections and so on.

2 You recall that?

3 A Yes, I do.

4 Q Health Canada did have a power to
5 inspect as well, correct?

6 A Under the *MMAR* there was an
7 authority to inspect. It was to ensure compliance with
8 the terms of the licence or the authorization to
9 possess.

10 Q Right. And the Regulations that
11 the government created provided that if you were going
12 to go into a dwelling house, you had to either have the
13 consent of the owner or the proprietor, occupant, or get
14 an administrative warrant, correct?

15 A That's correct.

16 Q Yeah. You didn't need a warrant
17 for an outbuilding, did you?

18 A I don't recall the provision well
19 enough to --

20 Q It said a residence or dwelling
21 house, didn't it?

22 A I believe the Regulations said if
23 the production site is at a dwelling, then consent is
24 required.

25 Q So you wouldn't need a warrant for
26 outbuildings or barns or commercial industrial area
27 facilities, things of that nature. There was nothing in
28 the Regulations requiring that, was there?

1 A I would need to look at the *MMAR* to
2 confirm, but I don't recall there being anything
3 specific to anything other than a dwelling.

4 Q The only one you recall is the
5 dwelling house one.

6 A Correct.

7 Q Okay. Now, I asked you about the
8 database because of police continuing to call in in
9 order to determine whether or not what they were
10 investigating was legal or not. Remember that?

11 A I remember you asking, yes.

12 Q Yeah. And have you now been
13 informed that Health Canada is continuing to maintain
14 that database?

15 A No, I have not.

16 Q Okay.

17 MR. BRONGERS: Just to assist my
18 friend, the next witness will be able to assist the
19 court with that. I can listen to the admonition not to
20 speak to the witness --

21 JUSTICE: Yes, I was wondering how she
22 was going to -- without being in trouble with me.

23 MR. CONROY: I should have thought
24 about that.

25 JUSTICE: You're safe.

26 MR. CONROY:

27 Q Okay. When you were the Director
28 of the Office of Medical Cannabis, you had somebody

1 maintaining this database, correct?

2 A There were a number of people on my
3 staff who had access to the database. From an
4 infrastructure perspective it was maintained by our
5 Infrastructure Management Group, but yes, we had -- the
6 database was maintained by my staff, yes.

7 Q And it was basically a database
8 which, as you explained, was improved to give you all of
9 the statistics with respect to patients and grams per
10 day, or kilograms being produced, those sorts of things.
11 Statistics relative to the particular program. Am I
12 right?

13 A No, that's not why it was improved.
14 It was improved because it was frankly in our cave
15 database and it had not kept pace with the times.

16 Q Yeah. No, no, I'm not asking why
17 it was improved but why you had the database at all.

18 A Oh, I'm sorry, I misunderstood the
19 question. Yes, we had the database so we could keep
20 track of the numbers of applications and how they were
21 being treated.

22 Q Keeping track of the specific
23 address of the production site wasn't of particular
24 importance to Health Canada, was it?

25 A I'm sorry, could you repeat that?

26 Q Keeping track of the particular
27 address of the production site wasn't something of
28 particular importance to Health Canada and its

1 statistics, was it?

2 A I would disagree with that. We
3 needed to know the address of every production site.

4 Q But the purpose of knowing that
5 address was so that you could provide it to the police
6 if the police made an inquiry during an investigation.
7 Isn't that correct?

8 A No, that's not the purpose of
9 having the address. The purpose of having the address
10 is because we were authorizing people to produce
11 marijuana, and we needed to know -- it was a requirement
12 of the *Regulations* to know where that production was
13 happening.

14 Q There was no particular reason that
15 advanced the *Regulations* or otherwise, simply by you
16 having the address. The benefit -- the people who
17 benefited from you having the address was the police
18 when they made a call to see if it was legal or not.
19 Isn't that right?

20 A We have an inspection capacity and
21 in order for us to inspect production sites, we needed
22 to have the address.

23 Q But a primary purpose was to
24 benefit the police, wasn't it?

25 A I do not agree with that statement.
26 That was not the primary purpose for having the address
27 of the production site. It was to make sure that we
28 knew where production sites were so that we could

1 execute our authorities under the *Regulations*.

2 Q The police were the only ones who
3 used to call you to determine whether or not a
4 particular site was legal or not. Isn't that correct?

5 A No, I don't believe that they were
6 the only ones who would call when they had -- when there
7 was knowledge of a production site in a community.

8 Q They were the only ones you were
9 authorized to provide information, weren't they?

10 A That is correct. But the
11 information was only to be provided in very specific
12 circumstances as outlined in the *Regulations*.

13 Q When they were in the course of an
14 investigation, essentially. Isn't that right?

15 A If they called us because they were
16 in the course of an investigation, yes.

17 Q So it was -- the database benefited
18 or was for the benefit of the police to that extent
19 then, wasn't it?

20 A No, the database was to the benefit
21 of Health Canada so that it could execute its
22 responsibilities under the *Regulation*. There was an
23 authority in the *Regulation* for police to call Health
24 Canada if they needed to know, in the course of an
25 investigation, whether or not a site was legal, and we
26 could confirm that.

27 Q All right. You were aware of a
28 letter Health Canada sent out to all patients in

1 November of 2013 advising them of the proposed changes?

2 A November of 2013?

3 Q Yes. Were you aware of that?

4 A No.

5 Q Okay. You haven't heard that all
6 the patients received a letter with the Office of
7 Medical Cannabis or other identifying criterion on the
8 outside of the envelope that's resulted in a civil
9 lawsuit?

10 A I have a general awareness of that
11 instance, yes.

12 Q Okay. And did you know, or did
13 this occur, when you were on point on this issue that
14 numerous patients felt the need to move their address of
15 their site as a result of that letter? Because of what
16 had happened with their neighbours, and so on? Did you
17 know that?

18 A In response to the first part of
19 your question, whether or not this happened while I was
20 there, no, I was not there when this happened. And as a
21 result, I do not know the answer to your second
22 question.

23 Q Okay. Let's go back to your
24 affidavit. We were at paragraph -- I think we got to 60
25 -- paragraph 60. We referred to the references to the
26 private dwellings and so on there. And you only refer
27 to private dwellings in that paragraph, don't you?

28 A No, I don't believe so.

1 Q Is there some other type of
2 facility that you're referring to?

3 A I referred to a site, without
4 defining that the -- are we talking about paragraph 60?

5 Q Yes, six-zero.

6 A I referred to a site as in a
7 production site. So I do refer to dwellings, but not
8 only dwellings.

9 Q Okay. You refer to the *Regulations*
10 not containing a provision requiring Licensed Producers,
11 and by that I take it you meant patients or their
12 designated growers? Just because of the confusion with
13 the term "Licensed Producer" under the *MMPR*, you're not
14 referring to the *MMPR*, you're referring to the *MMAR*,
15 aren't you?

16 A That's correct. That should have
17 more correctly stated "requiring persons with a personal
18 use production licence" --

19 Q Right.

20 A -- or a designated person
21 production licence.

22 Q And the *Regulations* could have
23 provided that that information could be provided to the
24 police and fire authorities, isn't that right?

25 A Which regulations are you referring
26 to?

27 Q The *MMAR* Regulations could have
28 been amended to make that a requirement. Isn't that

1 right?

2 A I'm sorry, could you repeat the
3 question from the beginning?

4 Q The *MMAR* could have been amended to
5 make it a requirement that the police and law
6 enforcement authorities be aware of the address of the
7 production site.

8 A That would have been a possibility.
9 However there are *Privacy Act* considerations that we
10 would have had to navigate because of the fact that many
11 of these production sites are in individuals' homes.
12 And therefore there are some *Privacy Act* restrictions as
13 I understood it at the time and as Health Canada
14 understood it at the time, that may make it difficult to
15 allow that to happen.

16 Q Well, it wouldn't have been
17 difficult to simply arrange that the information could
18 be provided or had to be provided on a confidential
19 basis. When the person applied for the licence they'll
20 be told that that was one of the conditions of the
21 licence. That could have occurred, couldn't it?

22 A I'm not a *Privacy Act* expert, but
23 we were -- Health Canada was advised at the time that
24 there were *Privacy Act* implications to requiring
25 disclosure of the personal information such as a
26 dwelling house.

27 Q I take it you're aware that other
28 governments, local or otherwise, have people who are

1 inspectors, and when people take out permits or get
2 licences they are able to go and inspect what's going on
3 pursuant to the licences without warrants? You know
4 that, don't you?

5 A Yes, I'm aware of that.

6 Q And that information could be
7 provided to law enforcement and fire authorities about
8 what's going on on a confidential basis? That's a
9 possibility, isn't it?

10 A I'm not aware of the details of
11 what is allowed or not allowed with municipal
12 inspections, but I suppose it is a possibility.

13 Q Okay. Paragraph 61 you refer to
14 again a large scale production, correct?

15 A Correct.

16 Q And again the only reason that such
17 large scale production was enabled was because of the
18 formula under the *MMAR* that the government put in place,
19 isn't that right?

20 A The formula in combination with the
21 increasing amounts of marijuana that were authorized for
22 daily use.

23 Q A daily dosage which is part of the
24 formula, isn't it?

25 A The formula is derived using the
26 daily dosage, yeah.

27 Q Right. So a change to the formula
28 could have helped to deal with that problem, couldn't

1 it?

2 A It could have helped to deal with
3 that particular problem, yes, but not with all of the
4 other problems that Health Canada wanted to address
5 through this regulatory package.

6 Q Okay. All right, you then at
7 paragraph 62, first of all you refer to Exhibit J, and
8 that -- sorry. Exhibit J pertains to unsolicited
9 correspondence, and in this case from municipal
10 officials, fire officials and law enforcement and
11 neighbours, correct?

12 A Yes, I don't know which --

13 Q Paragraph --

14 A I'm not quite sure which volume J
15 is in, but that's what the paragraph --

16 Q There's a collection of all of
17 those at Exhibit J. That's what Exhibit J is. Okay.
18 We won't go through them all in detail given the time,
19 but essentially you have complaints there, as you say.
20 In 64 you list various topics, but 66 you refer to a
21 letter from a B.C. municipal fire chief, for example, in
22 2011, correct?

23 A Correct.

24 Q No actual details are provided
25 there with respect to the particular issue or violation.
26 Simply totals. Is that fair?

27 A In that paragraph, yes, that's
28 fair.

1 Q Okay.

2 A I'd have to double check the letter
3 to know whether or not the letter went into more detail.

4 Q The paragraph doesn't go into the
5 details is my point, correct?

6 A The paragraph does not.

7 Q All right. The next paragraph, a
8 mayor from a B.C. municipality in December of 2012,
9 again complains generally about things but no specific
10 details in that paragraph. Fair enough?

11 A Correct.

12 Q Paragraph 68, we're not given a
13 date, are we?

14 A There's no date in paragraph 68.

15 Q And that quote, "Grow-op 24 times
16 more likely than normal home," did you know that that
17 was a well-known quote from Fire Chief Garis?

18 A No, I did not.

19 Q And again, you don't have any
20 numbers, statistics, or anything to support that
21 assertion there, do you? In paragraph 68? Health
22 Canada, that is.

23 A I have information that was
24 provided to me by fire chiefs, but has not been in
25 paragraph 68.

26 Q But you don't have information that
27 supports the 24 times more likely than normal in a home,
28 do you?

1 A I would need to refer to the letter
2 in this case to be able to confirm that.

3 Q So when you heard this initially,
4 you didn't do or have any staff do any calculations to
5 figure out if there was any basis for that assertion,
6 did you?

7 A My staff were not fire officials,
8 so I didn't have them look into that. But we did
9 receive information from fire officials that we
10 considered, along with other information, in the course
11 of this project.

12 Q Right. Paragraphs 69, you talk
13 about an Ontario municipal fire chief -- municipal fire
14 authority, correct?

15 A Correct.

16 Q Then if you go to 73 -- well, first
17 of all, just have a look at 69. The detail there refers
18 to a family with two young children, and it refers to
19 violations of Ontario codes and so on?

20 A Correct.

21 Q First of all, did you know that the
22 main source of fire in Canada were kitchens?

23 A No, I did not know that.

24 Q You didn't know that, okay. So if
25 you look at 69, and then you go to 73, are we talking
26 about the same place?

27 A I would need to see the letter in
28 its unredacted form. And if you point me to which

1 volume of the joint book this might be in, I could
2 check.

3 Q Well, I want you to first read 69,
4 and then read 73.

5 A I don't have enough in these
6 paragraphs to say whether it's the same person or not.

7 Q Well, they're both from Ontario,
8 correct?

9 A Yes.

10 Q They both allege violations of
11 Ontario codes, correct?

12 A Yes.

13 Q They both refer to incipient stages
14 of a fire, et cetera?

15 A Yes.

16 Q It appears to be a repeat of the
17 same information set out in 69 at 73, doesn't it?

18 A I'd have to check the exhibit to
19 confirm that.

20 Q All right. It doesn't seem that
21 apparent to you from just looking at the paragraphs?

22 A I cannot confirm it by just looking
23 at the paragraphs.

24 Q All right. And I take it, just as
25 with the equipment that we discussed in relation to
26 smell and that sort of thing, Health Canada didn't look
27 into the various types of equipment that are available
28 in the market to suppress fires, or prevent fires, or to

1 control the potential of a fire, or not through
2 temperature gauges and things of that kind.

3 A No, not specifically.

4 Q You were aware, I take it,
5 generally that such things are available, but not -- no
6 investigation was done again with a view to educating
7 the patient producers in that regard.

8 A I recall only one meeting during my
9 tenure at Health Canada where a -- somebody who held a
10 production licence dem -- or showed me literature about
11 such equipment. But that was only -- the only time that
12 I recall ever knowing about that equipment.

13 Q Okay. So, again, you get all of
14 these complaints, or letters, unsolicited, from various
15 -- in this situation, municipalities and so on. And
16 it's my understanding, correct me if I'm wrong, that if
17 a law enforcement issue was engaged, such as the
18 concerns referred to in paragraph 75, if it was an
19 individual or a neighbour or something like that, you
20 would refer them to law enforcement in the local area
21 for law enforcement to follow up, wouldn't you?

22 A Yes, we would.

23 Q But you didn't do that in relation
24 to other issues of concern that were being presented to
25 you, correct?

26 A It depended on the nature of the
27 issue. I believe we discussed earlier this morning that
28 for certain concerns that were raised we would indicate

1 that people should speak with their municipalities to
2 understand the bylaws and what their obligations under
3 the bylaws were. So we did not always direct
4 individuals to law enforcement, no.

5 Q You only did law enforcement if
6 there was a law enforcement issue apparent from the
7 complaint, isn't that right?

8 A If we received a complaint about
9 potential illicit activity, we would recommend that law
10 enforcement be engaged as it would be a law enforcement
11 matter and not a Health Canada matter.

12 Q Okay. Paragraph 75 refers to
13 street value of the marijuana being 10 to 15 dollars a
14 gram, you see that?

15 A Yes, I do.

16 Q And one of the concerns was the
17 value of cannabis in the illicit market and how that
18 might lead criminals to try and invade these medical
19 grow-ops and so on. Fair enough?

20 A We had been provided with
21 information from law enforcement in particular, that
22 this was a concern from their perspective, yes.

23 Q And I think you've told, maybe in
24 another forum, that you were advised by law enforcement
25 that the price was steady at \$10 a gram over the
26 previous ten years or something, is that right?

27 A I believe the figure was 10 to 15
28 dollars, and if my recollection is correct those are the

1 figures that were used in the Physical Storage Security
2 Directive for licensed dealers under the *Narcotic*
3 *Regulations* when they had to put in place security
4 requirements for storing other narcotics.

5 Q And I take it you have heard that
6 since you were in your capacity, that Washington State
7 and Colorado in the United States have legalized
8 cannabis?

9 A I'm aware that they're -- yes, I'm
10 aware of that.

11 Q And that there's now numerous other
12 states that have followed suit in terms of legalization?
13 Alaska, Oregon for example.

14 A I have not heard whether or not
15 others have taken the step, but I was aware of the
16 previous two that you mentioned.

17 Q You're aware that there was some 22
18 medical states where medical marijuana is approved in
19 the U.S.?

20 A I know that there are some. I
21 don't remember what the number is any more. I knew it
22 was --

23 Q At the time.

24 A -- around 17 at the time that I was
25 with Health Canada.

26 Q Okay. And I take it you knew from
27 your discussions with law enforcement and others that
28 the price of marijuana would go up and down depending

1 upon supply and demand in the market.

2 A To be honest, we never got into the
3 economics of it. The R.C.M.P. just gave us the rate
4 that they applied across the country as 10 to 15.

5 Q They didn't tell you that about 80
6 percent of the B.C. or the Canadian marijuana market was
7 going to the U.S. They didn't tell you that?

8 A I don't recall such a conversation.
9 It's possible that in some of the documents that they
10 provided to Health Canada that that information would be
11 there.

12 Q They never provided you with
13 information about how the market was diminishing and
14 people closing up their illegal grow operations because
15 they couldn't sell the stuff any more?

16 A No. I don't recall any of that.

17 Q So they didn't give you information
18 as to how the market was fluctuating. They just gave
19 you a fixed amount and that's what you went with, is
20 that right?

21 A Yes.

22 Q Okay. And just to touch on the
23 compassion clubs and dispensaries, I take it when you
24 were the Director and otherwise you knew that there
25 existed in British Columbia and elsewhere in Canada
26 compassion clubs -- first of all compassion clubs that
27 had existed long before the MMAR and the court cases.
28 You knew that?

1 A Yes, I did.

2 Q And you knew that more existed
3 throughout this program, including some that now call
4 themselves dispensaries?

5 A Yes.

6 Q And you knew that there was no
7 provision in the *Controlled Drugs and Substances Act* or
8 any Regulations allowing for such retail type of
9 operations, correct?

10 A That's correct.

11 Q But you know that the compassion
12 clubs, they were intended to supply -- the original ones
13 intended to be suppliers for the medical market in the
14 absence of any other supply.

15 A That's my understanding, yes.

16 Q And that there -- you knew, I take
17 it, that they seemed to be increasing in numbers,
18 steadily, these compassion clubs and dispensaries?

19 A I can't confirm that. Compassion
20 Clubs operated outside of the scope of the *CDSA* and the
21 *Regulations*. They weren't authorized by Health Canada.
22 And so I don't actually know how many there were or what
23 their positioning on the market would have been.

24 Q But you knew at least that they
25 would have an impact on the market and price, didn't
26 you?

27 A I'm not sure I understand your
28 question.

1 Q Well, you knew that in trying to
2 create this new regulatory model with Licensed
3 Producers, that having compassion clubs and dispensaries
4 out there might impact the viability of the market that
5 you were trying to create.

6 A I know that compassion clubs and
7 dispensaries came to our consultation sessions and some
8 expressed an interest in joining in to the regime that
9 we were creating, if they could meet the requirements.

10 Q But one of your objectives was to
11 ensure that there was a viable market for the Licensed
12 Producers, wasn't that right?

13 A We wanted to create the conditions
14 to allow for the establishment of a viable market, yes.

15 Q And a concern expressed was that if
16 people could continue to produce for themselves, or have
17 somebody produce for them, that that might affect the
18 viability of that market. Isn't that correct?

19 A That was the consideration, yes.

20 Q And the existence of compassion
21 clubs and dispensaries would also impact that market,
22 wouldn't they?

23 A The existence of compassion clubs
24 and dispensaries was outside of the scope of the *CDSA*
25 and the *MMAR*, so they were already operating outside of
26 the scope of the law. We had discussions with them
27 because we understood that some were interested in
28 joining into the *MMPR* regime, in which case they would

1 not be competing with the industry that we were setting
2 up. They would be applying for licenses just as other
3 prospective licensed commercial producers would be.

4 Q But you took no steps to change the
5 situation with respect to compassion clubs or
6 dispensaries, to bring them into the legal market,
7 Health Canada, did they?

8 A Anybody is welcome to apply for a
9 licence under the *MMPR* and as long as they can meet the
10 requirements, they can receive a licence under the *MMPR*.
11 Compassion clubs and dispensaries did indicate during
12 consultations that they were -- that some were
13 interested in joining this new regime.

14 Q So, do you agree that they -- their
15 existence would have an impact on the viability of the
16 Licensed Producer market under the *MMPR*?

17 A Yes.

18 Q Paragraph 76, there's a reference
19 to a concern expressed by the police about some people
20 having -- who had authorizations to possession and
21 personal production licence having criminal records.

22 A Paragraph 76, was that, sorry?

23 Q Yes.

24 A Correct.

25 Q There was no limitation in the *MMAR*
26 saying that people who are sick and approved by their
27 doctors wouldn't be eligible simply because they had a
28 criminal record, was there?

1 A There was no criminal record check
2 required for an authorization to possess, no.

3 Q Having a criminal record was not a
4 reason to deny access to cannabis as medicine, in other
5 words. Do you agree?

6 A The *Medical Marijuana Access*
7 *Regulations* did not deny authorizations to possess as a
8 result of criminal records.

9 Q It did not preclude people from
10 having -- being medically approved to consume cannabis
11 as medicine, correct? The existence of a record of any
12 kind.

13 A The existence of a record did not
14 stop a person from having an authorization to possess.

15 Q Okay. Or produce.

16 A If they met the other requirements
17 of the *MMAR*.

18 Q Okay. Or produce.

19 A Personal production -- a personal
20 production licence did not require a criminal record
21 check. A designated person production licence did.

22 Q Okay. Right. So, yeah. Good.
23 All right. Then moving on, 79 through 100 is basically
24 a -- you deal with unsolicited feedback from homeowners,
25 correct?

26 A Correct.

27 Q And there you deal again with the
28 issues of smell and odours and things of that kind. Am

1 I right?

2 A Those are elements, yes.

3 Q I mean there was a wide variety of
4 different things, including allegations of some criminal
5 activity by people. For example, paragraph 88 might be
6 one example, or paragraph 85.

7 A Yes, there were examples such as
8 vandalism and other --

9 Q Abuses by people being brought to
10 your attention, fair enough?

11 A Yes.

12 Q Okay. And again if it involved a
13 law enforcement or police matter, you would refer to the
14 local police. But otherwise you would refer them to the
15 local municipal authorities if it was an issue arising
16 within their jurisdiction.

17 A Yes.

18 Q Okay. Paragraphs 101 to 104 you
19 deal with feedback from program participants?

20 A Correct.

21 Q And again a few allegations from
22 people of various issues, including some abuses of
23 people selling excess, their excess and things of that
24 kind. Paragraph 102 for example.

25 A Correct.

26 Q And then at 105 through 120 of your
27 affidavit you deal with the issue of inspections for
28 compliance and enforcement, don't you?

1 A Correct.

2 Q And as I understand it, what you
3 discuss here in paragraphs 105 right through to 120,
4 including Exhibit K, the compliance document, was this
5 fact that suddenly there was this huge increase in the
6 number of people applying and being approved, to start
7 off with, correct?

8 A I'm sorry, which paragraph are you
9 referring to?

10 Q I'm looking at the generally 105 to
11 120 that deals with inspection, compliance and
12 enforcement.

13 A Okay. And the question again? I'm
14 sorry?

15 Q The problems started with the large
16 number of applicants being approved causing problems for
17 Health Canada to try and do inspections, correct?

18 A The exponential growth in the
19 program did absolutely create challenges for Health
20 Canada from an inspection perspective.

21 Q And very few inspections were
22 carried out under the provisions of the *MMAR*, isn't that
23 right?

24 A That's right.

25 Q There was this blitz that was done
26 in 2010 which is your Exhibit F, correct?

27 A Correct.

28 Q And so the rest of the affidavit,

1 the various paragraphs, goes into some considerable
2 detail about the significant cost to Health Canada of
3 having to conduct these compliance inspections, given
4 especially the numbers.

5 A Correct.

6 Q Okay. But then at paragraph 120,
7 the last paragraph on this issue, you describe the City
8 of Calgary carrying out inspections, don't you?

9 A Yes.

10 Q And it provides that the cost there
11 was some \$2,000 per inspection, isn't that right?

12 A That's right.

13 Q Whereas the costs that were
14 referred by you in relation to Health Canada was, for
15 example in paragraph 111 -- sorry, paragraph 110, to
16 check the 3,439 sites was \$27.4 million?

17 A That was an extrapolation that
18 that's what it would have cost if we were to check all
19 of those sites based on the cost of the exercise that
20 you've just referred to in 2010.

21 Q Okay. So we have the calculations
22 and extrapolations by Health Canada as to what it would
23 cost to have them carry out these inspections, but we
24 also have an example from a city where they were able to
25 carry them out at \$2,000 for inspection, fair enough?

26 A We would not be carrying out the
27 same inspections as Calgary, or any other city for that
28 matter, so I'm not sure that the comparison would be

1 accurate.

2 Q Okay. Did you know that many of
3 the cities and municipalities carry out inspections and
4 then they charge the person inspected for the cost of so
5 doing if the inspection produced anything?

6 A No, I didn't know that.

7 Q You didn't know that, okay.

8 A I'm not aware of municipal
9 inspection regimes.

10 Q No effort was made to try and work
11 something out with local governments using their ongoing
12 inspection powers to assist Health Canada in the
13 monitoring and otherwise dealing with any problems that
14 arose. Fair enough?

15 A The *MMAR* as a federal regulation,
16 the regulation of controlled substances is a federal
17 responsibility. It would not be appropriate to ask
18 another jurisdiction. It was Health Canada's feeling
19 that it would not be appropriate to ask another
20 jurisdiction to help it carry out its role. Inspections
21 that are conducted at a municipal level are for much
22 different reasons than for the production of controlled
23 substances.

24 Q So the answer is no arrangement was
25 worked out or considered.

26 A It was not Health Canada's opinion
27 that such an arrangement would be possible.

28 Q Okay. Paragraphs 121 through 126,

1 you grouped together program participation
2 dissatisfaction?

3 A Correct.

4 Q And you mention complaints about
5 Health Canada's -- this is 121 -- involvement in medical
6 decision-making. You see that?

7 A Correct. Yes, that's right.

8 Q And that's something that was being
9 done in relation to cannabis that was not being done for
10 any other drugs under the *Food and Drug Act*, correct?
11 Or *Controlled Drugs and Substances Act*, for that matter.

12 A That's correct.

13 Q Okay. And that's one of the
14 changes in the *MMPR*, is that the patient now goes to the
15 doctor, the doctor gives them a medical document, and
16 you don't have to go to Health Canada any more.

17 A That's right. That's one of the
18 changes.

19 Q Okay. There is discussion in these
20 paragraphs about delays and how long it took to process.
21 And obviously one of the factors was the increase in the
22 numbers that you were facing, fair enough?

23 A I'm sorry, can you --

24 Q Delays in processing applications.
25 You were suddenly faced with a large increase.

26 A Yes.

27 Q And that was causing delays in
28 processing, wasn't it?

1 A Yes, the large increase did cause
2 delays in processing.

3 Q Would it be fair to say, though,
4 that a major delay was also having Canadian police
5 checks done on individuals? CPIC checks?

6 A No, I don't believe that would be
7 fair to say.

8 Q That would only be done for
9 designated growers?

10 A And it wasn't Health Canada who
11 conducted those checks. It was --

12 Q Yeah, the police.

13 A -- the person applying for -- no,
14 the person applying for a licence had to go and have one
15 conducted and submit proof of that as part of their
16 application.

17 Q As part of the -- an *MMAR*
18 application.

19 A As part of the *MMAR* application.

20 Q Okay.

21 A But it was not something that
22 Health Canada undertook.

23 Q So Health Canada wasn't instructing
24 the police to do it in the process of approving the
25 applications.

26 A Not at all.

27 Q Okay. Lots of complaints from
28 people about the delays, fair enough?

1 A Yes.

2 Q Okay. Then you deal with the cost
3 of the administration of the program, and again, point
4 out in 127 that patients were being -- Health Canada was
5 being placed between the patient and the doctor and that
6 isn't done for any other drugs, correct?

7 A Correct.

8 Q And the rest of this provision --
9 part of your affidavit deals with the significant
10 administrative costs of running the program. And you
11 refer again to Exhibit F, the RAIS, and at 130 to the
12 cost/benefit analysis as well. Correct?

13 A Correct.

14 Q And this is the paragraph, 130,
15 that points out the government's supply at \$5 a gram
16 flat fee, no shipping. 130.

17 A Yeah, I'm just reading.

18 Q Sorry. Just --

19 A Yes, that's what 130 says.

20 Q Okay. And it shows that the cost
21 to the government was \$11 to \$12 a gram. So it was
22 about a 50 percent subsidy.

23 A Correct.

24 Q And then you deal again with the
25 uncollected accounts and so on. Fair enough? 131.

26 A Yes, that's true.

27 Q Okay. And then the next part of
28 your affidavit, paragraphs 133 through 145, deal with

1 the reform process. Am I right?

2 A Correct.

3 Q And so you take us through the
4 amendments and other factors in paragraph 133, 134, and
5 the options in 135.

6 A Correct.

7 Q And the options are summarized in
8 Exhibit M to your affidavit.

9 A Correct.

10 Q Or --

11 A That's correct.

12 Q There is also Exhibit N, which is
13 the report from Margaret Bloodworth, correct?

14 A Yes.

15 Q Okay. Now, that paragraph refers
16 to an analysis of international regimes. From your
17 earlier statements, were you involved in that, or not?

18 A There was a more significant
19 analysis of international regimes done by a policy group
20 within Health Canada that pre-dates my arrival onto this
21 file, so I don't have intimate knowledge of it, other
22 than knowing that it had been done. And that my own
23 team did -- was able to tell me how many medical
24 marijuana regimes there were in the world. So including
25 in the U.S. You referenced 22 earlier. At the time, I
26 believe it was 17.

27 Q You couldn't then give us the list
28 of the countries or anything like that.

1 A Not definitely any more,
2 unfortunately.

3 Q Okay. You know that at least
4 Israel and the Netherlands --

5 A I know Israel, the Netherlands.

6 Q United States.

7 A Many of the states in the U.S.,
8 yeah.

9 Q Okay. All right, and then at 136
10 you say, "The policy framework," and so you indicate
11 there that the essential -- the policy work led to the
12 development of a framework, and the major focus, or
13 principal focus if I can put it that way, was to treat
14 cannabis as much as possible as any other drug, is that
15 correct?

16 A It included treating marijuana as
17 much as any other drug. I'm not sure I would say it was
18 the principal focus as there were a number of -- there
19 were a number of considerations as outlined in that
20 paragraph. That was certainly --

21 Q Okay. Well, the other -- sorry.

22 A That was certainly a consideration.

23 Q The other considerations, though,
24 related to creating a new supply and phasing out
25 personal production and going back to being a regulator,
26 and then providing information to doctors, right?

27 A Yeah. Perhaps to be more clear, we
28 used the principle of treating marijuana as much as

1 possible like another prescription narcotic to set out
2 the policy framework for how we would develop the regs.

3 Q So am I right in understanding that
4 you're in this position at Health Canada and a policy
5 decision is made that this is the direction that the
6 government wants to go, and you're given the task of
7 bringing the teams together and so on in order to try
8 and put this into effect?

9 A Yes, after the Minister announced
10 her intention to reform the program, I was asked to take
11 on the new role of Director of Medical Marijuana Reform
12 and put in place the team and begin the work, the
13 significant amounts of work that are involved in the
14 federal regulatory process to develop the regulation.

15 Q A fundamental policy principle was
16 this treat it the same as any other drug.

17 A Yes.

18 Q Even though I take it you agree
19 that these other drugs are usually in a pill or capsule
20 type form.

21 A Yes, I would agree that they are
22 generally in that form.

23 Q They're not plants that people can
24 grow for themselves as their medicine.

25 A Marijuana is the only narcotic of
26 which -- which is -- currently which people are -- under
27 the *MMAR* anyway, were allowed to grow their own. But I
28 am also aware that many of these other prescription

1 narcotics do come from plants. It's just that they're
2 not grown by individuals in their homes.

3 Q So you know that in the case of
4 marijuana, a person could produce the medicine for
5 themselves cheaply, whereas you can't do that reasonably
6 with these other types of drugs, fair enough?

7 A I'm not sure what it would take to
8 grow these other types of plants, but I know that it's
9 not done.

10 Q No, but in order to produce
11 Oxycontin for example, most people wouldn't be -- it
12 wouldn't be easy for people to do that, would it?

13 A No, that would not be easy.

14 Q So there was that significant
15 difference between this drug, cannabis, and all those
16 other drugs that you're talking about, isn't that right

17 A There's not as much chemistry, if I
18 could say it that way, involved in this and in producing
19 oxycontin.

20 Q The drug cannabis is much more
21 comparable to some of the natural health care product
22 plants that are held out for medicinal value, isn't that
23 right?

24 A No, because the key difference
25 would be that the drug cannabis is listed as a narcotic
26 under Schedule II of the CDSA, and as a narcotic and a
27 controlled substance it has a different set of
28 parameters around its regulation.

1 Q Right, but you're just saying that
2 it's because -- and you use the term "narcotic" simply
3 because it used to be in the *Narcotic Control Act*, is
4 that right?

5 A A more appropriate term would have
6 been "a controlled substance".

7 Q You're not using the term
8 "narcotic" in the scientific sense, are you?

9 A No, I should have used the term
10 "controlled substance".

11 Q Okay. But leaving that aside, you
12 would agree that this is a medicine that people can
13 produce for themselves relatively easily, whereas those
14 other drugs that you're referring to, apart from natural
15 health care products, you can't produce easily for
16 yourself. Isn't that correct?

17 A Yes, that's correct.

18 Q All right. The balance of that --
19 your affidavit, in terms of the reforms going through
20 the following paragraphs, 141 and 144, you repeat there
21 the various intents and principles that Health Canada
22 was following, or intending to follow.

23 A Oh, paragraph 141 sets out the
24 policy principles behind the reform, yes.

25 Q And then 144, you have these
26 documents, the IAS, issues analysis statements, for a
27 whole variety of different topics that were considered.

28 A 143, yes.

1 Q That starts at 143.

2 A Yes.

3 Q And then all of those are listed as
4 exhibits to your affidavit, starting with Exhibit P,
5 right through to Exhibit GG. Am I right?

6 A That's correct.

7 Q Okay. At BB, and we don't need to
8 go to the actual exhibit, I don't think, if you just
9 look at your paragraph 144, and if you go to -- so, BB
10 is page 1484. So, paragraph -- well, it's not a
11 paragraph. It's page 1484. You there, as I noted it,
12 you deal with the question of extracts. In the middle
13 of that paragraph -- oh, it actually starts up -- you
14 see the word "in full awareness that persons wishing to
15 produce and market" --

16 A Yes.

17 Q If you drop down at -- it then says
18 "Health Canada was of the opinion that to
19 further expand the scope of products made
20 available outside of the *FDA/FDR* framework
21 would undermine the integrity of drug
22 legislation and regulation designed to
23 protect the health and safety of Canadians."

24 Correct?

25 A Correct.

26 Q So, correct me if I'm wrong, but
27 what I understand you to be saying is that,
28 notwithstanding the court decisions requiring Health

1 Canada to provide reasonable access to this cannabis as
2 medicine, Health Canada decided that they would limit it
3 to dried marijuana, because otherwise it would,
4 according to your affidavit, undermine the integrity of
5 the drug legislation, meaning the *Controlled Drugs and*
6 *Substances Act* and *Food and Drug Act*, new drug approval
7 process?

8 A Meaning the new drug approval
9 process and that there already is a system in place
10 whereby proponents who wish to bring a substance or a
11 therapeutic product to market have a regulatory system
12 to go through, which is the *FDA/FDR*. The exclusion of
13 medical marijuana from that was, as you say, the direct
14 result of the court process. But Health Canada is a
15 science-based organization and would not have regularly
16 taken a decision like that without being so directed by
17 the courts. And it has chosen to allow other products
18 to continue to go through the regime that is already in
19 place to bring approved therapeutic products to market.
20 Licensed Producers do have that option.

21 Q So am I right that if a person grew
22 some dried marijuana and put that dried marijuana in
23 their tea, or in hot water and lets it steep to make
24 tea, and then adds some milk or cream to the tea, that's
25 permissible under the *MMAR*, correct?

26 A The -- under the *MMAR* and under the
27 *MMPR*, possession is limited to dried marijuana. Health
28 Canada makes no recommendations as to how that should be

1 consumed. And there is no restriction in terms of means
2 that it can be consumed, orally or smoked.

3 Q But if that person then takes the
4 dried marijuana out of that tea, that leaves in the cup
5 what has come out of the dried marijuana into the cream,
6 or mainly water, isn't that right?

7 A Yes.

8 Q And can that person then consume
9 that which is extracted through the cream into the
10 remainder of the cup?

11 A There is nothing in the regulations
12 that restrict the way in which an individual can consume
13 the dried marijuana that they possess.

14 Q All right. But if they've taken
15 the dried marijuana out of the cup, did you know that
16 the process would have caused extractions of
17 cannabinoids and other things into what's left in the
18 cup once you've taken the dried out?

19 A I'm not a pharmacologist, but I've
20 been advised that that's what happens.

21 Q And so wouldn't that then be other
22 than dried marijuana that the person would be consuming?

23 A Health Canada wasn't concerned with
24 that and there was no -- there was nothing in the
25 Regulations that defined whether -- that that was a way
26 or not to consume their dried marijuana.

27 Q Okay. So Health Canada wouldn't
28 have a problem with that process I described.

1 A There's no limit -- there's no
2 recommendations that Health Canada makes for the
3 consumption of the dried marijuana that you possess.

4 Q Okay. All right, moving along
5 then, after that whole section dealing with the reform
6 process you reach, at 146, the consultations. You
7 explain the teams that were put together and you explain
8 the different processes: number 1 at 147, the
9 electronic process, and you describe as you continue on
10 all of the submissions that you got back in relation to
11 that first process. And the great majority of those
12 were from program participants, correct, as you
13 identified 150?

14 A From the electronic -- from the --

15 Q The electronic.

16 A -- web-based consultations, yes,
17 that is true.

18 Q Yes. And that's paragraph 150, and
19 as you say there, the comments from police, fire
20 fighters, medical commissions, governments at different
21 levels was insignificant, in that part.

22 A Statistically speaking, yes.

23 Q .01 percent.

24 A Mm-hmm.

25 Q Okay. And you then go into, at
26 151, the negative -- most of the respondents provided
27 negative comments about Health Canada's role, correct?

28 A In paragraph 151?

1 Q Yes.

2 A Yes, that's right.

3 Q And this is coming from patients,
4 am I right? Program participants.

5 A That's from program participants.

6 Q Primarily.

7 A Yes.

8 Q Okay. And so the concerns
9 expressed were control was one of them, correct?

10 A Correct.

11 Q Having personal autonomy over the
12 production of their medicine, their cannabis.

13 A Correct.

14 Q Another was the cost.

15 A Yeah.

16 Q Which we've dealt with in some
17 detail, that they feared it would be prohibitive.

18 A Correct.

19 Q And a third was many of them
20 expressed a therapeutic benefit in terms of the growing,
21 didn't they?

22 A The therapeutic -- I'm sorry, could
23 you repeat that last one?

24 Q Many of them also commented on how
25 they benefited therapeutically in growing the plants.

26 A Yes, we did receive such comments.

27 Q And then the fourth one was a
28 concern about how they had constructed the sites and

1 spent money on equipment and so on, and now they were
2 simply going to lose that investment, correct?

3 A Yes.

4 Q Because there was no provision for
5 Health Canada to reimburse them or anybody to reimburse
6 them for that.

7 A No, there is no provision.

8 Q And then another concern was
9 privacy in terms of having their medical information
10 going to a Licensed Producer, and then having the
11 cannabis mailed or shipped to them.

12 A That's correct.

13 Q At whatever their home address was.

14 A That's correct.

15 Q Okay. And finally there was also
16 concern from program participants that Health Canada was
17 taking the abuses by a minority and changing everything,
18 thereby negatively impacting the majority. Fair enough?

19 A Those concerns were expressed, yes.

20 Q And as you continue on in your
21 subsequent paragraphs, you say that while that was the
22 view of 55 percent of the program participants, there
23 were others who had other views that weren't supportive.
24 Fair enough?

25 A Yes, I'm just reading.

26 Q Sorry.

27 A Yes, that's accurate.

28 Q And again you refer to the smell

1 issue at 153 and the residential neighbourhoods issue at
2 154. Fair enough?

3 A I think that it might have been 152
4 and 153, but yes, that's --

5 Q Good. All right. And as you
6 conclude at 155, it was a wide variety of views both for
7 and against, and you provide examples in your Exhibit
8 JJ. Right?

9 A Correct.

10 Q Okay. You go into the second
11 process, the targeted stakeholders, and that's your
12 affidavit from paragraphs 156 through to 160, and
13 basically again these are compassion clubs, governments,
14 physicians, pharmacists, municipalities, and the law
15 enforcement. Fair enough?

16 A Provincial and territorial
17 ministries of health and public safety.

18 Q Sorry.

19 A I'm not sure if you mentioned that.

20 Q I missed that one, yes.

21 A But I believe you've caught
22 everything else.

23 Q And then each of your exhibits sets
24 out the summary or information coming from each one of
25 those groups, fair enough?

26 A Yes, that's correct.

27 Q Now, the one to do with physicians
28 and organizations, and we'll have to again -- it's a

1 bullet.

2 A Okay.

3 Q So it was 159 was the -- 1494 I'm
4 advised, is where it starts and then if we go over the
5 page, first there's the compassion clubs, the
6 provincial/territorial Ministries of Health, physicians
7 and if we go to the -- oh, I see there's a number of
8 letters that follow after. I'm now -- it's still under
9 physicians and surgeons, there's the September 29th
10 letter and then there's -- in the next paragraph a
11 September 26th letter.

12 A I believe those are referencing
13 meetings, but those are the dates.

14 Q Oh I see, okay. And in that one
15 September 26, there's a concern expressed by the doctors
16 about the potential for some medical practitioners to
17 over prescribe marijuana. You see that?

18 A Yes, that's there, yeah.

19 Q And so were you -- you were there
20 for these discussions?

21 A Yes, I was.

22 Q And so was this a situation of
23 doctors not knowing that there was no lethal dose and
24 that there wasn't the same consequences for over
25 prescribing marijuana as there would be for other
26 narcotics?

27 A I believe it would be more fair to
28 say that it was a result of unlike further narcotics

1 where there were clinical guidelines and there was a DIN
2 and a notice of compliance and doctors had more
3 knowledge as a result of that, they didn't feel as
4 comfortable using marijuana because they didn't have
5 same information that they would have for approved
6 therapeutics and that was the nature of their comments
7 in this regard.

8 Q So it didn't appear to be with a
9 concern that a patient might have too much that would
10 cause an overdose as with some other drug?

11 A No, that was not their concern.

12 Q Okay. And then going over to 161,
13 the third process. 75 days post-CGI.

14 A CGI. Yes that's --

15 Q Sorry, CGI.

16 A That's Canada Gazette 1.

17 Q Oh.

18 A It's a terribly bureaucratic term
19 from when we publish draft regulations.

20 Q Okay. It fits with *MMAR* and *MMPR*.

21 JUSTICE: The trouble is that I
22 actually know what she's talking about. We don't have a
23 life.

24 MR. CONROY:

25 Q Move down to paragraph 162. 1801
26 is the page. Sorry, 1501.

27 A 1501, yeah, I have it here.

28 Q 162, deals with program

1 participants and individuals Canadians again?

2 A Yes.

3 Q And there you say you've got the
4 number 14 -- 1,433 again who are referred to in 161
5 above, which gives a breakdown in 161. But the concerns
6 expressed over the elimination of the *MMAR* was the cost,
7 again was one of the factors?

8 A Capacity to purchase, yes, was one
9 of the factors.

10 Q Yeah. And then the next, 163,
11 again what was expressed by Health Canada in response to
12 I guess the grandfathering part in 162 was the concern
13 about it being in private dwellings, correct?

14 A Correct.

15 Q No references again to other
16 places besides private dwellings where patients could
17 produce without any of those problems that arise from
18 private dwellings, correct?

19 A No, but it -- I would point out
20 also that part of Health Canada's response was about the
21 exponential growth of the -- of the program, and so
22 there was not -- and the strain that this put on the
23 department's resources. So Health Canada's response was
24 no solely limited to the issue of dwelling places.

25 Q No, but in this paragraph that's
26 what's referred to particularly at the beginning of it,
27 correct?

28 A As -- yes, but it's also referring

1 to the strain on the department's resources.

2 Q In the latter part it goes on to
3 the growth and the strain aspect that you've mentioned?

4 A Yes.

5 Q Okay. And 164, the issue raised
6 there is that there seems to be a concern about people
7 not producing something -- seriously ill people
8 producing something that might not be good for their
9 health. Is that a fair way to summarize that? And you
10 refer particularly to Mr. Allard, one of his letters.
11 Do you see that?

12 A Yes, I do. I would summarize it by
13 saying that Health Canada wanted to ensure that people
14 who are using a substance for therapeutic purposes or as
15 their medicine that they should have access to something
16 that is grown in the same quality controlled conditions
17 as other therapeutic substances.

18 Q But again, there is no such
19 restriction in relation to natural health care products
20 for therapeutic purposes, or for health purposes, is
21 there?

22 A There are quality frameworks, quite
23 significant quality frameworks, in the regulations for
24 -- in all of the *FDA* regulations, which would include
25 the *Natural Health Product Regulations*.

26 Q But they're not about prohibiting
27 them from growing their own medicine, are they? Or
28 concern about what's in the medicine that they're

1 producing for themselves, natural health care products.

2 A That regulation is specific to
3 natural health care products that are being sold or
4 marketed.

5 Q Yeah. Only sold or marketed.

6 A Yes.

7 Q Fair enough? And again, the same
8 with respect to food. The person can grow their own
9 food and do it whatever way they want to, and they may
10 not know how to grow very well, but they have ways of --
11 means of learning how to grow, and they don't have to
12 depend upon Health Canada in order to do that, do they?

13 A No, but Health Canada's concern is
14 that with respect to marijuana for medical purposes, it
15 was being used as a medicine. And Health Canada wants
16 to make sure that Canadians who require its use have
17 access to quality controlled medicine.

18 I would also point out that it is a
19 controlled substance and so it is not entirely
20 comparable to growing natural health products that
21 aren't a controlled substance, or to growing food that
22 is not a controlled substance.

23 Q But they are -- the fact that it's
24 a controlled drug, though, has nothing to do with
25 whether or not the person grows the plant or the product
26 in a way that doesn't harm their health, does it?

27 A No, but it does speak to why Health
28 Canada believes that it should be regulated in the way

1 that it chose to regulate it under the *MMPR*.

2 Q But we know again that people can
3 produce their own food for themselves without any such
4 requirements.

5 A Yes.

6 Q And I take it you would agree with
7 me that most people, when they're trying to do something
8 that they're going to consume themselves, usually try
9 not to do something that's going to harm their health.

10 A I think that's probably true, yes.

11 Q And people who do it for sale in
12 the market out there, sometimes may not take as
13 significant precautions as an individual might do for
14 themselves.

15 A I'm sorry, I didn't understand your
16 last question.

17 Q People who are in the market who
18 are retail or commercial producers of a substance
19 sometimes don't take as much care as an individual might
20 do in producing for themselves.

21 A I wouldn't agree with that,
22 particularly because there are such significant quality
23 requirements in the regimes that Health Canada is
24 imposing on producers of these products to ensure that
25 Canadians are not harmed by them.

26 Q I take it you knew that there have
27 been a number of issues with some of the Licensed
28 Producers in relation to the use of pesticides, for

1 example?

2 A Since I have left the employ of
3 Health Canada in September of 2013, I don't have
4 knowledge about the Licensed Producer scheme and what's
5 going on with it in this --

6 Q So you have no knowledge of the
7 fact that there are recalls because of unsanitary
8 conditions, or pesticides, or things of that nature?

9 A Other than reading one article with
10 a title that suggested that there was a recall, I don't
11 know anything about that.

12 Q Okay. All right. The next section
13 is health care practitioners. And so you document what
14 happens in the meetings with them. And then you go back
15 over -- we come back to municipalities. We come to
16 municipalities, law enforcement, and the fire
17 individuals at 168 to 170. Am I right?

18 A Yes, that's right, sorry.

19 Q And then the provinces and
20 territories at 171 to 172.

21 A Correct.

22 Q And then the section to do with the
23 provinces and territories that at 171, which is page
24 1505 --

25 A Yes?

26 Q There is a reference there to --
27 towards the bottom of this paragraph. This is where
28 that reference is. I think it starts, "Concerns

1 included, lack of research, et cetera". And, sorry,
2 then it says, "Provinces and territories". Do you see
3 where I am?

4 A 171, "Provinces and territories
5 noted that a potentially higher..."

6 Q "...price for dried marijuana under
7 the proposed MMPR may put pressure on their governments
8 to subsidize the cost incurred by patients." That's
9 what we were referring to earlier. This is just the
10 spot where it appears?

11 A Yes.

12 Q Okay. And then at 173 you deal
13 with the prospective industry?

14 A Correct.

15 Q And the feedback coming from them
16 included, if we go to the middle of 173, first -- well,
17 if we start:

18 "Based on the price projected in Health
19 Canada's cost/benefit analysis of the
20 Regulations, which estimated that a Licensed
21 Producer, LP, producing 500 kilograms of
22 dried marijuana per year could set a price of
23 \$7.60 a gram and maintain a profitable
24 operation, many potential LPs felt that
25 registered clients, especially those in the
26 low income category due to a disability, may
27 not be able to afford the quantities they
28 need or are accustomed to."

1 Correct?

2 A Yes, we received that comment or
3 those comments during CG1, yes.

4 Q So you heard that from prospective
5 industry people, you heard it from people involved in
6 the provinces, and you heard it from many patients,
7 isn't that right?

8 A Yes. We also heard from
9 prospective industry that many of them felt that they
10 could provide compassionate pricing.

11 Q And you have no idea whether those
12 compassionate priced programs that they may or may not
13 have established are working currently?

14 A I don't know that, no.

15 Q All right, and then finally in
16 terms of this affidavit, you go on to deal with, at
17 paragraph 178 and following, basically describing the
18 process in terms of the *MMPR* and what went on there
19 moving forward, correct?

20 A Correct.

21 Q You deal with the injunction that
22 occurred at 184, I believe the middle of that paragraph.

23 A Yes.

24 Q And you set out those various dates
25 there in 186, the September 30th date and the March 31st
26 date, fair enough?

27 A Correct.

28 Q Okay. So just a final series of

1 questions, Ms. Ritchot, and we'll let you go. People
2 who did not have production licences and were not
3 allowed to purchase from Health Canada because they owed
4 them money, had no other lawful source of getting their
5 medicine, did they?

6 A They could have a designated person
7 produce on their behalf.

8 Q Well, they'd have to apply to
9 Health Canada to have a person do that for them,
10 correct?

11 A They could apply to Health Canada
12 and have a designated person apply for a designated
13 person production licence. I believe what you're
14 referring to is simply that they could not purchase
15 directly from Health Canada. But there were two other
16 supply options: designated person and personal
17 production.

18 Q But these were people who couldn't
19 afford \$5.00 a gram to Health Canada, correct?

20 A Again, I don't want to comment as
21 to what their financial situation was. I simply know
22 that we had accounts in arrears.

23 Q All right. But in order to get a
24 personal production licence, or have a designated
25 grower, they would have had to apply to Health Canada
26 and that would have taken some time, especially with the
27 numbers that you were dealing with and the delays you
28 were experiencing, before they'd get such a licence, if

1 they qualified, correct?

2 A The service standards were restored
3 by December of 2010, so it would not have been as
4 significant of a wait as it could have been in the past.
5 But yes, they would have had to apply for either a
6 personal use production or a designated person
7 production licence.

8 Q And in the absence, or while
9 waiting for that, they would have had no other lawful
10 supply of cannabis, would they?

11 A Yes.

12 Q And that's the same with under the
13 *MMPR*, if a patient gets a medical document and goes to a
14 particular Licensed Producer -- and first of all I
15 understand that there's a waiting list. Or do you know
16 anything about that?

17 A I'm sorry, I don't.

18 Q Okay, sorry, I'll leave that for
19 Mr. Cain who can hopefully answer that. Schedule 2.

20 The regulations for shipping. The *MMAR*
21 doesn't allow storage at a site other than the
22 production site or residence, correct?

23 A I would have to look at the *MMAR*.

24 Q You don't --

25 A It's been a while since I've seen
26 that regulation.

27 Q If you have volume -- or if you
28 could get Volume 10, tab CCC.

1 A Yes.

2 Q Page 3787 on the bottom right
3 corner.

4 JUSTICE: 37?

5 MR. CONROY: 3787.

6 A Yes.

7 MR. CONROY:

8 Q That sets out the *MMPR* provisions
9 regarding registration and ordering. Am I right?

10 A Correct.

11 Q And so at 103 it talks about
12 before registering as a client you have to obtain the
13 certain information that's listed there, correct?

14 A Correct.

15 Q And under B(1) the address of the
16 place in Canada where the applicant ordinarily resides.
17 Telephone number, *et cetera*.

18 A Yes, this is the -- in the *MMPR*.

19 Q *MMPR*, yes.

20 A Yes.

21 Q Under 2, if the applicant ordinary
22 resides in Canada but has no dwelling place, essentially
23 the address of the shelter, hostel or similar
24 institution that the person might be in?

25 A Correct.

26 Q And then if you go over to the
27 next page, F, paragraph F deals with shipping address,
28 doesn't it?

1 A Correct.

2 Q And it refers back to B(1) about
3 the address and mailing address in one and two there.

4 A Correct.

5 Q And then also provides for the
6 address of the health care practitioner, correct?

7 A Correct.

8 Q So those would appear to be the
9 only addresses that a Licenced Producer could ship to,
10 am I right?

11 A Correct.

12 Q Okay, thank you. In discussing
13 this business of the production sites in residences, you
14 talked about them not being constructed to have a
15 production site. That was one of the concerns, correct?
16 Not being designed or constructed to have this sort of a
17 thing in it?

18 A That residential dwellings aren't
19 typically constructed for the size of the grow -- of the
20 grow operations that we were seeing, that's correct.

21 Q So you would agree that if
22 somebody does construct a site that does take into
23 account the various things that might be required for
24 production of a substance, you wouldn't have any trouble
25 with that type of a site, would you?

26 A No, I wouldn't agree with that.

27 Q You don't agree with that?

28 A I don't agree with that.

1 Q You say that even if the site is
2 properly constructed, that that's still a problem?

3 A Many of the concerns that we heard
4 that led to the development of the *MMPR* included the
5 fact that residents didn't know that these sites were in
6 their communities and that they didn't want to have
7 sites in their communities that they did not know about.
8 So it wasn't simply that it was a dwelling place, there
9 were other -- there were other considerations, including
10 that neighbours didn't know, police didn't know,
11 municipalities didn't know about them and we've talked a
12 little bit today about the quality concerns that Health
13 Canada also had. So there was more than simply the fact
14 that it was a dwelling place that was properly equipped.

15 Q Okay, but if it was a dwelling
16 place and it was properly equipped, that would eliminate
17 the concern that you express in a number of places
18 throughout your affidavit about the dwelling places not
19 being properly constructed for that purpose, isn't that
20 fair?

21 A I'm not sure that I would agree
22 with that. There are more -- there were more problems
23 than simply the fact that they dwelling place itself was
24 not properly constructed for that type of production.

25 There were the problems that I just
26 listed, including that in neighbourhoods these
27 production sites existed.

28 Q I understand what you were talking

1 about. But if somebody constructed it properly, that
2 would eliminate that concern out of the other list of
3 concerns that you've mentioned. Isn't that right?

4 A It may eliminate one concern, but
5 it did not eliminate the ensemble of concerns that were
6 brought to Health Canada's attention and that it was
7 trying to address through the --

8 Q But I didn't ask you about those
9 other concerns, did I? I only asked you about the
10 construction of the site. Isn't that right?

11 MR. BRONGERS: Justice, the witness is
12 allowed to answer and provide an explanation for --

13 JUSTICE: Provide an explanation, but
14 I -- your friend wants to pin down whether if a house
15 was perfectly well-constructed and took care of all
16 problems, would that eliminate the concern about the
17 construction of the property. Is that right?

18 MR. CONROY: That's right.

19 JUSTICE: A simple question.

20 MR. CONROY:

21 Q Would you agree?

22 A I'm sorry, could you rephrase it?

23 Q That if the place was constructed
24 properly, that would eliminate that concern amongst the
25 other concerns that you've expressed.

26 A It would eliminate that concern.

27 Q Thank you.

28 Under the *MMAR*, Prairie Plant Systems was

1 prepared to produce more than one strain of cannabis,
2 but it was Health Canada that wouldn't allow them to do
3 so. Isn't that right?

4 A The -- I'm sorry, can you repeat
5 that?

6 Q Under the *MMAR*, Prairie Plant
7 Systems was prepared to produce more than one strain of
8 cannabis, but it was Health Canada that didn't permit
9 them to do so. Isn't that right?

10 A Yes. The contract restricted
11 Health Canada -- pardon me. The Health Canada contract
12 with PPS restricted PPS to selling one strain of
13 marijuana.

14 Q Do you know how many times the
15 Minister revoked licenses for production based on non-
16 compliance with the *Regulations*?

17 A I do not.

18 Q You knew that it had -- the
19 Minister had the regulatory authority to do that?

20 A Yes, I do know that.

21 Q If someone violated the *Regulations*
22 in respect of their production, the Minister had the
23 regulatory authority to revoke the production licence,
24 didn't he?

25 A Yes.

26 Q He could have -- or Health Canada
27 could have chosen to track additional information in its
28 database besides what it did track, couldn't they?

1 A Yes.

2 Q So it could have decided to track
3 smell complaints, it could have also decided to track
4 other data points.

5 A Health Canada could have tracked
6 that, but we would not have had the authority to do
7 anything about it, because the regulations did not give
8 us that authority, and that would have been the role of
9 municipalities.

10 Q Okay.

11 A So tracking the information would
12 not have helped us execute our role as regulator of the
13 *MMAR*.

14 Q Except that you could have created
15 an expert advisory committee as we discussed before, for
16 the patient growers, in order to provide them with all
17 sorts of information about equipment and other things to
18 minimize the impact on others. Isn't that correct?

19 A We could have -- we could have put
20 together an expert advisory committee, yes.

21 Q Because you didn't need regulatory
22 authority in the *Act* or *Regulations* to do that, did you?

23 A We did not, but it would not have
24 been consistent with the federal role. Those issues are
25 really not a federal role to regulate.

26 Q But you did do it for the doctors,
27 didn't you?

28 A We provided them with advice -- or,

1 pardon me. We provided them with an expert advisory
2 committee that could give them information about the
3 uses of medical marijuana, because doctors were put in a
4 situation where, unlike other drugs that had been
5 approved, they did not have information about dried
6 marijuana, yet they were being asked to play a role in
7 the regime.

8 Q You referred in your affidavit to
9 -- and I believe it's paragraph 10 about access by
10 patients to cannabis since -- medical cannabis since
11 1999. What you were talking about there was, that was
12 the first legal provision in Canada for access, am I
13 right?

14 A I'm sorry, can you remind me what
15 volume that was in?

16 Q 4, I think, is your affidavit.

17 A I just want to --

18 Q Paragraph 10 of that affidavit.

19 A In Volume 4?

20 Q Yes.

21 A Fifteen?

22 Q Page 1437.

23 A Thank you. And, I'm sorry, you'll
24 have to repeat the question.

25 Q Yes. You say there that patients,
26 or Canadians have access to medical cannabis since 1999.

27 A Yes.

28 Q And that was the Section 56

1 process, as I recall.

2 A That's correct, yes.

3 Q And so that was the first lawful
4 access mechanism, wasn't it?

5 A Yes.

6 Q But you knew, based on the
7 information that you've been provided, that Canadians
8 had been accessing cannabis for medical purposes a lot
9 longer than that?

10 A I am not sure what you mean, "the
11 information I had been provided".

12 Q Well, let me just -- did you know
13 cannabis was on the United States Pharmacopoeia as
14 recently as 1942?

15 A No, I am not familiar with that.

16 Q Did you know that it was on the
17 British Pharmaceutical Codex in 1949?

18 A I'm not familiar with that.

19 Q Did you know that Parke Davis,
20 Squib, Lilly, Burroughs, Welkin, Grimault and Sons and
21 others were producing fluid extracts of cannabis and
22 marketing them back in the 1800s?

23 A No.

24 Q So, you didn't look into any of
25 that historical availability of cannabis, including
26 tinctures and other extracts of cannabis that were
27 available in the last century?

28 A As I've said before, demonstrating

1 the safety and efficacy of a drug is not Health Canada's
2 role, it's the role of someone who wishes to bring it
3 forward to market. We made an exception in the case of
4 medical marijuana because of the court decisions.

5 Q But you knew that people had been
6 accessing it prior to 1999 for medical purposes
7 throughout the world, didn't you?

8 A Health Canada had no role in a
9 medical -- there was no medical marijuana regime prior
10 to 1999, so this would have been a law enforcement
11 matter prior to 1999.

12 Q So, Health Canada just didn't look
13 into it, is that that you're saying?

14 A I'm sorry, I can't speak for what
15 happened in 1999.

16 Q Did you know that it is back on the
17 U.S. American Herbal Pharmacopoeia from 2013 on?

18 A No.

19 Q So, when the program started, you
20 didn't have any facts -- Health Canada didn't have any
21 facts or rest of bits about the projected number of
22 Canadians that were consuming cannabis for medical
23 purposes at that time?

24 A I can't confirm. I wasn't around
25 in 1999.

26 Q But, the materials indicate that
27 Health Canada thought it was going to only be a small
28 number. Something like 300 I think you said in your

1 affidavit.

2 A Health Canada at the time, yes, did
3 think that it would be a small number.

4 Q Do you know what that was based on?

5 A No, I don't know what that was
6 based on.

7 Q The nature of the illness that
8 people might have and might allow them access to
9 cannabis was basically left up to the health care
10 practitioner, am I right?

11 A I don't --

12 Q In the early days with a specialist
13 consultation?

14 A There were three categories in the
15 early days. That went down to two categories, and now
16 the categories no longer exist under the *MMPR*. But,
17 yes, it was up to a medical practitioner in the forms
18 that a person would submit with their application to
19 identify what the ailment was for which marijuana for
20 medical purposes was being recommended.

21 Q Okay. But there is no limitation
22 to seriously ill as a requirement any more, is there?
23 Or if there ever was?

24 A The determination was always made
25 between a doctor and a patient. Health Canada had
26 categories but no longer does.

27 Q Okay. Do you have data for
28 authorizations to possess broken down in province by

1 province, the way you have for production licences?

2 A I don't have it with me, but that--

3 Q That is available?

4 A That would be available.

5 Q So, for Nunavut, you would be able
6 to tell us how many licences they have? Authorizations
7 to possess, if we wanted to know?

8 A The SAM database has that capacity,
9 yes.

10 Q Okay. And Health Canada is not in
11 any position, or it has no information that Mr. Allard,
12 for example, overproduced, diverted, produced unsafely,
13 or caused smells, correct?

14 A Not that I'm aware of, no.

15 Q That he was robbed or otherwise
16 victimized?

17 A No.

18 Q That he had a fire?

19 A No.

20 Q That he produced unsafe cannabis
21 for himself?

22 A No.

23 Q That he produced mouldy cannabis?

24 A No.

25 Q That he had negative consequences
26 from -- health consequences from consuming a cannabis
27 derivative product?

28 A No.

1 Q And the same is true for Ms.
2 Beemish?

3 A The same is true for Ms. Beemish.

4 Q Mr. Davey?

5 A Yes.

6 Q Okay. All right, now all of these
7 complaints and other things that you have in your
8 materials, in the affidavit and attached, are simply
9 what other people told you, fair enough?

10 A As well as the evidence that they
11 collected that they provided to Health Canada, yes.

12 Q They told you or Health Canada
13 about it? You're simply saying this is what we were
14 told. Fair enough?

15 A That's what the consultation
16 documents are about, yes.

17 Q You're not able to say that each
18 one of those things is true, are you?

19 A We have received evidence from
20 stakeholders that demonstrates that there are specific
21 incidences of much of what is in my affidavit. So I
22 would disagree with that statement.

23 Q But you can't say that all of the
24 complaints set out in paragraph 65 through 104 are
25 offered as true observations. They're simply
26 information that was provided to you and/or others in
27 Health Canada by these various people. Fair enough?

28 A It constitutes information that

1 was provided to Health Canada. Yes, we did not verify
2 every complaint that came to us.

3 Q You did no independent
4 verification, correct?

5 A I would disagree with that
6 statement. You referenced a verification exercise that
7 took place in 2010.

8 Q Oh, the complaint blitz?

9 A The inspections done in 2010.

10 Q Sorry, the inspection blitz.

11 A Yes.

12 Q Okay, thank you. Thank you that's
13 all I have.

14 JUSTICE: Mr. Brongers?

15 MR. BRONGERS: Thank you Justice
16 Phelan. I have no questions.

17 JUSTICE: Okay. Okay we will take our
18 break and back here in 15 minutes. You are free to go,
19 back to a colder place.

20 (WITNESS ASIDE)

21 **(PROCEEDINGS ADJOURNED AT 3:02 P.M.)**

22 **(PROCEEDINGS RESUMED AT 3:30 P.M.)**

23 JUSTICE: Mr. Brongers.

24 MR. BRONGERS: Thank you, Justice
25 Phelan. The forth of the defendant's factual witnesses
26 who is being cross-examined by the plaintiffs is Mr.
27 Todd Cain, and like the previous witness his current
28 title is different from the one he had at the relevant

1 time. He's now the Executive Director, review of
2 inspection function for the Department of Health. But
3 he is providing evidence in respect to his experience
4 that he had when he was assisting in the development and
5 the establishment of a Licenced Producer regulatory
6 framework and his title then was Executive Director,
7 Market Development for Health Environments and Consumer
8 Safety Branch.

9 His affidavit is in Volume 3 of the joint
10 book of documents. Starting at the beginning at page
11 620.

12 JUSTICE: What was the page, sorry?

13 MR. BRONGERS: 620. Right at the
14 start.

15 JUSTICE: Okay.

16 MR. BRONGERS: So I would ask that the
17 affidavit be marked as the next exhibit. I believe it's
18 29.

19 JUSTICE: 29.

20 **(AFFIDAVIT OF TODD CAIN MARKED AS EXHIBIT 29)**

21 MR. BRONGERS: Thank you, Justice
22 Phelan.

23 JUSTICE: Go ahead.

24 **TODD CAIN, Affirmed:**

25 THE WITNESS: Todd Cain, executive
26 director, Health Canada. Address 70 Columbine, Ottawa,
27 Ontario.

28 MR. BRONGERS: So Mr. Cain, please

1 answer the questions that will be posed to you by my
2 friend Mr. Conroy.

3 MR. CONROY: Thank you.

4 **CROSS-EXAMINATION BY MR. CONROY:**

5 Q So Mr. Cain, as my friend has
6 indicated, you're now the Executive Director, review of
7 inspection function of the Department of Health.

8 A That's right.

9 Q Health Canada?

10 A Health Canada.

11 Q And so review of the inspection
12 function, does that include all inspection functions
13 throughout the whole department of all kinds?

14 A Correct. Tobacco,
15 pharmaceuticals, *et cetera*.

16 Q Tobacco. Did you -- you've been
17 in the courtroom when I was examining Ms. Ritchot?

18 A Mm-hmm.

19 Q You heard my put a question to her
20 about tobacco?

21 A I remember that you asked a
22 question about tobacco.

23 Q You don't remember -- did you know
24 that people can produce 15 kilograms of tobacco on their
25 own place for themselves and anybody over the age of 18
26 years?

27 A I was not aware of that, no.

28 Q Okay. But tobacco is regulated by

1 the federal government, as well as, to some extent,
2 provincial governments -- a provincial government, I
3 suppose.

4 A I'm aware of the federal regime,
5 yes.

6 Q And you're aware there's quite a
7 regime federally of various programs that the federal
8 government is involved in trying to dissuade people from
9 smoking and help reduce smoking, because of the effects
10 on the health care system.

11 A Well, there's a very broad anti-
12 tobacco strategy, yes.

13 Q Yeah. Because we know that tobacco
14 can kill, don't we?

15 A That, I think, has been well
16 established through the medical research.

17 Q Thank you. So, you used to be
18 Executive Director, Market Development, for Healthy
19 Environments and Consumer Safety Branch, correct?

20 A Correct.

21 Q And that was from June, 2013 to
22 September, 2014.

23 A Also correct.

24 Q And so, it's been five or six
25 months since you were in that position.

26 A Yes.

27 Q Sorry, you're nodding, but you have
28 to just for the record --

1 A Yes. Verbalize, yeah.

2 Q But I take it you've been informed,
3 or have informed yourself, about anything that may have
4 been going on in the last six months so that the court
5 will be apprised of up-to-date information.

6 A That's correct.

7 Q Okay. So, let's deal with that
8 database issue. Let me just -- under the *MMAR*, or --
9 and continuing with Health Canada there was a database,
10 we heard, SAM 1, SAM 2 was the improvement. But
11 basically a hotline where the police could call when
12 they wanted to know whether what they were investigating
13 was legal or not.

14 A So, two separate issues. The
15 database existed to support the administration of the
16 program.

17 Q Yes.

18 A And then the information line
19 police was there so that they could be informed when
20 they came across a grow where they wanted to confirm
21 whether or not it was licensed by Health Canada.

22 Q And so somebody -- a person working
23 for Health Canada would man the hotline. If there was a
24 call, check the database and provide them with the
25 information.

26 A Correct.

27 Q And that's ongoing.

28 A So when the old regulations were

1 repealed, the SAM 2 database was essentially mothballed.
2 So whatever data was in there as of March 31st was left
3 in the database. There was a limited number of people
4 who had the capability to query the database in response
5 to inquiries from the police. So there's no ongoing
6 administration or maintenance of the database. It was
7 frozen in time on March 31st.

8 Q But if somebody calls -- somebody
9 using the hotline, a policeman or somebody on the police
10 behalf called using the hotline, they are provided with
11 information currently as to whether what they're
12 investigating is a legal operation or not.

13 A The information that the people in
14 the call centre are able to supply is essentially to
15 confirm whether or not a given site meets the criteria
16 set out in the injunction, that Justice Manson's
17 injunction to allow continuing right to grow, during the
18 period of the trial.

19 Q So, if I'm understanding that
20 correctly, policeman calls in, somebody at Health Canada
21 answers, goes to the SAM database -- the mothballed
22 database.

23 A Correct.

24 Q Looks up what's the name of the --
25 or the address or whatever of the place. And then
26 indicates to the policeman, (a) whether or not that
27 person had an authorization to possess on March 21st,
28 2014 when Justice Manson issued his order. That's the

1 first part.

2 A I forget the two criteria that are
3 in the order, but --

4 Q The second one being whether that
5 person -- if a personal producer, or if a designated
6 grower, had a valid permit to produce or grow for
7 someone on September 30th, 2013. Is that right?

8 A They would check the two criteria.
9 As I say, I don't recall the exact terms of the order.

10 Q Okay. So, if somebody fell
11 slightly between the cracks of that order, in that their
12 authorization to possess expired on March 20th, the day
13 before Justice Manson's order, but their personal
14 production licence was still valid back in September
15 30th, 2013, they would still have a valid production
16 licence but their possession licence would not be valid.
17 Fair enough?

18 A Well, the call centre is -- there
19 is authorized to confirm the two details that are
20 required under the terms of Justice Manson's injunction.

21 Q Right. So, if that situation
22 arose, and the person receives a call and says, "Well,
23 the production licence was valid on September 30th, but
24 the authorization to possess was not," then that person
25 at the call centre is telling the policeman that it's
26 not a valid site, aren't they?

27 A I'd have to look at the exact
28 wording, but it is entirely possible that they would not

1 be able to confirm that that site is covered under the
2 terms of the injunction.

3 Q And if a person had gone back to
4 their doctor to get an authorization under Regulation 53
5 of the *Narcotic Control Regulations*, in order to cover
6 their possession, because that part, the ATP, had
7 lapsed, or wasn't covered by the injunction, there is no
8 provision for Health Canada to make a record of that so
9 that if a policeman calls, they can say, "Oh, but they
10 have a valid Regulation 53 authorization." Am I right?

11 A There is no ongoing maintenance to
12 the SAM 2 database, so --

13 Q No ongoing maintenance, meaning
14 nothing is being added to it. Fair enough?

15 A The only thing that is happening
16 with it is queries in response to the information
17 requests of the law enforcement authorities.

18 Q But I take it -- sorry.

19 A Law enforcement authorities. Just
20 finish the sentence.

21 Q But I take it it would be
22 reasonably easy to facilitate adding that type of
23 information to it. Oh, he has a regulation 53
24 authorization.

25 A I have no idea what work would be
26 required to make the database operational again.

27 Q Okay, because I take it then, that
28 person at Health Canada, in the course of my occupation

1 I sometimes have cases where somebody has gone in to
2 what turns out to be a medical production site, but for
3 one reason or another, the police have been told
4 something and in they go. And then an affidavit is
5 prepared, and produced to the defence that sets out the
6 detail from Health Canada. Did you know that that was
7 still being done?

8 A Not familiar with this process.

9 Q Have you heard of Christina
10 McInnis?

11 A I've heard of her.

12 Q You've heard that she was the
13 person who dug up all of the information for Ms. Ritchot
14 in relation to the four plaintiffs?

15 A Yes, I read Madame Ritchot's
16 affidavit.

17 Q And you are unaware of the same
18 person or people in the litigation support group
19 preparing affidavits in the course of investigations or
20 charges against people for violating the *Controlled*
21 *Drugs and Substances Act*?

22 A I was not aware that that was part
23 of their activities.

24 Q You didn't know that they're
25 actually doing that and providing that paperwork?

26 A No.

27 Q Okay. Okay, and so looking at your
28 affidavit, after your initial information and you set

1 out your role and so on at paragraph 3 -- or your title,
2 sorry, at paragraph 3. You then say that what your role
3 included, which was determining the financial incentives
4 behind participating in licenced production, identifying
5 likely sectors of industry that may be interested in
6 participating, identifying and reaching out to research
7 applicants based on their participation in other Health
8 Canada programs. Is that right?

9 A That's correct.

10 Q And that involved -- well, as the
11 paragraph describes, you were in touch with perspective
12 licenced producers and others encouraging them to apply
13 and apply for research and development permits and so
14 on, and to assist them through the process?

15 A In making them aware of the new
16 regulations, the process, yes.

17 Q Okay. You, at paragraph 6, and
18 continuing through the various paragraphs, you simply
19 describe the transition to the new model from the *MMAR*
20 to the *MMPR*, don't you?

21 A Correct.

22 Q And you mention the process whereby
23 in order to be eligible, a person, a patient has to
24 obtain a medical document? This is your paragraph 7.
25 And must register with the Licenced Producer, presenting
26 that medical document, correct?

27 A In accordance with the regulations,
28 that's right.

1 Q Yeah. And so, if a person has an
2 approval for one gram of dried marijuana, the process
3 would be to try and determine, first of all, what is
4 available from the various licenced producers?

5 A Correct.

6 Q And the only way to do that, as I
7 understand it, is the web pages?

8 A Web pages, and they all operate
9 call centres as well.

10 Q Because they are not allowed to
11 otherwise advertize, are they?

12 A Correct.

13 Q So a person can't go and look at
14 the product, and smell it, or hold it, or anything like
15 that before they order the particular product?

16 A No, there is no sort of retail
17 aspect to this model.

18 Q Did you know that that is something
19 that does get done in dispensaries and compassion clubs?

20 A Yes.

21 Q Okay. So the person goes to the
22 web page, and the web page -- have you been keeping up
23 on what is going on on these web pages currently?

24 A Yes.

25 Q Do you agree with me that there is
26 an awful lot of listed "Unavailable" products?

27 A Well, our research indicates that
28 there is about 300 strains that the various Licenced

1 Producers have banked --

2 Q Yes.

3 A -- in terms of they have seeds, or
4 they have genetic material.

5 Q Yes.

6 A And there is about 100 of those
7 that are actually in production. Of those that are in
8 production, at any given time, yes, there very well may
9 be some that actually are out of stock. So it is a very
10 -- it is a very dynamic environment for sure.

11 Q Right, because at -- I think it is
12 paragraph 30, of your affidavit, and that is page 629.
13 You say "at this time there is overall sufficient supply
14 to meet the current demand. It's expected this will
15 continue, given the production capacity of current
16 producers and the expectation that additional producers
17 will be licensed in the future. But the ongoing
18 uncertainty in the market makes this challenging to
19 definitively predict." Definitely predict.

20 A Mm-hmm.

21 Q Correct?

22 A That's correct.

23 Q And so what you're talking about
24 there, as I understand it, is the total amount that is
25 being listed by the producers as being available. Not
26 breaking it down into individual strains, or individual
27 products.

28 A That's correct. The macro -- the

1 overall numbers, inventory continues to build every
2 month. And now sits at about 2700 kilograms of dried
3 marijuana in inventory as of December 31st, or January
4 30th, I forget which month. So, and that's been a
5 consistent pattern of producing more, collectively,
6 you're quite right, than what is being sold.

7 Q You see, I'm getting information
8 sent to me constantly by various people trying to access
9 these LPs, and one of the complaints is that they
10 experience having to wait a long time to get their
11 order. Were you aware of that problem?

12 A I've seen some correspondence that
13 aligns with that. In terms of the numbers that we
14 received from the Licensed Producers, they are required
15 to report on a monthly basis on unfilled orders, orders
16 that they weren't able to fill for whatever reason. And
17 from what we've seen, that looks like it's running at
18 about 4 percent of orders. So in a given month, there's
19 10,000 shipments. There might be 200 where they were
20 unable to fulfill because of either an inventory problem
21 or some other issue.

22 Q One person wrote and said they had
23 to wait two months before they were able to place an
24 order with a particular Licensed Producer. That's
25 something you've heard about that?

26 A I've seen correspondence to that
27 nature.

28 Q And so a person in that position

1 would have no other legal source except the Licensed
2 Producers, correct?

3 A Well, they would have the option of
4 seeking another medical document and registering with
5 another Licensed Producer.

6 Q Okay. It's explained to us that if
7 you don't register with a Licensed Producer, you can go
8 to another one with that same medical document. But if
9 you registered, then you've got to go back to the
10 doctor, get a new medical document to go to another
11 Licensed Producer.

12 A The *Regulations* require that the
13 Licensed Producer keep permanently on record the
14 original medical document, which is why the patient then
15 has to return to their physician to seek a new document
16 to change Licensed Producers.

17 Q So if there is this two-month
18 waiting period that this person experiences, because
19 they want a particular strain from a particular LP, but
20 it's not registering them yet, they're left in a
21 position where the only other possible option would be
22 to go to try and find another LP that maybe has the same
23 strain. Or -- well, that's their only other option, or
24 go to the black market.

25 A That's right. Yeah.

26 Q And similarly if people are having
27 complaints about the quality of the product that they're
28 receiving from the licensed producer, all they can

1 really do is complain to the licensed producer about the
2 quality. Am I right? And then go elsewhere, or try and
3 go elsewhere.

4 A That's right. If they can't
5 resolve the complaints with their Licensed Producer,
6 they can seek one of the other -- now, we're up to 25
7 licensees, so --

8 Q Has that stopped? Has the approval
9 of Licensed Producers stopped?

10 A No. Since the affidavit was filed,
11 there's been another two licensed, just in the last
12 couple of weeks. So they continue to be licensed.

13 Q Right. I had another complaint
14 saying that the person had requested a particular strain
15 and had called four companies that were advertising a
16 product they wanted to try. Three were not accepting
17 new patients, and the other company with the strain that
18 was available wasn't offering any compassionate pricing.
19 And so the people were complaining, saying we can't
20 access the product. Have you heard complaints of that
21 nature?

22 A Not anything along those lines, no.

23 Q Okay. There were a couple of --
24 let's go to that. I don't think you need to turn this
25 up. I take it you're aware that in May of 2014 Peace
26 Naturals had a voluntary recall of a batch of marijuana
27 after it tested positive for bacteria?

28 A I'm aware of four recalls. There

1 was three at the time the affidavit was filed, there's
2 been one, one recall since because issues had been
3 caught through the quality system that we put in place
4 that were serious enough to warrant trying to recall the
5 product from the market.

6 Q Fifty-five patients were effected
7 by the Peace Naturals' recall and told to discontinue
8 the use of that batch?

9 A I don't remember the specific
10 number of affected patients.

11 Q August 15th, Whistler Medical --
12 2014, Whistler Medical Marijuana Corp. recalled a batch
13 of White Widow.

14 A Correct.

15 Q And that was because it tested --
16 it was found to contain mould?

17 A That is my understanding.

18 Q Okay. And my recollection, let me
19 dig it up, is that in Jeannine Ritchot, the previous
20 witness, in her affidavit, she made reference -- and let
21 me see if I can do it from memory. She made reference
22 to three issues. Just tell me if you're aware. Two of
23 them involved Licenced Producers, unnamed, that had been
24 found to use to pesticides so they weren't in compliance
25 with the regulations. Did you know about that?

26 A I'm aware of two issues found on
27 inspect with pesticides over the course of the last
28 year.

1 Q Let me dig that up. No, this
2 isn't the right one.

3 In fact, let's do this given the time.
4 I'm going to ask my -- one of my assistants if they
5 would look through it just to find the paragraph to do
6 with the recalls. It's in Ms. Ritchot's affidavit and
7 then we'll plug ahead so that we make sure we try and
8 get you out of here on time.

9 So let's go to paragraph 8 of your
10 affidavit. There you assert that the *MMPR* -- do you
11 have that sir?

12 A Yes, I'm at paragraph 8.

13 Q Is intended to improve
14 significantly the way in which individuals access
15 marijuana for medical purposes, correct?

16 A Yes, that's what it reads.

17 Q And you have no personal knowledge
18 of how the *MMPR* has affected say any of the individual
19 plaintiffs in this case, do you?

20 A No, only from their affidavits.

21 Q At paragraph 10 of your affidavit
22 you discuss the intent of the *MMPR*, correct?

23 A Correct.

24 Q And they -- the regulations that
25 you refer to, Licenced Producer reporting requirements
26 and the guidance documents and so on, those are all to
27 do with people producing dried marijuana for sale to the
28 public, isn't that right?

1 A That's right. For Licenced
2 Producers operating under this new regulation.

3 Q Not to do with production for
4 one's self. At paragraph 25 under the plan for the
5 transition.

6 A Mm-hmm.

7 Q You refer to the information for
8 health care professionals and there's a discussion there
9 about dosage, correct?

10 A Yes.

11 Q Now, the sources of the dosage
12 information do not include the information gathered as
13 to -- from Canadians under the *MMAR*, in terms of what
14 doctors have been approving their patients for, do they?

15 A Well, this source doesn't cite that
16 as a --

17 Q This is sources other than Canada,
18 fair enough?

19 A That's true.

20 Q Okay. And by the way, I take it
21 you knew that in the part of the application form under
22 the *MMAR* that this information that you have at
23 paragraph 25, or some of it, was specified for the
24 information for the doctor in the place where the
25 decision would be made about grams per day? Did you
26 know that?

27 A That this reference material was
28 built into the form itself, under the *MMAR* that the --

1 medically authorization?

2 Q Well, a notice to the doctors that
3 this was the international or other information that
4 usually is 1 to 3 grams a day, did you know that?

5 A No, I do not recall that. What
6 we've seen under the new regime since it started is
7 usage patterns very similar to these numbers, with about
8 70,000 shipments to date. The average shipment is about
9 30 grams, which we are equating to about a gram a day.

10 Q Right.

11 A Although not everyone reorders
12 every month. So, if we actually look at the trend as
13 best as we can extrapolate the consumption pattern, it
14 is actually a little less than a gram. Closer down
15 towards the range that the Dutch have experienced under
16 their program. And the average authorization for those
17 who've registered under the new regime, is 3 and a half
18 to 4 grams a day. So, people are ordering about 25
19 percent of what they are authorized, is the pattern we
20 are seeing. That's an average, so there is lots of
21 variation in that. But --

22 Q Of course. But you were aware, you
23 were in the courtroom, and I assume you were aware of
24 the information in Ms. Ritchot's affidavit that the
25 average authorization was somewhere between 17, 18 grams
26 a day, on average?

27 A Yes, I am aware of that number.

28 Q And that she set out the table with

1 all the different amounts for being authorized by
2 different doctors for different patients?

3 A Yes, I've seen those statistics.

4 Q And you knew -- correct me if I am
5 wrong, that the information -- when the doctor filled
6 out the application form under the *MMAR*, he would have
7 to specify in a box what the grams per day would be?

8 A Right, the same as they have to do
9 under the new --

10 Q You are familiar with that form?

11 A Yeah, I have seen that form in the
12 past, yes.

13 Q What I am saying to you, did you
14 know that this information about the 1 to 3 grams, the
15 international information was actually set out right on
16 that form, right where the doctor has to fill in the --

17 A I didn't remember that about the
18 form.

19 Q You didn't know that?

20 A No.

21 Q Okay, all right. All right, so,
22 the source of that information also wouldn't include
23 anything to do with what was brought from Prairie Plant
24 Systems, for example, the dosages approved by physicians
25 when they went to Prairie Plant?

26 A No, but we did look at those
27 statistics, and the pattern of authorizations and
28 purchases that we saw over the many years of the Prairie

1 Plant System contract was very similar to what we're
2 seeing now. About 4 grams a day, authorized, and 1.2
3 grams was the average purchase that we saw under the PPS
4 contract.

5 Q Okay. Paragraph 31, you talk about
6 the contingency planning being guided by the principle
7 that a legal supply of dried marijuana for medical
8 purposes must be reasonably accessible?

9 A Yes.

10 Q And by that you mean enough should
11 be available for all medically approved patients,
12 correct?

13 A Correct.

14 Q Okay. At paragraph 22, going back,
15 you provide us with some details of the applications,
16 and you give us some statistics. Sorry, I don't think
17 it is 22.

18 A Thirty-two, I think it is.

19 Q Thirty-two. Sorry, thank you.
20 Yeah, there we are. Sorry. Exhibit 32.

21 Now, that's of course as of the date of
22 your affidavit, which was January 15th, 2015. Can you
23 give us an update on those?

24 A Some of the numbers I have updates.
25 So those statistics were at the end of December, and the
26 last numbers I have is that we've received 1250
27 applications. So it's gone up by about 60 in the
28 ensuing eight weeks. And there is 25 that are now

1 approved. And I think it's about 330 that are still in
2 the review process at one of the various stages of
3 review.

4 Q And so you've set out here at 32
5 where various applications fall.

6 A Mm-hmm.

7 Q In the process. Are you familiar
8 with Eric Nash of Island Harvest?

9 A Yes, I am.

10 Q And are you familiar with his
11 particular application?

12 A I haven't seen his application
13 document, no. I'm aware that he has applied and there's
14 been a lot of correspondence. I spoke with him on one
15 occasion or two occasions.

16 Q Did you know that he had filed an
17 affidavit in these proceedings?

18 A Yes.

19 Q As a fact witness setting out his
20 experiences?

21 A Yes, I did.

22 Q And did you have an opportunity to
23 look at that affidavit?

24 A I read the affidavit.

25 Q And so you know that in particular
26 at paragraph 98 -- and perhaps the witness could be
27 given that. And that would be at -- it's Volume 2, tab
28 9. Of the volume -- sorry. Yeah, Volume 2, tab 9.

1 MR. BRONGERS: Page 381.

2 MR. CONROY: Thank you.

3 Q And so the particular part of his
4 affidavit that makes reference to you in particular is
5 paragraph 98. And so if you've read that, you know that
6 what he is saying is that he read your previous
7 affidavit of the injunction application, and the
8 exhibits he refers to at 98. And at 99, you see that he
9 says that there are several discrepancies between his
10 experience of the process that you describe, and he goes
11 on, then, at 100 referring to your previous affidavit
12 about the industry engagement and streamlined process
13 for processing applications, and says that doesn't
14 reflect his company's experience, with a prolonged and
15 ambiguous *MMAR* application process.

16 So just stopping there, you remember
17 reading that?

18 A Yes.

19 Q And then he goes on, refers to
20 paragraph 22 of your affidavit. "The case management
21 approach was also adopted, which involves appointment of
22 case managers to work with applicants to complete the
23 review process and to enhance timely processing of
24 applications." And he then goes on at 102 to say that
25 on several occasions he spoke with Health Canada's
26 office of the controlled substances and licenses and
27 permits division, in regards to their file and was told
28 verbally and in writing that there were no case managers

1 assigned to individual files to assist applicants by
2 answering questions or providing timely file processing.

3 So he's looked at your earlier affidavit
4 which said there were case managers.

5 A Yes.

6 Q Not been his experience. Can you
7 comment on that?

8 A Sure. The -- at the time of the
9 previous affidavit we attempted a case management system
10 that was in place from about December until March, and
11 it only applied to applicants who had reached the end
12 stages of the application process. So, those applicants
13 who were in that pre-licence, licensing phase would have
14 a specific contact person.

15 It was discontinued after March 31st of
16 last year, because it wasn't found to really have a
17 substantial impact on speed with which the applications
18 were processed.

19 Q Okay. You've read the rest of his
20 affidavit and you understand the concerns or problems
21 that he's expressing with attempting to forward his
22 application?

23 A Yes, I've read the affidavit.

24 Q And in particular the sudden
25 change from having to have a security level 5 to a
26 security level 7?

27 A Yes.

28 Q Can you comment at all on the

1 problems that he appears to be having as a person who's
2 been -- from his affidavit you can tell has had a long
3 standing involvement with Health Canada on various
4 issues?

5 A Yes. I mean the overall situation
6 with the licencing process, it continues to progress.
7 It's a new system. The licencing unit that's referred
8 to in my affidavit and in this affidavit has been
9 updating their policies, adapting procedures based on
10 what they've experienced in the early licences that were
11 granted and the compliance and enforcement programs and
12 they've tried to integrate that back into the
13 application process.

14 There is lots of work under way to try to
15 update guidance, so that some of the frustrations that
16 Mr. Nash and some of his fellow applicants have
17 experienced is resolved, but it is a new process and
18 we're working through a lot of the challenges that are
19 outlined here.

20 Q Because there are -- there have
21 been other reports in the news and otherwise about other
22 people being upset and concerned who want to become LPs.
23 You're aware of that?

24 A I am aware of that.

25 Q People threatening lawsuits and
26 all sorts of things.

27 A Yes, I'm aware.

28 Q In fact I think there is on

1 lawsuit outstanding, or do you know that?

2 A I'm aware of one.

3 Q Okay.

4 A Yeah.

5 Q Mr. Nash at 108 says it's taken
6 now approaching 18 months for his. Is that a fair or
7 typical waiting time in order to try and get approved?

8 A It's a wide variation in terms of
9 what the total time is to have approval. I believe that
10 is correct in his case. It's been about a year and a
11 half.

12 Q You see my memory is, is that at
13 the time of the injunction in March of 2014 there was
14 something like 11 or 12 Licenced Producers, am I right?
15 Roughly?

16 A Approximately, yes.

17 Q And here we are in March of -- the
18 beginning of March of 2015 and you say there's 25.

19 A Correct.

20 Q And they're not all able to sell
21 to the public, are they?

22 A Correct. There's a small group of
23 the Licenced Producers who are in a phased licencing
24 process, who will eventually, assuming they meet all the
25 criteria, be able to sell to the public. There are a
26 couple other Licenced Producers who have established
27 themselves as a supplier to other Licenced Producers.
28 They'll never sell directly. They'll -- they're sort of

1 a production only type facility and they will sell their
2 product to a Licenced Producer who as the patient
3 relationships.

4 Q The object, though, is to have as
5 many Licenced Producers as possible so that there's
6 competition in the marketplace in order that the prices
7 come down. Is that the idea?

8 A The process is set up to deal with
9 whatever applications come in, ensure that they meet the
10 requirements of the regulations. Beyond that, the
11 broader policy framework was to establish the conditions
12 for a competitive market.

13 Q Right, that was one of the
14 objectives of Health Canada, was to try and ensure that
15 there was going to be a viable competitive market for
16 the Licenced Producers.

17 A Correct.

18 Q And as I understand it, that was
19 one of the concerns about people continuing to be able
20 to produce for themselves or have designated growers do
21 that for them, is that how that might impact on that
22 market?

23 A Well, the overall change in the
24 regulatory regime, I believe, was done for a whole host
25 of reasons. There was -- this new system, as my
26 affidavit suggests, was meant to address issues of
27 public safety, quality and patient access. So there was
28 a broad set of considerations that led to this

1 transition.

2 Q But one of them was establishing
3 this viable market for the LPs and a concern about how
4 the patient producers might impact on that economic
5 market?

6 A I wouldn't describe that as one of
7 the policy outcome -- objectives.

8 Q No policy outcomes, but concerns.
9 In terms of -- the policy objective, or one of them was
10 to establish this viable economic market for the LPs,
11 correct?

12 A That is correct.

13 Q And in look at that policy, a
14 concern that arose was the continued existence of
15 personal producers and how that might impact that
16 aspect.

17 A I'm not aware that that was a
18 significant consideration in the --

19 Q Not aware. Okay.

20 A -- in setting the rules for the
21 new regime.

22 Q And similarly was there was a
23 concern about compassion clubs and dispensaries and how
24 that might impact on that posed economic market?

25 A Not, not that I'm --

26 Q Not that you know?

27 A No.

28 Q Okay. All right. So, I take it

1 you don't disagree with what Mr. Nash is saying in his
2 affidavit. You're saying that it is just part of the
3 process of a new process of developing licences for
4 people and he just happens to be going through some of
5 the problems that exist, is that fair?

6 A Some of the growing pains?

7 Q Yeah.

8 A I mean, there has been a whole host
9 of different experiences. Some people have been able to
10 go through the licencing process in a matter of a few
11 months.

12 Q Yes.

13 A And others have been waiting for
14 longer than Mr. Nash to have their application resolved.
15 S, there is a lot of variables that affect the time it
16 takes to consider and approve any one of these
17 applications. The fact circumstances are very widely
18 varied.

19 Q And so you say it is not
20 necessarily typical, it's just, again, part of the
21 growing pains and happens to be the ones Mr. Nash is
22 experiencing?

23 A Well, as I said, there have been
24 Licenced Producers who have moved through the process
25 very, very quickly, and others where it has taken a
26 substantial period of time to get to either a rejection
27 of their application or to an approval.

28 Q Okay. But as you say, he is

1 correct, there is no such thing as case managers,
2 because it was abolished back in March of last year?

3 A Correct.

4 Q Okay. All right, paragraph 37 of
5 your affidavit, you talk about the collective projected
6 annual production capacities. And we note there that
7 you say that the capacity of the 23 LPs was over 25,000
8 kilograms, but in your affidavit of February 7th, there
9 were only 8 LPs and they had a capacity of 31,000
10 kilograms. So, there was more, 6,000 roughly,
11 difference between, if my math is correct, between the 8
12 producing 31, and the 23 producing only 25?

13 A Yes. So, that links to my earlier
14 comment around adjustments that we've made to the
15 licencing process over the course of the last year.
16 What we've done is on renewal, we've adjusted a number
17 of the Licenced Producers maximum production, based on
18 the patients that they've acquired, the pace with which
19 they are getting new clients, new patients, and the
20 growth of production within the facility, so that the
21 licence more closely matches what they actually have the
22 potential to produce.

23 So, in some cases there were licences
24 originally granted that were far in excess of what a
25 Licenced Producer could reasonably be expected to
26 produce in the one year cycle of the licence. So,
27 they've been adjusted to be more realistic.

28 Q Some of the LPs were projecting

1 inaccurately and giving wrong or optimistic estimates,
2 would that be a fair way to put it?

3 A Well, they asked for their long-
4 term production goal, which may have not been their plan
5 to produce in the last year, but it was what they hoped
6 to reach eventually. So, what we've done is kind of
7 graduate the licences, so that the amounts go up as
8 their actual experience shows that they need the
9 capacity in their licence.

10 Q Okay.

11 A What we've seen over the last year,
12 with about 15 months of production, the Licenced
13 Producers have been able to register about 17,000
14 patients, and the collective production over the last 15
15 months is somewhere around 2,000 -- sorry, the
16 collective sales is around 2,000 kilos. So, the
17 capacity that is reflected here is easily able to
18 accommodate what we've seen so far, and even looking at
19 the growth rate, we've been adding patients at about
20 1400 to 1600 new patients a month into the collective
21 Licenced Producers. There is a lot of room to
22 accommodate that, and that is not even counting new
23 Licenced Producers as they join the market.

24 Q As you say at 36 of your affidavit,
25 and I take it this is fairly current, maybe subject to
26 what you might have said a little earlier, 15 of the 23
27 are -- current LPs are ready to register clients and
28 distribute. So, the remaining eight are not?

1 A Yeah, we are up to 25 Licenced
2 Producers now. I am not aware that there has been a
3 change in the number that are authorized to register
4 patients.

5 Q Okay. Probably still 15.

6 A Or it has gone up by at most one.

7 Q Paragraphs 39 and 40 of your
8 affidavit, you get into this issue of the compassionate
9 pricing. And if we can go to that, do you have any more
10 current information than December of 2014?

11 A The only change to this that I am
12 aware of is another Licensed Producer named CanTrust has
13 introduced a compassionate pricing program.

14 Q Okay. That's the only one?

15 A That's the only one I'm aware of.

16 Q Do you know if there have been any
17 other amendments or discontinuance of what's contained
18 in your affidavit?

19 A No other changes that I'm aware of.

20 Q Okay. And as far as you know,
21 they're all continuing?

22 A Yes.

23 Q Okay. So, when we look at the
24 Metrim, the first one, 30 percent off all strains on the
25 first 30 grams per month. So it's only a discount for
26 the first order and then you'd have to pay for the rest
27 at the full price, is that the idea?

28 A I know what's reflected on the --

1 in the annex. Can you just let me catch up to you --

2 Q Oh, yes. In the G, was it? I
3 think it's tab G. The web pages. Is that what you're
4 referring to as the annex?

5 A Yeah.

6 Q Okay. Just for the benefit of
7 everybody, it's tab G, which is at page 744. Have that?

8 A Yes. But the compassionate pricing
9 is towards the end of that annex.

10 Q Okay. Right at the very end of the
11 actual exhibit. I see.

12 A I see Metrim at page 806, if I'm
13 looking at the same document.

14 Q Okay.

15 A Yeah.

16 Q So starting at page 806 of that --
17 of Exhibit G to your affidavit, you first talk about
18 Metrim assisted pricing program, correct?

19 A Yes.

20 Q And so it talks about approved
21 clients, doesn't it?

22 A Yes.

23 Q So Metrim has to approve you under
24 some criteria before you get that 30 percent. Is that
25 right?

26 A Yes.

27 Q And you have to complete a form and
28 prove that you're the recipient of a federal or

1 provincial income assistance program, and that you have
2 an annual income of \$30,000 or less. Right?

3 A That's what I understand from the
4 web page.

5 Q So it's a little more than just a
6 30 percent discount on the first order of 30 grams,
7 isn't it? There's a formal criteria that they apply
8 before you're eligible for it.

9 A There is a means test, yes.

10 Q Yeah. And the next one is Peace
11 Naturals. If we just go through them here. They have
12 what they call an accessible customer service plan. Is
13 that correct?

14 A Yes.

15 Q And back at 39 of your affidavit,
16 you say it's \$3 per gram for those on a disability
17 allowance. So that doesn't appear in the web page, but
18 that's information you got from them somewhere, is it?

19 A Yes. We requested the document
20 that they refer to in this.

21 Q And so a disability allowance would
22 be some sort of disability pension? As opposed to just
23 old age pension or something like that?

24 A That is my understanding.

25 Q Okay. And then the next one is
26 Tweed. And if we go to the web page first, which is the
27 page after -- it's now 808. That deals with their
28 compassionate pricing, and it says 10 percent of Tweed

1 production priced at \$5 a gram or less, including
2 shipping?

3 A Yes.

4 Q And 20 percent as a compassionate
5 pricing, promising a 20 percent discount for eligible
6 customers.

7 A Yes.

8 Q And then the eligibility criteria
9 is set out underneath at A and B there, for example.
10 Correct?

11 A Yes.

12 Q And so in your affidavit you say 20
13 percent discount for customers receiving financial
14 assistance or with an income below \$29,000. Fair
15 enough?

16 A Yes.

17 Q And that's actually referred to
18 there back at the web page, the \$29,000, isn't it?

19 A Correct.

20 Q And so each one of these, you have
21 put the web page -- if we just stay with the web page,
22 the next one is Delta 9 Biotech. And it says -- well,
23 halfway down the page it talks about its compassionate
24 pricing program. And it talks about 50 percent off for
25 low-income and disability patients. Fair enough? And
26 they explain how it works?

27 A Yes.

28 Q And so, if we carry on, for each

1 one, the description of the nature of their
2 compassionate pricing is set out under each of these web
3 pages, and what I take it is you've set out the ones
4 that do have compassionate pricing, and they are all the
5 ones that appear in the copies of the web page and all
6 the others do not, is that the idea?

7 A The other ones, we are not aware
8 that they have a compassionate pricing program.

9 Q Yeah. All right.

10 A Yes, 8 of the 15 were the ones we
11 were able to find evidence of a compassionate pricing.

12 Q Okay. I don't know if you are
13 aware of the details of the individual plaintiffs. For
14 example, Mr. Davey, did you know that he was getting
15 disability -- a settlement allowance in the amount of
16 \$5,000 a month, for example?

17 A I don't recall the specific incomes
18 of the plaintiffs.

19 Q If he did, that would obviously not
20 qualify for any compassionate pricing, fair enough?

21 A From my survey of these
22 compassionate pricing programs.

23 Q I think Mr. Alexander's evidence
24 was he was making about \$32,000 a year, so that would
25 put him just above the cap or the 29 or the 30, wouldn't
26 it?

27 A I don't know that I could say that
28 definitively without looking at the details of his

1 situation and the plans.

2 Q Ms. Beemish, did you know anything
3 about her situation?

4 A I did read your original factum,
5 but I don't recall the specifics --

6 Q She would obviously qualify if it
7 was just her on her own because of the \$600 a month
8 disability pension. She'd fit within what we've looked
9 at obviously.

10 A Again, I'd have to match up her
11 situation with the programs, but --

12 Q All right. Okay, but the nature of
13 these programs is left up to these individual private
14 companies and are subject to modification depending upon
15 their position, fair enough?

16 A That is correct.

17 Q There is no legislation that
18 requires them to do this, is there?

19 A None.

20 Q There is no provisions anywhere
21 that make it a necessary thing that they have to do for
22 these patients?

23 A There is no requirement in the
24 regulations.

25 Q Yeah. And it doesn't -- the
26 information that we have from their web pages or that
27 you've been provided, doesn't give us the detail with
28 respect to pricing restrictions on certain strains, or

1 this sort of thing, does it? One would have to go and
2 inquire of them in each particular case, wouldn't you?

3 A We don't have any more detail than
4 what is reflected in these annexes.

5 Q Okay. Paragraph 42, you deal with
6 inspection of private dwellings not being possible under
7 the *MMAR* without the consent of a home owner, or a
8 warrant. That was limited to private dwellings, wasn't
9 it?

10 A I don't recall the exact wording of
11 the inspection provision of the *MMAR*, but it did
12 specifically say a dwelling, I believe it was a dwelling
13 could not be entered without permission from the
14 resident.

15 Q Or a warrant, in the absence of
16 permission.

17 A It required permission.

18 Q In the absence of permission, you'd
19 have to get a warrant, is that right?

20 A Well, I know the language of the
21 Regulation. Required permission, whether you could
22 supersede that with a warrant, that is beyond my
23 knowledge.

24 Q You don't remember that being in
25 the -- you don't remember that being a requirement in
26 the *MMAR*, that if you didn't get permission, you'd have
27 to get a warrant?

28 A I don't --

1 Q Okay. But, I take it from your
2 knowledge, that didn't apply to searches of
3 outbuildings, barns, greenhouses, other outdoor
4 locations, they could all be inspected without consent
5 or a warrant, isn't that right?

6 A I don't recall whether the
7 regulation differentiated between residence and other
8 types of buildings.

9 Q Okay.

10 A In terms of requiring permission of
11 the owner.

12 Q With respect to the tracking of
13 Licenced Producer supply, you don't provide any
14 information in your affidavit on whether any individual
15 Licenced Producer can meet its own specific current
16 client demand, do you?

17 A No.

18 Q So, if I was to put to you e-mails
19 and other things that I receive, or others have been
20 receiving complaining about different things, you
21 wouldn't be able to answer those in terms of the
22 specific Licenced Producers?

23 A Well, specific situations, no. The
24 Licenced Producers are required to report on a monthly
25 basis on whether they've had to refuse to fill orders,
26 for whatever reason. So, there are statistics available
27 on individual Licenced Producers, and refusals to fill.

28 Q Okay.

1 the future.

2 A Correct.

3 Q Okay. And also if a patient has
4 been accessing their medicine through a designated
5 production under the *MMAR* or personal production, if
6 they want to purchase from a Licenced Producer, they
7 have to hand in their *MMAR* authorization to possess in
8 order to do that, don't they?

9 A That's not my understanding
10 anymore. That was a transition provision that was in
11 force up until March 31st. I'm not sure what -- whether
12 that's still a requirement anymore or whether they would
13 need the new medical document that's referenced under
14 the *MMPR*.

15 Q If they have gone and registered
16 with a Licenced Producers, does -- can they go back and
17 continue under the *MMAR* if they were grandfathered in
18 the injunction or having done that?

19 A I don't know the answer to that.

20 Q You don't know that? Okay. So if
21 a personal producer had a crop failure, for example,
22 they can't just go purchase from a Licenced Producer to
23 make up for the shortfall. They'd have to go, get a
24 medical document, register with the Licenced Producer
25 but you don't know whether they could later go back and
26 continue growing for themselves?

27 A No. First part of your question,
28 anyone who wants to register needs a medical document.

1 Q Yes.

2 A But the second part of your
3 question I don't know the answer.

4 Q Okay. Paragraphs 45, 49, 53 and
5 56 you talk about standard operating procedures for the
6 different types of inspections and set them out, I think
7 as exhibits.

8 A Yes.

9 Q Nothing like that existed for *MMAR*
10 inspections. Did --

11 A Not to my knowledge. Yeah.

12 Q And 58 you refer to the reporting
13 -- the three -- maybe this is what I was looking for
14 earlier. You refer to recalls of every Lotter batch of
15 dried marijuana made available for sale.

16 A Mm-hmm, yes.

17 Q And then you say -- you provide
18 information from Carol-Anne Chinnard as of November
19 about three recalls failing to meet the requirements of
20 division four and you attach those at Exhibit L to your
21 affidavit and it's Exhibit L gives us -- no, Exhibit L
22 is just the form, isn't it?

23 A That's right. It's the blank
24 form.

25 Q So I don't know if my friend found
26 the -- no, okay. So my memory is that Ms. Ritchot's
27 affidavit there were three recalls, two of them
28 involving pesticide being found, so there was non-

1 compliance with 55, I think it was, of the *MMPR*
2 regulations.

3 A Mm-hmm.

4 Q And one of them was unsanitary
5 conditions, dirty equipment, so on and so forth. Do you
6 have any memory of that?

7 A That sounds about right and
8 there's since been a forth recall where upon testing
9 they found that marijuana was at a higher level of THC
10 than what had been reported to patients by a couple of
11 percentage points and there was also a recall just in
12 the last four weeks or so because of this testing
13 process was in place to catch that kind of a --

14 Q Do you know if under the *MMAR*
15 there were any lawful places where people could have
16 their personal production or designated producer
17 production tested for THC levels or CBD and so on?

18 A There are -- there have always been
19 laboratories which are licensed to do testing on
20 controlled substances. So those facilities exist.
21 Whether there was any kind of restrictions on individual
22 patients accessing those labs, I have no knowledge of
23 that.

24 Q You don't know. Okay.

25 And I take it you knew throughout your
26 involvement in this process that affordability was one
27 of the significant concerns particularly of the
28 patients?

1 A I was aware affordability was a
2 concern.

3 Q And you knew that the price under
4 the cost/benefit analysis, and perhaps otherwise, was
5 projected to go higher, and that it was the patients
6 that would be most affected by that?

7 A I read the cost/benefit analysis,
8 yes.

9 Q Okay. And I take it you knew that
10 even some Licensed Producers expressed concerns about
11 the ability of patients to afford their product?

12 A Well, I learned that from reading
13 the affidavit.

14 Q Okay. And that certain provinces
15 and territories also expressed a concern that they may
16 have to get involved in order to subsidize the medicine?

17 A I was aware of that concern on the
18 part of the provinces and territories.

19 Q So you knew that the new program
20 that you were helping to put in place, unless you got a
21 lot of licensed producers competing to bring those
22 prices right down, which the cost/benefit analysis
23 didn't seem to think would occur, perhaps for a long
24 period of time, you knew that there were going to be
25 people who would not be able to afford the licensed
26 producer prices.

27 A Well, I was aware of the concerns
28 that had been raised throughout the policy development,

1 yes.

2 Q And the only provision to assist
3 them was this compassionate pricing program which the
4 terms of which would be up to the individual licensed
5 producers. Fair enough?

6 A That's the main mechanism I'm aware
7 of.

8 Q And there were no other
9 requirements to ensure that -- no other requirements by
10 Health Canada to ensure that all medically approved
11 patients would have reasonable access, including those
12 who could not afford the LPs. Isn't that right?

13 A There is no specific provisions
14 around price, affordability, from the *Regulations*.

15 Q So you knew that the *MMPR* would be
16 under-inclusive, in the sense that it would not be able
17 to service all approved patients in Canada.

18 A Well, what we've seen as reflected
19 in the affidavit is that a wide variety of prices for
20 different types of marijuana, as low as \$1.75 a gram for
21 a particular variety with over 10 percent THAT'S
22 CORRECT. So there is a wide variety of price points
23 that are available from the market as it's developed so
24 far. But how that directly affects individuals and
25 their ability to access, compared to what it would cost
26 them to grow on their own, and the investments required
27 to establish a home grow, supply issues with a home
28 grow, if -- of losing a batch, you know, those relative

1 comparisons, I think, are difficult to crystallize into
2 a single answer.

3 Q Okay. Now, a person -- a patient,
4 under this new model, who can't afford the licensed
5 producer prices, even the \$1.75.

6 A Mm-hmm.

7 Q Pause for a minute and say, I take
8 it you knew that a number of the patients have said that
9 they're able to produce for themselves at 50 cents to a
10 couple of dollars a gram?

11 A I saw the statistics on people's
12 estimates of their own cost to grow.

13 Q And given that they don't have to
14 comply with all of the requirements of the licensed
15 producer, it's not surprising that they'd be able to
16 produce a lot cheaper.

17 A Well, I've seen those estimates.
18 Again, I've never seen them actually verified that those
19 are the true total costs to produce at home.

20 Q Okay. And you knew that under the
21 *MMAR*, some patients could produce outdoors part-time of
22 the year, indoors at other times?

23 A Yes, I was aware.

24 Q And that being able to produce
25 outdoors enables you to reduce the electricity costs
26 substantially?

27 A Yes.

28 Q And that electricity cost is a

1 major cost in the production of cannabis?

2 A I'm aware of that, yes.

3 Q Okay. That's not permitted under
4 the MMPR, is it?

5 A No.

6 Q So a person, patient who can't
7 afford the LP prices including the -- isn't eligible
8 under the compassionate pricing, if they can't get the
9 strain they want from the LP or if they can't get the
10 product that they want from the LP, they will either
11 have to grow for themselves or go to the illicit market,
12 isn't that correct? Those are their only other options.

13 A In the fact pattern, theoretical
14 pattern you've described, yes. But under the old regime
15 if someone didn't have the facility to grow on their own
16 under any other options, designated or personal
17 production, they will have more options under this new
18 system than they would have under the old.

19 Q Well you say more options only
20 because you're saying there are more than one LP.

21 A Yeah, a variety of prices, a
22 variety of strains available to them.

23 Q Still depending though on whether
24 the particular strain is available at the price that
25 they can afford and available at the time when they need
26 it and on an ongoing basis.

27 A Yes.

28 Q Okay. All right. And I take it

1 you know that if a patient who is in that position where
2 he or she can't get it from an LP and isn't able to grow
3 for themselves -- or goes back and grows for themselves,
4 let's put it that way, because they can't access it from
5 the LP. That the consequences to such a person is not
6 limited to simply being prosecuted for committing an
7 offense under the *Controlled Drug and Substances Act* but
8 that they also might have their place, their residence
9 subject to civil forfeiture?

10 A Sorry, can you ask that questions
11 again?

12 Q If a person goes back to growing
13 and they don't have an *MMAR* -- they're not grandfathered
14 under the *MMAR*. So they can't afford the LPs and the
15 product that they want is not available, if they go back
16 and start growing for themselves --

17 A As opposed to switching to another
18 licenced producer?

19 Q That's right. Assume they aren't
20 able to afford or get what they want from any of those
21 Licenced Produces and they go back and grow for
22 themselves. I take it you know that the consequences to
23 them nowadays would be not only prosecution but the
24 existence of manditory minimum sentences if they grow
25 more than six plants and also potential forefeture of
26 their property. You knew that?

27 A Not terribly familiar with the
28 *Criminal Code*.

1 Q Controlled Drugs and Substances
2 Act.

3 A Yeah.

4 Q Did you know that those were the
5 provisions of that at currently?

6 A That if you grow marijuana outside
7 of the exceptions that are carved out under the *MMPR*
8 that it put you into the criminal sanctions regime
9 potentially.

10 Q And that the penalties in the
11 *Controlled Drugs and Substances Act* include mandatory
12 minimum penalties starting at over six plants?

13 A Yes.

14 Q And that the provinces all have
15 provisions in the *Controlled Drugs and Substances Act* as
16 well, but also the provinces have got into civil
17 forfeiture if you do that on your property and you're
18 not authorized to do so, did you know that?

19 A Not familiar with the provincial
20 civil forfeiture regimes, no.

21 Q Okay. Thank you, sir, that's all
22 I have.

23 MR. BRONGERES: Thank you, Justice
24 Phelan, I just have one question on re-direct.

25 **RE-EXAMINATION BY MR. BRONGERS:**

26 Q Mr. Cain, in response to a
27 question from my friend about compassionate pricing you
28 mentioned that since you swore your affidavit you had

1 become aware of a Licenced Producer called CanTrust,
2 which is offering a patient assistance program. I don't
3 think you were given a chance to provide details about
4 that. Could you just elaborate for the court about your
5 underestand of that program?

6 A Yes, from what I understand what
7 they published on their website is that for qualifying
8 patients, and again they do have a means test, they're
9 willing to provide up to 30 grams free to patients who
10 meet their program critera. And then they have market
11 pricing after that initial monthly shipment.

12 Q Thank you Mr. Cain, no further
13 quesitons.

14 JUSTICE: Thank you, sir, you are free
15 to go.

16 A Thank you.

(WITNESS ASIDE)

17
18 JUSSTICE: I take it we're done for
19 the day. Well done all, 4:30 bang on.

20 MR. CONROY: Productive day, Justice.

21 JUSTICE: I'm going to give Aeroplan
22 points if you keep this up.

23 Okay, I will see you tomorrow.

24 **(PROCEEDINGS ADJOURNED AT 4:30 P.M.)**

25

26

27

IN THE FEDERAL COURT
(Before the Honourable Justice Phelan)

Vancouver, B.C.
March 5, 2015

T-2030-13

BETWEEN:

NEIL ALLARD, TANYA BEEMISH, DAVID HEBERT
and SHAWN DAVEY,

Plaintiffs;

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,

Defendant.

PROCEEDINGS

Mr. J. Conroy, Q.C.,

Mr. K. Tousaw,

Ms. T. Grace,

Mr. B. Vaze,

Mr. M. Jackson,

Appearing for the Plaintiffs;

Mr. J. Brongers,

Ms. B.J. Wray,

Mr. C. Januszczak,

Mr. P. Alma,

Ms. M. Nicolls,

Appearing for the Defendant.

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VANCOUVER, B.C.

March 5th, 2015

Volume 8

(PROCEEDINGS COMMENCED AT 9:31 A.M.)

JUSTICE: Good morning, Ms. Wray.

MS. WRAY: Good morning, Justice Phelan. The next witness is Cpl. Shane Holmquist of the RCMP. Cpl. Holmquist, I'd ask if you could please step into the witness box.

And his expert report is in the consolidated book of expert reports at Volume 4, tab 12. It's slightly unusual in that there are no additional tabs, unfortunately. So you'll see that there is an affidavit, that then attaches his expert report.

JUSTICE: Right.

MS. WRAY: And then attached to the expert report are several appendices as well.

JUSTICE: And I see some photographs, et cetera. Yes.

MS. WRAY: Exactly. So we'll have to use the pages on the bottom.

JUSTICE: Okay.

MS. WRAY: Yeah, to refer to things.

JUSTICE: All right. And that will be this morning.

SHANE HOLMQUIST, Affirmed:

THE REGISTRAR: Please state your name, occupation, and address for the record.

1 THE WITNESS: My name is Shane
2 Holmquist, last name H-O-L-M-Q-U-I-S-T. I'm a Corporal
3 with the RCMP.

4 THE REGISTRAR: And your address,
5 please?

6 THE WITNESS: Is 14200 Green Timbers
7 Way in Surrey.

8 MS. WRAY: Thank you, Cpl. Holmquist,
9 you can take a seat now.

10 JUSTICE: And we'll mark his report as
11 Exhibit --

12 MS. WRAY: Thirty. My friend says 31.
13 Is that -- Exhibit 30.

14 **(AFFIDAVIT OF SHANE HOLMQUIST MARKED EXHIBIT 30)**

15 JUSTICE: We'll straighten it out if
16 there's a problem. Okay, go ahead.

17 MS. WRAY: Cpl. Holmquist is being
18 tendered here today as an expert witness in the public
19 health and safety risks of growing marijuana for medical
20 purposes outside the context of the current licensed
21 producer regime.

22 **EXAMINATION IN CHIEF BY MS. WRAY:**

23 Q So, Cpl. Holmquist, you've been
24 asked by the Attorney General to prepare an expert
25 report in these proceedings?

26 A Yes, I have.

27 Q And you have a copy of that report
28 in front of you?

1 A Yes.

2 Q Your qualifications are set out at
3 page 6 of your report, and also at Annex A, which I
4 believe is at page 89. We're going to take you very
5 briefly through some of those qualifications. You've
6 been with the RCMP since 2005, and now you're at the
7 rank of Corporal?

8 A That's correct.

9 Q And you're a member of the Federal
10 Serious Organized Crime section of the RCMP?

11 A Yes.

12 Q And within that section, you're
13 part of the Coordinated Marijuana Enforcement Team?

14 A Yes.

15 Q Can you please, for the benefit of
16 the court, tell us what the Marijuana Enforcement Team
17 does?

18 A Investigates large-scale grow
19 operations that have links to organized crime. And more
20 recently we've been involved -- educational component
21 regarding the *MMAR* and the *MMPR*.

22 Q And how many marijuana grow
23 operation investigations have you personally been
24 involved in over the years?

25 A Over the years, I haven't kept
26 track. I always say over 100. I know in 2009 I had 73
27 active investigations, and since then I've been pretty
28 much doing marijuana enforcement full-time.

1 Q At page 7, paragraph 8 of your
2 report, if you could turn there, please. The numbers of
3 the report are on the bottom right-hand corner as well.
4 You state at paragraph 8 the summary of issues that your
5 report addresses, correct?

6 A Yes.

7 Q And there were four issues that the
8 Attorney General of Canada asked you to address?

9 A That's correct.

10 Q The first was the criminal abuses
11 associated with the personal production of medical
12 marijuana?

13 A Yes.

14 Q And the second, the health and
15 safety concerns faced by law enforcement in
16 investigating personal medical marijuana grows?

17 A Yes.

18 Q And the third, the RCMP's
19 involvement in screening applications of Licensed
20 Producers under the new Regulations?

21 A Yes.

22 Q And finally you were asked to
23 discuss your own inspections of some of these new
24 Licensed Producers.

25 A Yes.

26 Q What materials did you review in
27 order to address the criminal abuses and the health and
28 safety concerns associated with the personal production

1 of marijuana?

2 A Started with the assistance of a
3 criminal intelligence analyst, and numerous police
4 investigational files we reviewed and data was gathered
5 and sorted. I ended up with approximately 18,000 pages
6 of information. And then in addition to that, requests
7 went out to police agencies across Canada asking for
8 examples that met these questions.

9 Q In your report you have indeed
10 provided numerous examples of the abuses and the health
11 and safety concerns. Are these examples drawn from that
12 material?

13 A Yes.

14 Q And when you reviewed that material
15 did you find additional examples that are not included
16 in your report?

17 A Yes, I did.

18 Q And why were they not included in
19 your report?

20 A Some of the examples I had found
21 were maybe someone growing five plants over their
22 amount. Those examples I didn't include in this. I had
23 a limited time window of about three to four months to
24 put this together and I chose examples that were
25 representative of large scale abuse.

26 Q And still on page 7 near the bottom
27 of the page at paragraph 9, you summarize the main
28 criminal abuses that you found are associated with the

1 personal production of medical marijuana. Could you
2 just for the purposes of the court briefly summarize
3 some of those abuses?

4 A It includes the exploitation of the
5 authorization process, forging of *MMAR* licences,
6 improperly disposing of waste material, overproduction,
7 the growing of monster marijuana plants, manufacturing
8 derivatives, trafficking and possession for the purpose
9 of trafficking, and organized crime involvement.

10 Q And you also describe in your
11 report that medical marijuana growing operations may
12 pose risks to law enforcement?

13 A Yes.

14 Q And why is that?

15 A Some medical marijuana grows that I
16 have been into, and pictures that I have reviewed,
17 indicate to me unsafe electrical as well as concerns of
18 confined spaces.

19 Q Why would confined spaces be an
20 issue?

21 A If there's ever a fire in a
22 confined space or a modified building, the chances of
23 getting out or being trapped without an egress route
24 poses safety concerns.

25 Q For anyone who enters that room?

26 A Yes.

27 Q You also note at paragraph 10 that
28 law enforcement must deal with violence that occurs at

1 these operations.

2 A Yes.

3 Q Could you describe that violence
4 for this court?

5 A Violence includes grow rips, where
6 people go in and break into *MMAR* sites and illegal
7 sites, for that matter, to steal marijuana and
8 subsequently resell it. This violence usually is
9 forcible entry into a residence and threats,
10 intimidation, that sort of thing, to these producers.
11 And then there has also been homicides in the Lower
12 Mainland as a result of people attempting to steal
13 marijuana.

14 Q My understanding is that under the
15 new regulations, the RCMP is conducting criminal record
16 checks of the potential commercial licensed producers.

17 A Yes. Health Canada has contracted
18 SIBS, which is the Security Intelligence Background
19 Section, and they're a section of the RCMP in Ottawa
20 that does background checks. So they conduct these
21 checks and forward that information to Health Canada.

22 Q Are you involved in that process?

23 A Yes, I am.

24 Q In what capacity?

25 A So these database queries that are
26 done in Ottawa, they're not all-encompassing. They
27 don't know necessarily what's going on in each province.
28 So as a result, they may task me with some further

1 inquiries, and I will do those inquiries and forward it
2 back to them. And then they in turn gather that
3 information, forward it to Health Canada, who makes the
4 decision to issue, deny, Licenced Producer.

5 Q You note in your report that you
6 have visited several of these new commercially Licensed
7 Producers.

8 A Yes, I have.

9 Q Do you recall how many you visited?

10 A I believe I listed seven in my
11 affidavit.

12 Q Most of them here in British
13 Columbia?

14 A Yes. And one in Saskatchewan.

15 Q And could you briefly describe some
16 of the differences that you observed between the
17 production of marijuana at those commercially Licensed
18 Producer sites versus what you've observed when you have
19 investigated personal production growing operations?

20 A I found Licensed Producers are
21 heavily regulated. They have to have video footage
22 that's kept for two years. Every item of marijuana that
23 is in the facility has to be accounted for. Any bag of
24 marijuana has to be weighed and stored in a safe or a
25 vault. People are very high cleanliness standards in
26 these facilities, some requiring having to have a shower
27 and putting on a gown before going in and being involved
28 in any production or contact with the marijuana plants.

1 MS. WRAY: Could you please answer any
2 questions that my friend has for you? Thank you.

3 JUSTICE: Just so I understand this,
4 Ms. Wray, this report is not used as the genesis for the
5 regulation or the changes to the regime.

6 MS. WRAY: That is correct.

7 JUSTICE: Okay.

8 **CROSS-EXAMINATION BY MR. VAZE:**

9 Q Cpl. Holmquist, I'm going to start
10 our discussion this morning by talking with you a little
11 bit about your background and some of your methodology
12 in terms of how you've gone about doing your research.
13 As my friend has established with you, I take it you've
14 been a member of the RCMP for almost ten years, that's
15 correct?

16 A Yes.

17 Q And you've a Corporal for almost
18 two years now as well.

19 A Yes.

20 Q Okay. Now, as my friend has also
21 gone over with you, you've come here this morning to
22 provide evidence with respect to an expert report that
23 you've given which addresses, among other things,
24 criminal abuses and safety concerns related to personal
25 production under what we refer colloquially to as the
26 *MMAR*, correct?

27 A Yes.

28 Q Okay. So now in coming here as an

1 expert, obviously you're also a law enforcement officer
2 with the RCMP. You've only been with the RCMP during
3 your career, that's correct?

4 A That's correct. I was involved as
5 a correctional officer prior to that.

6 Q Okay. Now, in coming here as we've
7 discussed, you are a police officer, but you're coming
8 here and you would also characterize yourself therefore
9 as a researcher. Would that be fair?

10 A Yes.

11 Q I mean you're giving expert
12 evidence here, so some of that, you would think,
13 involves research. Wouldn't that be fair?

14 A Yes, I do do reading on the side to
15 keep current on what's going on.

16 Q And with respect to that research,
17 would it be fair to say that you would characterize
18 yourself as an objective researcher?

19 A Yes.

20 Q And by that I mean in the course of
21 your research, what you would do in terms of that
22 objectivity is you would ask yourself a particular
23 question, or somebody might ask you a question that
24 requires an answer. You go out and you look and you
25 conduct research with respect to then answering that
26 question. Would that be fair?

27 A Yes.

28 Q And you would understand then, as

1 an objective researcher, it is important to look at all
2 data that may answer the question before you, and not
3 ignore data that would otherwise provide input to the
4 answer that you're trying to find. Would that be fair?

5 A Yes.

6 Q So, for example, I'll give you a
7 hypothetical. If you were asked the question, if any
8 researcher was asked the question, is Frank, meaning
9 Frank a person, "Is Frank ill?" it perhaps wouldn't be
10 proper to simply look at Frank and say, "He appears to
11 be well, therefore he is well." You'd have to conduct a
12 further study of his overall well-being outside of
13 simply appearance to find an answer to your question.
14 That would be fair?

15 A I'm not a physician to be able to
16 determine if someone -- their illness based on their
17 appearance.

18 Q Okay. Well, if -- well, what I'm
19 saying is you couldn't simply look at the outside of
20 Frank. This is a common sense question. You couldn't
21 simply look at the outside of Frank and come up with an
22 answer to whether or not he's ill. You'd have to look
23 further to determine that. Wouldn't that be fair?

24 A Yes.

25 Q Okay. So you'd agree that if you
26 ask yourself a research question, if you are being
27 objective, you'd have to look at all parts of the data
28 to come up with a proper answer. That's fair?

1 A Yes.

2 Q And so you'd also, in terms of
3 giving your answer, you want to make sure that your
4 answer is fully accurate in terms of all the data that
5 you've collected. I can give you a hypothetical, if you
6 want to -- if it assists in answering that question.

7 For example, let's say that you're asked
8 the question, did the Ottoman Empire ever lay siege to
9 Vienna? For example. And the -- you conduct research,
10 and you find authentic documents indicating that there
11 was a siege of Vienna in 1529, and in 1683. Okay? So
12 you have some answers. If you answered simply that,
13 yes, there was a siege of Vienna in 1529, and left it at
14 that, you would be not entirely accurate in your answer.
15 Wouldn't that be fair?

16 A That's correct.

17 Q Okay. You'd have to include, and
18 for full accuracy, yes, there was a siege of Vienna in
19 1529 and in 1683. Correct?

20 A Yes.

21 Q Okay. Now, again, coming back to
22 the issue and topic of research, would it be fair to say
23 that -- to characterize the expertise that you are
24 providing to the court as following -- that is about
25 criminal abuses and safety concerns under the *MMAR*, as
26 falling generally under the rubric of what we think of
27 as social and behavioural sciences?

28 A Sorry, can you rephrase the

1 question?

2 Q Okay. Well, let me explain it to
3 you. Obviously there are different types of sciences.
4 We have physical and mathematical sciences, for example;
5 chemistry, you might go into a lab, see how different
6 chemicals react, collect the data, and come up with an
7 answer. You're aware of that?

8 A Yes.

9 Q Okay. So what I'm saying is that,
10 if we think of social and behaviour sciences, it would
11 involve looking at a particular population, collecting
12 data with respect to that population about its
13 behaviour, for example, and then coming up with an
14 answer.

15 So, in that respect, would you
16 characterize your research into abuses and safety
17 concerns under the *MMAR* as falling under the rubric of
18 social and behavioural sciences?

19 A No, I was asked to -- in this
20 affidavit I was asked to provide examples of the abuse,
21 and I researched and provided examples of those abuse in
22 this report.

23 Q So you can't point to a particular
24 science or scientific method to which you employed any
25 methodology with respect to your report, is that
26 correct?

27 A That's correct. I don't -- I'm not
28 a scientific researcher or an academic, putting this

1 together. In order to put this together, I did
2 reference police investigations mostly.

3 Q Okay. Well, let's talk a little
4 bit about that, then. So if you're asked a particular
5 question, I'll put to you that there is two ways, in
6 fact, you could -- well, two ways at the outset. Two
7 ways that you could employ methodology to come up with
8 an answer. One, if you're asked a question, you could
9 commence new research, collecting data that may answer
10 the question. Would that be understandable?

11 A Yes.

12 Q Okay. The other thing you could
13 do, and I think you've already talked a little bit about
14 it, is you could go through historical data and compile
15 data to come up with an answer to the question.

16 A Yes.

17 Q That's fair?

18 Now, with respect to the second scenario,
19 where I talk about going through historical and compiled
20 data to answer a question, it would be reasonable to say
21 that if that historical and compiled data was, in the
22 researcher's view, or objectively, incomplete, it would
23 be important in order to properly answer the question to
24 conduct new research. Wouldn't that be fair?

25 A Yes.

26 Q Okay. We'll come back to
27 methodology perhaps a little later. Now, I'm going to
28 take you to your qualifications and CV. Now, I note

1 that in your expert report, this is in the Consolidated
2 Book of Expert Reports, Volume 4, you've got it there?

3 A Yes.

4 Q Okay. At page 6 of your report you
5 refer to your qualifications. Do you see that?

6 A I have page 89. Are you talking
7 about my CV?

8 Q That's your CV. I'm first
9 referring to page 6 where you mention your
10 qualifications.

11 A Six, okay.

12 Q And you've already alluded to your
13 CV. I'm going to go back a little bit, back and forth
14 between them.

15 A So just one second here.

16 Q So at page 89 then of your CV,
17 first page of your CV, you talk about your law
18 enforcement experience and you say that you were a
19 Provincial Correctional Officer from July 1996 to
20 October 2004?

21 A Yes.

22 Q Okay. What institutions were you
23 working at during that period?

24 A I started at Ford Mountain and
25 Chilliwack Community Correctional Centre and Mount
26 Thurston, and that was initially for a few months and
27 then I switched to Surrey Pretrial.

28 Q And then for the remainder of that

1 period you were at Surrey Pretrial.

2 A At Surrey Pretrial.

3 Q And I take it, looking at your CV,
4 that while you were working as a correctional officer
5 you were attending school, doing some courses for a
6 degree?

7 A Yes, I was.

8 Q Okay. Now, your CV says, and
9 that's on the first page again, that you have a Bachelor
10 degree from Simon Fraser University, November 2003?

11 A Yes.

12 Q That's correct?

13 A Yes.

14 Q You haven't provided any details
15 with respect to what that Bachelor Degree is. What was
16 it all about?

17 A It's a Bachelor Degree in General
18 Studies and it involves a small cohort program of law
19 enforcement professionals -- police, fire, ambulance,
20 corrections -- and they would attend courses at the
21 Justice Institute part-time, over three years, to finish
22 their degree, and the SFU instructors would attend the
23 JI and provide that training.

24 Q So it's a Bachelor of Arts?

25 A Bachelor of General Studies.

26 Q Okay. And it was designed
27 specifically for -- then what you're saying is people
28 interested in the justice field, so to speak.

1 A Yes.

2 Q Okay. And does this cohort program
3 exist at all any more?

4 A I don't know if it does. I know
5 there's a cohort program, Master's program that's
6 available through University College of Fraser Valley,
7 but I don't know if that particular program still
8 exists.

9 Q Okay. Now, you just mentioned the
10 University of the Fraser Valley. I take it that -- had
11 you done some courses through UFV in preparation for
12 that Bachelor of General Studies?

13 A No, I have not.

14 Q Now, in this Justice Institute, the
15 cohort program as you were talking about it, I take it
16 professors would come from various institutions,
17 instructors from various institutions, not just SFU?
18 Would that be fair?

19 A I believe they were all from Simon
20 Fraser University.

21 Q Okay. Any courses taught to you by
22 Darrel Placis?

23 A There was one course.

24 Q Any courses taught to you by Len
25 Garis?

26 A No.

27 Q Now, going back to your CV here,
28 you of course recognize that you're here being -- excuse

1 me. Obviously tendered as an expert witness by the
2 defendants, and one of the important aspects of that is
3 that in assisting the court with your expertise you
4 would have to ensure that the court can be satisfied and
5 parties are satisfied that you have proper
6 qualifications to give that expertise. You understand
7 that?

8 A Yes.

9 Q Okay. And so one thing that would
10 be very important in terms of listing both your
11 qualifications in your report as well as your CV would
12 be to ensure that both of those are completely
13 comprehensive with respect to research conducted and
14 experience had, respecting your qualifications.
15 Wouldn't that be fair?

16 A Yes.

17 Q I should say research conducted and
18 experience had respecting your expertise and your expert
19 report. That's fair?

20 A Yes.

21 Q Okay. And so I take it that in
22 compiling both your qualifications as well as your CV,
23 you took great care to ensure that all relevant and
24 important matters relating to your experience and
25 research would be included in that CV.

26 A Yes.

27 Q Okay. Making sure not to leave out
28 anything that would be particularly important. Correct?

1 A I put it together to the best of my
2 ability, yes.

3 Q Now, going to your CV again --
4 well, first I'll go to your qualifications. We can go
5 back to page 6. Now, one thing that you say at
6 paragraph 4 is,

7 "During my 9 years as a police officer I've
8 been involved in over 100 marijuana grow
9 operations investigations that had been
10 located primarily inside residences and have
11 read hundreds of police files related to *MMAR*
12 grow operations."

13 That's what you've put there?

14 A Yes.

15 Q Okay. And you also use the words
16 "you have spoken to numerous *MMAR* growers and other drug
17 experts about production, consumption, and diversion of
18 medical marijuana"?

19 A Yes.

20 Q And you also say,
21 "I have harvested marijuana plants from
22 medical marijuana grow operations and
23 clandestine grow operations to determine the
24 yield of marijuana bud."

25 Do you see that?

26 A Yes.

27 Q Okay. Now, let's go back to your
28 CV here. Well, let's just go first to Section 3 on the

1 first page of your CV. It says, "Related police
2 courses, training, and education". Do you see that
3 there?

4 A Yes.

5 Q There is nothing in your CV
6 respecting specific training with respect to marijuana
7 grow operations. Correct?

8 A That's correct.

9 Q And going further down there, going
10 back to the Bachelor Degree that you list as far as
11 Simon Fraser University is concerned, as part of that
12 Bachelor Degree training, you're saying it's in general
13 studies. Can you point to any courses you did in
14 statistics, for example?

15 A No.

16 Q So you didn't do any courses in
17 statistics?

18 A No, I did not.

19 Q You didn't do any -- or, I should
20 ask, did you do any courses in botany?

21 A No.

22 Q Did you do any courses with respect
23 to marijuana harvesting?

24 A No.

25 Q So, moving along from there, in the
26 CV, you have indicated that you've provided expert
27 opinion reports and/or expert evidence in court. You
28 see that there?

1 A Yes.

2 Q Okay. So, first of all, you say in
3 June, 2014, Tax Court of Canada, and you've given an
4 appeal number there, you see that?

5 A Yes.

6 Q Your exact words are, "Expert
7 opinion affidavit completed for Revenue Canada, case
8 regarding GST on illegal sales of marijuana to the B.C.
9 Compassion Club". You see that?

10 A Yes.

11 Q Now, I'm looking at, again taking
12 into account what you've said about the importance of
13 including everything that's important in terms of your
14 experience. From those words themselves, I take it that
15 you never actually tendered that expert opinion in
16 court.

17 A That particular one, no.

18 Q Okay. You didn't provide evidence
19 in court.

20 A No, I did not.

21 Q You weren't qualified as an expert
22 in court.

23 A Not in that one, no.

24 Q Okay. The next one, May 2014, you
25 say, "Expert opinion report completed for Fraser Valley
26 Traffic RCMP file. Vehicle stopped with 243 marijuana
27 plants." Do you see that?

28 A Yes.

1 Q Again, taking your words as they
2 are, I take it that this report was not completed for
3 court purposes?

4 A It was completed for court
5 purposes.

6 Q But of course you only say here,
7 "Completed for Fraser Valley RCMP."

8 A It was an expert opinion that was
9 requested by me to complete for Fraser Valley Traffic to
10 enter in evidence for a court.

11 Q But I take it it was not entered at
12 court, that's correct?

13 A This one I believe is still before
14 the courts and I'm not aware if it's been entered or
15 not, but I haven't given evidence on that one.

16 Q And you haven't been qualified as
17 an expert in that case, correct?

18 A In that case, no.

19 Q Thank you. And then February 2014
20 you've indicated *Allard et al. v. The Queen*. I take it
21 that's the report you gave for the purposes of the
22 injunction here in this particular case.

23 A Yes.

24 Q Okay. February 2014 again you say,
25 "Chilliwack Provincial Court File No." and then you say,
26 "Completed an expert opinion report and qualified as an
27 expert witness in price, packaging, distribution and
28 consumption and production of marijuana related to 401

1 plant marijuana grow operation"?

2 A That's correct.

3 Q So I take from that you're saying
4 that you were actually qualified as an expert.

5 A Yes.

6 Q Okay. Now -- okay. Then I'm going
7 to skip the next one but then we get to March 2014, you
8 say, "Expert opinion report completed for Fraser Valley
9 Traffic RCMP file. MMAR licence order exceeding the
10 possession amount." See that?

11 A Yes.

12 Q Again I take it that that was
13 simply a report tendered for the Fraser Valley RCMP.
14 You were not qualified as an expert in court.

15 A Not in that one, no, but the one
16 above that I was.

17 Q Oh, I see that. Now, 2013 you say,
18 "Four expert opinion reports completed for court"?

19 A Yes.

20 Q Okay. Again, given the lack of
21 detail here I take it that you were never qualified as a
22 court witness in that -- in those four cases.

23 A No.

24 Q Okay. 2012, "Five expert opinion
25 reports completed for court." Again, looking at the
26 detail, you were never qualified as an expert witness.

27 A No.

28 Q Okay. 2001, "Three expert opinion

1 reports completed for court." Never qualified as an
2 expert witness.

3 A No. The reports were submitted. I
4 don't know what the outcome in trial was, whether they
5 were admitted or what the outcome of that, each case
6 was. But I completed the reports and I can tell you to
7 save time, between 2013 and 2009, those were all entered
8 as evidence but I have never given evidence besides the
9 two, as an expert witness would.

10 Q You were saying that they were
11 entered as evidence, but you can't tell me what
12 ultimately happened at court with all of that, correct?

13 A That's correct.

14 Q So you don't in fact know that they
15 were entered as evidence, correct?

16 A That's correct.

17 Q Okay. Okay, and then again in
18 2010, "Three expert opinion reports completed for
19 court." Again, you've given your answer to that, that's
20 correct?

21 A Yes.

22 Q Okay. 2009 again, "Three expert
23 opinion reports completed for court." You don't know --
24 well, certainly you weren't qualified in court to give
25 that evidence, correct? You just don't know.

26 A I don't know what the outcome was.

27 Q You don't know what the outcome of
28 the case --

1 A I never gave evidence to qualify as
2 an expert on those cases.

3 Q Okay. Now, all these cases we've
4 looked at, I'm looking at the detail here, I take it and
5 you can tell me, these were all cases in which you were
6 actively involved in the investigation. Is that fair?

7 A No.

8 Q Some of them were cases in which
9 you were actively involved in the investigation. Is
10 that correct?

11 A I was not in a primary role in some
12 of those investigations, but the majority of them were
13 opinions sought out by me from other detachments in
14 other jurisdictions.

15 Q When you say "not a primary role",
16 that doesn't mean you were not involved in the
17 investigation. That's correct?

18 A Out of those, there was a couple
19 that I was involved in, say dismantling the grow. I was
20 on-scene, and I didn't take an active role in
21 interviewing any suspects or collecting any evidence.

22 Q Okay. But you were involved in the
23 investigations. Correct?

24 A On a couple of them, yes.

25 Q Couple -- that's a guesstimate.
26 Could be three, could be five, could be two.

27 A It could be two or three.

28 Q Okay. Of all of these here.

1 A Yes.

2 Q Okay. Now, I'm going to take you
3 back to page 6. I'm sorry I've got to keep you going
4 back and forth here.

5 A Okay.

6 Q You say again at paragraph 4 that
7 you've been involved in over 100 marijuana grow
8 operation investigations. That's also a guesstimate.
9 That's correct?

10 A Definitely more than a hundred, but
11 over a hundred, yes. I haven't kept track of every
12 single grow operation that I've been investigating.

13 Q So you haven't kept track. It
14 could be 101, it could be 105. It could be 95. Fair
15 enough?

16 A Well, I would say more than 101 for
17 sure. I would say more -- more, 200 plus.

18 Q Well, okay. But you haven't
19 compiled any statistics on all of this.

20 A On those ones, no.

21 Q Okay. So, You're saying here, to
22 the court and in your report, of course, that part of
23 your expertise, your experience, your research, comes
24 from these investigations that you've been involved in.
25 That's fair?

26 A From those investigations, and from
27 talking to other members about their investigations.

28 Q Fair enough. But what I'm saying

1 is that one of the things you're putting before the
2 court is that the research and experience you have comes
3 out of these over 100 investigations.

4 A Yes, that's correct.

5 Q And you're also telling the court
6 that with respect to all of these over 100
7 investigations, you haven't compiled individual
8 statistics on the number of investigations, number one,
9 correct?

10 A That's correct.

11 Q You haven't kept a separate
12 database, for example, regarding each of those
13 investigations and then entered certain things about
14 them. That's correct?

15 A That's correct.

16 Q Okay. And so in fact all the
17 things that could assist you in your research and your
18 experience, in terms of understanding this complicated
19 area, have not been compiled. That's correct?

20 A I believe they are compiled in this
21 affidavit that I've put forward for the court.

22 Q They're compiled from memory, but
23 you were not systematically compiling them. Correct?

24 A Are you referring to the 100 here?
25 Or are you referring to all the police investigations
26 that I have --

27 Q I'm referring first to the 100
28 investigations.

1 A Okay. Yeah, no, I never kept
2 statistics on investigations that I've done.

3 Q And you would agree that having
4 kept -- that if you had kept statistics, and all the
5 salient details of all of that, it would assist you in
6 your research. Correct?

7 A Yes.

8 Q It would assist you in providing a
9 better idea of the answers to the questions that you're
10 being asked. Fair?

11 A Yes.

12 Q Again, looking at page 6 here, it
13 says that you've spoken to numerous *MMAR* growers and
14 other drug experts about production, consumption, and
15 diversion of medical marijuana. You see that?

16 A Yes.

17 Q Okay. Now, I'm going to take you
18 back to your CV again. Now, I'm looking at this and the
19 first entry I see about you speaking and attending with
20 growers, for example, is on page 3 of that CV, under
21 2013. The fourth entry.

22 "I attended an *MMAR* grow operation and spoke
23 with the grower about grow cycles, plant
24 yield, use of carbon dioxide, and methods of
25 consumption."

26 You see that?

27 A Yes.

28 Q And that's the first entry on your

1 CV of having conducted that sort of talk, correct?

2 A Yes.

3 Q Okay. And then finally on page 4,
4 under "Additional marijuana related experience", fourth
5 entry is

6 "I have interviewed persons who have been
7 involved in the cultivation and sale of
8 marijuana to determine costs, packaging,
9 consumption, production, methods of
10 concealment."

11 Do you see that?

12 A Yes.

13 Q Okay. But you put no number on
14 that in terms of the number of people you've talked to.

15 A No.

16 Q And you can't tell us how many of
17 those people you've talked to.

18 A No.

19 Q So the only actual entry we have --
20 now, going back to the idea that you've spoken to
21 numerous people, we only actually know of one. Isn't
22 that fair?

23 A There's only one that's written in
24 the CV. But unfortunately I don't keep track of every
25 conversation I have with every single person to
26 determine if they have an *MMAR* licence or not.

27 Q Coming back to what you say at
28 paragraph 4 of your qualifications, you say that you've

1 harvested marijuana plants from medical marijuana grow
2 operations. You see that, of course.

3 A Yes.

4 Q We talked about that. And going
5 back to your CV, again, I'm looking at the CV as a
6 whole. And under 2012, I see that the first entry is --
7 the first entry with respect to anything having to do
8 with harvesting marijuana, I see the fifth entry under
9 2012 says,

10 "On three occasions I dried, clipped, and
11 weighed marijuana from plants to determine
12 yield."

13 Do you see that?

14 A Yes.

15 Q Okay. The next entry that I see is
16 on page 4. You say

17 "On one occasion I dried, clipped, and
18 weighed marijuana from plants to determine
19 yield."

20 A Sorry, is that page 4 of the CV?

21 Q Yes.

22 A Yes.

23 Q You see that?

24 A Yes.

25 Q Now, nowhere else in this CV do you
26 talk about anything in relation to the harvesting of
27 marijuana plants. That's correct?

28 A Harvesting.

1 Q Well, I look at -- it says, "On one
2 occasion I dried, clipped, and weighed marijuana ...".
3 That involves some -- that has something to do with
4 harvesting, that's fair?

5 A Yes.

6 Q Okay. And I'm saying that nowhere
7 else in this CV, other than those two instances that
8 you've cited, and I've cited to you, is there any
9 indication of engaging in the harvesting of marijuana.

10 A Well, if you're talking about the
11 drying or weighing, or the clipping of plants, that's
12 two different things, in my opinion. When we execute
13 search warrants at grow operations, we harvest -- cut
14 down the plants. So I've done that on hundreds of
15 occasions.

16 Q Okay. That is you've cut down the
17 plants, okay. You haven't been involved in the growing
18 of those plants.

19 A No.

20 Q Okay. You haven't harvested them
21 and then take them out, for example, to make them
22 useable product, for example.

23 A No.

24 Q Okay. You generally think that
25 harvesting, if we think about it in the common sense
26 term, that is a farmer, that's a farmer growing
27 vegetables for example, and then taking those vegetables
28 and turning them into product, that's correct?

1 A Yes.

2 Q So what I'm saying is that anything
3 related to the harvesting, then you can't say that
4 you've actually ever engaged in the harvesting of
5 marijuana.

6 A No, besides those two points where
7 --

8 Q Besides those two points.

9 A Yes.

10 Q So, okay, so those are the only two
11 times you've ever engaged in the harvesting of
12 marijuana.

13 A Well, there's two points, but I
14 believe one says on three occasions and the other one
15 says on one occasion. So on four occasions I've done
16 that.

17 Q Okay, four occasions in ten years
18 of service with the RCMP.

19 A That's correct.

20 Q Okay. You also say, and I'll take
21 you back to the CV again -- okay, well, you've talked
22 about, we've talked about the harvesting. And then you
23 say you've observed marijuana plants grown in dirt.
24 That's under "Additional Marijuana Related Experience".

25 A You're referring, under "Additional
26 Experience" you're referring to the second?

27 Q Yes, that's the second point there.

28 A Yes.

1 Q So that simple observation. Of
2 course, now, you haven't done the growing or anything
3 like that.

4 A I haven't done the growing, no.

5 Q Okay. Okay now, taking you again
6 to the CV, you talk about presentations conducted
7 related to marijuana. You see that at page 2 of your
8 CV?

9 A Yes.

10 Q And I note that all of those
11 presentations that you've conducted have been involved
12 with either law enforcement or other government
13 personnel, do you see that?

14 A Yes.

15 Q In fact actually the fourth entry
16 under that section says, "March 2012 and March 2014
17 conducted a presentation at the Chilliwack Youth
18 Academy".

19 A Yes.

20 Q See that? Okay. The Chilliwack
21 Youth Academy is actually a liaison body with the RCMP.
22 That's correct?

23 A Yes, it's summer students that have
24 an interest in a career in the RCMP.

25 Q Now, you understand what a peer-
26 reviewed publication in an academic journal might be?

27 A Yes.

28 Q Sometimes it's referred to as a

1 refereed publication, you see that? You understand
2 that?

3 A Yes.

4 Q Okay. So that involves obviously a
5 researcher collecting, in some cases collecting data or
6 presenting social science research, submitting it to a
7 publication, and having other experts in the field
8 review it for the purposes of determining whether or not
9 it's suitable for publication. You understand that?

10 A Yes.

11 Q And one of the things of course
12 they would do sometimes is look at the methodology
13 employed by the researcher and determine whether they've
14 employed proper methodology. You understand that?

15 A Yes.

16 Q Okay. You've never had any peer-
17 reviewed articles published anywhere, correct?

18 A That's correct.

19 Q Okay. In fact you haven't had any
20 official publications whatsoever with respect to any
21 expertise that you have related to marijuana, that's
22 correct?

23 A That's correct.

24 Q Now, you also say at page 4 of your
25 CV that -- the second entry up from the top, that you've
26 read books, articles, magazines, and watched videos on
27 marijuana, including history, culture, and other forms
28 of consumption. You see that?

1 A Yes.

2 Q You don't list any of the
3 publications or videos or anything that you've seen,
4 correct? And you can't point us to, at this time, any
5 peer-reviewed articles that you may have reviewed for
6 the purposes of gaining that understanding. Correct?

7 A That's correct.

8 Q You also say you have observed
9 people roll joints, smoke marijuana, and people under
10 the influence of marijuana.

11 A Yes.

12 Q You would agree with me that the
13 average teenager in B.C. may very well have seen those
14 exact same things?

15 A It's possible.

16 Q Okay. In fact actually you've only
17 been involved in drug investigations for five years,
18 since 2009. That's correct?

19 A No. There was a secondment period
20 to the Serious Crime section in Chilliwack.

21 Q Okay. But Serious Crime could also
22 involve homicide, all that sort of stuff.

23 A Yes.

24 Q It's not a specialization in drugs
25 or anything.

26 A No.

27 Q Okay. Now, you would also
28 understand that it's important in any report that you

1 tender for court, or otherwise in presenting your
2 research, to keep your knowledge current, as up to date
3 as possible.

4 A Yes.

5 Q That's fair?

6 A Yes.

7 Q Now, I'm going to take you to your
8 affidavit. One moment. Just bear with me one moment
9 here.

10 Page 16 of your report, paragraph 50.
11 You say that there were over 13,000 PUPL and over 2,000
12 DPPL under the *MMAR*, okay?

13 A Yes.

14 Q You see that. Okay. And I take it
15 PUPL, of course, means Personal Use Producer Licenses.

16 A Personal Use Production Licenses.

17 Q Production Licenses, yes. And the
18 DPPL, of course, refers to Designated --

19 A Designated Personal Production
20 Licence, yes.

21 Q Okay. So, essentially you're
22 saying that there were -- under this, 15,000 production
23 facilities for personal use in British Columbia.

24 A No, not facilities. Licenses.

25 Q Not facilities, licenses. Okay.
26 But there is essentially then 15,000 people growing for
27 their own use, or for somebody else's use. Correct?

28 A In the province of British

1 Columbia, yes.

2 Q So possible as many as 15,000 legal
3 grow operations in British Columbia.

4 A Yes. But you can actually have
5 four licenses per property, so that could be four times
6 as less.

7 Q Okay. But it's in the several
8 thousand, in any event.

9 A Yes.

10 Q Okay. And you're aware that the
11 number is much higher in Canada as a whole?

12 A Yeah.

13 Q In fact there might be as many as
14 38,000 at this time. You're aware of that?

15 A Of Personal Use Production Licences
16 or Authorizations to Possess?

17 Q Personal Use Production Licences.
18 Not under the current injunction necessarily, but prior
19 to all of this happening.

20 A I'm not sure on the exact number.

21 Q Okay, well, I'll perhaps go over
22 that with you afterwards. But in any event it's in the
23 several several thousand, the tens of thousands. That
24 would be accurate.

25 A Yes.

26 Q Okay. Now, please forgive me if
27 we're perhaps the obvious answer to some of these
28 questions which I understand you would be aware of as an

1 RCMP officer. You're aware that obviously there's many
2 different government regulated industries in Canada.
3 For example, advertising can be regulated. Securities.
4 Things of that nature. You're aware of that?

5 A Yes.

6 Q Okay. And one of the reasons why
7 government may seek to regulate those industries, of
8 course, would be because of public protection, to
9 protect the public from unscrupulous things that people
10 in those industries do. Fair?

11 A That could be one of the reasons,
12 yes.

13 Q So I don't know if you've seen the
14 ad, but there's ads relating to truth in advertising and
15 the importance to follow advertising standards. You're
16 aware of those?

17 A Yes.

18 Q Okay. Same thing with securities.
19 There's laws against insider trading, things of that
20 nature. Correct?

21 A Yes.

22 Q Okay. Now, even though these
23 regulations exist, it is a matter well known that
24 sometimes there are abuses of these regulations. That's
25 correct?

26 A Yes.

27 Q Okay. And one of the reasons they
28 have the regulations is to ensure that people comply.

1 Wouldn't that be fair?

2 A Yes.

3 Q Okay. And it's also the case that
4 notwithstanding that there are some abuses of those
5 industries, for example securities or advertising, the
6 reaction is not simply to shut down the industries
7 entirely. Fair enough?

8 A Yes.

9 Q I suppose a simple way to put it is
10 there might be lots of laws, but it's simply inevitable
11 that there's going to be some violations of those laws.
12 Fair enough?

13 A Potentially.

14 Q And so as a matter of common sense
15 you'd agree with me that -- let's say we have an
16 industry of 10,000 units. 10,000 users of that
17 industry, 10,000 people participating in that industry.
18 If there are five people within that industry, that
19 10,000, that might be abusing that industry, it wouldn't
20 be reasonable to suggest shutting down the entirety of
21 that industry. Fair enough?

22 A Yes.

23 Q Or for that matter 25 abusers
24 within that 10,000 number. Fair enough?

25 A Well, the ultimate goal is to stop
26 that 25 people abusing that system.

27 Q But it wouldn't suggest that a vast
28 majority of the 10,000 are necessarily abusing that

1 system. Fair enough?

2 A Yes.

3 Q Now, you're aware of different
4 things that can happen in regulatory investigations in
5 Canada. For example, spot audits. You've heard of
6 that?

7 A Yes.

8 Q An example, the best example
9 perhaps would be tax investigations. I don't have the
10 exact number, but there's 30 million people in Canada.
11 Potentially maybe there's about 15 million taxpayers?
12 You're aware, that would sound about right?

13 A I couldn't comment on that. I
14 don't know.

15 Q Okay. But you're aware, of course,
16 that under the tax regime everybody can be subject to a
17 spot audit. Somebody from CRA comes in and just does a
18 random audit on whether you've been properly filing your
19 taxes. Fair enough?

20 A Yes.

21 Q Okay. And one of the things that's
22 reasonable about that, of course, is that if everybody
23 knows that they are subject to a spot audit, it
24 encourages them to be in compliance with the laws. Fair
25 enough?

26 A Yes.

27 Q Okay, so you don't know you are
28 going to get audited, but if it is done randomly you

1 might get audited, and when they come and look at your
2 books, you better have them properly in place. Fair
3 enough?

4 A Yes.

5 Q Okay. And going to that point,
6 now, throughout your expert report, or at points in your
7 expert report, speaking generally, you refer to a
8 problem with inspections of medical marijuana production
9 sites as being a resource issue. You recall talking
10 about that?

11 A Yes.

12 Q That there is simply too many --
13 we've talked about the numbers in the thousands. There
14 is simply too many to be able to employ the personnel or
15 to have the personnel ready to go on and do inspections,
16 correct?

17 A Yes.

18 Q Now, at the same time, again,
19 bearing in mind, that this is a regulatory industry,
20 like we've just talked about with taxes, there is
21 nothing preventing a spot audit, or spot inspection, at
22 least for a large number of those -- not facilities, but
23 sites, correct?

24 A Well, there are a number of things
25 that make it difficult to do those spot audits, and one
26 thing, being private property, Health Canada inspectors
27 would require consent of the owner, or a warrant to
28 enter onto that property, and in comparison to the tax

1 example you gave, there is monetary penalties for those
2 spot checks being non-compliant. Whereas, under the
3 *MMAR* there wasn't any.

4 Q There might very well be criminal
5 penalties, correct?

6 A Possibly, yes.

7 Q Okay, no you've said private
8 residences or private property. That is the term you
9 used just now, okay?

10 A Yes.

11 Q You are aware that a large number
12 of those several thousand that we've talked about, do
13 not occur in dwelling homes. Correct?

14 A I don't know what the numbers are,
15 and where they are, because of the medical concerns
16 around the *MMAR*. I am not privy to exactly where they
17 are, or where they are located.

18 Q It's correct that you can do a spot
19 audit on a place other than a dwelling house under the
20 *MMAR*, correct?

21 A Other than a dwelling house. I
22 believe they would also need a warrant for private
23 property.

24 Q Do you want to go to the -- let's
25 go to the *Act* -- or the *Regulations* I should say. I am
26 going to refer you to the joint book of documents,
27 Volume 5 of 13. Have you got it there?

28 A I think so.

1 Q Okay. Now, in the first part of
2 that joint book, there is the affidavit of Jeannine
3 Ritchot, this is at page 1514, if you go to that. The
4 exhibit strap there?

5 A 1514, yes.

6 Q Okay, now, the first page in that
7 exhibit at 1515 is the *Medical Marijuana Access*
8 *Regulations*. See that?

9 A Yes.

10 Q Okay, and that's referring to 14th
11 June of 2001. Okay? Now, just for clarity purposes,
12 I've reviewed this, and I've reviewed the version of the
13 *MMAR* that would have been in place between -- before the
14 changes in 2013. And so, whatever I am going to put to
15 you I understood to be in place at that time. Okay?

16 A Okay.

17 Q Now, if we go to page 1531 of that
18 copy of the Regulations, so section 57?

19 A Yes.

20 Q Okay, you see at 57 it says,
21 "Inspection", correct?

22 A Yes.

23 Q And it says that,

24 "To verify that the production of marijuana
25 is in conformity with these Regulations and a
26 licence to produce, an inspector may, at any
27 reasonable time, enter any place where the
28 inspector believes on reasonable grounds that

1 marijuana is being produced or kept by the
2 holder of the licence to produce, and may for
3 that purpose..."

4 And then it goes on, and open and examine
5 containers, things of that nature. See that?

6 A Yes.

7 Q Okay. And (2), under that, it
8 says,

9 "Despite subsection (1), an inspector may not
10 enter a dwelling place without the consent of
11 an occupant."

12 A Yes.

13 Q So it refers to "dwelling place".
14 Correct?

15 A Yes.

16 Q Now, you were responsible, and
17 you've given an expert opinion here, with respect to
18 abuses under the *MMAR*.

19 A Yes.

20 Q And you were saying you didn't
21 understand the distinction between private property --
22 or you were saying that you thought it was private
23 property, not dwelling place. Is that correct?

24 A No, it says "dwelling place" in the
25 *Regulations*. If there was any sort of criminal action,
26 police would need a warrant to get onto that property to
27 investigate.

28 Q Okay. To get onto the property.

1 But we're talking here of inspections of dwelling
2 places.

3 A It says, yes, that Health Canada
4 has the ability to inspect.

5 Q And you can't provide me the
6 numbers, that is, of the several thousand licenses we're
7 talking about, you can't provide the numbers with
8 reference to the difference between the numbers that are
9 in dwelling places or not in dwelling places. Correct?

10 A That's correct.

11 Q So when you say that there was an
12 inability, because you could only -- because there were
13 problems entering private property, there was an
14 inability to inspect, you don't really know what you're
15 talking about. Fair?

16 A That I don't know what I'm --

17 Q You were saying that there was an
18 inability to be able to inspect places where there were
19 production licenses. Correct?

20 A There was an inability because of
21 the numbers is, I believe, what I said in my affidavit.

22 Q Well, I was saying that you could
23 do spot audits. Right?

24 A Okay.

25 Q There was nothing preventing you
26 from doing spot audits. You were saying --

27 A I can't do spot audits. Health
28 Canada can do spot audits.

1 Q Health Canada can. There was
2 nothing preventing Health Canada from doing spot audits,
3 okay? Your response to me was that, well, it was
4 different from monetary under CRA, because here we have
5 an inability to be able to enter private property.
6 Correct?

7 A I have the inability to enter
8 private property without a warrant to do an
9 investigation. So in comparison to the CRA example, for
10 -- CRA can issue immediately a monetary value. If
11 Health Canada wanted to further an investigation that
12 required criminal charges, they would contact the
13 police. The police would have to write a search
14 warrant, attend the property, and investigate.

15 JUSTICE: I don't think that that was
16 the purport of the question.

17 MR. VAZE:

18 Q What I'm saying -- I was saying --
19 you were saying that in response to my question
20 regarding inspections, I said people could do a spot
21 audit. You recall me asking you that question?

22 A Yes.

23 Q Your answer was that it's different
24 than under the monetary scheme, because here we have the
25 issue of what you referred to as private property.

26 A Yes.

27 Q But you cannot tell us any numbers,
28 that is of the different number of licenses that are

1 held and produced within private property, versus not
2 private property. Correct?

3 A That's right.

4 Q So you actually can't say that
5 there would be a problem with respect to doing spot
6 audits, even with limited numbers of inspectors.
7 Correct?

8 A That's correct.

9 Q Okay. And as we talked about
10 earlier, if you know you're subject to a spot audit at
11 any time, it's reasonable to think that people would
12 want to make sure they're in compliance as under the tax
13 rules. Correct?

14 A I would hope so, yes.

15 Q Now, we talked a little bit earlier
16 about social science analysis and methodology. Now, are
17 you aware of a form of research known as random sampling
18 analysis? Can you tell me anything about that?

19 A Not specifically.

20 Q Okay. Well, let me explain it to
21 you this way. Perhaps the easiest way to understand
22 what we call "random sampling analysis" might be a poll.
23 You've heard of polls before.

24 A Yes.

25 Q And so one of the things that you
26 might want to do, if you have a certain population of
27 individuals or grouping, is that you'll want to do a
28 sample of that -- of that population, to try and

1 determine maybe what their behavioural characteristics
2 may be, or who they vote for, things of that nature.

3 A Yes.

4 Q You understand that?

5 A Yes.

6 Q Okay. And so one of the things
7 that would happen, say you have a population of a
8 thousand, and one person in that thousand says that they
9 are going to vote for Party X. It wouldn't be
10 reasonable to assume that a vast majority of that
11 thousand would be voting for Party X. Wouldn't that be
12 fair?

13 A I don't know about a vast majority,
14 but there may be a representative that there could be
15 more than that one person.

16 Q There could be. But simply if that
17 one person says, "I'm voting for Party X," you can't say
18 that a majority of that thousand would vote for Party X.
19 Fair?

20 A That's correct.

21 Q Okay. And so what I'm getting at
22 is that an appropriate methodology, if you want to
23 understand the characteristics of a particular
24 population, is to take a random sample of that
25 population. Does that sound about right?

26 A Yes.

27 Q Okay. So, you know, you could look
28 at 100 members of that population and ask yourself, and

1 ask them all the question, "Who are you going to vote
2 for?" And if they say, "Party X," and if a majority of
3 them say, "Party X," then you might be able to conclude
4 that a majority of them are voting for Party X. Fair
5 enough?

6 A Potentially, yes.

7 Q Okay. And one of the things that
8 you'd also want to do as part of that poll is make sure,
9 for example, that if you're saying that -- let's say you
10 have these thousand people spread out over a particular
11 geographical area. You wouldn't want to take your poll
12 only in one-quarter of that particular area if you want
13 to be properly representative of the population. Fair
14 enough?

15 A Yes.

16 Q Because that one-quarter might only
17 vote for Party X, but you don't know what the other
18 three-quarters might do.

19 A Yes.

20 Q So taking 100, maybe you want to
21 take 25-25-25, something like that. Fair enough?

22 A Okay.

23 Q Okay. Are you getting with me then
24 as far as random sampling analysis is concerned in
25 social sciences?

26 A Yes.

27 Q Okay. It's like a poll. And you'd
28 agree with me that if you're trying to understand the

1 characteristics of a particular population, it would be
2 very helpful, if not a requirement, to engage in that
3 random sampling analysis.

4 A Yes.

5 Q Okay. You couldn't take two or
6 three examples because they might be outliers,
7 especially in a population of a thousand -- of
8 thousands. Fair enough?

9 A Yes.

10 Q Okay. Well, let me just ask you
11 straight off then. All these conclusions that you reach
12 in your expert report with respect to health and safety
13 issues, organizational crime, all of that related to the
14 *Medical Marijuana Access Regulations* and personal
15 producers, at no time have you engaged in a random
16 sampling analysis of the entirety of the population.
17 Correct?

18 A That's correct. There's difficulty
19 in getting that information to even do that sample.

20 Q Now, okay, well, let's do that.
21 Let's go back to your CV.

22 A Okay.

23 Q As I look at your CV, I do not see
24 anything in your CV indicating that any time you have
25 engaged in systematic research with respect to marijuana
26 or the medical marijuana growing population. Everything
27 you've learned has come from investigations you've been
28 involved in, correct?

1 A Yes.

2 Q Okay. And so coming back to this
3 point, you say that, well, there's problems associated
4 with doing a random sampling analysis, right?

5 A Yes.

6 Q You in fact have never tried,
7 correct?

8 A That's correct.

9 Q So it's not a question of problems.
10 You just haven't done the work.

11 A I haven't done a random sampling,
12 no. It's outside of my expertise. And given the fact
13 that medical marijuana patients have confidentiality
14 privileges, Health Canada won't share information with
15 me regarding these people's phone numbers or where they
16 are or anything like that, so I can't -- I couldn't
17 engage in that activity.

18 Q You've never thought of actually
19 going out and conducting any kind of questionnaires.

20 A No.

21 Q Okay. You're aware that in this
22 litigation, one of -- all of the plaintiffs and
23 particularly the lead plaintiff Mr. Allard has
24 voluntarily disclosed all sorts of information about how
25 he's gone about personally producing. You're aware of
26 that?

27 A Yes.

28 Q Okay. And so you could have. You

1 just didn't go out and ask the questions that you could
2 have asked, correct

3 A That's right, I did not ask.

4 Q And you've agreed with me earlier
5 that it would not be proper in the conduct of research,
6 research which then goes to expertise, to ignore data
7 which is potentially available in terms of rendering an
8 opinion, correct?

9 A Rendering an opinion, yes.

10 Q Now, I've talked to you a little
11 bit about random sampling analysis. Have you ever heard
12 the term comparative analysis?

13 A Comparing one thing to another,
14 yes.

15 Q Okay. One of the things you would
16 want to do as part of that comparative analysis is you
17 would want to set up a certain number of variables and
18 look at two different things, for example, and see how
19 they meet those variables. Does that sound about right?

20 A Yes.

21 Q So let's go to a direct example in
22 this case for example. You've talked about problems
23 related to toxic mould in your report. You recall doing
24 that?

25 A Yes.

26 Q Okay. That is that what you say is
27 that there might be problem associated with toxic mould
28 in medical marijuana grow operations, correct?

1 A Yes.

2 Q Okay. So one of the things that
3 you could conceivably do in terms of comparative
4 analysis would be to look at one type of facility, for
5 example what you talked about, the Licensed Producer
6 facilities, and compare that to a personal producer
7 area. Fair enough?

8 A Yes.

9 Q Okay. And one of the things that
10 you would want to do in that respect, though, is make
11 sure that the comparatives are also subject to random
12 sampling. That is, that the two things you're
13 comparing, if you're comparing Product A, for example,
14 to Product B, but Product B consists of 10,000 units,
15 for example, you can't simply take one of those units
16 and compare it to Product A. Fair enough?

17 A Yes.

18 Q That's not going to get you a
19 proper result. You have to take a random sampling of
20 Product B and compare that to Product A.

21 A Yes.

22 Q Fair enough? Okay. And you'd
23 understand, though, that if you're trying to reach an
24 answer to this question, sometimes you also have to
25 bring in a third variable. So if you're asking about
26 mould, one of the things you might want to consider is,
27 well, how prevalent is mould generally, outside of the
28 production facilities or the personal production sites.

1 Fair enough?

2 A Yeah.

3 Q Okay. In your report where you
4 talk about mould, for example, you have not engaged in
5 this kind of comparative analysis. Fair enough?

6 A That's correct.

7 Q Okay. In fact, speaking
8 specifically of mould, you I think mentioned one
9 occasion where you've observed mould in a medical
10 marijuana production site, just one, correct?

11 A That I've mentioned it just once?

12 Q That you've seen it.

13 A No, I've seen it on a few
14 occasions.

15 Q Okay, a few occasions, okay. Now,
16 you haven't done a systematic study of how prevalent
17 toxic mould might be in any home in British Columbia in
18 the Lower Mainland, fair enough?

19 A No. As a police officer I don't
20 investigate toxic mould in --

21 Q You could get that from Public
22 Health and Safety records perhaps? All of that?
23 Correct?

24 A Possibly.

25 Q Okay. You just simply have not
26 introduced that into your comparative analysis here, in
27 any comparative analysis.

28 A That's correct.

1 Q And in fact throughout your expert
2 report you have not engaged in any kind of comparative
3 analysis at all, correct?

4 A I've done some comparison from the
5 *MMAR* to the *MMPR*.

6 Q That's legislation. I'm talking
7 about places, things, production sites. You haven't
8 engaged in what I have described as a comparative
9 analysis.

10 A No.

11 Q Okay. Coming back to the random
12 sampling analysis, again I'm just going to take you to
13 one further example from your own report. You make a
14 reference to -- you recall making a reference to monster
15 plants.

16 A Yes.

17 Q You recall that? Okay. And what
18 you say is that the only inference that can be drawn
19 from growing monster plants is to traffic the excess
20 product. You recall saying that?

21 A Yes.

22 Q Okay. Now, what you haven't done
23 for example in reference to medical marijuana producers
24 is engage in a random sampling analysis of monster
25 plants. Fair enough?

26 A That's correct.

27 Q You haven't taken a random sample
28 of the population, determined whether or not they are

1 growing monster plants, and then determine what they
2 might be doing with those monster plants. Correct?

3 A That's right.

4 Q So in fact the reasonable inference
5 you make, that -- or the not reasonable inference, I
6 would say, but the inference you make, that the only
7 conclusion would be to traffic excess marijuana, is in
8 fact not a reasonable conclusion for you to refer to,
9 because you haven't engaged in the analysis. Correct?

10 A I haven't engaged in analysis, no.
11 But if someone has a licence for 50 plants, and they're
12 growing 50 plants that yield 3 pounds apiece, they're
13 going to be non-compliant with their licence, because
14 they're going to be over their possession amount.

15 Q Well, that has to do with when the
16 things are harvested, correct?

17 A Yes.

18 Q You have an authorization to have a
19 certain number of plants, right?

20 A Yes.

21 Q Things get harvested. Right?

22 A Yes.

23 Q It could produce more than your --
24 than you are allowed to have, right?

25 A Growing monster plants, yes.
26 Substantially more.

27 Q Well, wait. We haven't talked
28 about the number of plants. Let's say you're authorized

1 to grow 100 plants. What if you only grow one monster
2 plant? Is the only conclusion being that you will go
3 over the amount you are allowed to possess, and that you
4 will then traffic that excess?

5 A The licences for a number of plants
6 are based on the daily prescription amount. So, if
7 someone has a prescription amount for X, it would make
8 sense to grow that many plants to support that
9 prescription amount.

10 Q I don't know if you answered my
11 question. Not everybody may -- and you don't have any
12 data that everybody meets the number of plants that
13 they're allowed to have. Right?

14 A That's correct.

15 Q You might have -- be allowed to
16 have 100 plants, but you might only grow one. Correct?

17 A It's possible.

18 Q It's possible. Okay. And if you
19 go far under, and in fact you only have one monster
20 plant, leaving aside what monster plants are for the
21 moment, because I don't think you've defined what a
22 "monster plant" is. If you only have one monster plant,
23 you may or may not be producing over your limit. That's
24 fair?

25 A That's fair.

26 Q My point being this, that you
27 actually haven't gone out and done the work with respect
28 to whether or not people may have -- may be having very

1 few plants, but they might be large plants, and
2 therefore producing far under what they're allowed to
3 produce. Fair enough?

4 A It's possible.

5 Q Okay. So the inference you make is
6 in fact pure conjecture. Fair enough?

7 A If you're growing monster plants,
8 with the same amount of plants per that licence -- so if
9 someone's allowed 50 plants, and they're growing 50
10 monster plants, the inference is they're growing for
11 trafficking, yes.

12 Q If. You're putting all these
13 different variables in here. If they're growing numbers
14 of monster plants, okay? I'm going to perhaps take you
15 straight to the conclusion that you've drawn. This is
16 at paragraph 84, page 27 of your report. You see that?

17 A Yes.

18 Q You say

19 "A *MMAR* producer is only allowed to possess
20 and store the amount of marijuana listed on
21 their licence. It would be impractical to
22 cultivate monster plants if they yield more
23 than authorized."

24 You see that?

25 A That's correct.

26 Q Your next statement is as follows.

27 "The only logical reason to grow monster
28 plants is to traffic the excess marijuana."

1 You see that?

2 A Yes.

3 Q Now, based on the discussion we
4 have had, and the lack of research or work you've done
5 with respect to this area, you would agree to me -- with
6 me that that statement is purely conjectural.

7 A If someone is growing one plant and
8 not the number of plants according to their licence,
9 yes.

10 Q I'm referring you to the specific
11 statement you made here. Your lack of work and your
12 lack of analysis or research, you would agree with me
13 that that statement is purely conjectural, made on the
14 basis -- on basis -- no evidentiary basis whatsoever.
15 Fair?

16 A Yes.

17 MR. VAZE: I wonder, Justice, I am
18 going to move on to another area, if this might be a
19 proper time?

20 JUSTICE: If you'd like to take it
21 now, that's fine, we'll take 15 minutes.

22 **(PROCEEDINGS ADJOURNED AT 10:50 A.M.)**

23 **(PROCEEDINGS RESUMED AT 11:11 A.M.)**

24 MR. VAZE:

25 Q Cpl. Holmquist, continuing from the
26 earlier examination, I am going to take you back to your
27 CV. Annex A, page 89 of your affidavit. Go into the
28 first page here. At the end of the second section, you

1 see "Current Position and Mandate"? See that?

2 A Yes.

3 Q At the end of -- you describe
4 basically your role right now within the RCMP. And at
5 the end of that, you say the following, that -- well,
6 I'll just read the full thing. It says,

7 "The mandate of my current position within
8 the RCMP is to investigate large-scale
9 marijuana grow operations, organized crime
10 groups taking advantage of the *Marijuana*
11 *Medical Access Regulations*, provide
12 assistance and training to police detachment
13 on the *MMAR* and *MMPR*. Enhance police and
14 public awareness of the dangers and impact of
15 organized crime, and promote and support
16 changes to legislation and regulations that
17 discourage people from engaging in illegal
18 activities related to marijuana."

19 You see that?

20 A Yes.

21 Q And that is what you said.

22 Correct?

23 A Yes.

24 Q So, I take it from that, in coming
25 here today, in fact you have come here more as an
26 advocate for the position taken by the defendants,
27 rather than as an expert witness, correct?

28 A No, that's not the case.

1 Q Okay. Well, let's go back over it.
2 We've established that with respect to the question
3 you've been asked here, you had set up no research plan,
4 correct?

5 A That's correct.

6 Q You never asked yourself the
7 question, "Are there abuses, or health and safety
8 concerns under the *MMAR*," correct?

9 A I never, sorry?

10 Q You never set up a research plan
11 asking yourself that question, correct?

12 A Well, I researched what was asked
13 of me by the Department of Justice in those questions.

14 Q And so what was asked of you was,
15 provide an opinion supporting the abolition of the *MMAR*
16 and in support of the *MMPR*, correct?

17 A No, there was four questions that
18 was asked of me at the very beginning, and that is
19 actually attached here as an exhibit. And it is not
20 supporting one side or another, because that is what
21 expert opinion is, is to provide, you know, an opinion,
22 impartially not taking one side or the other.

23 Q Okay, but we've established again
24 that you didn't have a wider research plan in which you
25 consulted anything other than the three -- the 18,000
26 pages of police information, correct?

27 A And speaking with other police
28 officers, yes.

1 Q Okay, so I put to you again, you
2 are more an advocate than an expert in this case,
3 correct?

4 A Advocate versus expert. No, I
5 wouldn't say an advocate.

6 Q I am saying you are more an
7 advocate than an expert, correct?

8 A No.

9 Q Well, you've also given a number of
10 public presentations at town councils, things of that
11 nature, with respect to the scourge of marijuana grow
12 operations?

13 A Presentations to discourage? No.
14 I've presented issues that have been discovered.

15 Q I said, with respect to the scourge
16 of marijuana grow operations.

17 A Scourge.

18 Q Yes.

19 A Talking about the number of them?

20 Q That they're a bad thing, that
21 they exist, and they're bad, fair enough? You've talked
22 about those at town council meetings?

23 A Yes.

24 Q Okay. And you've publically gone
25 out and done these presentations?

26 A I've done one recently, yes.

27 Q And so in that respect, of course,
28 you have publicly gone out there and you have advocated

1 that *MMAR* is a bad thing.

2 A No, the last presentation I did was
3 not discouraging about the *MMAR*. The Mission City Mayor
4 had asked me to do a presentation on the *MMPR*, and the
5 mayor and councillors were concerned about what the *MMPR*
6 would look like versus the *MMAR*.

7 So the presentation I did was a
8 PowerPoint presentation and I explained the processes of
9 the *MMPR*. But the majority of the questions that came
10 forward from the audience and from councillors were
11 issues and neighbourhood complaints from the *MMAR*.

12 Q So you were, as such, encouraging
13 the betterment of the *MMPR* versus the *MMAR*, correct?

14 A Showing that facts of the *MMPR* have
15 an advantage over the *MMAR*, yes.

16 Q So you were advocating that,
17 correct?

18 A Yes.

19 Q I again put to you, you are more an
20 advocate than an expert as far as this subject matter is
21 concerned.

22 A No, I wouldn't -- I wouldn't say
23 that.

24 Q Okay. Let's go back to the *MMAR*
25 then. Now, I want to take you back, since we talked
26 about the *MMAR*, I want to take you back to some of the
27 sections of that. You have that Joint Book of
28 Documents, Volume 5 of 13, in front of you again.

1 A Yes.

2 Q And I'm going to take you to page
3 1523 of that book. Now, you see at page 27 -- or sorry,
4 at Section 27(1), "a person mentioned in subsection
5 26(1) who is seeking a Personal Use Production Licence
6 and shall submit an application to the Minister". You
7 see that?

8 A Yes.

9 Q Okay. And so obviously you were
10 aware that in order to get a Personal Use Production
11 Licence you would have to submit an application.

12 A That's correct.

13 Q And you had to answer a certain
14 number of questions on that application.

15 A Yes.

16 Q And you had to in fact make
17 declarations with respect to those questions, correct?

18 A I believe so, yes.

19 Q And you see then the next section
20 says, "Section 28, Applicant's Declaration." It says,
21 "The declaration of the applicant under paragraph
22 27(2)(a) must indicate..." again, then there's a number of
23 things that follow.

24 A Yes.

25 Q See that? One of the things it
26 says at sub (g) is,

27 "If the proposed production area involves
28 outdoor production entirely, or partly indoor

1 and partly outdoor production, that the
2 production site is not adjacent to a school,
3 public playground, daycare facility."

4 Do you see all that?

5 A Yes.

6 Q Okay. And at subsection (i),
7 "a description of the security measures that
8 will be implemented at the proposed
9 production site and the proposed site where
10 dried marijuana will be kept."

11 Do you see that?

12 A Yes.

13 Q Okay. Now, staying within that
14 same Book of Documents if you could, have you had an
15 opportunity to view some of the other affidavits that
16 have been filed in this case, for example of Ms.
17 Ritchot?

18 A No, I have not.

19 Q Okay. Have you looked at the
20 affidavit of Neil Allard, the plaintiff in this case?

21 A Quite a while ago at the beginning
22 I did.

23 Q You're aware that Neil Allard is a
24 plaintiff who has grown for himself?

25 A Yes.

26 Q And he's described as part of
27 everything else in this action that he -- various
28 measures that he takes for security, various ways in

1 which he's gone about setting up his production site.

2 A I'd have to refresh my memory on
3 that.

4 Q Well, I'll take you to that. But
5 you're aware of that.

6 A Yes.

7 Q Okay. Now, I'm going to take you
8 to page 1645 of that same Book 5 of 13.

9 JUSTICE: 16?

10 MR. VASE: 45.

11 JUSTICE: Thank you.

12 MR. VAZE:

13 Q And if you go back -- and just bear
14 with me, quickly, because I want to make sure it all
15 lines up. If you go back to page 1625, you'll see that
16 this is Exhibit B, referred to in the affidavit of Ms.
17 Ritchot?

18 A Yes.

19 Q Okay, and fast forward again to
20 1645 -- or I should say 1644, you see that this is an
21 application for licence to produce marijuana by
22 applicant?

23 A Yes.

24 Q And what I am showing you, and
25 you'll see this in the document, is it is essentially
26 Mr. Allard's application to produce, which was included
27 as part of Ms. Ritchot's affidavit. Do you understand
28 that?

1 A Okay. Yeah.

2 Q Okay. So, you see page 1, it says
3 "Application for licence to produce marijuana by
4 applicant." See all of that?

5 A Yes.

6 Q Okay, now if you go to the next
7 page, bottom of the page, part 5, see "production site
8 security measures"? See all of that?

9 A Yes.

10 Q Okay.

11 "Describe the security measures that will be
12 implemented at the site where you plan to
13 produce marijuana, to protect your marijuana
14 against loss or theft."

15 And he goes into a large description then about security
16 measures. You see that?

17 A Yes.

18 Q Okay. In fact, he says,
19 "I will begin with indoors. The rooms in my
20 basement suite, one room has a steel door
21 with a deadbolt and no window. The other
22 room has a lock on the door. The window will
23 be nailed over with three quarters-inch
24 plywood,"

25 And then he goes in to another description about
26 outdoors, you see that?

27 A Yes.

28 Q Okay, so now you are aware,

1 obviously, in order to get your personal use production
2 licence, what you would need to do is fill out this form
3 in its entirety? At least all of the sections that
4 apply to you, right?

5 A Yes.

6 Q Okay. And in fact, if you didn't
7 fill this part 5 out properly, whoever is reviewing the
8 form could simply refuse to issue the licence, right?

9 A It's possible. That would be
10 Health Canada, not --

11 Q Fair enough, but it's possible, you
12 understand that?

13 A Yes.

14 Q Okay, and now, over the course of
15 your expert report, you refer to "Poor security
16 measures", that some personal producers might have. Do
17 you recall doing that?

18 A Yes.

19 Q Okay, and you say that that is a
20 problem, because it could lead to violence, all that
21 sort of stuff that happens, correct?

22 A Yes.

23 Q Okay. But you'd agree with me,
24 that in fact, based on what we've just seen, somebody
25 could satisfy Health Canada that they have appropriate
26 security measures in place, and if they don't, they'd
27 simply be turned down for their personal use production.
28 Correct?

1 A It's possible.

2 Q Okay. Okay. So, what I am saying
3 is that it doesn't simply follow that with this *MMAR*
4 system in place, that there are automatically are going
5 to be security breaches. In fact, what we see from this
6 application is that it mandates there must be proper
7 security and safety at these sites, correct?

8 A It doesn't mandate particular
9 security. It just asks what security that you are going
10 to be implementing. Under the *MMPR* program, licenced
11 producers have to meet the security directive for the
12 storage of controlled substances, and those are specific
13 security requirements.

14 Q There is nothing, for example, in
15 this application process that this application could not
16 involve, that personal use producers had to follow
17 certain security requirements, correct?

18 A It's possible, yes.

19 Q Okay, and in fact, and if they
20 didn't, if they said they were and they didn't, spot
21 audits could ensure that they'd get shut down if they
22 didn't, fair enough?

23 A If there was ramifications for
24 that, yes.

25 Q Now, I'm just going to fast-forward
26 you all the way to -- no, let me go back again, sorry.
27 Excuse me.

28 Now, you'll note at 1646, Mr. Allard has

1 dated that application for May 7th, '04. You see that?

2 A Yes.

3 Q Okay. Now, I'm going to fast-
4 forward you to page 1948. And it says, "Form C,
5 application for licence to produce marijuana by
6 applicant". You see that?

7 A Yes.

8 Q Okay. This would appear to you to
9 be a more updated form than what I guess we can look at
10 as the 2004 form?

11 A Yes.

12 Q Okay. And in fact if we go over to
13 the end of this particular copy, at page 1951, we see
14 that it's signed August 24th, 2012.

15 A Yes.

16 Q You see that?

17 A Yeah.

18 Q And at page 1950, at C-4, again,
19 you see security measures for growing and storing
20 marijuana.

21 A Yes.

22 Q And again it says,

23 "Please describe the security measures that
24 will be used at the proposed production site
25 to protect your crop of marijuana against
26 loss."

27 Is that -- okay.

28 A Yes.

1 Q And you know that of course under
2 this regime Mr. Allard, if there were changes, and also
3 over certain periods of renewal, he would have to keep
4 renewing the licence and putting this in. Right?

5 A That's correct.

6 Q Okay. And so what you see, of
7 course, then, in the 2012 application is that, again,
8 he's got to give a comprehensive description of the
9 security measures he's putting in place.

10 A Yes.

11 Q Okay. So there's a constant review
12 to ensure that these sites follow things that will
13 ensure safety of the occupant and safety of the site
14 generally. Fair enough?

15 A I don't know what the review that
16 Health Canada does for the *MMAR* to meet the security
17 requirements.

18 Q You're aware that Health Canada
19 officials who are enjoined with the task of reviewing
20 applications would have to be somewhat specialized in
21 this area. Fair enough?

22 A I would hope so, yes.

23 Q And so somebody who's not
24 specialized should not be reviewing descriptions of
25 security. Fair enough?

26 A Yes.

27 Q And so if somebody who is
28 specialized is reviewing descriptions of security, they

1 could determine whether or not proper security is in
2 place. Fair enough?

3 A Yes.

4 Q And if it's not, simply refuse the
5 licence. Fair enough?

6 A Potentially.

7 Q Okay. Now, let's go back and I'm
8 sorry to make you jump around. But let's go back to the
9 *MMAR* that we have at the beginning of that book. Just
10 bear with me one second. I'm just trying to find my --

11 If I could turn you over to page 1534.
12 Now, earlier we had a discussion about the difference
13 between an outdoor inspection or a non-residential
14 inspection, and a residential inspection, a dwelling
15 house. You recall us talking about that, okay.

16 A Yes.

17 Q And what it says at Section 68, it
18 says, "Complaints and disclosure of information".

19 "An inspector shall receive and make a
20 written record of any complaint from the
21 public concerning a person who is a holder of
22 an authorization to possess or licensed to
23 produce with respect to their possession or
24 production or marijuana."

25 You see that?

26 A Yes.

27 Q Okay. So one of the things that --
28 and then it says,

1 "The inspector shall report to the Minister
2 any complaint recorded under subsection (1)."

3 You see that?

4 A Yes.

5 Q And then

6 "The Minister may communicate to any police
7 force in Canada, or any member of a police
8 force in Canada, any information contained in
9 the report of the inspector, subject to that
10 information being used only for the proper
11 enforcement or administration of the Act or
12 these Regulations."

13 You see that?

14 A Yes.

15 Q And when they refer to *Act of*
16 *course*, they're referring to the *CDSA*, the *Controlled*
17 *Drugs and Substances Act*. You understand that?

18 A Yes.

19 Q Okay. And of course generally
20 speaking, marijuana prosecutions would occur, I would
21 think, under the *CDSA*. Fair enough?

22 A Yes.

23 Q Okay. So even when we talk about
24 dwelling houses then, okay, certainly somebody could
25 make a complaint to an inspector about a dwelling house,
26 from what we've seen. Fair enough? They could say that
27 they've smelled or there's something going on there and
28 "I think something is going on there." Somebody could

1 make a complaint to an inspector, right?

2 A It's possible. I don't think it
3 would -- they would complain to Health Canada and then
4 ultimately it would be given to an inspector.

5 Q But maybe they would.

6 A It's possible.

7 Q Okay. They could. And then what
8 the inspector could do is share that information with
9 you in terms of the complaint. Fair enough?

10 A It's possible.

11 Q Irrespective of whether it's a
12 dwelling house or whether it's an outdoor, outbuilding
13 type of production site. Fair enough?

14 A It's possible.

15 Q I'm going to take you back to --
16 get into this issue of security, again bearing in mind
17 that you've talked about all this lack of safety with
18 respect to personal use production sites. I'm going to
19 take you to the Joint Book of Documents 1 of 13. See
20 that? You've got the book in front of you?

21 A I've got the book in front of me,
22 yes.

23 Q Okay, if you can go to page 57 of
24 that particular book. Right? See that?

25 A 57, yes.

26 Q So if you go to page 54 you'll see
27 that it's the affidavit of Mr. Allard. We were talking
28 about it earlier.

1 A Yes.

2 Q And as I've stated, throughout your
3 expert report you talk about health and safety concerns,
4 you talk about security concerns, all of these things
5 that you see as big problems under the MMAR personal use
6 production sites. Right?

7 A I see them as issues, yes.

8 Q Okay. Now, I'll take you to page 4
9 of that particular affidavit, so go in to page 57.

10 A Yes.

11 Q Now, you see what Mr. Allard says
12 at paragraph 13:

13 "I received my first Health Canada
14 authorization to produce cannabis for myself,
15 Personal Production Licence in 2004 at or in
16 my residence in Nanaimo, B.C. At that time I
17 made inquiries to Health Canada about safety
18 issues, inspections, and help with seeds, and
19 basic growing information, but I received no
20 assistance from them and was advised to
21 simply search the internet for my seeds. I
22 purchased books and seeds and spent hours
23 researching various strains and methods of
24 growing and the equipment needed. I put a
25 lot of time and energy into research and
26 planning and developing knowledge of organic
27 cannabis growing and having a production site
28 built. I invested substantial amounts of

1 money to set up a production site."

2 You see that.

3 A Yes.

4 Q Okay. I'll take you to paragraph
5 15. He says:

6 "In 2012 I separated from my wife and I moved
7 to my current location in Nanaimo and had a
8 third production site built by professional
9 tradespeople, and it is my current site which
10 is in the basement of my dwelling house, and
11 I designed this site for indoor gardening. I
12 spent thousands of dollars having my basement
13 insulated, and two grow rooms built with
14 professional wiring, insulation, venting, and
15 painting. I installed new plumbing, two
16 laundry tubs, and a new sewer pump to feed
17 and water my indoor cannabis plants. I had
18 all of the work done by certified
19 electricians and contractors, and B.C. Hydro
20 was notified to inspect completion of all of
21 the electrical work. Now produced and marked
22 as Exhibit K to this my affidavit is an
23 electrical inspection report."

24 You see that?

25 A Yes.

26 Q "The warm air from my lights
27 is filtered and used to heat my home during
28 cooler months."

1 And Mr. Allard then goes into various
2 measures he takes with respect to that. Part of the
3 reason I am reading this to you is because I understand
4 you haven't reviewed this for some time. Fair enough?

5 A That is correct.

6 Q Okay. Now, what he also says is,
7 at paragraph 17,

8 "As indicated above, I have grown outdoors
9 and in a greenhouse, and found the cost of
10 growing outdoors alongside my spinach, kale,
11 carrots, and other herbs and fruit to be
12 almost zero since the soil compost, water,
13 rain and sunshine are on the place"

14 I'm sorry, I am going to skip over some
15 of this stuff. But he says,

16 "With respect to the public safety risk of
17 break and enters, and attempt to steal my
18 plants and production or medicine, I live
19 near the end of a short dead-end street, with
20 very low car and pedestrian traffic, and I
21 can easily hear and see vehicles or persons
22 come in and go in from the area, inside my
23 home. I am home nearly all of the time, and
24 I have motion detectors at the front and back
25 of my house, and all outside doors are kept
26 locked. All three cannabis production
27 related rooms in my basement are equipped
28 with doors which lock, and I have both CO₂

1 and smoke alarms in place. My backyard has
2 tall wooden privacy fencing on both sides,
3 between my property and my neighbours. The
4 nearest neighbour's property is 13 feet from
5 my house. My lot is 70.5 by 150, which is
6 slightly under one-quarter of an acre in
7 size. There are mature fruit trees along the
8 perimeter of my home, and a large tall hedge
9 at the rear. I have a small greenhouse on my
10 property, and I hope to install another
11 larger one."

12 And then he goes on to talk about tall wooden structures
13 and all. You see all of that, of course, right?

14 A Yes.

15 Q Now, it sounds from this, you'd
16 agree with me, that Mr. Allard, in fact, has taken very
17 extensive measures to ensure safety of his site, and
18 both in terms of his own safety, public safety, health
19 concerns, all of those matters. You'd agree with me?

20 A I agree with you that he is --

21 Q That he has taken extensive
22 measures to ensure that all of this is safe, correct?

23 A He is making some steps, yes.

24 Q He is taking, in fact, extensive
25 measures, isn't that fair?

26 A Well, I would hope that someone who
27 is growing a controlled substance would take steps to
28 mitigate theft or loss.

1 Q Exactly. So, in fact, that is what
2 you would suggest most people would do, correct?

3 A Yes.

4 Q Okay. We've already established
5 you didn't engage in any random sampling of the
6 population as a whole, right?

7 A That's correct.

8 Q If you had, in fact, you probably
9 would have gotten many stories such as Mr. Allard's,
10 which show that there are in fact no health, safety, or
11 other concerns, correct?

12 A I don't know, I haven't done that
13 sample to be able to determine --

14 Q You don't know because you haven't
15 done it. All you've looked at is police examples of
16 abuses, correct?

17 A That's correct.

18 Q Could be out of a population that
19 -- of a population of 10,000 that 7,000 were like Mr.
20 Allard, you don't know?

21 A I don't know.

22 Q Could be 7,000. Could be 9,000,
23 right?

24 A Or this could be the only one. I
25 don't know.

26 Q Exactly, you don't know. I am just
27 going to turn to the topic of what you referred to in
28 your affidavit about faulty electricity wires, things of

1 that nature, and risk of fire, that comes as a result
2 from that? You recall talking about that in your
3 expert's report, right?

4 A Yes.

5 Q Now, you would agree with me, as a
6 matter of simple common sense, that most people don't
7 want fires breaking out in their homes or in their
8 businesses. Fair enough?

9 A That's correct.

10 Q People -- most people, at least,
11 don't want to simply be burned to death or incinerated.
12 Fair enough?

13 A Yes.

14 Q Okay. You would also agree with me
15 -- and so you would agree with me that anybody doing any
16 kind of activity who is worried about injuries from fire
17 or electricity would probably take precautions to ensure
18 that they're not subject to this stuff happening. Fair
19 enough?

20 A I would hope so.

21 Q Okay. But you'd also agree that
22 any activity, in fact, involving electricity, burning,
23 or fire, if done negligently or willfully in a risky
24 fashion could cause that to occur. Fair enough?

25 A Yes.

26 Q Leaving the stove on with something
27 burning that could cause a fire to break out would be
28 problematic. Fair enough?

1 A Yes.

2 Q Okay. And so in terms of thinking
3 about what we talked as both legal and illegal growers,
4 or growers generally, okay? When we think about what we
5 know about the population as a whole, and people with
6 personal interest in their security to not be burned, it
7 would be reasonable to think that both legal and illegal
8 marijuana growers would want to make sure that they did
9 not do anything that would put them at risk for fire
10 hazard. Fair enough?

11 A I believe so. But I also -- some
12 of these grow operations, when their wiring is done, a
13 lot of people don't have the money to pay for
14 electricians to come in and do professional wiring jobs.
15 Some people most likely believe they could do it
16 themselves, and then sometimes inadvertent issues arise.

17 Q Okay. But you can't point to any
18 statistics in that regard.

19 A No, I can't.

20 Q Okay. And in fact I think what
21 you've said in the -- you've talked about these people
22 not having money?

23 A Yes.

24 Q I think the wider body of your
25 expert report, if I understand it, is that the illicit
26 production of marijuana or cannabis is in fact a
27 substantially money building enterprise. Fair enough?

28 A Yes.

1 Q So that doesn't really make much
2 sense, does it? That they wouldn't have much money,
3 based on what you have offered to the court.

4 A The amount of money to invest to
5 have and abide by all the permit guidelines could be
6 onerous for some people.

7 Q You talked about organized crime.
8 They tend to invest, don't they, from what you would
9 say. Fair enough?

10 A Some do, yes.

11 Q Okay. In any event, you don't have
12 any statistics about people not having money or anything
13 like that.

14 A No, I don't.

15 Q Okay. And you've said it's
16 reasonable that both legal and illegal growers as normal
17 individuals would want to ensure that they not be
18 subject to risks from fire and things like that. Fair
19 enough?

20 A That's right.

21 Q Okay. In fact, you've even heard
22 of -- wouldn't it be fair to hear of illegal growers
23 trying to find -- to ensure that everything is actually
24 certified and done so that they don't run particular
25 risks. Fair enough?

26 A Some do, yes.

27 Q Yes. So you would agree, and we've
28 looked at Mr. Allard's affidavit about inspections and

1 electrical wiring and all, you would agree that in the
2 case of legal growers, that in fact while I'm suggesting
3 that compliance with electrical safety standards and
4 fire standards, even in a case of illegal growers would
5 be high, it would be even more heightened as a matter of
6 course in the case of legal growers. Fair enough?

7 A I would hope so.

8 Q Okay. So in fact you don't
9 actually really have any real reason to say that under
10 the legal *MMAR* regime, there were going to be any risk
11 for faulty wiring or risk of fire of any sort. Fair
12 enough?

13 A I can't speak to all of the grows,
14 no.

15 Q Well, my question was fairly
16 simple. We've just had this discussion about this, that
17 in fact you can't say -- you made -- you've essentially
18 opined that there is a risk of fire in all of this. But
19 in actual fact you can't really say that there is any
20 risk of fire or problems with faulty wiring in legal
21 *MMAR* grows. Fair enough?

22 A I have seen some risks at some
23 sites, yes. And I have attached some photos of those
24 sites to the affidavit.

25 Q There is just a few of them.
26 Correct?

27 A That's correct.

28 Q Okay. And you've done no random

1 analysis of sites as a whole, correct?

2 A That's correct.

3 Q And you've done no comparative
4 analysis, correct?

5 A That's correct.

6 Q And in fact -- bear with me. I'm
7 going to put something to you. I just need to find out
8 what book it's in.

9 There's a Consolidated Book of Experts in
10 Book 3. Oh sorry, Book 6. Oh, I'm sorry, Book 3.
11 Excuse me.

12 JUSTICE: Which one is it?

13 MR. VAZE: Book 3.

14 Q And you see there the affidavit of
15 Robert Boileau at tab 19?

16 JUSTICE: Tab 19 in 3?

17 MR. VAZE: I'm sorry, there's been a
18 mix-up with my volumes. If you'd just bear with me, I'm
19 sorry.

20 JUSTICE: Okay.

21 MR. BRONGERS: It's Volume 5.

22 MR. VAZE: Volume 5.

23 JUSTICE: Volume 5, all right.

24 MR. VAZE: I apologize. I'm just
25 trying to --

26 JUSTICE: And we're looking for?

27 MR. VAZE: The affidavit of Robert
28 Boileau.

1 JUSTICE: Boileau.

2 MR. VAZE:

3 Q Are we together?

4 A Yes, I have that in front of me.

5 Q Okay. Okay, so if I could take you
6 to the first annex of that affidavit, so that's at --
7 second page of that affidavit you see the
8 *boileauelectric.com*?

9 A Yes.

10 Q Okay. Going further down, you see
11 under the executive summary, second paragraph:

12 "With respect to marijuana grow operations,
13 there have no doubt been problems associated
14 with core electrical installations in the
15 past. As a paid on-call fire fighter I
16 attended structure fires that were determined
17 to have been caused by such faulty
18 installations."

19 And he says as an electrical contractor he's repaired
20 electrical services. You see all of that?

21 A Yes.

22 Q Okay. And then he refers in two
23 paragraphs from there to "Under the SSA a permit is
24 required for the installation of electrical works." You
25 understand the SSA is the *Safety Standards Act*. Do you
26 understand that?

27 A I've heard of that, yes.

28 Q Okay. And then if you go to the

1 beginning of the next page it says at the second
2 paragraph:

3 "When the requirements of the *Safety*
4 *Standards Act* are followed, an electrical
5 installation at a marijuana grow operation is
6 just as safe as any other electrical
7 installation of any other type of facility."

8 See that?

9 A Yes.

10 Q Okay. Now, I'm not going to go
11 through the whole thing with you, but you're aware that
12 under the *Safety Standards Act* that in fact, should a
13 certified or qualified electrician be doing
14 installations under that, it involves then yearly
15 inspection that comes up from there. You understand
16 that?

17 A I'm not aware that it requires
18 yearly inspections, no.

19 Q I will come back to that, but the
20 general idea here is there are various measures in fact,
21 that when people have certified electrical work done,
22 that they would have to be in compliance under permits
23 and things of that nature. You're aware of that,
24 correct?

25 A Yes.

26 Q Okay, and in fact, many
27 municipalities, many municipalities have bylaws and
28 various things in place that require various houses to

1 be in code, in terms of electrical compliance, things of
2 that nature --

3 A Yes.

4 Q -- are you aware of that? Okay.
5 And we've talked about how -- we've seen Mr. Allard's
6 affidavit, and we've talked about how people who are
7 conducting legal grows would have more of an incentive
8 to be in proper compliance and, -- because there is
9 nothing to hide. You understand that?

10 A I would hope so, but a lot of
11 people want to keep the nature of their grow operations
12 quiet, and not public, with contractors, to prevent the
13 inadvertent disclosure of the location that could lead
14 to a grow rip.

15 Q Well, you don't know that though?
16 You are just saying that a lot of people want to do
17 that. You haven't talked to those people, correct?

18 A That's correct.

19 Q So, in fact, what you just said has
20 no foundation at all, correct?

21 A I am giving an example of what
22 could happen, and the reason why.

23 Q You said, "A lot of people want to
24 do this". You had no evidence for that, when you said
25 that, correct?

26 A That's correct.

27 Q Also conjectural, "a lot of people
28 could", correct?

1 A Yes.

2 Q Pure conjecture. Now, I want to
3 talk a little bit about investigations that could occur
4 under the *MMAR*. You've referred at a couple of times in
5 your affidavit to problems associated with investigating
6 what are essentially illegal grows under the *MMAR*,
7 because of the *MMAR* process. You talked about that in
8 your expert report?

9 A Sorry, I don't --

10 Q Okay, perhaps I didn't explain it
11 properly. That is, that you've talked about the fact
12 that it becomes difficult to investigate people
13 illegally operating under the *MMAR*, because of the *MMAR*
14 process. You recall talking about that?

15 A Yes.

16 Q Essentially you are saying that it
17 serves in an impediment to being able to do proper
18 investigation to people who are overgrowing or
19 trafficking, or anything like that?

20 A Yes.

21 Q Okay. I am going to take you back
22 to your affidavit now, and I'm going to take you to
23 Annex FF. Now, I appreciate -- I don't know if yours is
24 tabulated, but if you could find FF please.

25 JUSTICE: Got a page number?

26 MR. VAZE: That's page 267.

27 Q You see that?

28 A Yes.

1 Q And this is a criminal intelligence
2 brief, a review of cases related to the *Medical*
3 *Marijuana Access Regulations*?

4 A Yes.

5 Q April 2009?

6 A Yes.

7 Q And you've referred to this annex,
8 as I understand it, as part of general background to
9 problems associated with administering the *MMAR*?

10 A Problems with?

11 Q Associated with administering and
12 investigating the *MMAR*.

13 A Investigating, yes.

14 Q Okay, so now, if I turn you over to
15 page 273, we see at the bottom of that page, challenge
16 to police investigations. It says, at the very bottom,
17 "*MMAR* issues have presented obstacles in RCMP
18 investigations for many years. The main
19 problem occurs when police officers respond
20 to a call for suspected marijuana related
21 activities. If police officers find
22 marijuana dried or plants in a residence,
23 they can ask to see the HC permit to confirm
24 the legitimacy of the drug."

25 See all that?

26 A Yes.

27 Q Okay.

28 "Although the permit states how much the

1 licensee is allowed to possess, it is
2 impossible to know if more marijuana was
3 produced and sold prior to police
4 intervention. Essentially police officers
5 find themselves in a situation where they
6 cannot properly assess if the licensee is
7 upholding the terms of the permit, therefore
8 they are unable to detect and charge persons
9 who misuse the *Regulations*."

10 You see all that?

11 A Yes.

12 Q And you use that statement, and
13 that report, as a basis to say that there are problems
14 associated with investigating the *MMAR*?

15 A No. My problems associated to
16 investigating *MMAR* come from my own experiences.

17 Q Well, you've referred to this.

18 A Yes.

19 Q So you agree with that, that you
20 would -- you would see that as a basis for what you talk
21 about in terms of problems investigating the *MMAR*.

22 A This does present an issue, yes.

23 Q You would agree with me that the
24 passage I just read to you is not specific whatsoever to
25 anything having to do with the *MMAR*, marijuana, or any
26 other specific criminal investigation. Fair enough?

27 A No, I wouldn't say that.

28 Q Well, let's put it this way. What

1 it basically says is that when you show up, there is no
2 way of knowing whether or not you were overproducing in
3 the past. Right?

4 A That's correct.

5 Q So, have you ever attended the
6 scene of domestic violence, for example -- a domestic
7 violence complaint? Have you?

8 A Yes.

9 Q Okay. You can't verify when you've
10 shown up there that it might have been going on for
11 twenty years. Fair enough?

12 A That's correct.

13 Q So this is the case, with any
14 investigation, this is not specific to *Medical Marijuana*
15 *Access Regulations* or any marijuana investigation. Fair
16 enough?

17 A That's correct.

18 Q So it does not form a proper basis
19 to say that the *MMAR* is an impediment to proper
20 investigative work. Right?

21 A It does when someone has possession
22 of a substance and we don't know if it's -- they are
23 legally allowed to have it under the *MMAR* or it's for
24 illegitimate purposes. So in order to verify that, we
25 have to call Health Canada and find out that information
26 to distinguish that information.

27 Q Well, the point is, here, all
28 they're saying is that when you show up on site, you

1 can't determine what they've done in the past. Right?

2 A That's correct.

3 Q Same as any other criminal
4 investigation, right?

5 A That's right.

6 Q Okay. Now, going back to the issue
7 of investigations, okay? So you've also talked about
8 the problems with doing investigations under the *MMAR*.
9 I have referred you to the section of the *MMAR* which in
10 fact allows complaints that go from -- that could go
11 from the inspector to law enforcement. You've seen
12 that, right?

13 A I've seen that, yes.

14 Q Okay. And the complaints,
15 reasonably, could be with respect to dwelling houses or
16 outdoor places or anything, right?

17 A It's possible.

18 Q Okay. Now, so you've mentioned
19 that there would be difficulty investigating places
20 where there is illegality respective to *MMAR*. Can you
21 point to any difference between investigating things
22 under an *MMAR* or a standard marijuana grow operation, in
23 terms of investigation?

24 A In terms of investigation? Under
25 the *MMAR* program, part of our investigation protocol is
26 to call Health Canada to confirm if it is a medical grow
27 or not. So we have to take that in consideration. If
28 someone is producing more marijuana plants than they're

1 allowed to, then we have to know what marijuana plants
2 they're allowed to produce.

3 So it creates issues when we write search
4 warrants on properties that have *MMAR* licenses and
5 they're growing over or excess the amount of marijuana
6 plants. We take the excess plants, but leave the plants
7 according to their licence. So it's very easy for that
8 person to make more clones and continue on right back
9 where they were.

10 Also under the *MMAR*, there was no ability
11 to revoke a licence unless they were convicted. So
12 therefore someone could be charged with an offence and
13 still be allowed to grow *MMAR* marijuana.

14 Q Cpl. Holmquist, what does anything
15 you have just said say about an impediment to
16 investigating whether or not there are violations under
17 the *CDSA* or *MMAR*? Investigating. You just talked about
18 investigating.

19 A Yes.

20 Q So, what of anything you just said,
21 operates as an impediment to an investigation?

22 A To determine what is illegal and
23 what is legal under the *MMAR*.

24 Q You can go in, right? You can get
25 a warrant and go in, right?

26 A Yes.

27 Q And then you can determine whether
28 somebody is overgrowing, or over their plant limit,

1 right?

2 A That's correct.

3 Q There is no impediment to
4 investigation, correct?

5 A It is -- it's more onerous to write
6 search warrants, or to investigate *MMAR* sites, than it
7 is illegal sites.

8 Q Oh, so you are saying you don't
9 want to put in the work?

10 A I did not say that at all.

11 Q So, it is not an impediment to
12 investigating. It simply means that you have got to do
13 the work. Like in any marijuana grow operation or
14 illicit substance investigation.

15 A No, I wouldn't say that. The last
16 *MMAR* investigation I did, the first 14 pages was
17 explaining the *MMAR* process in that search warrant
18 application. Whereas an illegal grow operation is
19 substantially simpler. There is no medical licence
20 there, and evidence of production, it is much simpler.

21 Q Well, you are aware in illegal
22 investigations in fact, that can also be highly variable
23 upon the nature of the investigation in terms of the
24 amount of work you have to do, to get entry, right?

25 A That's correct.

26 Q Sometimes something will happen at
27 a site which causes police officers to attend. They are
28 not there for investigating a marijuana grow operation,

1 but they have to go in to determine other things, and in
2 the course of that, they happen to see a marijuana grow
3 operation. Fair enough?

4 A That's correct.

5 Q In fact, so then all you have to
6 do, is write potentially an information to obtain, which
7 says "I saw the marijuana grow operation, I know what
8 marijuana looks like." Fair enough?

9 A Yes.

10 Q That's different from something in
11 which all you get, for example, is a tip from some other
12 person, right? That can start an investigation. Then
13 you establish surveillance, fair enough?

14 A Yes.

15 Q Correct? Okay. Then you can go
16 back and forth in terms of what you see in the
17 surveillance with -- maybe you see people showing up all
18 the time, large garbage bags going back and forth,
19 smells, all sorts of stuff. But you've got a report on
20 all of that, right?

21 A Yes.

22 Q And it can sometimes take a long
23 time, right?

24 A Yes.

25 Q Now, you've also talked about how
26 even in the medical marijuana investigations, how
27 sometimes you've received tips from Hydro inspectors,
28 right? Fair enough?

1 A Reports of thefts.

2 Q Okay, and so, and you've talked
3 about it in some cases, the hydro inspectors giving you
4 tips about a needle almost being burned off because so
5 much electricity is being used, right?

6 A I wouldn't call it a tip. I would
7 call it a theft report.

8 Q A theft report. Okay.

9 A Yes.

10 Q Fair enough. But it is information
11 you can then use to initiate an investigation?

12 A That's correct.

13 Q And so similarly, in a situation
14 like that, if you can see the size of the place, and you
15 can determine how many plants somebody is authorized to
16 possess, for example, then you can reasonably make a
17 correlation between the amount of electricity that is
18 being used, and whether or not somebody may be
19 overgrowing, fair enough?

20 A No, I can't do that, because if
21 somebody is growing monster plants, like you eluded to
22 before, they could just be growing one plant and
23 consuming a substantial amount of electricity. So, I
24 couldn't correlate the excess plants with the Hydro
25 consumption.

26 Q Okay, so now the monster plants
27 become relevant. I see. So, what is happening here --
28 but essentially is that if somebody is, for example,

1 using electricity that goes to a whole subdivision, and
2 the house is a quarter of the size of this room, that
3 might be a reasonable inference to say that they are way
4 overgrowing what they can grow, right?

5 A That is correct.

6 Q Okay, and you could put that in an
7 ITO, and put it before a judge to grant a search
8 warrant, correct?

9 A That's correct.

10 Q So, when we take the entire body of
11 what we just talked about, the highly variable nature
12 between investigating illegal grow operations and the
13 highly variable nature between investigating overgrowing
14 under the *MMAR*, as a whole there is no impediment to
15 doing investigations under the *MMAR* as there would be in
16 any other sense. Correct?

17 A Okay. Yes.

18 Q Okay. So one of the abuses --
19 sorry, or one of the problems associated with the *MMAR*
20 that you write in your report about there being
21 impediments to investigation can essentially be struck.
22 There's no impediments to investigation. Correct?

23 A You know, I would say they are more
24 difficult to investigate. More work has to be put into
25 it, as you alluded to.

26 Q But more work could also be put
27 into an illegal grow operation situation.

28 A Yes.

1 Q As a whole your answer to me was,
2 and you agree, that when we consider it all as a whole
3 there are no impediments to -- there are no generally
4 greater impediments to investigating *MMAR* grow-ops
5 versus illegal ones. Correct?

6 A Okay. Yes.

7 Q Okay. Now, one final question,
8 Cpl. Holmquist. We were talking about the *MMAR* earlier.
9 You're aware also that the Minister in charge of this
10 can in fact also revoke somebody's licence for non-
11 compliance, correct? Not just for convictions.
12 Criminal convictions.

13 A For non-compliance.

14 Q Yes.

15 A As in making a false attestation in
16 their application form is also grounds for denial.

17 Q But also just not complying with
18 the regulations themselves.

19 A Yes.

20 Q Okay. Okay. Now, I'm going to
21 take you back to the body of your affidavit. Page 56 of
22 your expert report, you're citing as one of the problems
23 under the *MMAR* in terms of abuse is involvement of
24 organized crime?

25 A Yes.

26 Q That's what this heading is here?
27 Right?

28 A Yes.

1 Q Okay. Now, under paragraph 116(a)
2 you say, you're referring to the British Columbia
3 Association Chiefs of Police and it says:

4 "The exact configuration of organized
5 criminal activity within British Columbia
6 cannot be directly identified, due to the
7 inherently unknown nature of much of the
8 data. Criminal organizations typically make
9 it their business to remain undetected."

10 You see that?

11 A That's correct, yeah.

12 Q Okay. And it says:

13 "However, based on two factors - consumption
14 of policing resources and involvement of
15 known criminal organizations - marijuana
16 cultivation and trafficking represents the
17 single most common activity pursued by
18 organized crime."

19 Correct?

20 A Yes.

21 Q You'd agree with me, of course,
22 that that statement itself says that none of this is
23 actually known. Correct?

24 A There is a large area of unknown,
25 that's correct.

26 Q Well, it's saying that -- well, it
27 doesn't provide any data here, does it?

28 A That's correct.

1 Q Okay. And then you say,
2 "I have found that organized crime groups in
3 Canada will associate with other crime groups
4 to further their illicit activities. For
5 example, one organized crime group may have
6 access to a substantial supply of marijuana
7 and trade it to another organized crime group
8 for access to other controlled substances."

9 You see that?

10 A Yes.

11 Q You say, "One organized crime group
12 may have access to a substantial supply." You don't
13 give any example. Correct?

14 A That's correct.

15 Q And you can't give an example right
16 now. Correct?

17 A That's correct.

18 Q So, that first sentence, "I have
19 found that organized groups in Canada will associate
20 with other crime groups ...", you don't have any evidence
21 for that. You say that you find that, but you have no
22 evidence for it, right?

23 A Not in this affidavit, no.

24 Q Well, I just asked. You can't
25 provide an example now, correct?

26 A No.

27 Q Okay. The next paragraph, you say
28 -- paragraph 118,

1 "In order to facilitate large-scale criminal
2 abuses of the *MMAR*, such as growing large
3 numbers of plants, cropping, packaging, and
4 distribution across Canada requires a network
5 of people working together for a financial
6 benefit."

7 You see that?

8 A Yes.

9 Q You're aware of single instances
10 where people have been growing thousands of plants, and
11 they've been tending it to themselves. Right?

12 A Yes.

13 Q And you're aware of people,
14 individually transporting and driving across the country
15 to give certain things to people. Fair enough?

16 A Yes.

17 Q Okay. And so it doesn't follow
18 that in fact in order to do all of this, you need to
19 have organized crime or more than one person doing
20 anything. Fair enough?

21 A It's possible, yes.

22 Q Okay. So again, that statement is
23 not entirely accurate in order to facilitate the large-
24 scale criminal stuff. It could be done by one person.
25 Right?

26 A Potentially, but highly unlikely.

27 Q Okay. Now, you see at paragraph
28 119, it talks about Annex NN. You see that?

1 A Yes.

2 Q Just going to take you to Annex NN.
3 What you've provided in Annex NN, starting at page 299,
4 to 302 -- you see that?

5 A Yes.

6 Q If you just review those, can you
7 just -- you said that it only refers to five examples of
8 people being involved in what they suggest is organized
9 criminal activity.

10 A Yes.

11 Q Okay. And you see going back to
12 page 299, suspect 1 was arrested in 2011 for possession
13 of over 100,000 MDMA. Okay? Do you see that?

14 A Yes.

15 Q Okay. The individual is known to
16 be a key cocaine importation and trafficking figure, is
17 reportedly associated to a violent organized crime
18 group, and is an associate of a high-level international
19 cocaine trafficker. You see that?

20 A Yes.

21 Q Okay. You see that there are no
22 names or details about the high-level cocaine
23 trafficker, or anything like that, that would allow
24 anybody to independently look at that and see if any of
25 that information is accurate. Right?

26 A That's correct.

27 Q Okay. So, it's an example given by
28 police, but none of us can really say if the example

1 itself is even accurate. Fair enough?

2 A Yes.

3 Q Okay. Go to the next scenario,
4 scenario 2, criminal participation in medical marijuana
5 grow operation. You see that?

6 A Yes.

7 Q And then the next page it says,
8 "Criminal Background," right?

9 "Suspect 5 has no criminal record. However,
10 Suspect 5's spouse, Suspect 8, served a
11 sentence for conspiracy to import 200
12 kilograms of heroin from Pakistan."

13 See that?

14 A So you're referring to page 300?

15 Q Yeah.

16 A Yes.

17 Q Okay. So in fact the Suspect 5,
18 and therefore the involvement of organized crime in this
19 example, actually there is nothing indicating the person
20 is involved in organized crime. Fair enough?

21 A Which person are you referring to?
22 The person who owns the property?

23 Q Suspect 5. Suspect 5.

24 A There is no indication in this
25 report to say that Suspect 5 is involved in criminal
26 activity.

27 Q And in any event, we only have five
28 examples here and two of them, again, we can't verify

1 that the examples in fact are even accurate. Right?

2 A Based on the information that's
3 provided here, no, it's not a full disclosure about all
4 the cocaine investigation.

5 Q Well, or involvement of any of
6 these people with illegal activity under the *MMAR*,
7 right?

8 A That's correct.

9 Q Now, if I take you to paragraph 120
10 of your affidavit, so if you could flip back to page 57
11 of that, see paragraph 120.

12 A Yes.

13 Q If you go -- it says that:
14 "October 17th, 2013, police officers from
15 Coquitlam received a report of an incident.
16 The victim had employed a number of people to
17 work at his *MMAR* production site. The victim
18 claimed he never obtained the full names of
19 the people who he hired or saw their
20 identifications. The producer had planned to
21 pay his workers with excess marijuana. When
22 the employees were not paid, one of them put
23 a gun to his head, [did other things]. The
24 employee further requested the victim produce
25 \$5000. When the victim did not, the employee
26 made death threats. An investigation was
27 initiated and the employee was identified and
28 interviewed. The suspect stated he worked at

1 the *MMAR* production site, was never paid, and
2 wanted additional money because he was owed
3 15,000 for labour and equipment at the *MMAR*
4 production site."

5 You see that?

6 A Yes.

7 Q And this is under the heading of
8 what you say is involvement of organized crime?

9 A That's correct.

10 Q So you take this to be an example
11 of involvement of organized crime?

12 A A person with an *MMAR* licence
13 involving multiple people to grow marijuana, who is
14 going to pay them with marijuana, in my opinion meets
15 the definition of organized crime under the *Criminal*
16 *Code*.

17 Q Well, we only have evidence here of
18 one person being involved in the actual action, right?

19 A One person with a myriad of
20 employees.

21 Q Come on, let's be straight about
22 this, right? When we think of organized crime, what are
23 we thinking of? We're thinking of gangs, all that sort
24 of stuff, right?

25 A Well, organized crime is defined
26 specifically in the *Criminal Code*. Organized crime
27 doesn't mean gangsters.

28 Q I see. So, if I understand it

1 then, when you talk about organized crime and you
2 suggest that there is the involvement of organized crime
3 in illicit activity under the *MMAR*, you're actually just
4 simply referring to anything that involves two or more
5 people, correct?

6 A What's the definition of organized
7 crime in the *Criminal Code*, that's what I'm referring to
8 as organized crime.

9 Q Okay, the definition. You
10 establish that definition where you say it indicates a
11 group comprised of more than three people which has as
12 one of its main purposes the facilitation of a serious
13 offence, right?

14 A Yes.

15 Q Okay. Now, so that might include a
16 family who operate their personal operation at home,
17 right?

18 A If it meets these other
19 requirements, that they are for a material benefit for
20 the facilitation of a serious crime, if it meets that
21 criteria, yes.

22 Q Okay. But you'd agree with me that
23 when you talk about involvement of organized crime in
24 your expert report, what you were suggesting is not a
25 family of three. You were suggesting what we think of
26 as gangs and large scale organized crime, right?

27 A No. I'm referring to three or more
28 people, the definition of organized crime in the

1 *Criminal Code.*

2 Q Okay, so potentially, in fact,
3 based on your very narrow definition, there's always
4 organized crime in any illicit activity, right?

5 A Not always. You just alluded to
6 the fact that one person could transport the marijuana
7 all by himself. So that wouldn't meet the definition of
8 organized crime if it's one person doing that.

9 Q Okay. But I'm suggesting to you
10 that in fact your allusion in this report, and I put
11 that to you, your allusion in this report to organized
12 crime is to suggest that there is gang activity involved
13 with abuses under the *MMAR*, right?

14 A No, I did not say "gang activity"
15 in my report.

16 Q When you say "organized crime" you
17 are talking about what we colloquially think of as gang
18 activity, right?

19 A No, I am not. I'm --

20 Q I'm suggesting to you that that's
21 actually what your intention was.

22 A That was not the case.

23 Q Okay. Okay, so let me take you to
24 paragraph 121. Now, you talk about

25 "On August 15, 2013, police officers from the
26 Surrey RCMP Drug Section executed a search
27 warrant in Maple Ridge on a large acreage
28 with multiple chicken barns. The acreage was

1 subdivided into two addresses but was
2 essentially operating as one address. This
3 permitted permitting eight *MMAR* production
4 licences."

5 Okay. You see that?

6 A Yes.

7 Q And then if you go over to the next
8 page at 122, what you say is that you attended this --
9 at the end of that paragraph you say you attended this
10 *MMAR* site and located a Hells Angel medallion on the
11 kitchen table, and then you attach it as Exhibit 00 to
12 the affidavit, right?

13 A That's correct.

14 Q So I take it -- now, having gone
15 through the general body of your report, most, save but
16 a few, most of the examples you provide for evidence of
17 abuses or safety concerns and all, most come from
18 investigations other than your own. Fair enough?

19 A Yes.

20 Q Okay. These are examples you've
21 read about in other reports and whatever. Right?

22 A Yes.

23 Q Okay. This is one of the few where
24 you were actually on site. Right?

25 A I did attend this one, yes.

26 Q Okay. You were involved in the
27 investigation.

28 A Yes.

1 Q Yes. Okay. Now, what you do at
2 paragraph 121 is -- well, what you've essentially done
3 with this entire section, so 121 through to 122, is
4 you've summarized what your investigation was all about.
5 Right?

6 A It is a summary of the
7 investigation, yes.

8 Q It's a summary of the
9 investigation, and you've provided details selectively
10 based on what you think is relevant as far as those
11 details are concerned. Is that fair?

12 A Relevant to the organized crime
13 abuses of the *MMAR*, yes.

14 Q I'm talking about this example.
15 You've summarized an investigation you were part of,
16 right?

17 A That's correct.

18 Q You haven't, for example, other
19 than the one document which I'll get to in a second, you
20 haven't provided us any other documents, right?

21 A That's correct.

22 Q Okay. So basically you've prepared
23 a summary of the investigation, and you've decided what
24 you should put in that summary and then brought it to
25 court. Right?

26 A I actually wasn't the primary
27 investigator in this file. I assisted the Surrey
28 Detachment with this file.

1 Q Okay, but you know about the file.

2 A Yes.

3 Q Right? Okay. And in fact you were
4 involved in preparing disclosure, things like that.
5 Fair enough?

6 A I submitted notes, but no, I wasn't
7 involved in preparing disclosure for that file.

8 Q You submitted notes. Okay. Now,
9 you'd agree with me that you are one of the primary
10 people who does investigations into *MMAR* abuse on any
11 given investigative team, right?

12 A I don't primarily do *MMAR* abuse
13 investigations, no.

14 Q In any event, with respect to this
15 investigation, you had access to all the documents and
16 parts of the investigation, and you could summarize it
17 for this court. Right?

18 A I didn't have access to all the
19 documents, no. There were some general warrants and
20 some other things attached to this investigation.

21 Q You could have gotten access to it.
22 Right?

23 A Yes.

24 Q So, what I'm saying -- I mean look,
25 it doesn't have to be that complicated. What I'm saying
26 is that you've summarized this investigation, the
27 details of the investigation, and you've decided what is
28 relevant as far as the details you're going to provide

1 to us.

2 A As in all the paragraphs. I have
3 summarized police investigations and put them in a
4 report.

5 Q But this is one you were involved
6 in.

7 A Yes.

8 Q Okay. So you've decided what
9 you're going to bring to -- what you're going to put in
10 this summary. Right?

11 A Yes.

12 Q Okay. Now, let's go to that -- so
13 you included one document, right? That's Annex OO,
14 right? That's at paragraph 122, you say Annex OO, which
15 is photographs of the scene. Which is photographs of
16 the scene.

17 A Yes. Do you want me to go to that?

18 Q Let me just -- yes, if you could go
19 there. Let me just get there as well.

20 Okay, so you provided a photograph of the
21 property, and the inside. You see that?

22 A On page 306, is that what you're
23 referring to?

24 Q Yeah, 306.

25 A Yes.

26 Q And then page 307, what appears, I
27 suppose, to be harvested, packaged stuff. You see that?

28 A Yes.

1 Q And then some stuff hanging from
2 the ceiling. Right?

3 A Large plants, yes.

4 Q Okay. You reproduced these
5 photographs, right?

6 A Yes.

7 Q When you were preparing your
8 affidavit.

9 A Yes.

10 Q Okay. On page 306, I see that
11 there is a -- you've included an insignia of what
12 appears to be the Hells Angels motorcycle club. Right?

13 A Yes.

14 Q And you have not indicated what
15 scale this is on, right? Like, how -- it's just a
16 photo. But it might be in fact just the size of this
17 photo, or even smaller.

18 A It was a medallion. It was like
19 the size of a keychain.

20 Q Okay. But I can't see that from
21 this photo, right?

22 A That's right. All the photos in
23 the affidavit, I never put scales on any of them.

24 Q Okay. You would agree that that
25 would be useful in terms if people were trying to decide
26 how big something is. Fair enough? If you put a scale
27 to -- I mean, I can't look at this and see if it's the
28 size of the insignia in the court, right? Based on you

1 not providing a scale.

2 A Okay.

3 Q Okay. But what you're telling --
4 okay? Right? Okay. What you're telling us in any
5 event is your recollection it was the size of a
6 keychain.

7 A I was there, and I do recall it to
8 be that size, yes.

9 Q Okay. So basically like a trinket,
10 right?

11 A Well, it was larger than a trinket,
12 so to speak. But it was -- I guess it was a couple of
13 inches around.

14 Q Like a trinket. Not a big patch on
15 somebody's jacket. Not a big patch on the door.
16 Nothing like that.

17 A Yes.

18 Q Just on a keychain.

19 A That's correct.

20 Q Okay. Now, let's go back to your
21 affidavit. You look at paragraph 122. All you see
22 there -- all you say there is about a Hells Angels
23 medallion. Okay? If I take that to mean that you're
24 suggesting that there was organized criminal activity to
25 be there, okay? That is the only evidence you are
26 providing in that investigation with respect to
27 organized criminal activity. Correct?

28 A No.

1 Q Well, where else? Point me in
2 terms of what you've summarized here.

3 A There was 25 people on scene.

4 Q That's not here now, right? That's
5 not in this --

6 A In paragraph 122, yes, it is.

7 Q Okay. Okay. Go on.

8 A Twenty-five people working there.
9 We had a property that was clearly subdivided for an
10 illegal purpose. We have eight licenses associated to
11 people who should be tending their plants, and they
12 weren't. There was over-production going on at that
13 site as well, including the production of monster
14 plants. They also had packaged marijuana that you can't
15 distinguish which marijuana belonged to which one of the
16 eight people.

17 Q Okay. Now, you're telling us this
18 now, but you selectively omitted some of it, what you
19 just told us, from your summary. Right?

20 A What did I selectively omit? I
21 don't believe I did.

22 Q Okay. Well, let's put it this way.
23 You didn't obtain a criminal conviction in this case,
24 correct?

25 A I don't know. It was the Surrey
26 RCMP Drug Section's investigation.

27 Q You have no knowledge of what
28 happened in this case?

1 A No, I do not.

2 Q Okay. As we've established, you
3 could have, for example, gotten various documents with
4 respect to this investigation, right? And reproduced
5 summaries of them or reproduced the documents as part of
6 your expert report, correct?

7 A It's possible. Then the expert
8 report would have been --

9 Q I'm not saying all documents. I'm
10 saying some documents. You have provided some
11 documents. The photos, right? Right?

12 A Yes.

13 Q Okay. So you could have gotten
14 more documents and given us some more detail, correct?

15 A Yes.

16 Q Okay. Now, you understand that you
17 have access to these documents and these investigations,
18 but members of the public do not. Correct?

19 A That's correct.

20 Q Okay. And so when I look at the
21 details you provided, for example, without access to
22 more documentation, I can't say for sure whether the
23 details you provided are in fact correct or not. Right?

24 A Yes.

25 Q Okay. So you say that there were
26 eight *MMAR* production licences, right?

27 A Yes.

28 Q You list the number of clients in

1 all. But because I don't have any documents I can't
2 corroborate whether in fact there were only seven *MMAR*
3 production licences. Fair enough?

4 A Yes.

5 Q So it's possible that in fact this
6 is all inaccurate, correct?

7 A No.

8 Q It's possible that they're all
9 inaccurate, correct? Based on what I have in front of
10 me I can't say either way, correct?

11 A No, but the documents do exist and
12 I can produce them.

13 Q You just -- okay, so for example
14 details you could have provided, could have included for
15 example 171 plants matched to licence of such and such
16 number, things of that nature, right?

17 A Potentially, yes.

18 Q Okay. And you could have basically
19 gone down the list and matched them all up. Right?

20 A Yes.

21 Q You just haven't done this in this
22 summary, right?

23 A That's correct.

24 Q And so in the absence of those
25 details it's impossible for me to be able to tell
26 whether any of this is accurate or whether some of it is
27 fudged, correct?

28 A Yes.

1 Q Okay. Now, when you said a moment
2 ago that, oh, those documents do exist, it suggests that
3 in fact there is some greater familiarity with this
4 investigation. I mean you were part of it, right? You
5 saw those documents.

6 A That's how I got these numbers was
7 by looking at documents through police investigations.

8 Q Okay. So you do in fact know what
9 was the outcome of this invest- -- what happened as a
10 result of this investigation, correct?

11 A I don't know the final outcome.
12 No, I don't.

13 Q So you wouldn't be familiar with
14 the fact that it's possible all of these charges were
15 stayed and not prosecuted.

16 A It's possible, yes.

17 Q You are saying you don't know?

18 A I'm saying I don't know.

19 Q So this example, like so many
20 others, basically whether or not we can determine the
21 accuracy of what you're saying is dependent on the
22 details within. Right?

23 A Yes.

24 Q And we can't determine the accuracy
25 of this example based on the details you've given us,
26 correct? There's no corroborative information that
27 would allow us to determine the accuracy, correct?

28 A It's a police investigation, a

1 summary that I provided. It's much like all the other
2 things in this entire report, exactly the same thing.

3 Q Mistakes happen in police
4 investigations, right?

5 A Yes.

6 Q In fact mistakes happen in official
7 documents and things, and sometimes they're only
8 discovered at court, right?

9 A Yes.

10 Q And it takes a comprehensive review
11 by counsel on many sides to determine whether those
12 mistakes have happened or not, right?

13 A Yes.

14 Q And what you're just saying is that
15 all of this is in documents, so it must be true. That's
16 the effect of what you're saying. Right?

17 A I've prepared this document in
18 truthfulness to the best of my ability.

19 Q And you could have made mistakes,
20 right?

21 A Anybody can make mistakes.

22 Q So, like that, when you have a lack
23 of detail to be able to investigate the accuracy of
24 examples given, we don't know whether in fact the
25 examples are accurate. Right?

26 A You don't, but I do, when I
27 prepared the report.

28 Q Okay. But you make mistakes,

1 right? You have made mistakes.

2 A People make mistakes, yes.

3 Q Okay.

4 JUSTICE: Would this be a convenient
5 time for the luncheon break?

6 MR. VAZE: Yes, I think it would work.

7 JUSTICE: All right. Before we go,
8 I'm going to say, where is the expert certificate that
9 accompanies an expert report? Have I -- it must be
10 missing from mine? I've just not been able to find it.

11 I'll leave you to that, and if you can
12 let me know after lunch.

13 MS. WRAY: Certainly, thank you.

14 JUSTICE: Okay.

15 **(PROCEEDINGS ADJOURNED AT 12:30 P.M.)**

16 **(PROCEEDINGS RESUMED AT 1:32 P.M.)**

17 MS. WRAY: Justice Phelan, you had
18 asked just before the break about the certificate, the
19 Code of Conduct for Mr. -- for Cpl. Holmquist.

20 JUSTICE: Oh, yes. I must have missed
21 it.

22 MS. WRAY: It's at page 95 of Annex B.

23 JUSTICE: Page 95. Thank you very
24 much.

25 MR. VAZE: Thank you.

26 Q So, continue with my questions from
27 earlier, Cpl. Holmquist. We were talking about
28 paragraph 122, page 58 of your expert report, your

1 affidavit. Are we there?

2 A Yes.

3 Q Okay. Now, what you did talk about
4 at paragraph 122 is, you say that there were 25 people
5 on scene, and then of course you talked to the -- you
6 talk about this Hells Angel medallion. Right?

7 A Yes.

8 Q And you had testified that it was
9 in fact just about the size of a keychain. Correct?

10 A Yes.

11 Q Now, if we're thinking about
12 organized crime, in terms of what we think of as gang
13 activity, if you understand colloquially, okay? That
14 medallion, that small keychain, you're saying that in
15 fact is the only evidence you have in this investigation
16 with respect to organized crime. Correct?

17 A No. We had discussed that, the
18 number of people, the licenses, the overage, all that.

19 Q And I just said to you, if we're
20 thinking about organized crime in terms of what we
21 colloquially think of as gang activity -- you remember
22 agreeing to that?

23 A Yes.

24 Q Okay. If we're thinking about
25 organized crime and what is referred to colloquially as
26 gang activity, that little keychain is the only evidence
27 at all that you have of quote-unquote, organized crime.
28 Correct?

1 A Yes.

2 Q And so you would agree with me
3 that, in that particular context, speaking colloquially,
4 that really is not any evidence at all suggesting it's
5 run by organized crime. Correct?

6 A I have spoken with the outlaw
7 motorcycle gang unit at our office, and they have seen
8 pictures of that medallion, and they believe that it's
9 not given to someone who's an associate or a loosely
10 affiliated with the Hells Angels.

11 Q That -- now you're telling us that
12 now. Okay? You haven't brought the medallion. You
13 have the small photo, right?

14 A Yes.

15 Q You've simply got these other
16 people telling you these things, right? You've agreed
17 that there were no large patches, nothing like that.
18 Right?

19 A That's correct.

20 Q Okay. The only evidence you've put
21 is a picture of this tiny medallion here. When we think
22 of it in the colloquial sense, right?

23 A Yes.

24 Q Okay. And you'd agree with me that
25 that, in and of itself, by itself, does not suggest any
26 organized criminal activity from the colloquial sense of
27 gang activity. Correct?

28 A Just the medallion, that's correct.

1 Q Now, moving further from there,
2 again, you testified that you were at this particular
3 scene when the investigation was occurring, correct?

4 A When they executed the search
5 warrant.

6 Q Okay. Now, you're aware, also,
7 that this was part of a much wider investigation
8 involving as many as three properties. Correct?

9 A That's correct.

10 Q Okay. So it's a fairly big
11 investigation, right?

12 A Yes.

13 Q Okay. And you're telling us you
14 don't know the outcome of the investigation at all.

15 A No, I don't.

16 Q And you're a major part of the
17 marijuana enforcement team, right?

18 A That's correct.

19 Q Please forgive me if I'm suggesting
20 to you that I find it unbelievable that you could come
21 here today and you could say you don't know what the
22 outcome of that was. Are you sure you don't know what
23 the outcome of that is?

24 A I don't know the outcome of that
25 investigation, no.

26 Q Okay. And I'm suggesting to you
27 that that's unbelievable. You would agree with me?

28 A No.

1 Q Now, okay, you say that you've
2 learned a little more about the investigation from
3 reviewing documents. When did you review those
4 documents?

5 A Which documents?

6 Q You say that you learned a little
7 bit more about what occurred in this. You reviewed some
8 documents. You reproduce them here.

9 A Yes.

10 Q Can you tell us when you reviewed
11 those documents?

12 A No, I can't recall off the top of
13 my head.

14 Q You have no recollection.

15 A Not specific days when I reviewed
16 them, no.

17 Q And what you say happened in this
18 investigation, and you've said that you were on site,
19 was that they were growing in excess of -- excess by way
20 of 55 plants, correct?

21 A That's correct.

22 Q Do you recall the plants being
23 counted?

24 A Yes, I believe they were counted.
25 I didn't count them but they were counted.

26 Q Okay. So the plants were counted
27 and you are saying that the documents or whatever have
28 revealed to you that there were 55 excess plants.

1 A That's correct.

2 Q Okay. Now, this was a medical
3 marijuana grow operation, correct?

4 A Yes.

5 Q Okay. And your earlier testimony
6 as I understand it is -- what you were trying to tell
7 the court was that when you attend at the site of
8 medical marijuana grow operations, the only thing you
9 can do is simply seize anything in excess and confiscate
10 it, correct?

11 A The excess above and beyond their
12 licence would be, yes, production under the *Controlled*
13 *Drug and Substances Act*. So we would take the excess.

14 Q Okay. Well, we were talking about
15 this in the context of you indicating investigational
16 impediments in terms of *MMAR* sites, right?

17 A Yes.

18 Q Okay. And you were saying that one
19 thing, the only thing you can really do when you go to
20 these places is seize the excess and confiscate it,
21 right?

22 A That's how it initially goes, but
23 the extra work, as you refer to it, has to involve
24 writing another search warrant to seize the medical
25 marijuana plants.

26 Q Oh, okay, so in fact what you were
27 saying earlier wasn't entirely accurate. In fact you
28 can go further. You just have to get another warrant.

1 Correct?

2 A I don't know if what I said --

3 Q Okay. Well, in this particular
4 case, so based on what you've said, I take it that all
5 that happened that you're aware of, in your evidence you
6 were telling us that all you would have done is seize
7 the excess plants in that case. Is that correct?

8 A All I would have done? When we
9 write a search warrant we seize the medical marijuana --
10 I'm sorry, we seize the overage, the excess plants. And
11 that's usually how the search warrant is written, to
12 seize the excess above and beyond what they've been
13 authorized to have. While we're on scene we look at the
14 totality of what we observe, and if there's indicators
15 of trafficking or excess production or an exorbitant
16 amount of plants or dried material, we will seek an
17 additional warrant to take the medical marijuana plants
18 and anything not covered in the first search warrant.

19 Q Okay. And in this particular case
20 in fact, if I ask you, you didn't do anything -- did you
21 do anything beyond seizing the 55 extra plants?

22 A A second warrant was written, I
23 believe. I attended with the affiants back at the
24 detachment in Surrey. The warrant was being drafted and
25 then I left. I didn't reattend the property and execute
26 that second warrant.

27 Q And so you can't tell us right now,
28 is what you're saying, whether or not a second warrant

1 was executed, correct?

2 A I can't say 100 percent that it was
3 executed, no.

4 Q And it's possible that in fact
5 before that warrant was sworn and executed, further work
6 was done beyond seizing the excess plants, correct?

7 A I don't know.

8 Q But you were on site at the time?

9 A I was on site at the time. I was
10 on site for -- I want to say about three, maybe four
11 hours.

12 Q And you went back and saw another
13 warrant being sworn.

14 A I did not say I saw the warrant
15 being sworn. I helped the affiant add paragraphs to
16 their existing warrants that were being written for this
17 investigation.

18 Q And you are telling us that you
19 can't recall or you don't know whether in fact other
20 seizures took place prior to the second affidavit being
21 sworn.

22 A I know there was a number of *MMAR*
23 investigations associated to this property. I don't
24 know the outcome of those, no.

25 Q I'm talking about earlier. You
26 said that all you would have done was seize the excess
27 plant matter, and in order to go further, you'd have to
28 get another warrant, correct?

1 A Yes.

2 Q Okay. And you're telling us --
3 well, I put to you that in fact before the other warrant
4 was obtained, much more went on beyond the seizure of
5 the 55 plants, correct?

6 A Most likely, yes.

7 Q So that was all done, then, without
8 warrant.

9 A I don't understand.

10 Q You were saying that to do anything
11 more than seizing excess plant material -- right? You
12 need to get a second warrant.

13 A No. We would seize what's in the
14 scope of the first warrant that's been authorized.

15 Q Okay. Earlier, as I understand it,
16 you told the court that the only thing you could do in
17 the investigation upon being there on site was simply
18 seize the extra plant matter. Right? You recall saying
19 that to the court?

20 A That the only thing is to seize the
21 excess plants. It's -- whatever is in the scope of that
22 warrant is what we seize. If it's outside of the scope
23 of that warrant, we require a second warrant. And most
24 of the warrants that I've been involved with have been
25 to seize the excess medical marijuana plants and then
26 another warrant is written based on our observations, as
27 I said, that lead to the seizure of those plants.

28 Q And you're saying in this case what

1 you've just told us is that more was done than simply
2 the seizure of plants before a second warrant was
3 obtained. Correct?

4 A That's correct.

5 Q Okay. You earlier mentioned to me
6 that if I wanted to get documents with respect to this
7 investigation, you have them?

8 A I have -- I could get access to
9 them through the Surrey RCMP.

10 Q Okay. I may end up taking you up
11 on that on some level, but we'll move on at the time
12 being.

13 Now, earlier, much earlier, I had asked
14 you about numbers of plants -- or, sorry, I should say
15 personal use production licenses across Canada.

16 A Yes.

17 Q And I didn't have the number at
18 hand at that time. I just want -- as I understand it,
19 you said in your expert report that you were aware of --
20 between the designated producers and the personal use
21 producers, there were, as of your current knowledge,
22 15,000 in British Columbia. You recall that?

23 A I believe the combined total was
24 17,000, 15 and 2, if I remember correctly.

25 Q Well, I was a little bit -- 15
26 what, sorry, you said?

27 A I'd have to double-check the
28 affidavit, but I believe it was 15 and 2 for a total of

1 17,000.

2 Q I believe it was 13 and 2. In
3 fact, let me take you right there. But I could be
4 wrong. At paragraph 50 of your expert report.

5 A 13 and 2, that's correct.

6 Q Okay. Okay, thank you. Now, I
7 just want to turn you to volume 4 of 13 in the joint
8 book of documents. I don't know if you have that with
9 you right now.

10 A Volume 4 of 13? No, I don't.

11 Q Yeah, and I'll take you to tab 15.

12 A I don't have numbers. It's just
13 alphabetical.

14 Q There's one at the very end. It's
15 the very last tab in that whole --

16 Why don't I take you to the page number.
17 It's 1435.

18 JUSTICE: Did you say Volume 13?

19 MR. VAZE: No, no. Volume 4 of 13.

20 Sorry. My apologies. I think it's gradually being seen
21 that numbers are not my strong suit.

22 Q We're together?

23 A Page 47? Sorry, 1435?

24 Q Yeah.

25 A Okay.

26 Q So you see that's the affidavit of
27 Jeannine Ritchot, right?

28 A Yes.

1 Q Now, I just want to take you to
2 page 1448 within that. At paragraph 49 you see:

3 "I'm informed by Kayleen Funk she conducted a
4 thorough and diligent search of the data held
5 by the MMAP."

6 And it gave the information about the
7 number of authorizations to possess issued -- well, this
8 is possess -- sorry, I've gotten ahead. Under the *MMAR*
9 you see that December 31st, 2013, 37,151?

10 A Yes.

11 Q Right. And then next paragraph it
12 says:

13 "I'm informed by Kayleen Funk about the
14 production licences, both personal use and
15 designated person issued under the *MMAR*."

16 Do you see that?

17 A Yes.

18 Q And then if you go over to the next
19 page it says December 31st, 2013, 28,228? You see that?

20 A Sorry, which paragraph is that?

21 Q Paragraph 15. So go over to the
22 next page on page 1449.

23 A Okay.

24 Q See December 31st, 2013?

25 A Yes.

26 Q Okay. What I've essentially been
27 giving you is the numbers produced by the defendants
28 with respect to the number of personal use production

1 licences in Canada. So you'd agree with me that sounds
2 about reasonable in terms of the numbers we're dealing
3 with across Canada?

4 A If Health Canada has these licences
5 and this is what they're saying, then yes.

6 Q Okay. And your understanding is
7 that then in B.C. we're talking about 15,000 total.

8 A Yes.

9 Q All I'm trying to do is establish
10 the numbers that we're dealing with generally.

11 A Yes.

12 Q Make sense?

13 A Yes.

14 Q Okay. So in terms of your data
15 collection and analysis, essentially what we're doing
16 with -- what we're dealing with when you look at them
17 comparatively is whatever you've come up with, it's
18 against -- when it comes to Personal Use Production
19 Licences, it's against a number of 15,000 in B.C. and
20 it's against a number of approximately 28,000 in Canada.
21 Fair enough?

22 A That's what I included, yes.

23 Q Okay. Now I'm going to take you to
24 tab -- sorry, Book 5 of the Consolidated Book of
25 Experts. That was the affidavit of Mr. Boileau that I
26 was speaking of previously.

27 A Is that Volume 5 of 6?

28 Q That is, yes, 5 of 6. Okay? We're

1 together?

2 A Yes.

3 Q Okay, that affidavit is at tab 19.

4 And I'll refer you to page 3 of that affidavit. And
5 you'll recall earlier we were talking about Mr. Boileau
6 as a tendered expert in electrical inspections, things
7 of that nature. You recall our discussion earlier about
8 that?

9 A Yes.

10 Q Okay. Now, I want to take you
11 again to page 3. You see "Applicable Legislation," you
12 see that?

13 A Yes.

14 Q Okay. It says:

15 "The standards with respect to electrical
16 safety in British Columbia are enforced by
17 the B.C. Safety Authority provincially, and a
18 number of municipal authorities in their
19 specific jurisdictions through an
20 administrative agreement with the Minister
21 responsible."

22 Minister of Energy and Mines, the
23 Minister responsible for housing. Do you see that?

24 A Yes.

25 Q "And the municipal
26 authorities that enforce the standards in
27 their jurisdiction..."

28 Then it gives a list of the cities that

1 do so. Do you see all of that there?

2 A Yes, I do.

3 Q Okay. And it says that they are
4 bound to the same *Safety Standards Act* as the B.C.
5 Safety Authority. Right?

6 A Yes.

7 Q And what it says here, then at Part
8 1, at the very last paragraph it says:

9 "Part 1 of the *Electrical Safety Regulation*
10 sets out the requirements of those
11 individuals who may perform regulated
12 electrical work and requires that an
13 individual must not perform regulated work in
14 respect of electrical equipment unless the
15 individual holds an appropriate industry
16 training credential in respect of electrical
17 work,..."

18 and going over to the next page,

19 "...has successfully completed training
20 recognized by a provincial safety manager..."

21 And it goes on and on. You see all of that?

22 A Yes.

23 Q Then it says at the bottom of page
24 4:

25 "Part 2 of the *Safety Standards General*
26 *Regulation* requires that a person must obtain
27 the appropriate permit from the regulatory
28 authority before performing regulated work."

1 And then it goes on to indicate that
2 permitted work is subject to the benefit of inspection
3 by a safety officer under page 3 of the SSGR. You see
4 all of that?

5 A Yes.

6 Q Okay. Now, we've also seen the
7 evidence earlier of Mr. Allard getting appropriate
8 inspections and stuff like that done. You'd agree with
9 me that sort of what I've just described to you, it
10 would be reasonable to suggest that standards being
11 enforced both by municipalities as well as the province,
12 under the guise of a certified and, as they say,
13 required certification electrician, would ensure that
14 all safety standards with respect to electrical work and
15 otherwise at grow operations would be safe. Correct?

16 A The electrical maybe, but the
17 otherwise part that you mentioned, I don't know what
18 that means.

19 Q Okay. But with respect to fear of
20 fire or other electrocution, things of that with respect
21 to electrical work, this would all work, right

22 A It sounds like if it's certified it
23 would mitigate those issues.

24 Q Okay. So it essentially ensure
25 that to the maximum degree possible, safety standards
26 would be respected in these circumstances, correct?

27 A It's possible.

28 Q And in fact throughout your expert

1 report, when you referred to worries about sort of
2 faulty wiring systems and stuff like that, you recall
3 doing that?

4 A Yes, I did talk a little bit about
5 that.

6 Q You haven't, in any of those
7 instances, juxtaposed photographs or examples from grow
8 operations where they were properly certified and all,
9 correct?

10 A In my position in law enforcement
11 it's not to inspect certified Health Canada sites. The
12 issues of medical grows that I come across are ones that
13 are complaints that have been brought forward that I
14 investigate.

15 Q So you're saying in your position
16 as law enforcement. You would agree that as an
17 objective researcher your position would be somewhat
18 different, correct?

19 A I get experience to one side of the
20 process, yes.

21 Q You're saying that you have no
22 experience on the other side of the process, is that
23 correct?

24 A I don't have any experience in
25 doing inspections at *MMAR* sites that have not been
26 issues.

27 Q You recall our discussion earlier.
28 All you would have had to do was ask any legal grower if

1 they'd permit you to take some examples of what's there,
2 correct?

3 A It's possible, but I had no one
4 coming forward to make those offerings, and it's outside
5 the scope of my duties as a police officer.

6 Q It's not outside of the scope as
7 your -- in your duties as a researcher and somebody
8 providing an objective expert opinion to the court.
9 Correct?

10 A What I was asked to do was not to
11 research in preparing this affidavit. It was to answer
12 those four questions.

13 Q So, you were prepared to give an
14 opinion to this court without considering all the data
15 that could have been available to you. Is that what
16 happened here?

17 A I don't have access to all that
18 data, no.

19 Q You could have asked, right?

20 A Potentially, yes.

21 Q You want your opinion to truly
22 assist the court in an objective and impartial fashion,
23 correct?

24 A That's correct.

25 Q And you didn't take any of these
26 steps.

27 A No.

28 Q You saw yourself simply bound by

1 your position as a law enforcement officer, and you
2 weren't going to take any additional steps that an
3 objective researcher would have done. Correct?

4 A I'm not trained in research
5 methodologies to be able to put that together.

6 Q Okay. Let's move on.

7 I'm going to take you to page 9 of your
8 affidavit again here. So this is a section where you
9 talk about marijuana cultivation.

10 A Yes.

11 Q You'd agree with me that you've
12 told the court that you haven't actually grown marijuana
13 from start to finish. That's correct?

14 A That's correct.

15 Q Okay. So you really can't say much
16 about marijuana cultivation as a whole, because you're
17 not experienced in it, right?

18 A My experience is outlined in my
19 affidavit. Just because I haven't grown it doesn't mean
20 I haven't spoken to people who have grown it, and other
21 experts who have grown it.

22 Q Fair enough. But you haven't grown
23 it.

24 A That's correct.

25 Q Okay. And so you wouldn't expect
26 anything you say about marijuana to have any weight
27 whatsoever against somebody who actually has grown it.
28 Fair enough?

1 MS. WRAY: I'm not sure if my friend
2 is actually asking a legal question there or not. I
3 think it's a little unclear in terms of the weight
4 that's being asked to be given.

5 JUSTICE: Well, I think it's a fair
6 question to ask what -- how does his knowledge, with no
7 experience, stack up with somebody who has knowledge
8 from experience. I think the answer is pretty obvious.

9 MS. WRAY: Thank you.

10 MR. VAZE:

11 Q How does your lack of experience
12 stack up with people with experience? Actually growing
13 marijuana?

14 A People who have grown would more
15 likely have more experience, yes.

16 Q You then go on at paragraph 27, you
17 say

18 "Rarely have I found medical marijuana under
19 the *MMAR* stored in optimal conditions."

20 Often you've found it in Ziploc bags or
21 lying out in the open, correct?

22 A That's correct.

23 Q You did no random sampling of
24 medical marijuana operations to determine if that is
25 actually the case, correct?

26 A That's correct.

27 Q Okay. Paragraph 29, you said,
28 "From my experience the average marijuana

1 cultivator will spend an hour or two every
2 day caring for either medical or clandestine
3 marijuana plants."

4 You see that?

5 A Yes.

6 Q You base that statement without
7 having done any random sampling analysis of marijuana
8 cultivators as a whole? Legal or otherwise?

9 A That's correct.

10 Q I'm curious about paragraph 33.

11 You say,

12 "Prior to the *MMAR*, the production and sale
13 of marijuana was done illegally."

14 Right?

15 A Yes.

16 Q And then you say,

17 "As such, many people who obtained *MMAR*
18 production licences relied on information
19 provided to them by people who cultivated
20 marijuana illegally."

21 A Yes.

22 Q The "as such" suggests in fact that
23 you have no evidence whatsoever to back up that last
24 sentence, correct?

25 A From *MMAR* growers that I've spoken
26 to, I've learned that information.

27 Q Okay, you have no statistics on any
28 of that, right?

1 A No, I don't.

2 Q You haven't done a random sampling
3 for any of it.

4 A No.

5 Q So in fact that statement is purely
6 conjectural, correct?

7 A No, it's based on information I
8 received from *MMAR* growers.

9 Q Okay. Turning you to page 13, at
10 paragraph 39 you say that you're aware of "numerous
11 expert opinions that have been entered as evidence in
12 courts across Canada that indicates the average
13 consumption of dried marijuana is between 1 to 3 grams a
14 day". And then you say "Health Canada also came to the
15 same conclusion about marijuana consumption." Then you
16 attach as Annex 8 -- excuse me. You attach as Annex H
17 the Health Canada Regulation? Right?

18 A It's an information sheet from
19 Health Canada about the consumption.

20 Q It's a single page information
21 sheet. Correct?

22 A That's correct.

23 Q Okay. And so you rely your entire
24 basis to talk about the applicable prescription is that
25 one page information sheet, correct?

26 A No.

27 Q Well, okay, well, let's look at
28 that. You're saying you're aware of numerous expert

1 opinions, correct?

2 A That's correct.

3 Q You've indicated sometimes there
4 are police expert opinions, for example, that are given.

5 A Yes.

6 Q Yourself being an example. Okay.
7 You can't refer us to any peer-reviewed medical articles
8 that would indicate that the standard thing should be 1
9 to 3 grams per day, correct?

10 A I'm not aware of any peer-reviewed
11 studies that say that, no.

12 Q Okay. So you'd agree with me that
13 in terms of available medical literature, you can't say
14 either way about what the standard prescription dosage
15 should be, correct?

16 A That's really up to the doctor to
17 decide on what the prescription dosage is for a person.

18 Q I'm saying you haven't reviewed the
19 medical literature at all, and so you can't say what the
20 medical literature would say should be applicable,
21 correct?

22 A I cannot say what the medical
23 literature would say.

24 Q Now, if I take you over to page 16
25 of your affidavit, you see "Investigations of Criminal
26 Abuses"? See that?

27 A Yes.

28 Q I mean, these are all grounds you

1 place for the problems with MAR. These is included
2 within that, correct?

3 A Yeah.

4 Q Okay. You recall our discussion
5 about that earlier today.

6 A Yes.

7 Q Okay. If I take you over to page
8 18, you talk about hiding illegal grow operations under
9 *MMAR* production licenses. See that?

10 A Yes.

11 Q And at paragraph 60, you say,
12 "Investigating abuses are much more difficult." You
13 recall us talking about that earlier. Okay? And then
14 your final sentence is,

15 "I have started investigations based on
16 complaints, only to discover a majority of
17 them are *MMAR* production sites."

18 Correct?

19 A Yes.

20 Q You then go no further within that
21 particular paragraph about what happens when that
22 investigation occurs, right?

23 A That's right.

24 Q And you can't tell us right now
25 about any statistics or any results referring to those
26 majority of *MMAR* production sites.

27 A No, I can't.

28 Q Correct. So in fact they very well

1 could have been subject to further investigation and
2 prosecuted as the case may be. Correct?

3 A It's possible. But the ones that
4 I've been involved in may not have been.

5 Q May not have been. But you can't
6 say.

7 A Well, I can't give you the exact
8 numbers, no.

9 Q No. Now, started at paragraph 62,
10 you list several examples -- well, six examples,
11 exactly, to illustrate a person cultivating marijuana
12 illegally and subsequently obtaining an *MMAR* production
13 licence. Correct?

14 A Yes.

15 Q Okay. Those are the only six
16 examples you can refer to, correct?

17 A It's a representative -- it's not a
18 total of all the examples.

19 Q And you haven't compiled an exact
20 number?

21 A No, I have not.

22 Q You haven't compiled any statistics
23 regarding percentages, correct?

24 A That's correct.

25 Q You haven't offset, for example,
26 this own number of six versus the 28,000 we might have,
27 correct?

28 A Correct.

1 Q Okay. So all we really know about
2 are six examples. Correct?

3 A The six that I've listed in here.

4 Q I understand that. But having
5 failed to compile any statistics, all we really know
6 about are the six examples. Right?

7 Sorry, I need you to verbalize.

8 A Yes.

9 Q Now, going over to page 20, you
10 talk about exploitation of the authorization process.
11 And it says, "Excessive MMAR licenses issued by one
12 doctor." Okay? And then you talk about marijuana-
13 friendly physicians. Right?

14 A Yes.

15 Q Now, you see the list -- and you
16 included a list of physicians from a website you found.
17 Correct?

18 A Yes.

19 Q Okay. All of the physicians listed
20 as marijuana-friendly, you have no information
21 whatsoever that they are abusing their authority as
22 medical professions -- professionals, to prescribe
23 marijuana in the dosages they see as applicable.
24 Correct?

25 A That's correct. That's up to the
26 College of Physicians.

27 Q Okay. But what I'm saying is that
28 you've listed this thing that you find on a website but

1 you have no information that those doctors are at all
2 abusing their authority. Correct?

3 A That's correct.

4 Q Okay. In fact, you can, in all of
5 this, come up with only one example of a physician
6 purported to and alleged to be abusing their authority
7 to prescribe under the *MMAR*. Correct?

8 A I've only included one in this
9 example, yes.

10 Q Okay. And then you say,
11 "I believe some doctors saw the opportunity
12 to make a significant amount of money
13 endorsing *MMAR* production licenses."

14 See that? That's at paragraph 64.

15 A Yes.

16 Q You see that?

17 A Yes.

18 Q Okay. Yet you can only come up
19 with one example.

20 A I've only included one example in
21 this report.

22 Q You don't know of any other
23 examples, correct?

24 A In this case, no, I don't.

25 Q Okay. So you're making, if you'll
26 excuse in saying so, pretty far-reaching statement about
27 doctors who are enjoined to properly undertake what we
28 think of as a Hippocratic oath as well as to go under

1 specific regulations from colleges. You're saying that
2 you believe physicians -- you say -- you use the term
3 "some", but you believe physicians are abusing their
4 authority. You make that statement. And you can only
5 come up with one example.

6 A I only included one example in this
7 affidavit, yes.

8 Q So you would agree with me that
9 you're basically attacking a profession that is heavily
10 regulated without any real evidence or basis to do so.

11 A I'm not attacking doctors in this
12 case.

13 Q Well, at paragraph 71 on the next
14 page -- well, let me go back. Let's look at the heading
15 of that section on page 20. Right? You say,
16 "Exploitation of the authorization process." You're
17 suggesting that doctors are exploiting the authorization
18 process, are you not?

19 A Exploitation and I've given an
20 example of one doctor.

21 Q A single example.

22 A That's correct.

23 Q So you can't say there's
24 exploitation. You're saying that there's one rogue
25 amongst an otherwise perfect group.

26 A I'm saying one was involved in
27 that, but I don't know what the percentage or stats of
28 all the other doctors are.

1 Q Okay, going over to the next page
2 at paragraph 71, you say,

3 "Another way a person could persuade a
4 physician to endorse the ability to grow more
5 plants is by using an affidavit."

6 Correct?

7 A Yes.

8 Q You'd agree with me that your use
9 of the word "persuade" is perhaps a little bit off
10 centre because what's happening here in the example you
11 give is somebody has to swear an affidavit with respect
12 to liability, correct?

13 A Yes.

14 Q So they're not persuading the
15 doctor to do anything. It could very well be simply
16 that the doctor is asking them to do this affidavit
17 because there were concerns over liability, correct?

18 A It's possible. But this is quite a
19 large licence in this particular example.

20 Q Well, but you use the word
21 "persuade" and you say, "Another way a person could
22 persuade," and you use this example, right?

23 A Yes.

24 Q "Persuade" is too strong a word.
25 In fact it's the incorrect word. All that's happening
26 is a doctor is saying, "You've got to put together the
27 affidavit if you want me to -- if you want the licence
28 to be issued," correct?

1 A Yes.

2 Q Okay. So nobody is hoodwinking
3 anybody here. It's just process. Right?

4 A Yes.

5 Q You give an example -- well, you
6 then talk about forged *MMAR* licences, and then you give
7 an example at paragraph 77 about a medical clinic.

8 A That's correct.

9 Q And in fact the clinic themselves
10 called the Pitt Meadows -- the Maple Ridge RCMP and told
11 them that two doctors' signature stamps had been stolen.
12 That's correct?

13 A That's correct.

14 Q So you'd agree with me that if
15 doctors' signature stamps are stolen, anything could be
16 forged as far as prescriptions go, correct?

17 A That's correct.

18 Q This is not specific whatsoever to
19 *MMAR* licences, correct?

20 A Well, except they were used for
21 *MMAR* licences.

22 Q These were. But if I asked you and
23 we went and did some research, we'd also find possibly,
24 you'd agree with me, that there have been instances
25 where people have forged prescriptions for Percocets or
26 Oxycontin using doctors' signature stamps, correct?

27 A Yes.

28 Q Okay. You talk at paragraph 79 of

1 improper disposal of *MMAR* waste materials. You've given
2 -- well, you say you have found that *MMAR* producers
3 often discard their soil medium after every crop. Do
4 you see that?

5 A Yes.

6 Q And you give one example from
7 Richmond. You see that?

8 A Yes.

9 Q You've compiled no statistics
10 whatsoever on people improperly discarding stuff from
11 marijuana grow operations?

12 A No.

13 Q You've compared -- you've conducted
14 no random sample analysis of that population, correct?

15 A No.

16 Q You recall our earlier discussion
17 about monster plants, what you call "monster plants"?

18 A Yes.

19 Q You then give several pages with
20 respect to over-production and monster plants. You see
21 that?

22 A Yes.

23 Q Okay. And you would agree with me
24 that you have nothing to compare that against, because
25 you haven't done any research into people properly
26 producing "monster plants". Correct?

27 A I haven't seen people properly
28 producing monster plans, no.

1 Q But you haven't checked. Correct?
2 A That's correct. It's outside of my
3 mandate.
4 Q There is no random sample analysis
5 conducted.
6 A No random sample analysis
7 conducted.
8 Q On page 32, you refer to
9 manufacturing of derivatives to traffic.
10 A Right. Yes.
11 Q You then give a number of examples,
12 you say, of trafficking in derivatives. You see that?
13 A Yes.
14 Q And in fact, at paragraph 93, you
15 only refer to a single example in that whole section,
16 right?
17 A Yes.
18 Q And you've compiled no statistics
19 in that regard?
20 A That's correct.
21 Q And no random sample analysis.
22 A That's correct.
23 Q You then go on in your affidavit at
24 page 34, starting at paragraph 94, that you're saying "A
25 quandary is created when a person who is authorized to
26 grow a specific number of plants grows more than
27 authorized." Do you see that?
28 A Yes.

1 Q And then you go on to talk about
2 instances in which people were growing more than they
3 were permitted to. You see that?

4 A That's correct, yes.

5 Q And in example A, in fact, actually
6 there was other criminality involved, or at least
7 suggested criminality, because you're talking about a
8 cocaine trafficking investigation. Correct?

9 A Yes.

10 Q And a number of these examples that
11 follow, in fact, you talk about search warrants being
12 executed. Right? You say, at B, "Executed a search
13 warrant at a residence." C, "Obtained from the above ..."
14 Well, above search warrant. Do you see that?

15 A Yes.

16 Q Okay. So in fact actually you
17 could get search warrants for these *MMAR* sites and go
18 ahead and do an investigation, right?

19 A Yes.

20 Q Page 40 of your affidavit, "Theft
21 of Electricity".

22 A Yes.

23 Q Okay. Now, you refer to 13
24 examples that you say you know about. This is on the
25 next page, with respect to theft of electricity. Right?

26 A Did I say 13 in that paragraph?

27 Q Sorry, I should direct you directly
28 to paragraph 102.

1 A 102.

2 Q Between September 2010 and May 2013
3 you were able to locate 13 MMAR production sites?

4 A That's correct.

5 Q See that? Now, those weren't ones
6 that you personally located. That's just from records
7 that you've indicated, right?

8 A That's correct.

9 Q Okay. And you have no statistics
10 in that regard?

11 A That's correct.

12 Q Okay. Indeed these 13 examples,
13 while I understand about selection of examples, based on
14 our lack of statistics we can only definitely say there
15 are these 13 examples for example, right?

16 A I know B.C. Hydro has disconnected
17 electricity at places where theft of electricity has
18 occurred, without any police investigation.

19 Q You have no numbers.

20 A But I have no numbers, no.

21 Q And you could obtain those numbers,
22 right?

23 A I wouldn't know if they were
24 medical grows or not because they disconnected the
25 electricity.

26 Q Well, okay, but you didn't even try
27 and obtain those numbers, right?

28 A No, I selected examples to go into

1 the affidavit.

2 Q Okay. You didn't try and obtain
3 numbers, correct?

4 A Try and obtain numbers from B.C.
5 Hydro?

6 Q Numbers in terms of the number --
7 you said that there were a number of instances of
8 disconnecting.

9 A That's correct.

10 Q Okay. You didn't try and obtain
11 those numbers, correct?

12 A No. I did speak with Thomas Jones
13 from B.C. Hydro, and I do have a list of costs of theft
14 directly attributed in paragraph 101 to theft of
15 electricity at medical marijuana grows.

16 Q I'm not talking --

17 A But we don't have a stat on the
18 exact number of residences.

19 Q Fair enough. So you can't say how
20 many, what the numbers are, right?

21 A That's correct.

22 Q And you can't say with reference to
23 medical marijuana grows, correct?

24 A The numbers in --

25 Q So you have no numbers with respect
26 to theft of electricity, correct?

27 A Well, the numbers I have, I just
28 mentioned to you here with the Thomas Jones from B.C.

1 Hydro, attributes 115,515.47 directly associated to
2 theft of electricity.

3 Q I said no numbers. Sorry, perhaps
4 I was unclear. I meant no numbers with respect to
5 absolute numbers in terms of units that are stealing.
6 Correct?

7 A That's correct.

8 Q You've just got a cash figure here.

9 A That's correct.

10 Q Okay. And you also don't have any
11 further numbers with respect to whether any of those
12 thefts were at all associated with medical marijuana
13 sites. You don't have numbers and you don't have any
14 details, right?

15 A Well, there's 13 examples of thefts
16 at medical marijuana sites.

17 Q Those 13. I'm talking about
18 numbers generally beyond that. You were saying you had
19 talked to B.C. Hydro and they told you things. Beyond
20 these 13 examples you have no numbers.

21 A That's correct.

22 Q And so you have nothing to compare
23 to what we've talked about, 15,000 production licences
24 in British Columbia, is that correct?

25 A Yes.

26 Q At paragraph 103 you talk about
27 multiple *MMAR* licences and brokers. You see that?

28 A Yes.

1 Q You've given two examples of people
2 abusing multiple licences, in your words?

3 A That's correct.

4 Q And you have no statistics on
5 anything else? How many more?

6 A that is correct.

7 Q Okay, so the only thing that we can
8 definitively say is that, and these -- one example was
9 from Nunavut, right? Or -- yeah, in Nunavut. Example B
10 was from Nunavut. Police officers, the drug section,
11 executed a search warrant at a compassion club, do you
12 see that?

13 A That is correct.

14 Q Okay. And the first one, on the
15 earlier page, doesn't say the province, right? It just
16 says an ad on Craigslist?

17 A That's correct, it was on Vancouver
18 Island.

19 Q Okay, that's what -- okay. Fair
20 enough. Anyway, so two cases in Canada. Right?

21 A Two cases that I have listed in
22 this affidavit.

23 Q So, versus the potentially 28,000
24 licenced licences, that is the best we can do? Two
25 examples?

26 A I have no stats on all the rest of
27 it.

28 Q Okay. Going over you talk about

1 marijuana clones. Do you see that?

2 A Which?

3 Q The next page.

4 A Yes.

5 Q You give three examples of people
6 trafficking marijuana clones?

7 A Yes.

8 Q And I'm not going to get into the
9 sort of minute details of each example, but you can't
10 provide any further stats in respect of these?

11 A No, I can't.

12 Q Versus the 28,000 licenced licences
13 that we are dealing with, correct?

14 A I have no idea.

15 Q And you haven't done any random
16 sample analysis?

17 A No random sample analysis.

18 Q Page 49, you talk about 21 examples
19 at paragraph 114.

20 A Yes.

21 Q Do you see that? Okay. And
22 you're talking about people who are engaging in
23 trafficking using their *MMAR* licences? Right?

24 A That's correct.

25 Q Okay. Now, I am not going to get
26 into all of these with you, but I'd like to refer you to
27 paragraph D under 2012 on the next page. That is page
28 50?

1 A Yes.

2 Q Okay. And it says that on March
3 27th, 2012, a police officer from an Agassiz RCMP
4 detachment stopped a vehicle. Do you see that?

5 A Yes.

6 Q It said the male had an expired
7 *MMAR* production licence that permitted him to grow 88
8 medical marijuana plants. Do you see that?

9 A That's correct.

10 Q And then it says afterwards that he
11 was getting people to purchase *MMAR* production licences,
12 do you see that?

13 A Yes.

14 Q So, in fact, actually, this has
15 nothing to do with trafficking under the the *MMAR*. This
16 is standard criminal activity in which somebody is
17 trying to get -- first of all, the person doesn't even
18 have an *MMAR* licence, it's expired, so he can't be
19 trafficking with an *MMAR* licence, fair enough?

20 A He can't be trafficking with an
21 *MMAR* licence, but he was previously associated with an
22 *MMAR* licence and he was in possession of half a pound of
23 marijuana.

24 Q He's not trafficking under an *MMAR*
25 licence, correct?

26 A That's correct.

27 Q Okay, and what he is doing, in
28 terms of trying to get other people to purchase them, is

1 actually just regular criminal activity, correct?

2 A I believe that criminal activity is
3 going to lead to the abuse of the *MMAR* program.

4 Q It could lead to it, but he is just
5 engaging at that point in criminal activity, right?

6 A Okay.

7 Q Yes?

8 A (inaudible)

9 Q Okay. Okay, I'm going to take you
10 to page 58, which is Section C, "Health and safety
11 concerns to law enforcement".

12 A Yes.

13 Q You see that? And you list a
14 number of what you call health and safety concerns. You
15 see that there?

16 A That's correct, yes.

17 Q The first one you refer to, of
18 course, is building modifications in confined spaces.

19 A Yes.

20 Q Okay. And you say that *MMAR*
21 producers often modify buildings from their intended
22 use. See that?

23 A Yes.

24 Q Okay. And then they often seal off
25 grow rooms to maintain control. You have observed holes
26 cut into walls, floors, and ceilings to accommodate air
27 and intake. See all of that?

28 A Yes.

1 Q Confined spaces -- this is at
2 paragraph 127 -- require first responders to be trained
3 in confined space awareness. See all of that?

4 And then you give only one single example
5 of a problem of confined spaces. Correct?

6 A I chose the extreme example.

7 Q You chose the extreme example. You
8 have no statistics of other situations involving
9 confined spaces, right?

10 A No, I have no statistics.

11 Q You haven't conducted any random
12 sample analysis of other growers, and how they go about
13 growing, right?

14 A No, I have not.

15 Q And you've heard the testimony of
16 Mr. Allard with respect to all the things that he's done
17 in his case regarding making sure that problems aren't
18 associated with improper growing. You see that?

19 A I haven't heard his affidavit, but
20 I've read the part that you pointed out to me, yes.

21 Q Okay. No problems with confined
22 spaces there, right?

23 A I don't know. I'd have to see the
24 layout and the pictures and all that sort of stuff to
25 determine that.

26 Q Fair enough. You talk about high
27 voltage electrical wires. Yes?

28 A I guess so.

1 Q That's at the next section.

2 A On page 60, yes.

3 Q Page 60. Okay. And you've given
4 one photograph, right?

5 A Yes.

6 Q From a *MMAR* production site. As we
7 talked about earlier, you haven't juxtaposed it with
8 anything else in terms of a certified and proper
9 production site. Correct?

10 A No.

11 Q Okay. No random sample analysis.

12 A No.

13 Q Certification. You've agreed with
14 me that safety, proper safety standards, could be
15 respected with proper certification. Correct?

16 A To mitigate electrical issues, yes.

17 Q Then you say toxic mould and
18 fertilizers. And at paragraph 131, you say, "I have
19 observed mould growing on walls and ceilings at *MMAR*
20 production sites." And you have included photographs of
21 mould at *MMAR* production sites, within the attachments
22 to this affidavit.

23 A Contained within the attachments,
24 yes.

25 Q Okay. So you can't tell us how
26 many times you observed mould.

27 A No. I never went into count mould
28 at *MMAR* sites.

1 Q Okay. But you can't tell us how
2 many times mould has been observed, period. Correct?

3 A No, I can't.

4 Q And you can't tell us how many
5 times versus a sample of those mould viewings -- what
6 that would be relative to mould viewings in the standard
7 home in British Columbia. Correct?

8 A That's correct.

9 Q Okay. You talk about carbon
10 dioxide and propane tanks. You see that?

11 A Yes.

12 Q Okay. And you say at paragraph 136
13 about some of the health and safety concerns of using
14 CO₂, right?

15 A That's correct.

16 Q You talk about a list of things, a
17 device burning unattended, high levels of CO₂ can cause
18 unconsciousness and death, right?

19 A Yes.

20 Q You can't give us any examples and
21 indeed you haven't given any examples of this sort of
22 CO₂ thing leading to either fires or unconsciousness and
23 death, correct?

24 A No.

25 Q So in the absence of any evidence,
26 you can't in fact back up the statement you make that
27 high levels of CO₂ can cause unconsciousness and death,
28 correct?

1 A I know that high levels of CO₂ can
2 cause unconsciousness and death.

3 Q You have no evidence here to say
4 that, right?

5 A Well, I believe it's scientifically
6 proven that high levels of CO₂ will cause
7 unconsciousness and can lead to death, yes.

8 Q In any event you have no statistics
9 or examples of that happening in the context of an *MMAR*
10 site.

11 A No examples in this affidavit, no.

12 Q Well, period. You have no
13 examples.

14 A That's correct because I don't
15 know. I haven't been into those sites.

16 Q You talk about weapons at *MMAR*
17 sites, you see that, at page 62, paragraph 137.

18 A Yes.

19 Q You could only give, I believe it
20 was one example of weapons being present. You see that?

21 A I provided one example in this,
22 yes.

23 Q Okay. And you have no statistics
24 otherwise, that's correct?

25 A That's correct.

26 Q Okay. You then go on to talk about
27 grow rips or what is commonly referred to as grow rips.
28 You see that at paragraph 139?

1 A Yes.

2 Q Okay. At paragraph 141 you say:

3 "I believe grow rips are underreported to
4 police because *MMAR* producers who are
5 criminally abusing the program do not want to
6 bring the attention to their illegal
7 activities."

8 Do you see that?

9 A That's true, yes.

10 Q Okay. You don't have any evidence
11 to back that up. Fair enough? It's just your belief.

12 A It would be a logical assumption
13 that if someone is contravening the law, that they
14 wouldn't draw the police to their attention.

15 Q You have no evidence to back that
16 up, correct?

17 A That's correct.

18 Q It is just your belief based on
19 your version of logic. Right?

20 A I believe it's logical, yes.

21 Q Okay. You then talk about what you
22 say are, at paragraph 144, page 64 of 87:

23 "Criminals are often searching out *MMAR*
24 production sites to conduct grow rips. Below
25 are two examples of where they have
26 intervened before grow rips have occurred."

27 Do you see all of that?

28 A Yes.

1 Q Okay. And it says,
2 "On May 12, 2012, a police officer from the
3 Mission RCMP detachment, stopped a vehicle
4 occupied by people near a medical marijuana
5 grow operation."

6 Do you see that?

7 A Yes.

8 Q And then you say, further on it
9 says,

10 "One of the occupants of the vehicle was the
11 subject of a police investigation in 2010,
12 where 45 pounds of marijuana was located
13 along with cocaine, ecstasy, steroid, body
14 armour..."

15 et cetera, et cetera. Right?

16 A Yes.

17 Q You'd agree with me that that
18 statement doesn't indicate anything whatsoever that the
19 people are searching out a grow rip to rob, right?

20 A Given the fact that this person was
21 involved in criminal activity before, and they have
22 tools to do a grow rip, it is possible that they were
23 there to do a grow rip.

24 Q You -- the tools you talk about are
25 pliers, crowbar, hammers, screw drivers, gloves, right?

26 A Yes.

27 Q That could just as easily be to
28 enter any -- to commit a break and enter anywhere,

1 correct?

2 A It's possible, yes.

3 Q Okay. And again, you only have two
4 examples here that you say -- leaving aside for the
5 moment whether they are bona fide examples, you only
6 provide two examples of police "intervening" before a
7 grow rip could occur, right?

8 A That's correct.

9 Q Okay. And I take it that one of
10 the things you say is that because there are medical
11 marijuana grow operations around, they are inherently
12 vulnerable because people might want to rip them. Is
13 that one of the conclusions you would reach? Is that
14 fair?

15 A Grow ops in general, yes.

16 Q They are inherently vulnerable
17 because people want to seize what is there.

18 A That's correct.

19 Q You'd agree with me that banks are
20 inherently vulnerable because people might want to go
21 there, right?

22 A It's possible. However, they have
23 security requirements.

24 Q Okay, so do medical marijuana
25 operations, right?

26 A Some do, yes.

27 Q Okay, well, the licence form says
28 there are security requirements, right?

1 A It doesn't say what security
2 requirements.

3 Q It says there are security
4 requirements, right?

5 A It asks them to list security
6 requirements.

7 Q Okay. But -- okay, well, jewelry
8 stores, can also be targeted, right?

9 A Yes.

10 Q Okay. Homes with valuables, large
11 numbers of valuables can also be targeted, right?

12 A That's correct.

13 Q Okay. Liquor stores can also be
14 targeted, in fact they often are, right?

15 A I don't know about "often" but
16 yeah, they can be targets, yes.

17 Q At paragraph 148, this is on page
18 71, you talk about homicides related to grow rips?

19 A Yes.

20 Q Okay, and your statement is that
21 "on occasion violent grow rips result in homicides",
22 right? Do you see that? It's just the first sentence.

23 A If violent grow rips -- yes.

24 Q Okay, and you talk about grow rips
25 generally. There is no connection here to *MMAR* grow
26 operations, correct?

27 A That's correct. People who do grow
28 rips, don't distinguish between medical grows and

1 illegal grows.

2 Q So, you have been told that by a
3 vast number of people that they don't distinguish, is
4 that correct?

5 A The target is the marijuana, which
6 is a value. So, regardless of whether it is medical or
7 an illegal grow operation, the target is the marijuana,
8 and wherever they can get that, that is where they --

9 Q I am suggesting to you that you
10 have no actual evidence suggesting that people who want
11 to conduct grow ops distinguish between medical and
12 illegal grow ops, correct?

13 A That's correct, they don't
14 distinguish.

15 Q I am saying, you have no evidence
16 that they actually don't distinguish, correct?

17 A Not in this affidavit, no.

18 Q And you can't provide any new
19 evidence now, correct?

20 A No.

21 Q So, your final statement in that,
22 is that you learned that between November 2003 and
23 February 2013, there were 14 homicides related to grow
24 ops in the Lower Mainland. The majority were the
25 result of fatal shootings, correct?

26 A That is correct.

27 Q Okay, you only say homicides
28 related to grow ops. You provide no further details

1 about how they might be related to grow rips. Correct?

2 A That's correct.

3 Q Okay. And none of these grow rips
4 or the 14 homicides related, as you say, to grow rips
5 were at *MMAR* production sites, correct?

6 A I don't know if they were at *MMAR*
7 production sites or not.

8 Q You don't know and you didn't take
9 the time to actually look, correct?

10 A Homicide investigations don't
11 distinguish between medical and -- they're investigating
12 the homicide aspect of the file. So I asked them for a
13 list of homicides related to grow rips, and that's the
14 information that I was provided.

15 Q So based on the knowledge you have,
16 in fact zero homicides could be in any way related to
17 medical marijuana grow operations, correct?

18 A Potentially, yes.

19 Q Based on the information you have,
20 that's a real possibility. Zero.

21 A Yes.

22 Q And you'd agree with me that those
23 who have a legal licence to grow are much more likely to
24 have a cooperative relationship with police, correct?

25 A I can't -- I don't know.

26 Q Well, going back to logical or
27 common sense assumptions, if you're not doing anything
28 illegal and you want to make sure that all measures are

1 taken to ensure your security and safety of your person,
2 it would probably be reasonable to have a cooperative
3 relationship with police. Right?

4 A I would hope so, but no MMAR grower
5 has come to me saying, "Please take a look at my
6 facility."

7 Q I'm not talking about taking a look
8 at your facility. I'm saying a cooperative relationship
9 in which they would not be hesitant to call you should
10 they have any kind of problems. That's a fairly
11 reasonable assumption?

12 A I would hope that's the case.

13 Q Okay. And so you'd also agree that
14 the following would apply, that is that if you were
15 seeking to undertake a grow rip, if you're a criminal
16 out there seeking to undertake a grow rip, you would
17 tend to target an illegal operation and not a legal
18 operation because you would think that the illegals
19 would not call the police to come save them, right?

20 A I have no idea how the grow rippers
21 would know or be able to distinguish between a medical
22 grow and an illegal grow.

23 Q Well, it would be fairly reasonable
24 that if they knew, they wouldn't target a grow operation
25 that has a cooperative relationship with police. Fair
26 enough?

27 A If they knew it would increase
28 their risk, yes.

1 Q You've also seen, for example, the
2 testimony -- you've seen the example that came from Mr.
3 Allard in which he talks about monitors and security
4 systems that are sensitive and all. You've seen some of
5 that?

6 A From what you pointed out to me
7 earlier on, yes.

8 Q So you'd agree that if people have
9 motion detectors, things of that nature, it'd be
10 reasonable that somebody seeking to do a grow rip would
11 not seek to approach a site where there's proper
12 security in place. Fair enough?

13 A It depends. It increases their
14 risk of getting caught, yes.

15 Q Okay. You talk about clandestine
16 labs at page 71, paragraph 149, do you see that?

17 A Yes.

18 Q And I guess what you are suggesting
19 is that based on your knowledge of certain things that
20 go on at clandestine labs, you were concerned that the
21 same risks could be associated with *MMAR* production
22 sites? Would that be fair?

23 A I believe making those derivatives
24 causes risk, yes.

25 Q Okay.

26 A Particularly butane.

27 Q And you've given four examples of
28 stuff that happens at -- that is, explosions that have

1 occurred as a result of production of BHO at non-*MMAR*
2 production sites, right?

3 A That's correct. That's what I
4 said.

5 Q Okay. And you are aware of no
6 instances where explosions of that type have occurred at
7 any *MMAR* production site, correct?

8 A No, that is incorrect. Paragraph
9 153 has an explosion at an *MMAR* site.

10 Q But there's no cause to that
11 explosion listed there. If you read the body of that.

12 A It was the result of the
13 manufacture of butane hash oil.

14 Q Well, it doesn't say that in the
15 paragraph.

16 A But that was the result.

17 Q Well, you've compiled this from
18 some other thing. You weren't at that site.

19 A I was not at that site, no.

20 Q Okay, so you made a statement that
21 this happens as a result of BHO, and then you summarize
22 what happened and there's no mention of BHO. It just
23 says there's an explosion.

24 A That's correct. It's under the
25 heading of "Explosions at *MMAR* production sites".

26 Q Fair enough. But I'm talking about
27 the details within that summary. There is nothing --

28 A As a result of the making of BHO.

1 Q Okay. Well, in the body of that,
2 there is no mention of the explosion occurring because
3 of BHO. Right?

4 A Not in (a), but in the paragraph
5 153.

6 Q Oh, okay.

7 A It says it was a result of making
8 BHO.

9 Q In any event, one example.

10 A One example is listed, that's
11 correct.

12 Q Out of 28,000 in Canada and 15,000
13 in B.C., right?

14 A Yes.

15 Q Can you give me the statistics on
16 the number of house fires that have resulted in 2014 as
17 a result of leaving a barbeque on?

18 A No, I can't.

19 Q Could be a hundred, maybe?
20 Perhaps?

21 A I don't know. I'd be guessing.

22 Q Could be zero, could be a hundred.
23 Right?

24 A Could be.

25 Q And it could be greater than one.
26 Right?

27 A Yes.

28 MR. VAZE: Justice, I'm noting the

1 time. I think if we were able to take the break now, I
2 could probably conclude fairly quickly after the end of
3 the break.

4 JUSTICE: All right.

5 MR. VAZE: And I'll just review my
6 notes at this time.

7 JUSTICE: Fair enough. We'll take 15
8 minutes.

9 **(PROCEEDINGS ADJOURNED AT 2:47 P.M.)**

10 **(PROCEEDINGS RESUMED AT 3:04 P.M.)**

11 MR. VAZE:

12 Q Corporal, you can't tell us how
13 many legal grow operations have had fires at any time,
14 correct?

15 A That's correct.

16 Q In fact, you can't even give us one
17 instance. That's correct?

18 A Of a medical grow with a fire? Not
19 that I'm aware of.

20 Q Now, I'll take you to page 74,
21 paragraph 157 of your report. You say that your role
22 now is a role as the provincial *MMPR* coordinator.
23 That's correct?

24 A That's correct.

25 Q Okay. It's correct, in fact, that
26 prior to you becoming a witness in these proceedings,
27 you in fact had written numerous letters to Health
28 Canada complaining about the *MMAR* program. Correct?

1 A I had written some letters to
2 Health Canada, yes, and some e-mails.

3 Q Numerous letters, complaining about
4 the *MMAR* program. Correct?

5 A Bringing issues to their attention
6 that needed to be corrected to prevent abuse from the
7 *MMAR* program.

8 Q Complaints. Fair enough?

9 A Yes.

10 Q Not in favour of this program.
11 Correct?

12 A In favour of correcting the
13 deficiencies to the *MMAR* program.

14 Q Okay. Now, as role as the -- in
15 your role as the provincial *MMPR* coordinator, and you
16 understand that what the government or the federal
17 government has intended to do was to -- is essentially
18 replace the *MMAR* with the *MMPR*. Correct?

19 A That's correct, because the *MMAR*
20 was repealed.

21 Q So you will have -- should the *MMPR*
22 come into force and remain in force, a particularly
23 important role in that regard, correct?

24 A It's an important role, liaising
25 with the licensed producers, yes.

26 Q Well, your role as the provincial
27 *MMPR* coordinator. That's what you say you are.
28 Correct?

1 A That's correct.

2 Q So you have an interest in ensuring
3 that the *MMPR* becomes valid and upheld legislation.
4 Correct?

5 A It's not about an advocacy for a
6 particular legislation. It's about ensuring criminal
7 abuses don't occur in this new program.

8 Q I didn't ask you about advocacy. I
9 said you have an interest in ensuring that *MMPR* comes
10 into force and stays in force. Correct?

11 A It is in force, the *MMPR*, and I
12 want to ensure the legitimacy of the program.

13 Q You want to ensure that it stays in
14 force, correct?

15 A I'm not about saying that one --
16 that the *MMPR* needs to stay in force or not. But my job
17 is to ensure that organized crime doesn't take advantage
18 of the *MMPR* program.

19 Q Okay. Now, you talk at page 75,
20 you say "licenced producer inspections under the *MMPR*",
21 do you see that there?

22 A Yes.

23 Q So you've conducted some
24 inspections under the *MMPR*?

25 A I've participated in inspections.
26 Health Canada do the inspections, I attend with them.

27 Q Okay, and I take it that they know
28 you are coming before hand?

1 A Yes.

2 Q Okay. These haven't been spot
3 audited at all?

4 A Spot audited?

5 Q Unannounced. They haven't been
6 unannounced inspections.

7 A Some inspections that I have
8 attended, yes, have been unannounced.

9 Q Okay. But many of them have been
10 announced?

11 A For the initial licencing process,
12 they are announced. But subsequent inspections after
13 that, are unannounced.

14 Q Okay. And of course that is
15 something that could have been maintained even with the
16 personal use production licences by way of spot audits,
17 right?

18 A It's possible.

19 Q Okay. And you go on further in
20 your affidavit to talking about certain things that can
21 occur under the *MMPR*, you talk about secured medical
22 marijuana storage? Extensive record keeping, audits,
23 and inventory records, do you see all that?

24 A Yes.

25 Q Compliance and enforcement of
26 production standards, do you see all that? Right?

27 A Yes.

28 Q Health and safety protocols inside

1 *MMPR* facilities, that's at page 83.

2 A On page --

3 Q Page 83.

4 A I have got page 76.

5 Q No, sorry, if I could move you
6 along. My apologies I was just sort of --

7 A Sorry, which page?

8 Q Page, 83.

9 JUSTICE: 83.

10 MR. VAZE:

11 Q Health and safety protocols inside
12 *MMPR* facilities? Right?

13 A That's correct.

14 Q Okay. Comprehensive testing of
15 medical marijuana at *MMPR* facilities, right?

16 A On page 84, yes.

17 Q Destruction of medical marijuana,
18 page 85, multiple marijuana strains, secure packaging,
19 all of that?

20 A That's correct.

21 Q Okay. Now, it's correct that you
22 haven't conducted any kind of comparative analysis
23 between *MMAR* personal use production sites, and what is
24 now under the *MMPR*, correct?

25 A What do you mean comparative
26 analysis?

27 Q Well, you haven't, first of all,
28 taken the random sample.

1 A No random sampling, no.

2 Q Okay. And then taken that random
3 sample and compared it to all these things that you
4 should say should happen and will happen under the *MMPR*,
5 correct?

6 A That is correct.

7 Q Okay, so you can't really say
8 whether there is anything better about the *MMPR* versus
9 what is going on under the *MMAR*, nor can you say that
10 many of the things that you advocate could not occur
11 under the *MMAR*, correct?

12 A Sorry, I don't understand the
13 question.

14 Q First of all, you can't really say
15 that all of these benefits that you ascribe to the *MMPR*
16 have not already been occurring, or can't occur under
17 the *MMAR*, because you haven't taken a random sample,
18 right?

19 A That's right, I haven't taken a
20 random sample and I haven't been in to all medical grows
21 for inspections, no.

22 Q Well, you haven't been into any
23 other than the ones that you have been investigating,
24 right?

25 A That's correct.

26 Q Okay. Now, Corporal, have you ever
27 heard of a concept of confirmation bias?

28 A Confirmation bias?

1 Q That is where you have a bias with
2 respect to a particular position, and you simply go out
3 and you get things that confirm what is your pre-
4 existing bias. Have you ever heard of that concept?

5 A Yes.

6 Q You'd agree with me that that is
7 exactly what you've done with the report before the
8 court, correct?

9 A No, I've listed a selection of
10 examples to answer the questions that I was asked to, by
11 the Attorney General.

12 Q You've conducted no independent and
13 new research, correct?

14 A Well, the new research was
15 gathering the information in this affidavit.

16 Q You didn't engage in a research
17 plan as we've discussed, correct?

18 A That's correct, because I'm not a
19 research scientist or academic to be able to put that --

20 Q So what I --

21 A -- in place.

22 Q What I'm putting to you is that in
23 fact you had an agenda, your bias, which was that the
24 *MMAR* should be shut down. And you went and wrote a
25 report that confirmed that bias. Correct?

26 A No.

27 Q Now, with respect to the plaintiffs
28 in this case, then, obviously throughout your report you

1 talked about all the problems that you associate with
2 criminal abuses and health and safety difficulties under
3 the *MMAR*. Correct?

4 A Yes.

5 Q You have no evidence that any of
6 those things that you've cited have occurred in the case
7 of Neil Allard, correct?

8 A That's correct.

9 Q You have no evidence that any of
10 those things you've cited have occurred in the case of
11 Shawn Davey, correct?

12 A That's correct. I haven't
13 investigated those people.

14 Q My question is, you have no
15 evidence, right?

16 A That's correct.

17 Q You have no evidence that any of
18 those problems that you've cited throughout your report
19 have existed in the case of Tanya Beemish?

20 A No.

21 Q And you have no evidence that any
22 of those things have occurred in the case of David
23 Hebert, correct?

24 A Correct.

25 MR. VAZE: Those are my questions.
26 Thank you.

27 JUSTICE: Ms. Wray?

28 MS. WRAY: I do indeed have a few

1 questions on re-direct for Cpl. Holmquist.

2 **RE-EXAMINATION BY MS. WRAY:**

3 Q Corporal, you were shown provisions
4 in the *MMAR* relating to Health Canada inspections, and
5 you were asked to comment on those?

6 A Yes.

7 Q When inspecting a grow-op, what
8 would a Health Canada inspector be looking for compared
9 to a police inspector?

10 A Health Canada is looking at
11 compliance with their regulations, rather than criminal
12 investigation. It's quite a bit different.

13 Q In what ways is it different?

14 A Are you referring to the *MMAR* or
15 the *MMPR*?

16 Q The *MMAR*.

17 A The *MMAR*. Well, they would be
18 looking at -- under the *MMAR*, the number of plants, the
19 amount of storage, and their production as well.

20 Q And what would police be looking
21 for?

22 A We're looking for trafficking,
23 excess production outside of their licence. *Criminal*
24 *Code*, *CDSA* investigations.

25 Q My friend took you to paragraph 84
26 of your report.

27 A Yes.

28 Q It's at page 27. And you, at

1 paragraph 84, have written the statement, "The only
2 logical reason to grow monster plants is to traffic the
3 excess marijuana." What is the basis for that opinion?

4 A It's based on the fact that if
5 someone has a set amount of plants per their licence,
6 they're taking those plants and they're growing larger
7 plants. Health Canada, in Section 30 of the *MMAR*,
8 outlines what a yield of a plant should be. So it says
9 30 grams, or roughly 1.06 ounces.

10 So if someone is growing plants outside
11 of that size for the same number of plants according to
12 the licence, they would be overproducing marijuana.

13 Q You agreed during your cross-
14 examination that it's possible that someone might
15 satisfy Health Canada that they deserve a production
16 licence based on what they set out in their application
17 form about the security measures that they intend to
18 take. What's your opinion as a law enforcement official
19 on whether asking a licensee for an explanation of
20 security measures that they will implement at some
21 future date is adequate to ensure public safety?

22 A I don't believe it is adequate for
23 public safety. I believe that those requirements or
24 those things should be verified by Health Canada to
25 ensure that they are in place and operational, to
26 prevent theft, diversion or grow rips.

27 Q You were also taken to page 297 of
28 your affidavit. This is Annex NN to your affidavit.

1 A Yes.

2 Q This is an RCMP document on the
3 Criminal Exploitation of Marijuana Medical Access
4 Regulations Licences.

5 A Yes.

6 Q From 2012. Can you please explain
7 why the descriptions of the criminal cases in this
8 document are so limited in terms of their detail?

9 A Sometimes investigations are based
10 on search warrants that have a sealing* order attached,
11 also based on information that contains informant
12 information. So a lot of that is vetted.

13 Q If we could go back to the body of
14 your affidavit, you were also asked quite extensively
15 about paragraphs 121 and 122.

16 A Yes.

17 Q Those paragraphs, you explain an
18 *MMAR* grow-op you attended as part of a criminal
19 investigation where this Hells Angel medallion was
20 found?

21 A That's correct.

22 Q And it was pointed out to you that
23 you did not include any other background documents
24 relating to this investigation?

25 A Yes.

26 Q So how can you then be confident
27 that the information that you have given in these
28 paragraphs is accurate?

1 A Because I've reviewed documents in
2 this investigation and obtained the information from
3 those documents.

4 Q My friend also asked you questions
5 about your role, your current role in relation to the
6 *MMPR*.

7 A Yes.

8 Q If the *MMPR* was no longer in force,
9 would your employment status be jeopardized in any way?

10 A Sorry, the *MMAR* or the *MMPR*?

11 Q *MMPR*.

12 A If the *MMPR*, my job status would
13 not change, no.

14 Q My friend ask you if you did a
15 comparison between the *MMAR* and the current Licensed
16 Producer Regime, and specifically you agreed you had not
17 taken a random sample comparative analysis.

18 A That's correct.

19 Q Were there any other comparative
20 analyses that you did between *MMAR* grows and the current
21 Licensed Producers?

22 A I did do some comparisons from the
23 *MMAR* from my observations at *MMAR* grows and the files I
24 reviewed from the *MMAR*, which photos are attached, and
25 compared those to my attendance at *MMPR* licensed
26 facilities.

27 Q Further to the cross-examination
28 conducted by my friend, have you changed any of your

1 opinions with respect to any of the four issues you were
2 asked to address in your report?

3 A No.

4 Q Thank you.

5 JUSTICE: Okay, that's that? Thank
6 you, Corporal.

7 THE WITNESS: Thank you.

8 JUSTICE: You are free to go.

9 (WITNESS ASIDE)

10 JUSTICE: I take it that that's it for
11 this week?

12 MS. WRAY: I believe that is it for
13 this week, and on Monday it is Surrey Fire Chief Mr. Len
14 Garis.

15 JUSTICE: Okay, so we have a holiday
16 Friday. Class is let out. See you Monday.

17 MS. WRAY: Thank you.

18 **(PROCEEDINGS ADJOURNED AT 3:30 P.M.)**

19

IN THE FEDERAL COURT
(Before the Honourable Justice Phelan)

Vancouver, B.C.
March 9, 2015

T-2030-13

BETWEEN:

NEIL ALLARD, TANYA BEEMISH, DAVID HEBERT
and SHAWN DAVEY,

Plaintiffs;

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,

Defendant.

PROCEEDINGS

Mr. J. Conroy, Q.C.,

Mr. K. Tousaw,

Ms. T. Grace,

Mr. B. Vaze,

Mr. M. Jackson,

Appearing for the Plaintiffs;

Mr. J. Brongers,

Ms. B.J. Wray,

Mr. C. Januszczak,

Mr. P. Alma,

Ms. M. Nicolls,

Appearing for the Defendant.

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VANCOUVER, B.C.

March 9th, 2015

Volume 9

(PROCEEDINGS COMMENCED AT 9:32 A.M.)

JUSTICE: Good morning.

MS. WRAY: Good morning, Justice

Phelan.

JUSTICE: Yes, Ms. Wray?

MS. WRAY: Our next witness is Fire

Chief Len Garis. Mr. Garis, if you could please step
into the witness box. Chief Garis is the fire chief of
Surrey, British Columbia.

LEN GARIS, Affirmed:

THE REGISTRAR: Please state your
name, occupation, and address for the record.

THE WITNESS: My name is Len Garis.
I'm the Fire Chief for the City of Surrey, and the
address is 8767 - 132nd Street, Surrey, British Columbia.

MS. WRAY: Justice Phelan, Chief Garis
is being tendered as an expert witness by the defendant
on the public safety and public health risks of growing
marijuana for medical purposes outside the context of
the commercial licensed producer regime.

EXAMINATION IN CHIEF BY MS. WRAY:

Q Chief Garis, you've been asked by
the Attorney General to prepare a report in these
proceedings?

A That's correct.

1 Q And do you have a copy of that
2 report in front of you?

3 A Yes, I do.

4 MS. WRAY: For the court's purposes,
5 this is at volume 3, tab 10 of the consolidated book,
6 and I believe we're at now Exhibit 31. Ask that that be
7 marked as 31, please.

8 **(AFFIDAVIT OF LEN GARIS MARKED EXHIBIT 31)**

9 MS. WRAY:

10 Q Chief Garis, since 2001, you have
11 been the Fire Chief of the City of Surrey?

12 A That's correct.

13 Q And could you please describe your
14 duties as the Fire Chief?

15 A As the Fire Chief for the City of
16 Surrey, I administrate approximately 400 professional
17 firefighters, dispatchers, fire prevention officers. I
18 administrate the *Fire Services Act* of British Columbia
19 and the appropriate bylaws associated with fire safety
20 in the city. I conduct or oversee approximately --
21 custodial oversight over about 13,300 commercial
22 properties to meet the fire safety regulations of the
23 provinces as laid out by the *Fire Services Act* of
24 British Columbia.

25 I oversee about 30,000 emergency
26 responses to the public in the City of Surrey annually,
27 of which about 1,000 are fire-related responses.

28 Q And I note that you are also an

1 adjunct professor at the University of the Fraser
2 Valley.

3 A Yes, that's correct.

4 Q And an affiliated research faculty
5 at John Jay College of Criminal Justice in New York?

6 A That's correct.

7 Q Could you please describe the kinds
8 of courses you teach?

9 A At the University of the Fraser
10 Valley, I am involved in the graduate program for arts,
11 for criminal justice research. In that particular area
12 I teach a class on leadership and change. And I also
13 guest lecture at undergraduate programs in criminal --
14 for various criminology programs.

15 At the John Jay in New York, that's a new
16 appointment. I'm associated with them in terms of the
17 delivery of some new publications on evidence-based
18 decision-making for fire service, and of police
19 professionals. Just recently completed a workbook and
20 will be making presentations in New York at the end of
21 April in anticipation that it may be adopted by their
22 Masters of Public Administration program.

23 Q I also note in your CV that you've
24 given dozens of presentations and published many
25 research reports on the risks associated with marijuana
26 growing operations?

27 A That's correct.

28 Q And these papers include looking at

1 the risk of fire and contamination?

2 A That's correct.

3 Q I'd like to briefly have you
4 discuss the City of Surrey's electrical and fire safety
5 initiative, and I understand that also goes by the
6 acronym EFSI?

7 A Yes.

8 Q So if we use EFSI we'll be on the
9 same page?

10 A That's correct.

11 Q Okay. If you could please describe
12 the genesis of that program.

13 A In 2005 the City of Surrey was
14 faced with concerns in reference to the number of fires
15 and the ability for the City to deal with complaints
16 associated with marijuana grow operations. So that
17 would be two aspects, complaints and fires. The City
18 encouraged an alternate approach to that. The City,
19 myself, created a proposal to conduct administrative
20 inspections of these locations to approach or address
21 safety issues associated with those properties.

22 We took this proposal to the provincial
23 government, Ministry of Children and Families at that
24 time, which were the custodians of the *Safety Standards*
25 *Act* of the Province and the *Fire Services Act*, and we
26 outlined an approach, a methodology where we would
27 conduct inspections associated with properties that were
28 alleged to be a marijuana grow operation. We approached

1 those properties under the aspects or the auspices of
2 the *Electrical Safety Standards Act* to ensure that they
3 were meeting the Regulations associated to the City and
4 the provincial government. That project ran for
5 approximately 90 days and it was deemed to be
6 successful, and that initiative has proceeded since 2005
7 to today, has been in operation.

8 Q And the EFSI currently has an
9 inspection team?

10 A That's correct. That inspection
11 team is made up of two fire officers and an electrical
12 inspector by the City. At times that electrical
13 inspector is contracted through a qualified firm due to
14 work load, but we do have a qualified electrical
15 inspector on the team. And we also have associated to
16 the team and the inspection process would be a police
17 officer. That police officer today is deemed to be --
18 must reside outside of the property and is there to keep
19 the peace if necessary.

20 Q And what is the purpose of the EFSI
21 inspection team?

22 A The purpose of the EFSI inspection
23 team is to conduct regulatory inspections with the
24 City's bylaws and the *Electrical Safety Standards Act* to
25 ensure compliance and to make repair orders or
26 recommendations or impose regulations associated with
27 the safety of that particular building. It varies in
28 type depending on what is found in those particular

1 sites.

2 Q Now, I understand from reading your
3 report that between 2005 and 2013 the EFSI inspection
4 team inspected 1,855 residential marijuana growing
5 operations in Surrey. 314 of those were licensed
6 medical grows under the old *MMAR*?

7 A That's correct.

8 Q During those inspections, did the
9 EFSI team document anything they found?

10 A Yes. Basically two parts were
11 taken. There was checklist that was constructed against
12 for the electrical safety regulations associated with
13 the province, a checklist that the electrical inspector
14 would initiate at that particular -- each of those
15 inspections. Photographs, between 40 and 50 photographs
16 were taken of the premises, inside the premise,
17 outlining and documenting the concerns that were found
18 by the inspection process.

19 Q And when violations were found,
20 what would happen?

21 A Combination of things. Of course,
22 if they were -- they held a medical licence, one process
23 would occur. If it was an illicit operation, depending
24 on the circumstances, the electrical inspector would
25 take immediate actions depending on the severity of what
26 he found. Either with -- involved removing electricity
27 or asking for electricity to be removed by the Hydro
28 Authority, as to issuing a repair notice, or in certain

1 circumstances would remove occupancy of the property and
2 ask that it be vacated.

3 Q If I could have you turn, please,
4 to page 11 of your report, at paragraph 41.

5 A Page 11?

6 Q Correct, paragraph 41. You see
7 there's a chart.

8 A Yes.

9 Q And this chart sets out the number
10 of inspections carried out by the EFSI inspection team
11 between 2005 and 2013?

12 A That's correct.

13 Q And it also sets out the number of
14 repair notices issued during that time?

15 A That's correct.

16 Q So if we look at that chart, you
17 see that the repair notices are the red or the burgundy
18 colour.

19 A That's correct.

20 Q And the number of inspections at
21 illegal grows are the green.

22 A That's correct.

23 Q And the number of inspections at
24 medical grows are blue.

25 A That's correct.

26 Q So if you could please explain,
27 then, under 2013 the number of inspections that were
28 carried out at each of those and the repair notices

1 issued.

2 A This chart would depict that there
3 was 198 inspections of medical grows, and 59 -- sorry,
4 56 illegal grows, and that there was 225 repair notices
5 issued by the electrical inspector at the time of the
6 inspection of these premises.

7 Q So if there are 225 repair notices
8 issued, is it fair to say, then, that nearly all of the
9 medical grows inspected were issued repair notices?

10 A That's correct.

11 Q And is it also reasonable to assume
12 that the medical marijuana grows that were issued repair
13 notices had not obtained the requisite permits and
14 licenses before building their grows?

15 A That's my understanding, yes.

16 Q If I could have you turn to page 12
17 of your report. Paragraph 47.

18 A Yes.

19 Q In this paragraph you set out the
20 issues that the Attorney General of Canada asked you to
21 prepare a report on?

22 A Yes.

23 Q And there are four?

24 A Yes.

25 Q If you could tell us those four
26 issues, please.

27 A I was asked to prepare a report
28 identifying the -- and the identical -- identify the

1 potential fire and electrical safety hazards associated
2 with growing marijuana in residential dwellings. I was
3 asked to comment on the contamination for these
4 locations that may be caused by growing marijuana in
5 residential locations. I was asked to comment on the
6 risks associated with marijuana grow operations in
7 residential dwellings that pose to first responders. I
8 was asked to provide information on the differences, if
9 any, between illegal or illicit residential grow
10 operations and those that obtained a medical licence.
11 And I was asked to do a comparative analysis on that.
12 And I conducted that retrospectively on the 1,800
13 inspections that were conducted in the City of Surrey
14 since 2005 to 2014.

15 Q So could you please explain to the
16 court how you went about answering these questions.

17 A There was basically two
18 methodologies. The first methodology was to take the
19 inspection certificates, or checklists, that the
20 electrical inspector conducted on each one of these
21 inspections. I had a graduate student transfer the data
22 from these certificates onto a spreadsheet, and
23 conducted -- I conducted an analysis on that in terms of
24 what the outcomes of those inspections were.

25 On the second sense, I tabulated the
26 addresses of the locations and the photographs of each
27 one of these 1800 inspections, and I provided those to
28 three independent individuals. One is an expert in

1 electrical safety inspections; two -- one was an
2 industrial hygienist, and three was a building official
3 with the City of Surrey. And I asked them to grade
4 those photographs, each one of them was nearly 80,000
5 photographs for each one of them, so about a quarter of
6 a million impressions that were obtained from reviewing
7 those photographs.

8 They were -- they graded those, much like
9 I explained in the first sense, and they provided those
10 back to me with their grading, and I tabulated those in
11 terms of their level of risk and their observations, and
12 I presented those findings within this report.

13 Q And in general, in terms of public
14 health and public safety risks, what did your study find
15 when you compared illicit grows with medical marijuana
16 grows?

17 A Essentially in terms of the
18 outcomes and their observations, both from the
19 inspections that were done by the electrical inspector
20 and the observations that were done by the three
21 experts, essentially we found them to be extremely
22 similar in nature. And if anything, in terms of the
23 zoning and the building permit usages, we probably found
24 that the licences, licensed medical marijuana grow
25 operations were slightly more out of violation, or more
26 into violation if you would.

27 Q And one final question. As a fire
28 chief are you concerned about the existence of marijuana

1 growing operations in residential locations?

2 A Yes, I am extremely concerned and
3 essentially around the uncertainty of if and when these
4 locations catch fire, and I'm concerned about first
5 responders that approach these expecting them to be a
6 typical residential house fire where we may find that
7 there's chemicals in use or in play, or that the
8 electrical system may have been compromised. And that
9 expresses concern for us.

10 Q Thank you. If you could please
11 answer the questions my friend has for you.

12 A Thank you.

13 JUSTICE: Before you start, I'm going
14 to have one question for you that your friends can deal
15 with later.

16 Do you know of any other city that has
17 something like the EFSI?

18 A Yes, I do. Just if I -- I wasn't
19 prepared for that question but what I would like -- if I
20 can just kind of visually walk around in my mind, the
21 City of Richmond adopted a similar process. The City of
22 Coquitlam adopted a similar process. The City of Pitt
23 Meadows adopted a similar process. The Township of
24 Langley adopted a similar process. The District of
25 Mission adopted a similar process. The City of
26 Abbotsford has a similar process. That would exhaust my
27 memory.

28 JUSTICE: Okay. All in B.C.

1 A Yes.

2 JUSTICE: All right, thank you. Go
3 ahead.

4 **CROSS-EXAMINATION BY MR. JACKSON:**

5 Q Good morning, Mr. Garis. Mr.
6 Garis, I'm going to start by taking you to paragraph 4
7 of your report where you list your qualifications.

8 A And what page would that be on,
9 sorry?

10 Q That's page 3.

11 A Yes, I have it.

12 Q So under the section you list six
13 bullet points which provide your professional
14 qualifications for presenting this expert report today?

15 A That's correct.

16 Q And I note that two of these bullet
17 points, the first and the last, are with specific
18 reference to your experience as a fire chief and in the
19 fire safety profession, is that correct?

20 A That's correct.

21 Q So it says you have more than 34
22 years in fire service management, the past 13 as fire
23 chief of B.C.'s second largest city. That would be
24 Surrey.

25 A That's correct.

26 Q So when you say more than 34 you
27 mean approximately 34? 34 years of service?

28 A It would be 34 years of service,

1 yes.

2 Q Okay. And I note that at bullet 6
3 you say two years as President of the Fire Chiefs
4 Association of B.C. Now, is that concurrent to you
5 being Fire Chief of Surrey? Are you the Fire Chief of
6 B.C. as well as Surrey?

7 A That's correct.

8 Q Okay, so it's not 36 years total,
9 it's 34.

10 A That's correct, right.

11 Q Now, you've attached a CV to this
12 report at Appendix E, that's correct?

13 A Yes.

14 Q And that CV details your various
15 experience in fire safety, is that correct?

16 A That's correct.

17 Q And your CV contains, I take it, a
18 complete and detailed record of your total professional
19 and educational experience?

20 A That's correct.

21 Q I note in reviewing your report,
22 I'm not going to take you through it all -- sorry, your
23 CV, that you've taken quite a number of courses in fire
24 safety. Is that fair?

25 A That's correct.

26 Q All right. Now, Mr. Garis, I
27 understand that in February 2013 you attended a two-day
28 workshop called the Cannabis Research Priority Setting

1 Workshop, is that correct?

2 A That's correct.

3 Q It was led by Linda Baumies and
4 attended by persons having some interest in cannabis
5 issues from one perspective or another?

6 A That's correct.

7 Q And at that workshop the topic of
8 personal production in residences and the acceptability
9 of that, if the number of plants was limited to the area
10 of 5 to 10 and the site was properly certified by an
11 electrician, was discussed. Do you remember that?

12 A Vaguely.

13 Q I understand the benefits of home
14 production to patients including the lesser expense of
15 home production was discussed at that meeting. Do you
16 recall that?

17 A Yes.

18 Q And do you recall that it was
19 ultimately agreed by the persons at that meeting,
20 including yourself, that home production could be safe
21 if done properly with certified electrical work and on a
22 limited scale?

23 A That was one aspect that was
24 discussed, yes.

25 Q And do you recall agreeing with
26 that?

27 A That particular component, yes.

28 Q So that is if the marijuana

1 production site is put together and set up in a safe and
2 secure manner in a way that won't pose a risk to
3 neighbours, is properly certified, that would not pose a
4 problem in your opinion.

5 A The one aspect that you mentioned
6 about posing the problem to the neighbours, that was a
7 separate process aside from the electrical safety aspect
8 of it. It would be land use.

9 Q I see. So specifically with regard
10 to fire safety then, you would agree that what I just
11 said with regard to a small-scale, safe and certified
12 grow site, that wouldn't pose a fire and safety problem.

13 A It would most likely reduce the
14 risks, yes.

15 Q By reduce the risk do you mean
16 would reduce the risks to the maximum extent possible?

17 A Yes.

18 Q I'd like to take you to the
19 affidavit of Mr. Boileau. It's at tab 19 of Volume 5 of
20 the expert reports.

21 A Volume 5. Yes.

22 Q Now, Mr. Robert Boileau is an
23 expert who has been called by the plaintiffs in this
24 matter. You understand that?

25 A Yes.

26 Q And he's been called as an expert.
27 I'll read the first page of the report. He says -- do
28 you have that there? It's at page 2 of the affidavit.

1 A Yes.

2 Q Under "Purpose".

3 A Yes.

4 Q "As an independent expert,
5 I have been asked to provide an opinion with
6 respect to the safety of electrical
7 installations in buildings used to grow
8 marijuana under the current *MMAR* by
9 individuals holding a personal use production
10 licence or designated person production
11 licence."

12 So you see that?

13 A Yes.

14 Q Okay, I'd like you to go down to
15 the last paragraph on that page.

16 A Yes.

17 Q Under the "Executive summary".

18 Now, Mr. Boileau, who I note has -- let me step back for
19 a second. Have you -- have you had the chance to review
20 this report?

21 A Yes.

22 Q Okay. So you've seen that on page
23 3, Mr. Boileau lists his qualifications?

24 A Yes.

25 Q And he has 25 years' experience in
26 electrical trade in B.C., he's a certified Red Seal
27 journeyman electrician. You've seen that?

28 A Yes.

1 Q He has 10 years as a paid on-call
2 firefighter with the City of Maple Ridge, retired as
3 captain, correct?

4 A Yes.

5 Q And Parole Board certified fire
6 officer 1, correct?

7 A Yes.

8 Q And he has a bachelor of applied
9 science from UBC that would be engineering, correct?

10 A Yes.

11 Q All right. So going back to the
12 bottom of page 2, Mr. Boileau says, "Under the SSA,"
13 that's the *Safety Standards Act* --

14 A Yes.

15 Q "... a permit is required for the
16 installation of electrical works."

17 A Yes.

18 Q "This permit must name a
19 qualified person, field safety
20 representative, who is responsible for the
21 work and the work is subject to inspection by
22 a safety officer. This ensures that the
23 installation is done safety. In order to
24 ensure that the installation remains safe,
25 the safety officer can and ought to, in these
26 cases, require that an annual operating
27 permit be taken out for any installation.
28 This operating permit requires that the named

1 field safety representative be responsible
2 for the ongoing safety of the installation,
3 allows for annual re-inspection by a safety
4 officer. When the requirements of the *Safety*
5 *Standards Act* are followed an electrical
6 installation at a marijuana grow operation is
7 just as safe as any other electrical
8 installation at any other type of facility."

9 Do you agree with that?

10 A Yes.

11 Q I'd like to take you to the
12 affidavit of Eric Nash, which is found at volume 6, tab
13 24. Do you have that there, sir?

14 A Yes, I do.

15 Q Now, Mr. Eric Nash is an expert
16 witness of the plaintiffs, and he has provided this
17 report in part as a rebuttal opinion to your report. Do
18 you understand that?

19 A Yes.

20 Q I'm going to take you to the part
21 of the report where he refers to your report, which is
22 at page 8, paragraph 39.

23 A Yes.

24 Q So I'm just going to read that to
25 you and then ask you a couple of questions. So, Mr.
26 Nash says,

27 "Respectfully, I disagree with the implied
28 indication that all rooms and/or buildings

1 utilized for legally licensed indoor medical
2 cannabis production under the *MMAR* program
3 are built or constructed in a manner that
4 negatively impacts property value or produce
5 undesirable results that require remediation.
6 From my experience, all the legally licensed
7 personal and designated producers I
8 personally know, and whose sites I have
9 inspected, have employed professional
10 tradespeople, including engineers,
11 electricians, plumbers, building and bylaw
12 inspectors to ensure that there are no
13 associated problems with health, safety, or
14 structural damage to the building. With
15 professional advice, research, proper
16 ventilation, installation and monitoring,
17 indoor cannabis production can and does take
18 place safely and securely in residential
19 homes and properties under the *MMAR*."

20 Do you see that?

21 A Yes.

22 Q Do you agree with Mr. Nash?

23 MS. WRAY: I have to object to this
24 question simply because this -- actually in this part of
25 the report is not referring to Chief Garis's report.
26 This section of the report is referring to a report done
27 by Mr. Larry Dybvig. So just to be sure that we have
28 the proper characterization. My friend can certainly

1 ask if Mr. Garis agrees with his statement, but this is
2 not from his report.

3 JUSTICE: Fair enough. That clarifies
4 the source but the question is proper. Go ahead.

5 MR. JACKSON:

6 Q Yes, I do apologize for that. My
7 learned friend is right. This is in specific response
8 to Larry Dybvig. But having read those two paragraphs
9 to you, is it your opinion that Mr. Nash is correct? Or
10 do you agree with Mr. Nash?

11 A One aspect of the case referencing
12 his experience, and I don't think I can comment on his
13 experience, but if you're proposing the hypothetical
14 aspect of if it meets all of those regulations and
15 follows those rigorously, would they be safe? I would
16 agree with that idea.

17 Q Okay. Okay, I'd like to take you
18 now to the affidavit of Remo Colasanti which is at tab
19 2, Volume 1 of -- I think it's the expert reports. Do
20 you have that there, sir?

21 A Yes, I do.

22 Q Now, Mr. Colasanti has been
23 tendered as an expert witness by the plaintiffs of this
24 matter on the topic of being able to grow marijuana. Do
25 you understand that?

26 A Yes.

27 Q If you go to page 3, paragraph 10.

28 A Yes.

1 Q And in this paragraph Mr. Colasanti
2 -- I'll just read the paragraph to you. Paragraph 10:
3 "The primary determinants of overall yield in
4 indoor cannabis production are lighting and
5 physical space, assuming adequate levels of
6 other required inputs, and not adjusting for
7 differences in the various strains as some
8 strains have significantly outproduced others
9 or can significantly outproduce others. For
10 example, assuming a production site is 200
11 square feet with 6,000 total watts of
12 lighting, it is possible to produce the same
13 overall quality of cannabis from six plants
14 as it is from 600 plants. However, it would
15 take significantly longer to produce that
16 similar quantity, assuming you only had one
17 room to work with. In addition there exist
18 small-size closed production systems in which
19 a small amount of cannabis can be produced in
20 extremely small spaces including closets,
21 grow tents, or growth chambers. The bloom
22 box version 3.0 is an example of a hydroponic
23 grow box that can be placed in an apartment
24 or condominium and would enable a person to
25 grow in such a location with all the factors
26 such as humidity and electrical issues taken
27 care of or controlled by the technology of
28 the box itself."

1 And then he attaches at Exhibit C a website printout for
2 a bloom box.

3 Are you familiar with the bloom box or
4 similar engineered solutions?

5 A No, I'm not.

6 Q Okay. So you're not at all
7 familiar with the concept of a self-contained system
8 such as described here.

9 A I am not.

10 Q I'd like to take you to paragraph
11 45 of that affidavit, which is at page 9, under the
12 heading "Other fire and smoke". Just going to read it
13 to you and ask you a couple of questions.

14 A Right.

15 Q It says:

16 "Smoke detectors hooked up to a monitored
17 alarm system are beneficial and recommended.
18 Fire extinguishers in each room kept current
19 by date, and automatic dry chemical fire
20 extinguishers would eliminate the threat of
21 fire in any home or garden. An example of
22 such a device now produced and marketed as
23 Exhibit E of my affidavit is the Flame
24 Defender, which is a fire
25 suppressant/retardant that has an automatic
26 release valve, meaning that if the room
27 reaches a certain temperature, it will erupt
28 and smother any fire. It is like a Halon

1 system in kitchens that is a gas that will
2 extinguish flames, but is not a gas. It is
3 essentially something like a fire
4 extinguisher that has a sprinkler nozzle on
5 the bottom.

6 Another example of a device is the power
7 box, (see catalogue as plaintiff document
8 number 83). With this product, you set up a
9 thermostat in the room, and if the
10 temperature in the room reaches a
11 predetermined level then all the lights will
12 automatically turn off automatically. So if
13 your air conditioner breaks down and the
14 temperature goes way up, this is a safety
15 backup that will shut everything down and
16 prevent any fire or plant death due to high
17 temperature."

18 And Mr. Garis, would you agree that smoke detectors
19 hooked up to a monitored alarm system are beneficial and
20 recommended?

21 A Well, first I'd like to comment
22 that a smoke detector is a local alarm only. It's been
23 designed to do that. And the CSA requirements would
24 basically prohibit that assembly from being monitored in
25 that particular aspect. So this application that has
26 been suggested here is not something that would be
27 recommended as being -- meeting the standards of the
28 country.

1 Q I see. So you're saying
2 specifically with respect to the monitored alarm system
3 aspect --

4 A The smoke alarm being monitored --

5 Q Right.

6 A -- is not an approved assembly.

7 Q Okay. But it is beneficial and
8 recommended that a marijuana operation in a home has
9 smoke detectors hooked up.

10 A Smoke detectors would be desirable,
11 yes.

12 Q And it's also desirable that there
13 be fire extinguishers in each room, and an automatic dry
14 chemical fire extinguisher in each room of the home or
15 garden?

16 A If we're referencing a Halon-like
17 system, I would just like to point out that Halon is no
18 longer used in the suppression world today. It's been
19 banned a number of years ago because of ozone and
20 environmental issues. But if we are talking about --
21 and it's proposing, and it's not suggesting what type of
22 a chemical suppression agent it would be using, in
23 theory that's being proposed here in terms of having an
24 automatic system that would automatically detect a fire
25 and suppress the fire, that principle certainly would be
26 supported, yes.

27 Q And similarly, you would recommend
28 from the fire safety perspective that there should be a

1 thermostat in the room where the marijuana is growing,
2 and that it would be recommended and beneficial if it
3 automatically turned all the lights off, as with the
4 power box system?

5 A If you're referencing some form of
6 a thermocouple and an assembly that was approved by,
7 say, CSA or NFPA, or somebody of that nature that
8 basically tested this assembly, National Research
9 Council is a good place where they test these new types
10 of assemblies or sets of circumstances, but certainly
11 would need to go through that type of a rigour, in order
12 to make sure that it was proven to be working and
13 functional, yes.

14 Q Okay, if you could turn to
15 paragraph 32 of Mr. Colasanti's affidavit. It's on page
16 7 where he references mould.

17 A Sorry, which tab are we on?

18 Q This is the same tab. It's tab 2.

19 A Yes.

20 Q Page 7. Paragraph 32.

21 A Yes.

22 Q Mr. Colasanti says:

23 "Mould is not desirable in a medical cannabis
24 production site. Because of my geographic
25 location in British Columbia I live in an
26 area with very high levels of mould simply
27 due to the climate, and I am particularly
28 concerned with ensuring that my medicine is

1 not contaminated by mould.”

2 Is it your knowledge and opinion that
3 mould is common in British Columbia due to the climate?

4 A No, I couldn't support that as an
5 area of knowledge or expertise.

6 Q Okay. So then at paragraph 33 Mr.
7 Colasanti says:

8 “I have been able to successfully produce
9 medicine without any mould issues, either in
10 the medicine or in the production site, by
11 the use of climate control devices such as
12 air conditioners and dehumidifiers. In
13 addition, as noted above, I also use UV-C
14 lighting in my air handlers to eliminate
15 bacteria, mould spores, and pathogens.”

16 Now, are you aware of these climate
17 control devices such as air conditioners and
18 dehumidifiers.

19 A Generally I'm aware of them, yes.

20 Q And the UV-C lighting system?

21 A Yes, I'm aware of those as well.

22 Q Okay, well, in your opinion do you
23 consider these devices to be effective at controlling
24 humidity, mould, bacteria, and pathogens?

25 A I'm afraid I can't provide you an
26 opinion on that. In terms of engineering the climate
27 within this kind of an environment, I don't think that
28 would be an appropriate comment for me to make and I

1 don't have an opinion on it.

2 What my experience is is retrospective,
3 what I've observed as being a result as opposed to what
4 was being done to treat it in order to either eliminate
5 it or the fact that it was there. I simply -- I don't
6 think it's an appropriate matter to comment on that.

7 Q Thank you for that clarification.
8 Now, you agree that you do include large sections of
9 your report on mould in houses, correct?

10 A That's correct. Those were
11 observations of basically an outcome.

12 Q All right, so those are
13 observations by other people at these houses visited by
14 the FSI team?

15 A That's correct. I have personal
16 knowledge as well. I have been to, I would probably
17 estimate 50 to 100 myself personally.

18 Q Okay. But you just said that you
19 have no personal expertise in issues relating to mould.

20 A I have no personal expertise in the
21 issues of controlling mould or eliminating it in this
22 environment. My expertise is observations
23 retrospectively of what they were at the time of the
24 inspection.

25 Q All right. I'd like to take you to
26 the affidavits of the plaintiffs in this matter. So
27 we'll go to the affidavit of Mr. Allard at tab 2, Volume
28 1 of the green books.

1 A That's Roman numeral II? Is that
2 correct? Or, sorry --

3 Q There's a whole number of tabs
4 here.

5 A Oh, yes.

6 Q So it's not Roman numeral II. It's
7 -- you know, let's go to the page number. So the
8 affidavit starts at page 15.

9 JUSTICE: At the bottom right you'll
10 see a page number --

11 A Oh yes.

12 JUSTICE: Will get you there.

13 A Thank you. Yes, I'm sorry. Yes,
14 I have the page.

15 MR. JACKSON:

16 Q Okay, so it's actually at the
17 second affidavit, which is at page -- well, it starts at
18 page 18, but I'm going to refer you to page 51. So
19 that's the number on the bottom right-hand corner.

20 A Right. Yes.

21 Q Okay. So Mr. Allard is asked a
22 question here and then provides a response. I'm going
23 to read it to you.

24 "Q Have you ever had your marijuana grow
25 operation inspected by a qualified
26 electrician? If so, please provide full
27 particulars, e.g., who performed the
28 inspection, when, for what purposes, costs of

1 inspection, what the results were, et cetera,
2 and all supporting documentation.

3 A Yes. The wiring for all my basement
4 needs, including the growing rooms, was done
5 by a qualified electrician. I refer you to
6 Exhibit K attached to Exhibit A attached
7 hereto for the electrical inspection request
8 that was subsequently carried out."

9 Now, if we could turn to paragraphs 15
10 and 16 of affidavit -- his affidavit number 1, which is
11 at page 57. I'm going to read this paragraph to you and
12 ask you a couple of questions. So you have that there?

13 A Yes.

14 Q Paragraph 15, at the bottom.

15 A Yes.

16 Q "In 2012, I separated from
17 my wife and I moved to my current location in
18 Nanaimo, B.C., and had a third production
19 site built by professional tradespeople. And
20 it is my current site which is in the
21 basement of my dwelling house, and I designed
22 this site for indoor gardening. I spent
23 thousands of dollars having my basement
24 insulated, and two grow rooms built with
25 professional wiring, insulation, venting, and
26 painting. I installed new plumbing, two
27 laundry tubs, and a new sewer pump to feed
28 and water my indoor cannabis plants. I had

1 all the work done by certified electricians
2 and contractors and B.C. Hydro was notified
3 to inspect completion of all the electrical
4 work. Now produced and marked as Exhibit K
5 to this, my affidavit, is an electrical
6 inspection report."

7 Now, having read that, in your view as a fire safety
8 professional, do you consider that Mr. Allard's set-up
9 would have met all the safety requirements under bylaws
10 and regulations in Surrey?

11 A That's a difficult question to
12 answer because I'm not sure if the City of Nanaimo's
13 building regulations are exactly the same as what it is
14 in Surrey. Certainly we have overriding safety
15 standards of the province, and we have -- we're a
16 delegated authority in Surrey for electrical safety
17 inspections, and our building inspectors, but we also
18 building bylaws and land use and permit requirements as
19 well. So I'm not sure I could compare the City of
20 Nanaimo with the City of Surrey.

21 Q Okay, well, let's break it down a
22 bit then. So would you recommend, as a fire safety
23 professional, that persons who were -- patients who were
24 installing a marijuana production facility in their
25 house, have that production site by professional trades
26 people who have proper certification as electricians or
27 contractors?

28 A No, I would ask for -- this would

1 be an alternative proposal. So it's a use of a
2 particular property which is not common to the dwelling.
3 So in this particular case we'd ask the applicant to
4 make an alternative solution. So for example, you would
5 probably need to engage the services of a fire detection
6 engineer, somebody that would be willing to certify the
7 use, in other words the electrical work, the building
8 alterations and the use, and to make sure that it's
9 compatible with the property so that it meets the
10 regulations.

11 But certainly the first overriding aspect
12 of this would be in the land use and zoning that would
13 be associated with the City as well. So that basically
14 trumps all of the mechanisms that would come into play.
15 So the land use of the zoning aspects are public
16 process. So the public would be asked to say whether or
17 not the property would have an acceptable use as -- for
18 growing medical marijuana under those circumstances.
19 And then the officials would be able to cascade from
20 there in order to work towards an approved use.

21 But once again, this type of a use would
22 need to go through an independent process in order to
23 make sure it's compatible with the building.

24 Q All right. So if a residential
25 site such as Mr. Allard's house is described here, has
26 zoning that allows for growing vegetables indoors, you
27 would agree with me that to have that site installed by
28 your certified electricians and contractors would be

1 recommended and beneficial?

2 A That's correct.

3 Q And to have it inspected by B.C.
4 Hydro or a B.C. Hydro certified person that the
5 electrical work is safe, that would also be beneficial.

6 A That would be beneficial. And I
7 can't speak on behalf of B.C. Hydro, but I'm almost
8 certain that they would not inspect the electrical works
9 inside of the property. I think a relationship is
10 associated to their works, which is a meter on the
11 outside of the property. And the *Safety Standards Act*
12 or the electrical inspector, whoever is qualified under
13 to interpret and to enforce the *Safety Standards Act* of
14 the province would be the person that would be
15 inspecting the interior of the property, to deem whether
16 or not that it was in practice with the *Safety Standards*
17 *Act*.

18 Q Okay, so I take it here that Mr.
19 Allard is explaining what he did.

20 A Right.

21 Q And that he had it inspected by, it
22 appears, a B.C. Hydro inspector. Now, that may be the
23 process in Nanaimo. You don't know.

24 A Absolutely.

25 Q But if it were Surrey, you're
26 saying that it would have to be inspected by someone
27 certified under the *Safety Standards Act* and who would
28 be, I take it, an employee of Surrey, an inspector of

1 Surrey.

2 A That's correct.

3 Q And so if the Surrey inspector goes
4 and inspects the property and deems it to be -- to have
5 met all the standards and requirements of Surrey bylaws
6 and the *Safety Standards Act*, that would be a
7 possibility?

8 A Yes, it would be.

9 Q And if that happened then the
10 structure would be safe as defined by those Acts,
11 Regulations, and Bylaws.

12 A That's correct.

13 Q All right, we'll move on. I won't
14 take you to the other plaintiffs.

15 So, Mr. Garis, are you familiar with the
16 B.C. Office of the Fire Commissioner?

17 A Yes, I am.

18 Q And you're aware that the Office of
19 the Fire Commissioner publishes annual statistics on
20 fires in British Columbia?

21 A That's correct.

22 Q And you would agree that these
23 annual statistics are reliable, correct?

24 A Yes, I would agree that they're
25 reliable, in so much as the individual departments, some
26 450 of them in the province of British Columbia, report
27 individually into that database, and there is -- they're
28 assembled from that perspective, yes.

1 Q Okay. And these annual statistics
2 are provided in a report on the Fire Commissioner of
3 B.C.'s website, correct?

4 A That's correct.

5 Q So they're publicly available to
6 anybody who wants to see them.

7 A That's correct.

8 Q You didn't include any of these
9 reports in -- as attachments to your expert report, did
10 you?

11 A I did not.

12 Q Now, the expert report of Tim Moen,
13 plaintiff expert, Fire Chief of Fort McMurray, Alberta,
14 attached those statistics from 2001 to 2012 to his
15 report. And I'm just going to take you through some of
16 those statistics and ask you a few questions.

17 This expert report is at tab 23 --

18 A On which --

19 Q The volume 6 of the grey book. The
20 expert reports.

21 A Yes. Sorry, which tab again?

22 Q Twenty-three. Now, unfortunately
23 the exhibits aren't page numbered, so this might be a
24 little bit confusing.

25 A Sure.

26 Q I ask that you bear with me. Okay,
27 so starting at Exhibit B, that's where the statistics
28 are -- start at.

1 A What page would that be?

2 Q It's -- oh, these are page-

3 numbered. Okay. That's page 18, which the "18" is at

4 the top. Do you have that there?

5 A Yes.

6 Q Okay, so at page 12 -- sorry,

7 that's page 30.

8 A Yes.

9 Q You see there is a chart there that

10 says "Fire losses by major property classes", correct?

11 A Yes.

12 Q Okay.

13 A That would be the centre chart,

14 yes?

15 Q Yes, the centre chart.

16 A Yes.

17 Q And it shows that under residential

18 --

19 A Yes.

20 Q -- there were 2,147 fires in B.C.

21 that year.

22 A That's correct.

23 Q 236 injuries, and 39 deaths.

24 A Yes.

25 Q And if you go to page 33.

26 A Yes.

27 Q You see the chart at the top there,

28 it breaks down the various causes of fires in family

1 dwellings and apartments.

2 A Yes.

3 Q And then it lists different causes
4 of fires. There's a heading there that says "Cooking
5 Fires".

6 A Yes.

7 Q And it shows approximately 460
8 fires that year. Correct? It says 328 in family
9 dwellings and 129 in apartments?

10 A That's correct.

11 Q Okay. And it shows that as a
12 percentage of all fires in this group, it says 22.5
13 percent of one to two family dwellings and 27.9 percent
14 of apartments, correct?

15 A That's correct.

16 Q And then it shows these other
17 categories or other major causes of fires in residential
18 properties. That's heating equipment fires, smoking
19 material, and arson fires.

20 A That's correct.

21 Q Now, I'm not going to take you
22 through every year of these statistics. I'd like to
23 skip ahead to 2004 which starts at page 61.

24 A Yes.

25 Q And you see here at the top there
26 is a chart that says, "Fire Casualties, British Columbia
27 Fire Injury and Death Rates".

28 A Is it page 61 that you're on?

1 Q Oh sorry, page 64. So it's a chart
2 that shows the years 1995 to 2004.

3 A That's correct.

4 Q Right. And it shows the number of
5 fire injuries for each year.

6 A That's correct.

7 Q And my -- just by glancing at this
8 list of injuries, in 1995 it's 414; '96, 432; and it
9 goes down to 373. And then 2003 it's 212. 2004 it's
10 208.

11 A That's right.

12 Q And the average for the ten years
13 is 317.

14 A That's correct.

15 Q So it appears that the number of
16 fire injuries was generally going down, would you agree?

17 A I would agree, yes.

18 Q And then it has B.C. fire deaths
19 and 1995 says 36; 1996, 27; and then in 2001 there's 44;
20 2004 there's 30; for an average of 34.6 a year.

21 Correct?

22 A That's correct, and these are all
23 deaths.

24 Q Right.

25 A Not just -- including residential
26 but also commercial.

27 Q Right. Okay. So the deaths per
28 year in this period they seem to fluctuate. There

1 doesn't seem to be any pattern going up or down.

2 A That's correct.

3 Q Okay, and this year of the fire
4 statistics, the Commissioner's Office starting
5 publishing the per capita fires by location, which
6 starts at page 68.

7 A Yes.

8 Q You see there's on that page, the
9 following page and the page after, a breakdown of what
10 appears to be every significant city in British
11 Columbia.

12 A That's correct.

13 Q With the population, the fires, the
14 injuries, deaths, money loss and fire rate. So you see
15 at page 9, the City of Surrey is there. And it's in the
16 centre of the page.

17 A Yes.

18 Q Population of 387,162. Fires, 788.
19 That's -- as you mentioned, that's total fires. Right?

20 A Right.

21 Q 38 injuries, one death, and a fire
22 rate of 2.0.

23 A That's right.

24 Q Okay, and then at the bottom is the
25 total for the entire province.

26 A Right.

27 Q Right? And it says "Fire rate of
28 2.8" for the entire province.

1 A That's correct.

2 Q All right. Now, page 11, just
3 pointing out one thing here. It says in the chart,
4 "Fire loss by major property class", it says
5 residential, 2,347, injuries 168, deaths 24. Percentage
6 of fires, 30.79 percent. Correct?

7 A Yes.

8 Q And at page 13 of the report, which
9 is page 75 of the affidavit, you see down at the bottom
10 there's a chart that says "Fire facts".

11 A Yes.

12 Q It says there are 83 fires reported
13 to have occurred at school properties.

14 A Yes.

15 Q And then there is a heading called
16 "Grow-ops, crystal meth labs".

17 A Right.

18 Q It says 27 fires were reported to
19 have been caused as a direct result of grow operations.
20 Is that correct?

21 A That's correct.

22 Q Two fires were reported to have
23 been the result of individuals cooking marijuana,
24 causing four injuries, correct?

25 A Correct.

26 Q Okay. We'll skip ahead to 2007.

27 A What page would that be?

28 Q It starts at page 120. And I'm

1 going to take you to page 5 of that year, which is page
2 126.

3 A Yes.

4 Q And it's a bit hard to read here,
5 but at the bottom, it says, "Fire facts".

6 A Oh.

7 Q And yeah, this copy -- my copy,
8 anyways, is hard to read. But it says, "2,244
9 residential fires with 34 fatalities in that year." You
10 see that? It's under the --

11 A I'll take your word for it. It's
12 not -- I can't read it.

13 JUSTICE: I don't know that anyone can
14 read that.

15 MR. JACKSON: Yeah.

16 JUSTICE: Is there a cleaner copy some
17 place around?

18 MR. JACKSON: Unfortunately, the copy
19 I was using is at my office, which is a clean copy.

20 Okay. Well, we'll just have to move on,
21 then.

22 JUSTICE: It's all the same thing.

23 MR. JACKSON: Perhaps I'll find a
24 better copy.

25 JUSTICE: Does anyone know what it
26 said?

27 MR. JACKSON: Well, I know it says
28 2,244 residential fires reported in B.C., resulting in

1 34 fatalities.

2 A Okay, so page 5.

3 JUSTICE: Now, if you want that report
4 to pay attention to it, you'll have to find something
5 that I can read.

6 MR. JACKSON: Yes, I understand.
7 Okay, we'll move on.

8 Q Page 6, there is a chart in the
9 middle, it says, "Top causes of fire".

10 A Yes.

11 Q And it lists there a number of the
12 top causes of fire. And there is a pie chart which
13 unfortunately in this version we can't really make out.

14 A Right.

15 Q In any event the top causes of fire
16 are listed there as match or lighter not used for
17 smoking; stove, range, top burner, area oven; smokers'
18 material, cigarette; internal combustion engine;
19 permanent electrical wiring; fireplace, chimney; vehicle
20 wiring; electrical equipment; wood pellet stove.

21 Correct?

22 A That's correct.

23 Q We'll turn to page 132. Again
24 these are the statistics for individual communities in
25 B.C. And you'll see about two thirds of the way down,
26 Surrey is there.

27 A Yeah.

28 Q There's 422,915 population. Number

1 of fires 701. 33 injuries, 4 fatalities, and fires per
2 1,000 persons rate of 1.7.

3 A Correct.

4 Q And on the next page there's a
5 chart that says "Fire Facts". Do you see that?

6 A Yes.

7 Q Unfortunately the bottom is quite
8 difficult to read. The notes, you can -- the legible
9 part says "60 fires on school property."

10 MR. CONROY: I have just given my
11 friend the original from the Moon affidavit that is
12 legible. It just happens to -- in the copying process
13 into the expert books. So the original affidavit is
14 legible, just so that hopefully that helps.

15 MR. JACKSON: Mr. Justice Phelan,
16 would it be possible for me to direct the witness to
17 this legible copy?

18 JUSTICE: Sure, show it to the
19 witness. Show it to your friend first.

20 MR. JACKSON:

21 Q Mr. Garis, now here, you see that
22 it says there were 30 structural fires related to
23 illegal activities from grow-ops and meth labs.

24 A Yes.

25 Q So I note again that those were
26 illegal grow-ops and it doesn't break down the number of
27 grow-ops and meth labs.

28 JUSTICE: What did it say?

1 MR. JACKSON: There were 30 structural
2 -- structure fires related to illegal activities from
3 grow-ops and methamphetamine labs.

4 Q So you agree that by that
5 statement, that there's no breakdown between illegal
6 grow-ops and illegal meth labs. It's just a statement
7 of 30 structural fires.

8 A That's correct.

9 Q Okay, we'll skip ahead to 2008.

10 A On page --

11 Q It starts at page 136. And then --

12 A Sorry.

13 Q -- I'm taking you to page 142.

14 A Yes.

15 Q And again, it says -- there's a
16 chart. The bottom says "Fire facts, residential fires".
17 In 2008, there were 2,447 residential fires.

18 A Okay.

19 Q Accounting for 78 percent of fire-
20 related injuries in B.C. Correct?

21 A Sorry, what page are you on again?

22 Q 142.

23 A Yes, okay. Yes.

24 Q In the bottom chart there.

25 A Total -- yes.

26 Q And I can read this. I don't know
27 if your copy, you can read. It says "Smoking in your
28 residence was the leading cause of residential

1 fatalities in 2008." That's bullet point 4.

2 A Yes.

3 Q Okay. And then bullet point 5,
4 again it's a bit hard to read. It says, "Cooking was
5 the leading cause of the determined residential fires
6 and fire-related injuries. Candles ranked second to
7 cooking for residential fires." Correct?

8 A Yes.

9 Q And if we go to page 12 -- sorry,
10 that's of the statistics of that year, page 149 of the
11 affidavit.

12 A Yes.

13 Q Now, there is another box that says
14 "Fire facts". And it says there are -- bullet point 2,
15 there are 69 fires related to school properties, bullet
16 3 there are 127 industrial fires. Bullet 4, I can read
17 this -- if you can't let me know. It says "Fireworks
18 caused 34 fires."

19 A That's correct.

20 Q And then the bottom one, it says
21 there were 23 structure fires related to illegal
22 activities from grow-ops and methamphetamine labs.

23 A That's correct.

24 Q Okay. So we'll go to 2009 now,
25 which starts at 152 of the affidavit.

26 A Yes.

27 Q Go to page 9 of that report, which
28 is --

1 A 152?

2 Q Yes. That appears to be the wrong
3 page. Yes, it's page 5, which is page 158.
4 Unfortunately this is another chart that is quite hard
5 to read. The chart says "Fire facts, residential
6 fires".

7 A You said 168? Sorry?

8 Q 158.

9 A Oh, I'm sorry. Yes.

10 Q Okay. Now, I can read this barely.
11 If you can't read it, please let me know.

12 A I cannot read it at all.

13 Q Okay.

14 JUSTICE: Where's the good copy?

15 MR. JACKSON: Yes, I'll go to that
16 page.

17 Q Okay, Mr. Garis, I'm going to show
18 you this legible copy here.

19 A Sure.

20 Q It's "Fire Facts, Residential
21 Fires".

22 A Yeah.

23 Q And here it says there were 2,393
24 residential fires reported in B.C.

25 A Yeah.

26 Q Resulting in 36 fatalities. And at
27 the bottom it says, "Cooking is the leading cause of the
28 determined home fires and fire-related injuries."

1 A That's correct.

2 Q If you go to page 12 of that
3 report, it's page 165 of the affidavit and unfortunately
4 this is completely illegible. I'm just going to show my
5 friend a legible version. Mr. Garis, again there's a
6 box that says, "Fire Facts, 36 fires related to school
7 property."

8 A Yes.

9 Q "29 fires caused by fireworks."

10 A Yes.

11 Q "23 structure fires related to
12 illegal activities from grow-ops and meth labs."

13 Correct?

14 A Yes.

15 Q And it doesn't specify a breakdown
16 of grow-ops and meth labs there, does it?

17 A No, it does not.

18 Q Okay, moving to 2010 which is at
19 page 168 of the affidavit.

20 A Yes.

21 Q And at page 5 there's another box
22 that says "Fire Facts."

23 A Yes.

24 Q That's page 174 of the affidavit.
25 "Residential Fires," it says at bullet 2 -- sorry,
26 bullet 3: "In 2010 there were 2,139 residential fires
27 reported in B.C., resulting in 44 fatalities."

28 A Yes.

1 Q And at the bottom I can read this.
2 It says, "Cooking is the leading cause of the determined
3 home fires and fire-related injuries." Do you see that?

4 A Yes. Yes.

5 Q Okay. And the next page there,
6 there's a chart in the middle says, "Top causes of
7 fire."

8 A Yes.

9 Q And it lists those top causes as
10 match, lighter, not for smoking, then smoker's
11 materials, then cooking equipment, stove-top, oven.

12 A That's right.

13 Q Then electrical equipment, then
14 internal combustion, then vehicle wiring.

15 A That's correct.

16 Q And if we go to page 11 of that
17 report, again, these are statistics for communities in
18 B.C. And you'll see Surrey three-quarters of the way
19 down?

20 A Yes.

21 Q And the population of Surrey in
22 2010 was 463,211. There are 595 fires, 21 injuries, 5
23 fatalities, and a "fires per 1,000 persons" rate of 1.3.

24 A That's correct.

25 Q And in B.C. of that year on the
26 next page, population of 4,459,674. 7,306 fires, 179
27 injuries, 44 fatalities, and a "fires per 1,000 persons"
28 of 2.0, correct?

1 A Correct.

2 Q And on that same page we have
3 another box that says "Fire facts". And on point 2,
4 there were 68 fires related to school property.

5 A Right.

6 Q At the fourth bullet, in 2010,
7 there were 43 fires caused by fireworks.

8 A Yes.

9 Q This is difficult to read. But I
10 can see that it says there were 24 structure fires
11 related to illegal activities from grow-ops and
12 methamphetamine labs. Can you see that?

13 A That's correct. It ends with \$5
14 million in damage, was it?

15 Q Yes.

16 A That -- yes, okay.

17 Q And again, that's illegal
18 activities and there is no breakdown between grow-ops
19 and meth labs, correct?

20 A Right.

21 Q If you could go to 2011, page 9 of
22 the report, which is page 194 of the affidavit. 2011
23 "Fire facts, miscellaneous". You see that there?

24 A Yes.

25 Q It says there are 54 fires related
26 to school property.

27 A Yes.

28 Q Bullet point 3, there are 21

1 structures related to illegal activities, 3 housing
2 methamphetamine laboratories and 18 housing marijuana
3 grow operations. So that year, we do have a breakdown.

4 A Yeah.

5 Q And it's best -- these are illegal
6 activities. Right? Okay. So, we'll skip ahead to
7 2012, the last year for which fire statistics are
8 available, at least on the website. See at page 206 --
9 205?

10 A Yes.

11 Q There is a "Fire facts" box on the
12 right.

13 A Yes.

14 Q And it says at the bottom that 33
15 percent of fire injuries were caused by cooking and
16 equipment. Correct?

17 A Yes.

18 Q And at page 5 at the bottom it says
19 "Fire Facts". Sorry, that's 208 of the affidavit.

20 A Yes.

21 Q You see at bullet point 3, "In 2012
22 there were 2,206 residential fires in B.C. with 22
23 fatalities."

24 A Yes.

25 Q And at the bottom, "Cooking is the
26 leading cause of the determined home fires and fire-
27 related injuries."

28 A Yes.

1 Q And then page 11 which is 214 of
2 the affidavit, again a breakdown of the communities of
3 B.C., and we see Surrey about three-quarters of the way
4 down?

5 A Yes.

6 Q And the total population in 2012
7 was 482,725. There were 55 fires total, 38 injuries, 2
8 deaths, and 1.1 fires per 1000 people.

9 A Yes. That was 555, yes?

10 Q 555 fires total. And for the B.C.
11 population at 215, the next page, total population of
12 B.C. 4,459,674. 6,780 fires, 266 injuries, 35 deaths,
13 and 1.5 fires per 1,000 people.

14 A Yes.

15 Q Right. And then at the bottom here
16 it says, "Fire Facts" and again at bullet point 2 it
17 says there's 55 fires related to school property.

18 A Yes.

19 Q And in 2012 there were 29 fires
20 caused by fireworks.

21 A Yes.

22 Q And there were 15 structure fires
23 related to illegal activities from grow-ops and
24 methamphetamine labs. Correct?

25 A Yes.

26 Q Okay, we're all done with the
27 stats.

28 A Thank you.

1 Q So you had all these statistics
2 available to you when you wrote your report?

3 A That's correct.

4 Q But you didn't include any of those
5 statistics in your report.

6 A Well, that's not exactly correct.
7 I used a differently methodology actually as a local
8 assistant to the Fire Commissioner, which I'm appointed
9 by the natural role of being the Fire Chief in the
10 Province of British Columbia. I have access to the
11 provincial database. So I can go in and ask specific
12 questions, and I asked it some specific questions in
13 terms of the number of residential fires that occurred
14 from 2005 to 2013. There was approximately 18,000 of
15 those that we looked at in their sample size. And out
16 of that we were able to extract 168 fires that were
17 associated with the category that you mentioned, either
18 illegal grow operations or methamphetamine labs. And
19 during that process we were able to identify that there
20 was two deaths and 33 injuries that occurred in that
21 cohort that we extracted from that database.

22 Q Okay. But you didn't --

23 A That's in my report.

24 Q I appreciate there is a paragraph
25 in your report that summarizes what you just said. But
26 what I'm asking you is you didn't actually provide any
27 of the statistical information itself, or any citations
28 for that information.

1 A Actually I did. I think, I believe
2 that I set it up and said that I used the Office of the
3 Fire Commissioner's database in assembling this report,
4 and I viewed that.

5 Q I understand that. You said that.
6 What I'm asking you specifically is that you didn't
7 provide any of the hard statistics, the source materials
8 that show those numbers attached to your report.

9 A Actually I think it's included in
10 there because actually I kind of graphed all of the
11 causes associated with them, and there was a couple of
12 tables in there. I'd have to look at them to refresh my
13 memory.

14 Q We will be getting to those. But
15 I'm asking specifically, you didn't attach any source
16 materials published by the Fire Commissioner showing
17 statistics for Surrey and B.C. to your report.

18 A In terms of the publications of the
19 type or the variety that you just showed me, no, I did
20 not.

21 Q In the statistics that we just
22 reviewed together today, and I took you to every single
23 mention of illegal fires relating to illegal marijuana
24 grow-ops and meth labs, in those statistics they only
25 report 2 injuries and zero deaths. Would you agree?

26 A The information that I just
27 described to you was from 2005 to 2013. I'm not sure
28 that -- I can't recall the years that the tables that

1 you had showed me, whether or not that they covered all
2 of those or not. But in fact that's what I extracted
3 from there, and I would stand by the data that I saw.

4 Q Fair enough. However, you did not
5 provide that data as an attachment to your report.

6 A It's included in my report based on
7 an extract that I took from the Office of the Fire
8 Commissioner's database, would be exactly the same
9 source that those statistical reports came from.

10 Q You included specific information
11 that you selected from the statistics of the Fire
12 Commissioner's office. Right?

13 A That's not exactly correct. What I
14 did is, I extracted -- in essence there was 67,000 fires
15 that was looked at. And it was narrowed down to 18,000
16 plus or minus in terms of residential. And then what we
17 did is, we looked at the act or omission of all of those
18 fires, and we basically listed those, and that -- those
19 -- that is included in the table of that report. So
20 basically it characterized all of the acts or omission,
21 a.k.a. "cause", of those fires, and it put those into a
22 table.

23 Q I see. But again, what I'm asking
24 you is, you didn't actually provide source materials
25 from the Fire Commissioner's office supporting those
26 findings, did you?

27 A I'm not sure how to answer that,
28 because as I said before, I extract those -- those

1 queries can be done off their database, which is live,
2 and is representative of the forms that are filled out
3 by some 400 and some-odd fire departments. There is
4 67,000 incidents that are listed there that were
5 extracted and basically analyzed into the tables that
6 are presented there. So the source information is from
7 the Office of the Fire Commissioner through its internet
8 access, so that we can conduct -- so I could conduct
9 those queries and those are the results that I've listed
10 there. So I'm not sure how to answer that, to be honest
11 with you.

12 Q Okay. Well, let's take your
13 explanation of what you did in this case.

14 A Yes.

15 Q You enter a query into a database
16 on your computer that you have access to.

17 A That's correct.

18 Q Okay. I take it that members of
19 the public don't have access to this.

20 A They have a limited access to make
21 queries, yes.

22 Q Limited access of inquiries.

23 A Yes.

24 Q So, you go and do this inquiry
25 about the number of fires, and then something pops up on
26 your computer screen?

27 A No, a table is presented.

28 Q And that is a table compiled by the

1 computer program?

2 A It's compiled by the individual
3 reports that are filed within the database, each one of
4 them.

5 Q All right. So, those charts, as
6 you call them, that appear on your computer screen when
7 you do the search, you didn't print those out and attach
8 them to your report, did you?

9 A No, I did not.

10 Q And you didn't make any breakdowns
11 in your report about the numbers specific to Surrey,
12 like in these reports that we just went through.

13 A Actually I did. There's two tables
14 that are included in my report and there was a number of
15 fires that occurred as a direct relationship to grow-ops
16 in the City of Surrey from 2005 to 2013. I believe
17 there was 99 of those. And then in addition to that I
18 submitted a chart which is representative of the fires
19 that occurred in residential buildings that were not
20 caused by the grow-op but there was a grow-op present at
21 the time of the fire. And I believe there were 74 of
22 those.

23 Q And in your report you didn't
24 mention once, other common causes of fires in
25 residential properties, did you?

26 A Actually in that table that I
27 mentioned to you for the act or omission, there was a
28 complete list of rates and fires by act or omission, by

1 the various different major categories. And grow-ops
2 and methamphetamines were included in that.

3 Q Okay, let me give you a specific
4 example. You didn't, for example, provide the
5 information that's available in these statistics that
6 kitchen fires are the top source of fires in residential
7 properties.

8 A I displayed them as basically as an
9 act or omission, as an aggregate of all of the fires
10 that occurred in terms of act or omission. I'd have to
11 refresh my memory to look at that to be more precise.

12 Q Okay, well, I was going to go to go
13 this later but it seems that we need to go to it now.

14 Oh, I see it's the time for the break.

15 JUSTICE: Do you want a break now?

16 MR. JOHNSON: Yes, thank you.

17 JUSTICE: Fifteen minutes.

18 **(PROCEEDINGS ADJOURNED AT 11:02 A.M.)**

19 **(PROCEEDINGS RESUMED AT 11:24 A.M.)**

20 MR. JACKSON:

21 Q Mr. Garis, we just went through
22 several years of statistics from the Fire Commissioner's
23 Office relating to rate of fires in Surrey in British
24 Columbia.

25 A That's correct.

26 Q And we went through the published
27 numbers of illegal marijuana grow-op fires and meth lab
28 fires for each year. Do you recall that?

1 A Yes, I do.

2 Q And would you agree with me that
3 without general fire rate statistics, including the
4 total number of fires and fire causes, it's impossible
5 to say what the rate of fires at marijuana grow-ops is,
6 as compared to other residents that don't have marijuana
7 grow-ops? Correct?

8 A No, I couldn't support that. As I
9 said, I'll rely on the statistics analyzing that I did,
10 and I can say that marijuana grow operations represent
11 on average about 1 percent of the residential fires that
12 occurred in British Columbia annually between 2005 and
13 2013, about one percent.

14 Q If I understand your answer, are
15 you saying that you can't say that because you don't
16 have any training in statistics?

17 A I'm not sure how that relates to
18 the question that you asked previous to that.

19 Q I'm just trying to understand your
20 answer. Now, the proposition I'm putting to you is that
21 in order to understand, to compare something, you have
22 to have the statistics of the general population, the
23 general rate of fires, and the rate of the thing that
24 you are studying which is illegal grow-ops, correct?

25 A That's correct.

26 Q So you can't do a comparison of
27 those two things without that information, correct?

28 A That's right.

1 Q And you didn't include any of the
2 general information statistics about Surrey and British
3 Columbia and rates of fires, correct?

4 A Actually I think I did. As I said
5 before, I looked at 67,000 fire reports, 18,000 were
6 residential, and about 1 percent of those were under the
7 act or omission of illegal grow operations or
8 methamphetamines. It's a division --

9 Q Yes.

10 A -- a simple division. And out of
11 that on average there was about 30 of those per annum
12 from 2005 to 2013, as I mentioned before.

13 Q Okay. Well, let's go to that
14 paragraph of your report. It's at page 49 of your
15 report.

16 A Yes.

17 Q Okay. So what you just said is
18 correct. You reported there were 67,465 fires in B.C.,
19 18,843 were residential fires. 196 were determined to
20 have been caused by an MGO. And I take it by that you
21 mean an illegal MGO, or medical -- marijuana grow-op.

22 A I think it's described further on
23 in the sentence. Act or omission, human action or
24 inaction that caused a fire or factor which caused the
25 fire.

26 Q Right.

27 A And that's --

28 Q Clarifying here that you mean

1 illegal marijuana grow-op.

2 A It was listed as illegal marijuana
3 grow operations or methamphetamines, as you described in
4 those statistical reports that you mentioned earlier.

5 Q Okay. So it's -- the question I'm
6 asking you here -- here we have what you've provided.

7 A Yes.

8 Q You didn't provide any general
9 statistics about general rates of fires for the city of
10 Surrey, the city of B.C., did you?

11 A The general rates of fires
12 associated to general causes? Is that the question?

13 Q Yes. The total rates. The average
14 number of fires for the City of Surrey, for example.

15 A In the average number of fires in
16 the City of Surrey, they were listed in the reports that
17 you outlined in the specifics of the Fire Commissioner.
18 Approximately 700 per year, I think you were --

19 Q Right. And my point is, you didn't
20 include any of that in your report. Any of that
21 information.

22 A I did not.

23 Q Okay. And because you didn't
24 compare -- you didn't provide that information, it's
25 impossible to do a comparative analysis of the rates in
26 the general population versus the rates of houses that
27 have marijuana grow operations, illegal marijuana grow
28 operations.

1 A I wouldn't say it's impossible. It
2 wasn't what I was asked to do.

3 Q Okay. So then you say the MGO
4 contingent represented about 1 percent of total
5 residential fires during that time period. Again, you
6 mean illegal marijuana grow-ops?

7 A That's correct.

8 Q And then you were referencing these
9 charts. That's on the next page, page 50, 51.

10 A Yes.

11 Q So these are the charts that you
12 prepared based on the information you gathered from your
13 computer searches of the Fire Commissioner's statistics.

14 A That's from the extraction of their
15 data, yes.

16 Q Yeah. But this isn't actually --
17 are these actually what came from your computer screen?
18 Or are these charts compiled by you, or someone on your
19 team?

20 A Well, the computer screen was an
21 image of the database that was extracted against the
22 query from the Office of the Fire Commissioner's
23 database of that many fires, yes.

24 Q Okay. So, this is a chart prepared
25 by you or someone on your team?

26 A It's prepared by myself, yes.

27 Q By you, okay. So you didn't
28 provide any of the information that you were provided by

1 the Fire Commissioner in order to create these charts,
2 did you?

3 A I'm not sure how to answer that
4 because I extracted it from the source, which was the
5 Office of the Fire Commissioner's database, so --

6 Q Yes, you extracted it -- I'm sorry
7 to interrupt. You extracted it from the source. I'm
8 asking you, you didn't provide the source material
9 itself, did you?

10 A No, I did not.

11 Q So then it's impossible for an
12 independent person, someone reading your report, to look
13 at your source material to come up -- to confirm that
14 these numbers in your chart are accurate, correct?

15 A Could you rephrase that again,
16 sorry?

17 Q Because you didn't provide the
18 actual source material, it's impossible for an
19 independent researcher to compare the source material
20 with the information in these charts to determine if
21 they're accurate. Isn't that right?

22 A If the question is for an
23 independent researcher to conduct or replicate or
24 reverse engineer this, then I would say yes, you're
25 correct.

26 Q Okay. All right, and then at
27 paragraph 138 you talk about the injury rate for fires
28 at MGOs as being 2.2 times higher than the rate for non-

1 MGO-related fires.

2 A That's correct.

3 Q Okay, but you don't provide, as
4 we've already said, you don't provide any statistics on
5 what the rate of non-MGO-related fires is.

6 A Actually I did. A non-MGO fire for
7 all -- injury rate for 100 fires is 7.7. And the injury
8 rate of fires for MGO-associated fires is 16.8.

9 Q Right. That's from your chart that
10 you interpreted from the source data. So I'm asking
11 you, you didn't provide any of the actual source data
12 about the general rate of non-MGO-related fires.

13 A I did not provide that, no.

14 Q Okay. And in these sentences you
15 relate, you talk again about MGOs, and I want to make it
16 clear that you're talking about illegal grow operations.
17 Correct?

18 A I've extracted that, yes, and it's
19 listed as an act or omission for illegal marijuana grow
20 operation/methamphetamine lab, yes, as you had pointed
21 out in the charts that you showed me previously.

22 Q Right, but it's not specified in
23 your charts or in that paragraph.

24 (WITNESS'S CELL PHONE RINGS)

25 A I'm so sorry. I thought I had this
26 turned off. Excuse me, I'm so sorry. Once again I
27 apologize. Go ahead.

28 Q Okay, what I was trying to clarify

1 here is that in this paragraph, paragraph 138 and in
2 these charts, you don't specify that you're talking
3 about illegal marijuana grow-ops. You just say MGOs.
4 Correct?

5 A I think further ahead I have
6 identified them as being marijuana grow operations
7 associated with fires as listed as a category by the
8 Office of the Fire Commissioner, which basically linked
9 back to what you were pointing out earlier as
10 MGO/methamphetamine labs, which is a criteria that is as
11 reported as being a cause, yes.

12 Q Okay, so again in this paragraph
13 and in these charts, you don't use the word "illegal".

14 A That's correct.

15 Q You just put "MGOs".

16 A That's correct.

17 Q Okay. So then we go to the chart.
18 See the first one there, "Injury per 100 Fires"?

19 A Yes.

20 Q It says, "MGO Fire-Associated
21 Fires".

22 A Yes.

23 Q Okay. Again, it doesn't specify
24 illegal but that's what you mean, right? Illegal.
25 MGOs?

26 A It's all MGOs that are listed or
27 reported to the Office of the Fire Commissioner. I
28 believe the majority of them are under that category,

1 yes.

2 Q Okay, so you say you believe the
3 majority of them are under the category of illegal.

4 A They are.

5 Q Okay. Fire-associated fires. Now,
6 I take it that that means fires that happen at a
7 residence that has an illegal MGO in it.

8 A It was characterized as residential
9 fires. As I pointed out there was about 18,000 of
10 those. There was 168 fires that occurred that had a
11 grow operation or a marijuana grow
12 operation/methamphetamine lab present at the time of the
13 fire.

14 Q Okay. Actually at paragraph 136
15 what you say is 196 were determined to have been caused
16 by MGOs.

17 A That's correct.

18 Q Okay. But here in your chart you
19 say "fire-associated fires". You don't say fires caused
20 by marijuana grow-op.

21 A I would have to say that's probably
22 an adjective but that's the meaning.

23 Q Okay, but we can't -- because we
24 don't have the data we can't determine if these are just
25 houses that happen to have fires in them from other
26 sources like a stove fire, where the Fire Department
27 came and found a marijuana grow-op in the basement.

28 A What I can say is that these fires

1 were investigated by a local assistant of the Fire
2 Commissioner, and that some of them could have come from
3 as many as 440 various different fire departments of the
4 province of British Columbia. All of those were
5 reported on a form provided by the Office of the Fire
6 Commissioner that has approximately 78 fields associated
7 with it. And basically what they're tasked with doing
8 is making a determination on what the cause of the fire
9 was. That lies in the category which is called act or
10 omission, and there are a number of categories that can
11 fall within that, of which one of them is marijuana grow
12 operation/methamphetamine labs.

13 Q I see. I understand that. But
14 what I'm asking you -- and in your report itself, you do
15 this. You talk about houses that have fires caused by
16 something else where the fire department goes there and
17 finds a marijuana grow-op in the house, correct?

18 A That's right.

19 Q Okay. So in your chart here,
20 there's no way for us to know that this statistic of
21 16.8 includes those fires that were caused by something
22 else and fires that were caused by the NGO.

23 A Oh, I would disagree with that
24 because the act or omission would have to be associated
25 with the marijuana grow operations. The fact that there
26 was a grow operation there that was not the cause of the
27 fire, determined the cause, but that was present in that
28 residence at the time would have been listed --

1 certainly a list of that in the City of Surrey because
2 that's in the text of the report, but certainly not in
3 the actual official cause of the determination in the
4 field that was aggregated from the database.

5 Q And so it would be very helpful,
6 you would agree, to have that information in your report
7 so that we can verify what you're saying, that these are
8 all caused by marijuana grow-ops.

9 A It would be helpful, yes.

10 Q And without it we don't actually
11 know.

12 A Well, I would hope that you would
13 rely on the work that I did and I'm presenting to the
14 court here now.

15 Q All right, in paragraph 138 in the
16 third sentence you say, "Both substantively and
17 statistically this figure," meaning the 2.2 times rate
18 of non- -- of MGOs with injuries, you say, "Both
19 substantively and statistically this figure is
20 significant and confirms that" -- then you go on to say
21 that MGO-related fires pose injury risk beyond the norm.

22 You don't have any training in
23 statistics, so you can't say substantively and
24 statistically this figure is significant, can you?

25 A Well, I'm not sure that the fact of
26 whether I had training or not, and whether or not I can
27 apply a statistical formula to a situation is connected.
28 If I go to Wikipedia and I say what is statistically

1 significant it said within a 5 percent margin, then
2 that's kind of -- it's pretty simple to arrive at that.
3 But I would agree I haven't been trained statistically.

4 Q Okay, so in your opinion with, as
5 you said, you haven't been trained statistically, these
6 sample sets that you provide are sufficient to do a
7 statistical analysis that is substantively and
8 statistically significant.

9 A Yes.

10 Q And you agree that it would be
11 helpful if you had actually provided the source
12 information so that a statistician could assess your
13 information to come to that same conclusion or not.

14 A For the same conclusion, yes, that
15 would be helpful.

16 Q All right, I'm just going to point
17 out that these other charts that you've provided on
18 these two pages, death per 100 fires, casualty per 100
19 fires, average loss per fire, these are all the same MGO
20 fire-associated fires that we just discussed?

21 A No, they're not. They're actually
22 broken out by the major categories under "Act or
23 Omission". For example, incendiary, which would suggest
24 if we read the definition of incendiary would be likely
25 arson. Misuse of source of ignition, misuse of material
26 ignited, mechanical/electrical failures, those are the
27 act or omissions that are listed on all of the fires
28 associated with residential fires in the Province of

1 British Columbia during that period of time. The act or
2 omission that we were referencing here is MGO-associated
3 fires.

4 Q Okay. What I'm asking you is, in
5 the death per 100 fires chart, the casualty per 100
6 fires chart, the average loss per fire, you put that
7 category of MGO fire-associated fires, correct?

8 A Yes.

9 Q And that's the same category we
10 just discussed where we don't actually know if those
11 fires were caused by a stove or by a marijuana grow-op.

12 A The stove is another element to
13 that report and it's not basically the act or omission
14 or the cause. The stove is a medium or the source of
15 heat. In the stove situation, I would probably suggest
16 to you that we would be talking about a misuse of source
17 of ignition, materials first ignited might be -- might
18 be the cabinet or something. It's a little bit more
19 complicated than --

20 Q All right.

21 A Human -- human failing might be a
22 cooking fire. Human failing might be smoking as well.

23 Q I believe you already answered the
24 question with respect to the first chart.

25 A Right.

26 Q Okay? All I'm getting at is,
27 sometimes fire department officials attended a fire
28 that's caused by something else than the marijuana grow-

1 op, and then they find the marijuana grow-op in the
2 house.

3 A That's correct.

4 Q Okay. And so we don't know if
5 those fires are included in this category here, of MGA
6 -- MGO associated fires --

7 A Those fires -- those fires would be
8 included in that category, yes.

9 Q They would be?

10 A Yes.

11 Q Okay.

12 A Because the cause was obviously not
13 the marijuana grow operation.

14 Q Now, you mentioned this category of
15 act or omission.

16 A Yes.

17 Q Okay. And you say these illegal
18 grow ops are an act or omission?

19 A They're listed under the Office of
20 the Fire Commissioner list of determinations and choices
21 to make in determining what the act or omission was,
22 yes.

23 Q And I'm a bit confused by that.
24 And maybe you can help me with it, because really --
25 it's not actually growing of a plant that causes the
26 fire. It's, for example, the misuse of lights.

27 A Right.

28 Q Okay? Right. And, or faulty

1 wiring. Something like that. Okay. Just wanted to
2 clarify that.

3 Okay, and in your report you say that 1
4 percent of total residential fires during the time
5 period you looked at were -- well, what you actually say
6 is, the MGO contingent represented about 1 percent of
7 the total residential fires during that time period.

8 A That's correct.

9 Q Okay. And that's in comparison,
10 for example, to 33 percent caused by stoves in 2012.

11 A I think it was cooking is what you
12 referenced before.

13 Q Okay, fair enough. Mr. Garis, in
14 the review of all the statistics that we went through
15 earlier, there wasn't a single mention of a single fire
16 being caused by a legal medical marijuana production
17 site, is there?

18 A There is not.

19 Q We'll move on to a new topic. So
20 if you could turn to page 3 of your report.

21 A Yes.

22 Q This is the first page.

23 A Yes.

24 Q So you have the certification
25 there. You say that you certify you are aware that you
26 have a duty to assist the court and it's not to be an
27 advocate for any party in respect of the above-noted
28 litigation, correct?

1 A That's correct.

2 Q So you read the code of conduct for
3 expert witnesses.

4 A That's correct.

5 Q Okay. And then you say, "My fees
6 for preparation of this report are based on the amount
7 of professional time required, not contingent on any
8 action or event resulting from the use of the report,"
9 right?

10 A That's correct.

11 Q So you were paid to produce this
12 report.

13 A I was given a contract in order to
14 prepare this, and it's basically I made some estimates
15 on what that would be, and I was -- I tendered some
16 invoices through the University of the Fraser Valley for
17 this work, yes.

18 Q Who paid your fees?

19 A The Department of Justice, I
20 believe.

21 Q Okay.

22 A Oh, sorry, I'll have to correct
23 that. It was the University of the Fraser Valley.

24 Q All right. I see at the top here
25 you say that there is the University of the Fraser
26 Valley logo.

27 A Yes.

28 Q So the University of the Fraser

1 Valley approved the use of your -- of their logo on your
2 report?

3 A That's correct. Actually the
4 relationship for the work that was done here was between
5 the Department of Justice and the University of the
6 Fraser Valley.

7 Q Right. And then you say exactly
8 that, a report prepared for the Department of Justice,
9 Canada.

10 A That's correct.

11 Q And you don't say a report prepared
12 for the Federal Court of Canada.

13 A That's correct.

14 Q Okay, we're going to move back to
15 your qualifications. Actually, sorry, I'm going to ask
16 you one more question about these.

17 You mentioned in your report on a number
18 of occasions, and here today, that you had -- you hired
19 various people to assist you in the research. You
20 mentioned an inspector, I believe, a fire person -- you
21 mentioned three people, in any event.

22 A That's correct. There was actually
23 four, but -- four.

24 Q All right. And were those people
25 paid as well?

26 A Yes.

27 Q By the DOJ or the university?

28 A The University of the Fraser

1 Valley.

2 Q There is also a reference at one
3 point to a criminology graduate student.

4 A That's correct.

5 Q Is that a graduate student of the
6 University of the Fraser Valley?

7 A Yes.

8 Q And that person was not paid, then?

9 A That person was given a stipend for
10 his time, yes.

11 Q Okay. So he was paid.

12 Okay. So, you're associated with the
13 Centre for Public Safety and Criminal Justice Research
14 at the University of the Fraser Valley, correct?

15 A That's correct. I'm an adjunct
16 professor for the University of the Fraser Valley,
17 attached to the School of Criminal Justice and Research.

18 Q All right. I've also seen you
19 listed on their website, for example, as a research
20 associate, as your title. Is that also correct?

21 A I am listed as a research associate
22 with John Jay College in New York.

23 Q I believe you're also listed as a
24 research associate for the Centre for Public Safety and
25 Criminal Justice Research on the website.

26 A That's correct.

27 Q Yeah. Instead of saying Centre for
28 Public Safety and Criminal Justice Research, I'm just

1 going to say "the Centre". You understand? That's
2 fine?

3 A That's fine. That's fine.

4 Q Okay. And instead of University of
5 Fraser Valley, I'm going to say UFV, you understand?

6 A That is correct.

7 Q Okay. So the UFV is a special
8 purpose teaching university for the geographic area of
9 the Fraser Valley, is that right?

10 A Yes.

11 Q Okay. It doesn't offer any
12 doctoral degrees, for example?

13 A It does not.

14 Q And the Centre -- the Centre, as
15 we've defined it, that has as its head the RCMP Chair of
16 Research, is that correct?

17 A The Director is a Chair. The
18 actual Chair of the Centre is an Amy Prevost, it's a
19 different person. So would not be the head.

20 Q Oh, okay. But there is somebody at
21 the Centre who is the -- I think it's the RCMP Research
22 Chair, is what it's called?

23 A That's correct.

24 Q And that used to be Professor
25 Darryl Plecas, is that correct?

26 A That's correct.

27 Q And I believe it's currently --

28 A Dr. Irwin Cohen, today.

1 Q Yes, thank you. Is that a paid
2 position by the RCMP?

3 A I think they -- it's probably not
4 directly paid. I'd have to characterize it this way.
5 My knowledge is that the university receives stipends
6 from the government, and the university creates that
7 position, which flows through to that position. That's
8 my understanding.

9 Q Okay. Then can you explain to me
10 why it's called the RCMP Chair?

11 A I believe it's an industrial
12 research chair idea. And so it just happens to be
13 connected to the RCMP that are funding the chair that
14 conducts the research. It's my understanding that's how
15 it works.

16 Q All right. And so in preparing
17 your expert report were you acting under the
18 supervision, guidance, of the RCMP Chair?

19 A No.

20 Q So the RCMP Chair wasn't involved
21 in --

22 A No.

23 Q Okay. I noted on your -- the
24 Centre's website there is a section that says "Centre
25 Partners".

26 A Yes.

27 Q So the Centre has a number of
28 partners, and there is a list -- list of them that

1 includes the federal RCMP, federal Canadian agencies
2 such as Health Canada, Department of Justice Canada,
3 National Parole Board and Correctional Services Canada,
4 correct?

5 A Yes.

6 Q And the RCMP "E" Division, and the
7 British Columbia Municipal Police Departments.

8 A Yes.

9 Q In a variety of locations.

10 A Yes.

11 Q There is a number of others. Fire
12 Services of B.C., British Columbia municipal
13 governments, and then it says, "RCMP provincial and
14 municipal police in Alberta and the Atlantic region".
15 That's another partner?

16 A Yes.

17 Q Okay. And the various unpublished
18 papers that you have attached as appendices to your
19 report, those were also through this Centre?

20 A A variety of them were, yes.

21 Q Right. So the ones, for example,
22 Professor Darryl Plecas was a co-author on, I believe,
23 most or all of those attached papers, correct?

24 A Yes. I'd have to review them to
25 verify that -- the term "all", but --

26 Q Right.

27 A Generally, yes.

28 Q Well, if you'd like to do that now,

1 we can do that.

2 A Because I think some were published
3 by Dr. Joseph Clare and myself, and James Bond as well.

4 Q Okay. So at paragraph 63 we have
5 the table of contents for the appendices.

6 A Sorry, what page was that?

7 Q 63.

8 A Yes, I have it.

9 Q All right. So Appendix H, the
10 first mention of Professor Plecas is there.

11 A Yes.

12 Q Plecas *et al.* That's one of the
13 papers you did with Professor Plecas?

14 A Yes.

15 Q And that's when he was the RCMP
16 Chair of the Centre?

17 A I believe so, yes.

18 Q And that's a self-published paper
19 that hasn't been subject to peer review, that's correct?

20 A Yeah.

21 Q And Appendix I, it says "Diplock *et*
22 *al*"?

23 A Yeah.

24 Q That's also with Professor Plecas
25 and yourself, correct?

26 A Yeah.

27 Q And Mr. Diplock I understand is an
28 RCMP research analysis?

1 A That's correct.

2 Q And he's an employee of the RCMP
3 then?

4 A That's my understanding, yes.

5 Q Again that's a self-published non-
6 peer-reviewed article?

7 A Yeah.

8 Q And Appendix L, Plecas et al, again
9 you co-authored that?

10 A Yes.

11 Q Again he was the RCMP Chair at that
12 time?

13 A Yes.

14 Q And it's a self-published, non-
15 peer-reviewed paper?

16 A Yeah.

17 Q Yes? Okay. Appendix O, Plecas et
18 al. I don't think you actually were part of that one,
19 were you?

20 A I don't recall.

21 Q Okay. It's called *Marijuana*
22 *Growing Operations in B.C. Revisited*.

23 A I don't believe I was, no.

24 Q Okay. And Appendix P is Plecas et
25 al, 2011.

26 A Yes.

27 Q You were a co-author?

28 A Yes.

1 Q Right. And both that and the
2 previous Appendix O, those are self-published, non-peer-
3 reviewed papers, correct?

4 A I would characterize them as they
5 were published by the University of the Fraser Valley on
6 the Criminal Justice Research website. So they do get
7 reviewed internally before they're published, but
8 they're not published in the normal sense of peer review
9 as you describe. So I couldn't say that they're self-
10 published.

11 Q Okay, fair enough. Thank you for
12 the clarification. And it's R. Diplock and Plecas 2011,
13 *Increasing Problem of Electrical Consumption in*
14 *Marijuana Grow Operations.*

15 A I was not attached to that.

16 Q That's another one that was
17 published on the website?

18 A Yes, yeah.

19 Q Okay. I believe that's all of
20 them. Okay, I'm just going to take you back to your
21 qualification section at page 3 of the report. Okay, so
22 we covered the first and sixth bullet point about your
23 fire experience. And in the second point you say more
24 than four years as adjunct professor at the School of
25 Criminology and Criminal Justice, University of the
26 Fraser Valley.

27 A Yes.

28 Q When you say "more than", do you

1 mean four or approximately four?

2 A Well, it was -- I can't remember
3 the date of the appointment, but it would be just
4 slightly over, yeah.

5 Q Okay. And so that's an adjunct
6 professor with the Centre, which is --

7 A With the university, yes.

8 Q Okay. And you mentioned that you
9 teach one course?

10 A That's correct.

11 Q How many courses have you taught in
12 that four-year period?

13 A Three.

14 Q And what were the subjects?

15 A Criminal justice leadership in the
16 master of arts program.

17 Q Okay. So I just want to clarify
18 here that my understanding is that an adjunct professor
19 is someone who is basically hired on a contract basis
20 normally by a university to teach specific courses
21 within their area of expertise.

22 A No, in this particular case I was
23 invited by the chair of the school to apply for an
24 adjunct professor status. Under the policy under the
25 university, what I needed to do was submit my curriculum
26 vitae, which I did, and was reviewed by the department
27 head, which was then sent to the Dean of Arts. The Dean
28 of Arts conducted an assessment and then based on that I

1 was invited to provide a presentation to the faculty of
2 the university.

3 And then I believe what occurred from
4 there, there was a recommendation by the dean that was
5 made to the senate, and the senate approved my
6 appointment as an adjunct faculty for the university
7 which granted me the ability to instruct at the Masters
8 level, and to guide and direct students based on my
9 abilities, on my comfort level within that scope.

10 So, a thorough assessment was done of my
11 credentials and my work experience over the last 35
12 years before I was appointed to this position. So the
13 characterization of being hired would have been the last
14 thing that occurred in terms of being able to instruct
15 students in the university setting.

16 Q Okay. So, I take it then you are
17 not disagreeing with me that you are an adjunct
18 professor, and you have been approved as such, for the
19 purpose of teaching courses or doing papers, in the area
20 of your own expertise?

21 A That's correct.

22 Q Which is fire safety?

23 A That's correct.

24 Q Now, I've reviewed your CV and you
25 don't have a PhD. or a Master's degree?

26 A I do not.

27 Q You don't have a bachelors degree?

28 A I do not.

1 Q Okay, and the fifth bullet point
2 says, "appointed two years ago to the National Council
3 Against Marijuana Grow Operations and Clandestine
4 Laboratories"?

5 A That's correct.

6 Q So, I understand that is a national
7 organization or association of people who are against
8 marijuana grow operations and clandestine laboratories?

9 A That's the title, yes.

10 Q That would be, of course, illegal
11 marijuana grow operations?

12 A That's correct.

13 Q Okay. And then at paragraph 5 you
14 list a number of authored and co-authored research
15 papers?

16 A Yes.

17 Q Which, some of which are the ones
18 that are attached as appendices?

19 A That's correct.

20 Q And I'm interested in the third
21 one, the October 2012 article in the *Journal of Global*
22 *Policy and Practice*?

23 A Yes.

24 Q I understand that that journal is a
25 publication of an association of people in the United
26 States who are against any form of drug reform, is that
27 correct?

28 A I couldn't characterize it in the

1 way that you describe it. I'd have to go back and read
2 their mission statement in order to verify that.

3 Q Right, I'll get the name for you.
4 It's called "Drug Free America Foundation". Is that --

5 A I'd have to reference that myself
6 in order to be satisfied by that, but yes.

7 Q Okay.

8 A You want me to do that?

9 Q Drug Free America Foundation. And
10 so that's a foundation that has an online site where
11 papers like yours are published on the web. Correct?

12 A Yes.

13 Q Okay. So I just want to go over
14 some things about your qualifications. You've already
15 said this morning that you aren't a qualified person to
16 speak to the science or biology of mould, for example.

17 A Am I -- no, I am not.

18 Q Okay. And you don't have any
19 specific university training in botany or agricultural
20 sciences?

21 A I do not.

22 Q So then you're not an expert on the
23 growing of marijuana?

24 A I am not.

25 Q And you've already said that you
26 don't -- you haven't taken any courses in statistics.
27 You haven't taken any other advanced-level courses in
28 research methodologies, have you?

1 A I have taken some short courses
2 over my career, but nothing that would constitute
3 probably what you're reaching for in terms of an
4 academic designation, no, I do not.

5 Q And you don't have any training in
6 civil, structural, or electrical engineering?

7 A I do not.

8 Q And you haven't been trained as an
9 electrician.

10 A I have not.

11 Q So, you would agree with me, then,
12 that your expertise in providing this report and as an
13 expert witness in this court is specific to your
14 expertise in fire safety based on your experiences in
15 your career.

16 A That's correct. It would be more
17 relative to fire cause determination, what the causes
18 were, and that I am an expert in.

19 Q Right. So, earlier it was referred
20 to that you were an expert in public health and safety.
21 That's not quite accurate. It's actually you're expert
22 in fire safety.

23 A You'd have to -- we'd have to
24 define "public safety". I would suspect because
25 certainly our area does focus on individual safety in
26 terms of behaviours that take place in a home and what
27 we can do to mitigate them.

28 Q Okay. Well, I'm not -- so fire

1 safety is obviously -- it's part of the concept of
2 public safety.

3 A Right.

4 Q Public safety incorporates other
5 things.

6 A That's right. Of course.

7 Q Right. So, just wanting to be
8 specific here. It's fire safety. So public health, you
9 can't say you have any expertise in that area.

10 A Well, I would dispute that in terms
11 of behaviours associated with people that are being
12 injured or dying because of fires. That, I would say,
13 was a public health concern, and certainly a result of
14 the statistics that we have been talking about.

15 Q So, I appreciate that
16 clarification. You're saying that within the sort of
17 general concept of public health, you have expertise
18 with respect to fire safety.

19 A That's correct.

20 Q All right, and then in your
21 assignment at page 3 of the report, you repeat the
22 issues that were assigned to you to provide your expert
23 opinion by the defendant in this matter, correct?

24 A That's correct.

25 Q So the first one is the potential
26 fire and electrical hazards of growing marijuana in a
27 residential dwelling, correct?

28 A That's correct.

1 Q So, but you don't actually -- you
2 can speak to fire hazards.

3 A That's correct.

4 Q But you can't speak to electrical
5 hazards as you don't have any training as electrician or
6 as an electrical engineer, for example.

7 A I have the training to determine
8 what the cause of the fire was and if it was associated
9 to electricity. I can do that, yes.

10 Q Okay, so again thank you for that
11 clarification. And then with respect to a residential
12 dwelling, that was your instructions.

13 A That's correct.

14 Q And the second point says, "The
15 contamination that may be caused by growing marijuana in
16 a residential dwelling."

17 A Yes.

18 Q Now, you'll have to assist me. I
19 don't know what that means, contamination. Was that
20 further refined for you in other instructions? What
21 does contamination mean?

22 A Contamination, and certainly if
23 we've read the section there we'd probably see that I'm
24 referring to chemical residue. We're talking about
25 mould, mildew, those types of things that were
26 observations from visiting these locations.

27 Q Okay, so you received this
28 instruction to look into contamination that may be

1 caused by marijuana grow-ops -- by growing marijuana in
2 a residential dwelling, and you decided that
3 contamination meant those things you just described, the
4 moulds and the chemicals. Is that right?

5 A That's correct.

6 Q Again that's specific to a
7 residential dwelling.

8 A That's correct.

9 Q And the third one, the risk that
10 marijuana growing operations in residential dwellings
11 pose to first responders?

12 A That's correct.

13 Q So those are risks that in fact
14 exist. It's not asking you to ask to look into
15 potential risks. It doesn't say "may pose", right?

16 A That's correct.

17 Q Again it's residential dwellings,
18 correct?

19 A That's correct.

20 Q In all three of these first three
21 issues there's no distinction made between illegal grow
22 operations and medically licensed medical operations
23 under Health Canada and the *MMAR*?

24 A That's correct. It characterizes
25 them as being all.

26 Q So you received these instructions,
27 and because it wasn't specified to medical marijuana
28 grown legally, you went and assessed illegal and legal.

1 A I assessed the inventory of the
2 inspections. I've included both licensed and unlicensed
3 for the City of Surrey during the period of time that I
4 indicated.

5 Q Okay, and on the subject, going
6 back to contamination.

7 A Yes.

8 Q You mentioned chemicals.

9 A Yes.

10 Q That's referred to in your report a
11 fair bit.

12 A Yes.

13 Q You don't have a degree in
14 chemistry.

15 A No, I do not.

16 Q You never spent any time in a lab
17 environment where chemistry or chemicals were analyzed.

18 A Not for this purpose, no.

19 Q And with respect to your expertise
20 in fire safety, this is based on your actual experience?

21 A That's correct.

22 Q Specific to you?

23 A That's correct.

24 Q Okay, and then point 4 you are
25 asked to provide -- it says,

26 "...the differences, if any, between the
27 illicit marijuana residential growing
28 operations and medical marijuana residential

1 grow operations, in terms of potential fire
2 hazards, contamination, and risks to first
3 responders."

4 A That's correct.

5 Q Okay, at paragraph 12 of your
6 report, you say,

7 "The realization of the significant but
8 unquantified public safety risk posed by
9 medical MGOs, lead me to spearhead a Canada-
10 wide, fire services lobby of Health Canada to
11 acknowledge the risks associated with their
12 licences, MGOs, and to release their
13 location to cities to enable them to address
14 these risks. Health Canada subsequently
15 introduced legislation banning the growing of
16 medical marijuana in residential settings."

17 Do you see that?

18 A Yes.

19 Q So, you're saying here that you led
20 a lobby of fire safety professionals of Health Canada?

21 A Yes. Yes.

22 Q And this your opinion here -- at
23 that time, this was your opinion that there was a
24 significant, but un-quantified public safety risk posed
25 by medical marijuana grow operations?

26 A That's correct.

27 Q And as you say there, it is un-
28 quantified. So you didn't have any statistics or data

1 to support that at that time?

2 A What I knew there was a growing
3 number, and I believe that was the statement as
4 referencing solicitation, if that's the right term, or a
5 requests from Health Canada to meet with the Canadian
6 Association of Fire Chiefs, and I believe it was in 2011
7 in Calgary, and we met with a representative from Health
8 Canada to talk about medical marijuana. And at that
9 time, there was individual experiences right across the
10 county that was being articulated. But it was not
11 quantified. In other words, it wasn't statistically
12 gathered across Canada. We do not have a national
13 database across Canada that we can aggregate, but
14 individuals who are expressing their concerns, and that
15 is why the term was un-quantified at that point in time.

16 Q Okay. And there were no
17 transcripts of that meeting that you're talking about,
18 that was published?

19 A I am not aware of those, no.

20 Q I understand in 2009 you testified,
21 I believe, at the Canadian Senate in support of
22 mandatory minimum sentences being imposed for drug
23 offences under the *CDSA*?

24 A That's correct.

25 Q And that's including, of course,
26 the mandatory minimum sentences of six months in jail
27 for people who illegally grow more than six plants,
28 correct?

1 A That's -- not sure that it was six
2 months, I'm sorry.

3 Q Okay. So I take it your evidence
4 then to the Canadian Senate was specific to your fire
5 expertise?

6 A Yes, it was. It was specific to
7 the harms that were being created in our community at
8 the time, and we wanted to articulate those in terms of
9 health and safety and fire-related issues, yes.

10 Q So those were harms in your
11 opinion.

12 A Harms that I've experienced in the
13 City of Surrey, yes.

14 Q And would you agree with me that
15 you've been commonly quoted in the media with respect to
16 illegal marijuana grow operations being 24 times more
17 likely to have fires?

18 A Yes, I have been quoted on that. I
19 would like to explain that maybe.

20 Q I think we'll just move on. So I
21 take it in your various public statements about the
22 harms that you -- in your opinion were posed by medical
23 patients growing marijuana, I take it that you were
24 advocating for a banning of that practice.

25 A I was advocating for a change of
26 practice so that the marijuana could be grown outside of
27 the residential environment. I didn't believe that the
28 system was compatible or suitable for what was going on,

1 and certainly encouraged a policy that would take it out
2 of the residences.

3 Q Okay. As a necessary implication
4 that you were advocating in favour of commercial or non-
5 residential production, you were advocating in favour of
6 a ban on residential growing by patients.

7 A That's correct.

8 Q And at that paragraph 12 that we
9 just read it said, "Health Canada subsequently
10 introduced legislation banning the growing of medical
11 marijuana in residential settings." What you're
12 referring to is what are known as the *MMPRs*, the medical
13 marijuana, the new regulations?

14 A That's correct.

15 Q Okay, I'd like to take you to page
16 10.

17 A Yes.

18 Q I'm sorry, I have the wrong
19 reference here. It's probably page 10 of your CV.

20 Here we go. It's page 99 of your report,
21 at your CV.

22 A Yes.

23 Q Okay. I'm referring to the section
24 where you say you provided expert opinion --

25 A Yes.

26 Q -- on fire cause determination?

27 A Yes.

28 Q So those were three criminal

1 matters, two of them in the provincial court and one in
2 the B.C. Supreme Court, in the 1990s.

3 A That's correct.

4 Q Okay. And then under -- you have
5 expert opinion and harms of marijuana grow operations in
6 B.C. This is 2013 to present. Minister of Justice,
7 civil forfeiture, authored five reports on the harms of
8 marijuana grow operation in B.C.

9 A That's correct.

10 Q You didn't -- stating the obvious
11 here, you don't provide court file numbers for those
12 five reports, do you?

13 A I do not. Those -- I can say that
14 four out of the five of those were submitted to the
15 court and they settled. They weren't heard. And there
16 is one that's still outstanding.

17 Q You don't actually know that they
18 were submitted to the court.

19 A I would --

20 Q They were submitted to the lawyer
21 who hired you.

22 A I would -- I would give way to
23 that, yes.

24 Q Okay. And one of them is still
25 before the courts, one of those cases.

26 A It's -- well, as you described,
27 it's been submitted to the government and the government
28 has -- whatever process it is, it is. But I understand

1 that it has not settled, it has not been heard.

2 Q Okay. So, my understanding of
3 civil forfeiture is, there is something called the *Civil*
4 *Forfeiture Act*, a provincial piece of legislation.

5 A Yes.

6 Q And you're familiar with the civil
7 forfeiture regime in general, I take it.

8 A Just in general, yes.

9 Q So, civil forfeiture is a civil
10 proceedings brought by the Civil Forfeiture Office, a
11 department of the provincial government? You're aware
12 of that?

13 A That's correct.

14 Q And those are proceedings against
15 properties in British Columbia where the Civil
16 Forfeiture Office alleges that unlawful activity has
17 occurred?

18 A That's correct.

19 Q Okay. And those properties -- in
20 the cases, the five that you've been involved in, I take
21 it you understand that if the Civil Forfeiture Office is
22 successful in its litigation, that those properties are
23 forfeited to the government?

24 A I'm not exactly sure of the result.
25 My understanding is that some of these settled, and
26 those were certainly only anecdotal, that they're
27 negotiated settlements, and it doesn't always
28 necessarily mean that the property was forfeited for the

1 value. If there's a culmination of a number of things
2 that occur, so I wouldn't be able to rest on exactly
3 what you had said there.

4 Q Okay. Let me ask you something
5 much more simple than that. It's just that if the
6 government, the provincial government, is successful in
7 its civil forfeiture action, the property it's targeting
8 is forfeited to the government.

9 A I don't know that.

10 Q You don't know.

11 A I'd like to believe it, but there
12 is that combination of things that occur as an outcome
13 to that. That's the principle of the *Civil Forfeiture*
14 *Act*, as I understand it. As I said, I'm not privy to
15 what the results are.

16 Q All right. So if I understand what
17 you're saying, then, you provided these five reports on
18 harms of marijuana grow operations but you didn't
19 appreciate that the end results of the court process
20 could be the forfeiture of the properties subject to the
21 claim.

22 A I knew there was a value
23 proposition associated with that, yes, I did.

24 Q In preparing these reports, were
25 you provided with anything other than police evidence?

26 A I was not.

27 Q Were you provided with the response
28 to civil claim filed by the defendants in those matters?

1 A I was not.

2 Q And I take it that none of those
3 reports were on your expertise in fire safety, were
4 they?

5 A Yes, they were.

6 Q They were? It says that they're on
7 the harms of marijuana grow operations.

8 A That's correct. Safety would be
9 one of the harms.

10 Q So one aspect of those reports is
11 fire safety.

12 A That's correct.

13 Q And the rest of those reports would
14 be on for example marijuana yields, the number of plants
15 in a room and how much they might be worth on the black
16 market, that sort of thing?

17 A Correct.

18 Q But you don't actually have any
19 expertise in those areas, do you?

20 A Well, you'll have to specify which
21 area that you're referring to. In terms of fire safety
22 I would say yes, I do. And I have experience in
23 observing those things.

24 Q Okay, for example the yield of
25 marijuana plants, you don't have any expertise in that.

26 A I co-authored a report with the
27 colleagues that you mentioned that basically set that
28 out in terms of what it cost to set up a grow operation,

1 what the yield might be in terms of the number of plants
2 within a margin.

3 Q Right, but you're talking about the
4 reports co-authored by Professor Daryl Plecas and Jordan
5 Diplock and yourself that were self-published on the
6 website at the Centre?

7 A That's correct.

8 Q All right.

9 A I believe there was a table that
10 was in one of the reports that basically is used to
11 reference, to answer one of those questions.

12 Q But you don't have -- as we've
13 discussed, you don't have any training or expertise in
14 botany or growing of marijuana.

15 A I do not.

16 Q And you also provided opinions on
17 the value of the marijuana that's grown on the black
18 market?

19 A That's correct.

20 Q But you don't have any expertise in
21 economics, do you?

22 A I do not.

23 Q Now, those five civil forfeiture
24 proceedings you've been involved in.

25 A Yes.

26 Q As an expert. I take it you didn't
27 know that whether the property that was being subject to
28 forfeiture claims was being used by organized crime or

1 gangs, correct?

2 A I do not.

3 Q You don't know if those properties
4 were owned by, say, a disabled person growing ten plants
5 in his basement as medicine for himself.

6 A There wouldn't have been one with
7 ten plants. I can rest assured of that.

8 Q All right.

9 A The disabled aspect of it I would
10 agree. You're right, you're correct, I do not know
11 that.

12 Q So the civil forfeiture claim is
13 against a property where there's been unlawful activity.

14 A That's correct.

15 Q And you've been involved in five
16 where the allegation is there is an illegal marijuana
17 grow-op in the house?

18 A Four of them, yes.

19 Q Four of them. Okay. So you don't
20 know if any of those defendants are disabled people
21 growing marijuana without a licence but for medical
22 purposes.

23 A They were illegal as far as I know.

24 Q Right, but they are illegal because
25 they didn't have a licence, but you don't know if they
26 were growing for medical purposes?

27 A I do not know.

28 Q So it's entirely possible then that

1 in one of the four claims against a property owned by a
2 person in B.C., that that property could be forfeited
3 and that person could be a person growing marijuana for
4 their own use as medicine.

5 A That is a possibility, yes.

6 MR. JACKSON: Now would be a good time
7 for the break.

8 JUSTICE: A good time for lunch?
9 We'll come back a little later, quarter to two.

10 **(PROCEEDINGS ADJOURNED AT 12:30 P.M.)**

11 **(PROCEEDINGS RESUMED AT 1:46 P.M.)**

12 JUSTICE: Go ahead.

13 MR. JACKSON:

14 Q Mr. Garis, before lunch we spoke
15 briefly about some comments you'd been making in the
16 media about fires being 24 times more likely. Now, I
17 understand it that that comment was based on a study by
18 Darryl Plecas, where he found that in looking at illegal
19 marijuana grow-ops that had been investigated by police,
20 approximately 3.7 percent of the investigations that the
21 police did come to their attention because of a fire at
22 an illegal marijuana grow-op, and that that 3.7 percent
23 rate was 24 times higher than the rate of fires in the
24 general population. Is that fair?

25 A No.

26 Q No?

27 A That's not correct.

28 Q Okay.

1 A Specifically in that report you'll
2 see that Dr. Plecas did a specific study for the City of
3 Surrey. And what he did is he developed a rate of fires
4 that were occurring in the City of Surrey on an average
5 of five years during the period of time in which his
6 study took place. 1997 to, I believe, 2003 or '04. I
7 don't quite recall.

8 But essentially what he did is, he looked
9 at the rate of fires that were occurring on average in
10 the City of Surrey, and that was 137 of those. And the
11 rate and the number of dwellings that were in the City
12 of Surrey at the time was about 69,000. So the rate of
13 fires that were occurring naturally in the City of
14 Surrey was 1 in 524. And the rate of marijuana grow
15 operations in the City of Surrey was 1 in 22 out of that
16 137.

17 So essentially what he did is, he divided
18 the 22, the rate of marijuana grow operations, into the
19 525, and that turns out to be 24. So the rate on that
20 particular day was 24 times more prevalent to be a
21 marijuana grow operation than a natural fire, and that's
22 how it was characterized.

23 Q Okay. So the study was specific to
24 the City of Surrey.

25 A That portion that we just
26 described, in terms of the rate of 24 times more likely
27 --

28 Q Right.

1 A -- was a characterization of the
2 fires that were occurring in the City of Surrey as a
3 result of a marijuana grow operation at that time.

4 Q Okay. So if I understand, then,
5 you're saying that there were a certain number of
6 illegal grow operation fires in Surrey during that
7 period of time?

8 A That's correct.

9 Q And what I'm curious about is the
10 comparator number. So you say there is this many
11 illegal grow-op fires. How do you know many illegal
12 grow-ops there are in the City of Surrey?

13 A You don't.

14 Q So, that number is compared to the
15 number of known grow-ops, is that right?

16 A It was a rate of the fires that
17 were occurring naturally, as opposed to the ones that
18 were determined to be a grow-op, and it was divided by
19 that number.

20 Q Okay. So just to be clear, you or
21 Mr. Plecas, who wrote that report, you didn't know the
22 total number of illegal marijuana grow operations in
23 Surrey during that time period?

24 A We did not.

25 Q That's because it's impossible to
26 know that. Correct?

27 A That's correct.

28 Q So then the number of fires in the

1 City of Surrey -- so to say that it's a certain
2 percentage of the total, it's not actually known.
3 That's not a --

4 A He wasn't using a percentage. He
5 was using a rate.

6 Q A rate. Right.

7 A So, out of an average of 137 fires
8 that were occurring naturally, 1 in 22 of those was
9 determined to be a marijuana grow operation at that
10 time.

11 Q All right. I'd like to ask you
12 some questions about your methodology in your report.

13 A Yes.

14 Q Okay. So, the discussion you
15 included is at page 7 under "Methods".

16 A Yes.

17 Q Okay. And so at paragraph 26 you
18 see there, you restate some of the issues that you had
19 been asked to look into.

20 A That's correct.

21 Q Right. And then in the second
22 section sentence you say:

23 "The question is relevance since indoor
24 cultivation, particularly on a larger scale,
25 has until now generally resulted in some type
26 of structural or contamination hazard to the
27 growing premises."

28 And you cite an article by Mr. Plecas and yourself,

1 correct?

2 A Yes.

3 Q Okay. And I've reviewed that
4 report and -- one second. I believe it's called
5 "Revisiting the Issues Around Commercially Viable Indoor
6 Marijuana Grow Operations in B.C."?

7 A Yes.

8 Q Okay. And so that's a report where
9 you and the other co-authors express opinions about the
10 harms of marijuana use, potential economic costs of
11 marijuana use, the dangers of illegal indoor marijuana
12 grow operations to occupants, first responders and
13 children, is that right?

14 A That's correct.

15 Q Okay, so I take it there you're
16 saying that in your opinion it's an established concept
17 or theory or something of that nature that indoor
18 cultivation generally results in some type of structural
19 or contamination hazard to the growing premise.

20 A That's correct, and in that report
21 you'll probably see a passage in there where there was a
22 qualitative workshop that was done with environmental
23 companies that are in the business of remediating
24 marijuana grow operations in the region, and we
25 basically extrapolated a lot of those issues into
26 forming some of those opinions based on that report, and
27 albeit qualitative at that time.

28 Q Okay. So as I understand it, what

1 you're doing here is you're stating a premise that you
2 believe to be true, correct?

3 A Yes, based on my experience.

4 Q Right. And then at the next
5 paragraph you say --

6 A Which paragraph would that be?

7 Q It's 27.

8 A Okay. Yes.

9 Q "In this report I will outline
10 what has been reported in the professional
11 literature relating to marijuana grow
12 operations. I will augment that with data
13 from the B.C. Fire Commissioner's Office in a
14 quantitative analysis of 1800 illicit and
15 federally licensed operations inspected in
16 the City of Surrey."

17 A Yes.

18 Q Okay. So you started with this
19 premise that indoor cultivation is generally a hazard.
20 And then --

21 A It's my experience, yes.

22 Q Right. And then you say you're
23 going to outline what's in professional literature
24 relating to marijuana grow operations.

25 A That's correct.

26 Q I take it that's illegal marijuana
27 grow operations.

28 A That would be anything listed as

1 marijuana grow operations, yes.

2 Q Right. I've reviewed your
3 literature that you've attached here and I don't believe
4 that any of it talks about medical marijuana operations
5 specifically. Would you agree with that?

6 A I have published a study on that in
7 terms of medical marijuana and some of the experiences
8 that we've experience in the City of Surrey.

9 Q But that's not attached to this
10 report?

11 A I don't believe it is, no.

12 Q All right. So you say there that
13 you're going to report on what this literature says and
14 that you will augment what is said in those articles
15 with data from the Fire Commissioner's Office and the
16 study.

17 A That's correct.

18 Q So what you're saying is you're
19 assuming that all marijuana, or all residences that grow
20 marijuana are hazardous, you're going to provide a
21 review of literature that makes comments to that effect,
22 and that you're going to present data that further
23 augments it in the sense of establishing those premises.

24 A That's correct.

25 Q Okay. And later on in your report,
26 to be fair, you acknowledge that this is a -- not a
27 random sample analysis.

28 A It's a non-random sample, yes.

1 Q Yes. I suggest to you that in fact
2 it's the opposite. It's a selective sample analysis.

3 A Based on what I was asked to do,
4 that's what we basically presented.

5 Q Right.

6 A And we considered -- I'm not sure
7 what aspect that you'd be referring to in terms of how
8 random.

9 Q Okay. Well, I'm saying that in a
10 random sample analysis, for example if you wanted to
11 know the -- let's say the rate of fires at medical
12 marijuana production sites in the City of Surrey.

13 A Right.

14 Q Sorry, not the rate of fires.
15 Let's say the rate of mould, that are at medical
16 marijuana sites.

17 A Right.

18 Q To do a random sample analysis what
19 you would do is you would contact a portion of the 1,225
20 medical growers in Surrey, or, say, 200. And you would
21 ask them questions and gather data from them as to
22 whether or not mould exists at their property. Correct?

23 A Correct.

24 Q And then you would extrapolate
25 those findings from the 200 who you have data from to
26 say that that is reasonably -- it's reasonably safe to
27 say that that data reflects what's going on for the
28 entire 1200 legal growers. Correct?

1 A That's what we did.

2 Q Well, okay. I respectfully -- I
3 disagree with you. I don't think that's what you did at
4 all.

5 A Well, 1200 and -- we know from
6 Health Canada's report there's about approximately 1200
7 medical marijuana grow operations in the City of Surrey,
8 and 315 of those have been inspected by city officials.

9 Q Right. Okay. Good point. So,
10 let's talk about your sample, then.

11 A Right.

12 Q Your sample consists entirely of
13 legal or illegal grow sites that have come to your
14 attention due to problems -- complaints to the police,
15 or reports from B.C. Hydro of high levels of electricity
16 consumption. Correct?

17 A Yes.

18 Q So, what you have here is the
19 sample of properties of legal and illegal marijuana
20 growers who have a problem of some kind.

21 A Well, the problem would be
22 deflected by the legislation that came about in 2006 for
23 the provincial government that compelled B.C. Hydro to
24 provide consumption records for every residential
25 address in the City of Surrey, and to display those that
26 were three times higher than the average rate of
27 consumption for a residence in the City of Surrey. And
28 that's how we came about to identify those.

1 So I guess the question scientifically
2 whether it was random or not random is still exists.
3 But we erred on the non-random perspective to err on the
4 side of caution in terms of advising the specifics on
5 that. So, but it still is one-quarter of all of the
6 grows that we know were licensed in the City of Surrey.
7 It's still one-quarter.

8 Q Okay. Can you tell me how many of
9 the various sites that were inspected came to the
10 attention of the EFSI team or your office as a result of
11 police -- like, the RCMP contacting you about some kind
12 of complaint?

13 A I cannot describe that.

14 Q Yes. So you don't know how many,
15 and for the -- so you don't know how many then were
16 directed to your attention because of high uses of
17 electricity.

18 A I cannot.

19 Q Okay, and I take it that the reason
20 that B.C. Hydro -- that the provincial government passed
21 these new regulations to allow B.C. Hydro to release
22 this information about electricity usage three times
23 higher than the average was because there was a
24 presumption at least that that amount of electricity was
25 potentially harmful.

26 A That's correct. I think it was
27 called a safety threshold.

28 Q Safety threshold. Okay. So then

1 the legal sites that you inspected which came to you
2 from B.C. Hydro had been defined by these bylaws as
3 exceeding the safety threshold.

4 A I don't believe it was a bylaw. I
5 believe it was legislation.

6 Q Legislation, excuse me. So that's
7 correct?

8 A Yes.

9 Q So the other 950 or so other legal
10 marijuana production sites, they didn't have this unsafe
11 level of electricity usage?

12 A We have not detected it through
13 that means, no, we have not.

14 Q Are you suggesting that B.C. Hydro
15 wouldn't detect high uses, three times higher than
16 normal?

17 A No, I'm not.

18 Q Okay. And the same thing applies
19 then for the illegal marijuana grow sites. They're
20 either coming to you as the result of a police complaint
21 of some kind of illegal activity, or because the B.C.
22 Hydro power analysis suggests that there's an unsafe
23 level of usage.

24 A That's correct, and there would be
25 one other means, would be a citizen complaint perhaps.

26 Q Citizen complaint which would be
27 with respect to some kind of criminal activity?

28 A The smells. There's a number of

1 things. The smells, the comings and going, the concerns
2 from the neighbourhood.

3 Q So I think you're agreeing with me
4 then that your sample, both illegal and legal, is not a
5 random sample. It was selected through these defined
6 criteria, the complaint or Hydro usage.

7 A That's correct.

8 Q And would you agree with me that in
9 a social science or a science study where you start with
10 a hypothesis, like in your case that growing marijuana
11 indoors is hazardous, the approach would be to test that
12 hypothesis with all known data to see if it's true?

13 A That's correct. If one has
14 possession of all of the data.

15 Q Right. But in your case you had
16 this hypothesis that you believed to be true, and then
17 you took selective data that supported the hypothesis
18 and didn't use data that didn't support the hypothesis.

19 A I would disagree with that. What
20 we did is we assessed those properties against
21 provincial and city regulations to see whether or not
22 they complied with what we believed to be the laws of
23 the land, provincial building code, fire code, bylaws
24 associated with the regulatory aspects of it; and we
25 weighted those or graded those against what we would
26 expect to find in an occupied residence at the time that
27 it was actually granted occupancy. So kind of your
28 exception checklist.

1 sections on mould in this study, did you?

2 A I did not.

3 Q And you didn't do that with respect
4 to violations of building code bylaws or other safety
5 bylaws in Surrey.

6 A That's correct.

7 Q And you didn't do that with respect
8 to -- you have sections where you talk about the amount
9 of what you call chemicals in bottles, labeled and
10 unlabeled.

11 A Right.

12 Q So you didn't provide the -- you
13 didn't provide or try to provide the statistical rates
14 of having those chemicals labeled or unlabeled in the
15 general population in Surrey.

16 A That's correct.

17 Q So then when you say that legal
18 medical marijuana residential sites have, let's say, I
19 think you say this in your report, 25 percent, according
20 to your study, have some kind of mould problem.

21 A We inspected 25 percent of what's
22 been reported to us as what exists in the City of Surrey
23 that are licensed under the regime. And by the means in
24 which I mentioned to you, we've inspected approximately
25 one-quarter of those, yes.

26 Q Okay. So it would be helpful then
27 to know what the rate of -- the percentage rate of mould
28 problems in all residences in Surrey is, correct?

1 A That would be correct, yes.

2 Q Because without that, we don't know
3 if 25 percent for medical marijuana residences is higher
4 or lower than the rate for the rest of the population.

5 A If we're referring to the
6 population of, say, 100,000 homes in the City of Surrey,
7 if that population, I would agree, yes, that's true.

8 Q And similarly with respect to the
9 population of B.C. in general.

10 A That's correct.

11 Q And Canada.

12 A That's correct.

13 Q And that would apply for the rates
14 of bylaws and code violations that you talk about?

15 A That's correct.

16 Q And applies to the rates of
17 unlabeled chemicals that you talk about?

18 A That's correct.

19 Q And it would apply to the rates you
20 provide with respect to electrical hazards due to
21 improper construction.

22 A That's correct.

23 Q And you would agree with me that in
24 providing or preparing any of these statistics with
25 respect to the general population, respect to medical
26 marijuana sites and illegal sites, it would be very
27 important to do and apply proper statistical methods of
28 analysis, correct?

1 A I would say that we applied the
2 statistical analysis that we had available to us. We've
3 asked Health Canada repeatedly for the addresses in all
4 of the locations in the City of Surrey, and we've been
5 denied access in order to get the sample size so that we
6 can be certain of what the characteristics are. But as
7 I mentioned before, 25 percent I believe is a
8 significant amount albeit acquired non-randomly.

9 Q I understand, but what I'm asking
10 you is that it would be important to apply to any data
11 you collect proper statistical methods of analysis.

12 A It would have been better, yes.

13 Q And you didn't have a statistician
14 on your team of researchers.

15 A I did not.

16 Q Okay, I'd like to ask you some
17 questions about the EFSI program.

18 A Yes.

19 Q Okay. I'm going to explain to you
20 my understanding of how it works and you correct me if
21 I'm wrong, okay?

22 A Okay.

23 Q So, as I understand it, you have a
24 team of Fire Services Officer, an Electrical Inspections
25 person, and a Bylaw Enforcement Officer, and an RCMP
26 officer on a team.

27 A That's not correct. I have two
28 fire officers, one qualified electrical inspector, and

1 an RCMP member.

2 Q Okay. I'm taking this from your
3 report at paragraph 30, but that's fine. All right. So
4 that's the team. Did these teams, these EFSI teams,
5 previously were they known as Green Teams?

6 A No.

7 Q Okay. So the way it works then is
8 somebody at Surrey -- actually I'll ask you. Who at
9 Surrey receives a complaint from the police, for
10 example, to initiate an EFSI investigation?

11 A I don't know that. I know that
12 from time to time we get information from the police,
13 but the overwhelming majority of the information
14 received is from B.C. Hydro in doing the analytics
15 around high consumption. But I can't profess to you the
16 proportion of which in terms of the information coming
17 to our attention.

18 Q I understand that. I'm not asking
19 you the proportion or who gave it to you. I think I
20 understand that. I'm asking you who at Surrey gets the
21 reports?

22 A The reports of --

23 Q Either crimes --

24 A -- a potential marijuana grow
25 operation?

26 Q Well, no, the information from B.C.
27 Hydro or from the RCMP.

28 A That report is received by a Deputy

1 Chief, who basically posts it on a website, a secure
2 website. Then EFSI Team, the fire officers and the
3 electrical inspector all analyze that information
4 against building records and other known information
5 about the property in order to ascertain whether or not
6 high consumption is a likelihood or not.

7 Q Okay.

8 A Have a reason to inspect.

9 Q And is one of those things that you
10 inquire about whether or not that residential address
11 has a medical marijuana licence to produce?

12 A We do not check that.

13 Q You're aware that Health Canada
14 would provide that information to you if you asked.

15 A They will not disclose that to us.
16 They will disclose it to a uniformed member of the RCMP.

17 Q Okay. All right, so either the
18 RCMP or B.C. Hydro contacts the Deputy Chief of the Fire
19 Department?

20 A That's correct.

21 Q Okay. And then you do an
22 assessment and you determine whether this property is
23 likely to have fire and safety problems.

24 A They conduct an assessment of a --
25 of the electrical records that have exceeded three times
26 normal. If they do, we're actually given a pattern of
27 two years previous to that, so they can see the billing
28 periods, to see what the pattern was, if it was stable

1 over and above the three times. They will look at the
2 property records to see whether there is any electrical
3 permits that were taken out there, or any equipment
4 that's been approved on the property that would be
5 associated, or would give some sort of indication why
6 the consumption is three times normal.

7 We would look at the building records as
8 well to see whether there's any billing permits that
9 were taken out, any alterations that were done, that
10 might provide an instance or a reason for that property
11 to be at that high consumption level.

12 Q Okay. But one of the things you
13 didn't do was to ask the RCMP to call Health Canada to
14 ask if that residential address had recently gotten a
15 production licence.

16 A To my knowledge, I don't believe
17 that we do that. And I would speculate that I don't
18 think that the RCMP would become an agent for us on that
19 particular matter, if that was the term -- in terms of
20 the information, what's going on on that property.

21 Q Okay. So you say you speculate.
22 So you never asked the RCMP if they would do that for
23 you?

24 A I don't think I can accurately
25 answer that question. In terms of the process.

26 Q All right. You personally, you
27 never asked the RCMP to find out if these sites were
28 legal.

1 A I do not.

2 Q Okay. And that would be highly
3 relevant, wouldn't it, to know if it was a legal site?
4 Because if they had gotten a licence that year, for
5 example, that would suggest that they probably installed
6 some lights, and that those lights use more power. That
7 would be an explanation for why the power consumption
8 had gone up.

9 A That's correct. But I also
10 mentioned that we check to see whether or not they had
11 taken out an electrical permit or there was any
12 alterations on the property, and that would likely have
13 been void, if we're to speculate. But I also realize
14 that that reason that that property has come to our
15 attention is because it was over the safety threshold
16 for consumption. So regardless of whether it was
17 licensed or not, probably is irrelevant to the fact that
18 we need to conduct an inspection of the property to make
19 sure it's safe, which is the goals of the initiative.

20 Q Okay. You bring up an interesting
21 point. So, are you aware of any examples, then, where
22 you get a report from B.C. Hydro saying there is three
23 times the power usage, so it may be unsafe. And then
24 you do an investigation and you find that a medical
25 licence holder has gotten the necessary permits and
26 installed equipment to grow marijuana.

27 A Not in Surrey.

28 Q You're unaware of any of those

1 examples?

2 A No. As a matter of fact, I can you
3 tell you that nearly all of the locations that we went
4 to have had a safety repair notice issued against them
5 since we've started inspecting grow operations that were
6 licensed.

7 Q I understand that. What I'm asking
8 you is -- so, okay, let's step back for a second. You
9 didn't actually get these reports. It was the deputy
10 chief.

11 A The deputy chief receives an Excel
12 spreadsheet of data from B.C. Hydro.

13 Q Okay.

14 A And based on a signature request
15 that I've made lawfully from B.C. Hydro in order to --
16 so, technically those -- that request and that
17 possession of that information is sent to myself, which
18 is passed on to my staff, who analyze that data.

19 Q Okay. Your staff analyze the data,
20 and then they decide whether to proceed with an
21 inspection.

22 A They proceed with it if it's over
23 the safety threshold, yes.

24 Q Okay. So it's entirely possible
25 that your staff could have received data from B.C. Hydro
26 suggesting the three times over limit, and your staff
27 would look into it, and it's entirely possible that they
28 could find that electrical and other permits have been

1 taken out to safely install hydroponic equipment.

2 A They have not, in the City of
3 Surrey.

4 Q But you don't that because you
5 didn't actually do these investigations. You said your
6 staff member did.

7 A That's correct.

8 Q Okay, so moving on, so then your
9 staff does an analysis and decides, okay, we should go
10 and inspect this site.

11 A That's correct.

12 Q And I take it that the assumption
13 is that the reason for the high power usage is that
14 there's a marijuana grow operation going on.

15 A They don't always find that, but
16 that's the primary assumption, yes.

17 Q Okay. Now, you brought up another
18 interesting point. So they don't always find that.

19 A That's correct.

20 Q So there are a whole number of EFSI
21 investigations going on where no marijuana grow
22 operation is found.

23 A Approximately about 5 percent.

24 Q Five percent, okay. But you didn't
25 include that information in your report, did you?

26 A That's correct.

27 Q So then the EFSI Team goes and
28 searches, enters the house and does an inspection.

1 A That's correct.

2 Q Okay, and that's without a warrant?

3 A Initially what we did is we asked
4 for permission to inspect and we inspected. The matter
5 was challenged before Provincial Court and B.C. Court of
6 Appeal, and we asked for permission today formally and
7 we asked for a waiver formally. And if that's not
8 granted then a search warrant is applied for and
9 generally obtained.

10 Q That's an administrative search
11 warrant under the *Safety Standards Act*?

12 A That's correct.

13 Q Okay, so, but prior to that Court
14 of Appeal decision which came out in 2010 --

15 A Right.

16 Q Prior to that, you were conducting
17 these searches without a warrant.

18 A We were conducting searches based
19 on the assumption of permission to enter, yes.

20 Q What do you mean "assumption of
21 permission"?

22 A Well, we were asking for permission
23 to inspect and we weren't giving the occupant a choice
24 of whether or not they wished us to obtain a search
25 warrant.

26 Q Okay, so if I understand what
27 you're saying, you're saying that you didn't give them a
28 choice. So was that like a -- they have two days to

1 respond to your request?

2 A No, in all cases our process
3 allowed for 24 hours. So we would post a notice, we
4 would notify them that we wanted to inspect, and we
5 always provided 24 hours and an appointment. And then
6 we would show up and we would explain to them that we're
7 here for an inspection, we'd like to inspect the
8 premises for safety reasons, and we told them what
9 information or evidence that we obtained, high
10 consumption, those types of things. And we would pose
11 that to the occupant and almost in every case they
12 invited us in to conduct the inspection. That was
13 challenged, that process was challenged as you put.

14 Q Are you saying --

15 A So it was somewhat of a tacit
16 approval, and I certainly -- we were corrected in the
17 courts.

18 Q I see. I find that really strange.
19 You say that in almost all cases you were invited to go
20 in.

21 A That's correct.

22 Q Even if it was an illegal marijuana
23 grow-op?

24 A That's correct.

25 Q All right, but in the case of the
26 medical marijuana producers would it be safe to say that
27 they would consent to the inspection?

28 A They did, yes.

1 Q All right. And then so for the
2 ones who did not consent, we don't know how many but you
3 say it wasn't that many.

4 A Well, actually I do.

5 Q Oh, you do.

6 A There was five.

7 Q Five total?

8 A Five total.

9 Q Okay. So for those five, you would
10 proceed to do the inspection anyways.

11 A No, we would obtain a search
12 warrant in those cases. One was denied and four were
13 granted. But out of the 1800 and some-odd, the non-
14 consent was five.

15 Q All right. And then you had the
16 court decision where the B.C. Court of Appeal found that
17 the EFSI provisions was a breach of Section 8 of the
18 *Charter*.

19 A That's correct.

20 Q Because it was an unreasonable
21 search.

22 A That's correct.

23 Q Right. And so now as a result of
24 that decision, in all cases you must get an
25 administrative warrant.

26 A In all cases we ask for permission,
27 and if that's granted and waived at the time, then in
28 fact that's the process that occurs. It still stands as

1 being five search warrants that we're actually --
2 administrative search warrants that were actually
3 applied for. Four of them were granted and one was
4 denied.

5 Q Okay. All right, so almost
6 everyone consents. You go in the house and then -- not
7 you personally. EFSI Team, correct?

8 A That's correct.

9 Q Did you ever personally attend
10 these inspections?

11 A Yes, I have. I have attended
12 probably greater than 50 but less than 100.

13 Q Okay. So approximately 2 or 3
14 percent of all of them.

15 A Yes.

16 Q And that Court of Appeal decision
17 we were talking about, it's called *Parkenstall v.*
18 *Surrey*, is that right?

19 A That's correct.

20 Q You were a witness in that case?

21 A That's correct.

22 Q All right, so you enter the
23 residence, you do your inspection. I'm curious, did
24 these property owners also give you express and explicit
25 consent to take 40 to 55 photographs of the interior of
26 their house?

27 A Explicit consent, I cannot confirm
28 or deny that.

1 Q In any event that's what would
2 happen in all cases.

3 A That's correct.

4 Q And so these photos that were
5 taken, were they only taken of possible violations?

6 A Our staff were instructed to take
7 photographs that represent the property and its
8 condition. I would assume there's a fair amount of
9 subjectivity associated with that.

10 Q All right, well, I'm not suggesting
11 that anyone was going in someone's bedroom and taking
12 pictures.

13 A Right.

14 Q What I'm asking about is if the
15 inspector goes into a house and doesn't find violations,
16 or even finds maybe one, does the inspector still take
17 photographs of the electrical equipment and whatnot that
18 didn't show a violation?

19 A As I said, there's an electrical
20 checklist that the electrical inspector has in order to
21 work through and to calculate what he finds in terms of
22 the property. So it's by exception, and photographs are
23 likely by exception as well.

24 Q So then it's quite possible that
25 your photo sample would only show deficiencies of
26 properties.

27 A I wouldn't say so, because from the
28 photographs that we graded we found a very large number

1 that had absolutely no observations of anything wrong
2 whatsoever. That would be contained in the report.

3 Q So then the inspectors were taking
4 pictures of people's houses where there was no suspected
5 violation of any law?

6 A I believe they're taking
7 photographs that represented the conditions of the home.

8 Q Without the owner's consent.

9 A I can't confirm or deny that.

10 Q Okay, and you haven't provided any
11 photographs in your report of these houses where there
12 was properly installed electrical equipment.

13 A No, I have not.

14 Q In fact what you've provided are
15 extreme examples of the opposite, non-compliance.

16 A What I've provided was samples of a
17 grading process that was developed by each one of the
18 experts that I commissioned to analyze those photographs
19 for their specific expertise; electrical, hygiene, and
20 building construction.

21 Q And who selected these examples?

22 A Those individuals did.

23 Q All right. Did you, in conducting
24 this study of the 1800 sites, legal and illegal, did you
25 get the consent of all 1800 of those property owners to
26 use the photographs of their home?

27 A I can't confirm or deny that.

28 Q So it's entirely possible, then.

1 A I can't confirm or deny that.

2 Q Okay. One thing that's curious to
3 me is at paragraph 36, where you talk about analysis of
4 EFSI results.

5 A Yes.

6 Q You say "In April 2014, the City of
7 Surrey and the University of the Fraser Valley initiated
8 a research project to study the harms associated with
9 MGOs in residential settings."

10 A That's correct.

11 Q Is that a different study than this
12 report?

13 A No.

14 Q So you're talking about this
15 report?

16 A That's correct.

17 Q And it was initiated by the City of
18 Surrey and the University of the Fraser Valley?

19 A That's correct.

20 Q It wasn't at the request of the
21 Department of Justice.

22 A The Department of Justice had asked
23 us four questions, and that initiated this study, in
24 order to answer those questions.

25 Q And the City of Surrey and the
26 University of the Fraser Valley, they helped fund the
27 report, is that right?

28 A That's -- actually the Department

1 of Justice, as we spoke before, commissioned us to do
2 this study.

3 Q Well, did the City of Surrey and
4 the University of Fraser Valley provide the time and
5 effort of paid employees to assist in preparing the
6 study?

7 A That would be myself, yes.

8 Q Just you?

9 A That's correct. Other staff would
10 have been -- made data available to us.

11 Q Okay. So they cooperated in the
12 study.

13 A That's correct.

14 Q All right. If you're going to back
15 to the FSI system, so I take it that for the illegal
16 growers, who you say would invite you in, you would
17 inspect, you'd find an illegal grow-op, and then you
18 would issue them a remediation order?

19 A No, the process works this way, is
20 that once the determination of safety violations, or
21 violations with our controlled substance bylaw, which
22 the City of Surrey has initiated, depending on the
23 degree of that, *i.e.*, if the electrical inspector
24 determines that the power needs to be terminated, that
25 gets terminated, or if there is any immediate safety
26 concerns, we'll generate the process. The property
27 owner is contacted and based on the observations, *i.e.*,
28 mould, mildew, electrical violations, or construction

1 issues, and an environment -- and we would ask the
2 property owner to commission a remediation company to
3 come in and conduct an assessment on the property. That
4 assessment includes electrical, building, and
5 environmental.

6 And then the property owner is required
7 to hire sub-consultants based on the recommendations of
8 the professional remediation company, or hygienist, in
9 order to effect those repairs. Once those repairs are
10 completed, then the environmental engineer will come
11 back, assess the property, provide a certificate that
12 the property has been corrected, and remediated to a
13 standard that would be acceptable to the city, and the
14 city then places the occupancy -- ability to occupy the
15 house back onto the property. That's the process.

16 Q Okay, and these -- these are
17 mandatory determinations. So if there is a remediation
18 order that's mandated, and the person has to comply.

19 A It's a remediation process.

20 Q Okay.

21 A Because there is a fair amount of
22 professional subjectivity on behalf of the remediation
23 specialist, or remediation organization. They're
24 generally a hygienist or an engineering firm that is
25 skilled in the area of assessing damages associated to
26 mould, mildew, chemical contamination, et cetera.

27 Q Okay. And if there was a violation
28 found, the property owner would be given a bill for the

1 costs of the inspection.

2 A Yes, that's correct.

3 Q Something in the range of \$5,000?

4 A It ranges between 3,000 and \$5000.

5 Q And then if there is a remediation
6 order they have to pay for that too.

7 A If there's a remediation process or
8 work that needs to be done in order to bring it back
9 into compliance, those are the costs associated with
10 that.

11 Q Okay. And then for the legal
12 growers, and we looked at your chart earlier this
13 morning when my friend was asking you some questions.
14 We will go to that chart right now actually, at page 11,
15 paragraph 41.

16 A Yes.

17 Q So the chart shows in -- basically
18 from 2005 to 2010 there are very very few legal sites
19 being inspected.

20 A That's correct.

21 Q In fact a total of 11 for that six
22 years.

23 A That's correct.

24 Q Which makes sense because the
25 number of producer licences has gone up exponentially in
26 the last few years.

27 A That's correct.

28 Q So that's why we see the number

1 going up there, or at least it's a possible reason.

2 A I would agree with that, yes.

3 Q Okay, and we see that, you know,
4 2007 was an anomaly year. I guess there were a lot of
5 illegal grows inspected.

6 A I believe that, in 2007, that's
7 when the legislation was passed. Actually it was in
8 April of 2006.

9 Q Oh, I see.

10 A The legislation was passed by the
11 provincial government in order to report the safety
12 threshold. And then armed with that, we identified a
13 thousand locations approximately in the City of Surrey,
14 and in 2007 the 445 are a result of those inspections
15 that occurred then.

16 Q Okay, so besides that year, which
17 you've explained why there are so many, so you had a
18 report of over a thousand, but it only shows 445 being
19 inspected here.

20 A That's right.

21 Q So --

22 A By the time that we got to them
23 they were actually -- they were gone.

24 Q But you still would have done the
25 inspections.

26 A Actually the Hydro information
27 would have disappeared off of the site, and then, of
28 course, you can imagine what it would take, you can do

1 four to five inspections a week, how long it would take
2 to get there, and then very shortly after that we
3 realized that the previous consumption was disappearing.

4 Q Okay. All right, so the medical
5 grow sites being inspected goes up quite dramatically.
6 In 2013 there's 198.

7 A That's correct.

8 Q And then the illegal ones are down
9 to 56. And it shows repair notices going up sort of in
10 -- it looks like it's in correlation with the medical
11 sites that are inspected.

12 A That's correct.

13 Q So repair notice is, if I
14 understand it, it's something that is issued to a
15 property owner informing them of certain problems and
16 telling them what they have to do to become in
17 compliance.

18 A That's correct.

19 Q So you would go and inspect the
20 legal sites. You didn't know they were legal until you
21 inspected them, correct?

22 A That's correct.

23 Q So you go there, you'd ask the
24 owner, they'd say it's a legal site. And then they'd do
25 an inspection, find some problems, talk to the owner
26 about how to fix those problems and give a repair
27 notice, is that right?

28 A That's correct. That would be an

1 electrical repair notice.

2 Q Okay. And the owners of these
3 medical sites, they didn't have any problem with that,
4 did they? They would get the repair notice and they
5 could be perfectly happy to comply.

6 A That's correct.

7 Q In fact it's reasonable to assume
8 they would if the fire inspection team comes and tells
9 them they've got a whole bunch of unsafe electrical
10 stuff in their house. They would want to have that
11 fixed, right?

12 A I would hope so, yes.

13 Q Because medical marijuana users,
14 like everyone else, doesn't want to have a fire in their
15 house. Correct?

16 A I would hope so. That's correct,
17 yes.

18 Q And do you know if all of those
19 fire repair notices have now been complied with?

20 A It's my understanding that they
21 have, yes.

22 Q All of them?

23 A As far as I know, yes.

24 Q So therefore all of these
25 identified medical grow sites that were inspected, all
26 of them are now in full compliance with fire and safety
27 bylaws.

28 A They are in compliance with the

1 B.C. *Safety Standards Act* and the electrical code, yes.

2 Q And are these sites annually
3 inspected?

4 A No.

5 Q But they could be.

6 A They could be, yes.

7 Q And for the illegal grow-ops, I
8 take it the EFSI team would inform the RCMP that there
9 was an illegal grow in the house?

10 A No.

11 Q No? Okay.

12 Forgive me, we've covered some ground in
13 my notes, so I'm going to have to go through them a
14 little bit.

15 Okay, I'd like to talk a little bit about
16 the experts that you hired to help you in your study.

17 A Yes.

18 Q You've provided a couple of CVs in
19 here, and reports from them.

20 A Yes.

21 Q Did you provide them all?

22 A I think you probably should have
23 them from the three of them. From Mr. Woodall, from Ms.
24 Macintosh, and from Mr. Hollyer, who is the city
25 employee and building official. I think all three of
26 them should be there.

27 Q But not the criminology graduate
28 student.

1 A No.

2 Q All right. So, these people are
3 the ones who actually conducted the analysis of the
4 photos.

5 A Yes. What we did is, we provided
6 them with a list of the addresses, and the photographs
7 that were associated with them, and we asked them to
8 grade them.

9 Q And you did that because you
10 recognized that you didn't have the necessary
11 qualifications to do the analyses that they were doing.

12 A I would say, yes, that's correct.

13 Q Okay. So, you picked people who
14 you thought were qualified to do the --

15 A I picked people who had had
16 experience in the field with -- for those particular
17 purposes. For example, the environmental individual is
18 in a course, has done work in the Province of British
19 Columbia in providing advice for remediating
20 contaminated properties that have been used for grow-
21 ops.

22 Q Right.

23 A Mr. Woodall would be an electrical
24 contractor who has been commissioned by B.C. Hydro and
25 others to conduct the same work. And Mr. Hollyer, who
26 is a building official with the City of Surrey, we
27 contacted him because he had certainly had lots of
28 experience in the past retrospectively in dealing with

1 grow operations in the City of Surrey and building
2 envelope violations and structural issues associated
3 with them.

4 Q Okay, and you would agree with me
5 that it is impossible for us to now here in this trial
6 to question these people as to their qualifications,
7 methodology, and findings?

8 A You have their CVs, but that is
9 correct, you would not be able to question them.

10 Q And Darrel Woodall, he was your
11 expert on electrical problems, is that right?

12 A That is correct.

13 Q And Darrel Woodall has been
14 employed by B.C. Hydro for many years doing inspections
15 to find out if there are illegal marijuana grow-ops,
16 correct?

17 A That's correct.

18 Q That's in fact his full-time job?

19 A I couldn't confirm or deny that.
20 They're an electrical firm. I believe they do a number
21 of other services in the electrical contracting field,
22 in addition to that work.

23 Q Okay, well, I am basing that in
24 part what Darrel -- Darren Woodall says in his CV. I am
25 a little confused. I don't know if his name is Darrel
26 Woodall, or Darren Woodall, it says curriculum vitae of
27 Darren Woodall, and then it says Darrel Woodall. What
28 is his name?

1 A Darrel Woodall.

2 Q Darrel. That's --

3 JUSTICE: What page are you on?

4 MR. JACKSON: This is at 385.

5 JUSTICE: Thank you.

6 MR. JACKSON: Appendix S.

7 Q Okay, if you see down, he lists his
8 qualifications. It appears that he has an electrical
9 contracting licence, an electrical FSR, I don't know
10 what that is. An electrical TQ, again I don't know what
11 that is. And then he says, he describes his work
12 experience, and he says,

13 "While working for family business, Woodall
14 Electric Ltd., our company was approached in
15 January 1998 for B.C. Hydro Power Authority
16 for a pilot program to investigate theft of
17 electricity from this utility. This program
18 was initiated to help the bolster crew
19 compliment to attend various locations
20 throughout Greater Vancouver and the Fraser
21 Valley region of British Columbia, as the
22 problem of thefts and financial loss to B.C.
23 Hydro became an epidemic. Primarily all
24 responses to these call-outs had to do with
25 suspected theft of electricity associated
26 with MARIJUANA GROW OPERATIONS. The program
27 was expanded to a large amount of the
28 response area, and a long-term labour

1 contract was negotiated. As time went on, I
2 was also indentured to detect and locate
3 energy diversions, thefts of electricity, and
4 eventually hired to full-time contracting to
5 B.C. Hydro security department.
6 I worked across B.C. as a primary electrical
7 investigator for the detection of these
8 thefts from January 1998 to January 2012. I
9 have investigated and dismantled the
10 electrical apparatus of over 2,500 MARIJUANA
11 GROW OPERATIONS, detected and located over
12 1,000 thefts of electricity. I have
13 testified in Federal and Supreme Court on
14 over 300 criminal cases as an expert in the
15 area of electrical investigating, and the
16 thefts of electricity in conjunction with
17 marijuana grow operation electrical
18 apparatus. I have given expert opinion on
19 electrical apparatus. I have given expert
20 opinion on electrical apparatus and
21 consumption records for police agencies
22 across western Canada, for the assistance of
23 a warrant to search relating to suspected
24 illegal marijuana grow operations. I have
25 also given expert opinion related to the
26 electrical apparatus, theft of electricity
27 and damages as a result of marijuana grow
28 operations in regards to civil court cases."

1 So, that is what he says. He is not a
2 particularly unbiased or objective electrical contractor
3 to do this expert opinion work that you've asked him to
4 do, is he?

5 A I don't think I could agree with
6 that. I also noticed that his work history is in
7 residential wiring, high voltage installations,
8 commercial wiring, industrial wiring, and I certainly
9 don't have the number of permits or projects that he
10 worked on in that area, so it would be difficult to
11 weigh that.

12 Q Okay. Well, there is a number of
13 issues I see here. One of them is that he says,
14 basically all that he has done, from 1998 to 2012 is
15 investigate and dismantle electrical apparatus at grow
16 operations. Correct?

17 A That's what he says, yes.

18 Q Okay. So, just on that, that would
19 suggest he has had no experience in anything else with
20 respect to electrical works in a house. Correct?

21 A Well, I would still go back to
22 defining that his work history and experience includes
23 residential wiring and others, but I just don't have the
24 numbers to compare, so I'm not sure how I would weight
25 that on the surface of that.

26 Q Okay. But you don't see there is
27 any problem in his objectivity in the fact that he has
28 been likely a paid expert for B.C. Hydro and/or the RCMP

1 and/or Civil Forfeiture in hundreds of criminal cases
2 and other cases?

3 A Well, I don't see the latter two in
4 terms of working for Civil Forfeiture or for the RCMP.
5 Certainly B.C. Hydro would be one for sure.

6 Q Well, he says in the last sentence,
7 "civil court cases". So as I understand it, they're
8 civil forfeiture, but also B.C. Hydro is launching civil
9 court actions targeting people who they allege have
10 stolen electricity.

11 A Well, I don't think that would be
12 civil forfeiture, though.

13 Q No, that's another --

14 A I think that's a civil process,
15 right?

16 Q You are correct. They are
17 different things, but they are both civil cases.

18 A Correct.

19 Q And in his CV, he actually --
20 that's all he talks about. He doesn't talk about the
21 details of his experience in doing electrical work at
22 all. Correct?

23 A No. Once again, I have to say that
24 he does talk about his work history and experience as
25 being associated in those areas, but I don't know the
26 quantity or the quality or the value of that either.

27 Q Right. He has these bullet points,
28 he says, work history and experience, employment in

1 family electrical business since 1978. Residential
2 wiring, high voltage installations, commercial wiring
3 and industrial wiring. That's what it says.

4 A That's right.

5 Q Okay. What I'm saying to you is
6 after that, when he's providing detailed descriptions of
7 his work experience, he's only talking about his
8 involvement in investigating and in dismantling **
9 electricity cases. Correct?

10 A That's correct.

11 Q So, in reviewing this, you accepted
12 that he was a qualified expert to provide opinion
13 evidence to you, which you would then confirm and repeat
14 to the court now.

15 A On the basis of what I saw it
16 looked -- it appeared that he had a great deal of
17 experience in inspecting these premises that were used
18 for these reasons.

19 Q Okay, we'll move on. Okay, I'm
20 going to take you through some of your report now. If
21 you go to page 7, paragraph 25,

22 A Was that paragraph 25?

23 Q Yes. This is in the section where
24 you summarize the opinions on the issues addressed.

25 A Yes.

26 Q And you say:

27 "This report will show that a significant
28 number of licensed production facilities

1 appear to willfully ignore municipal,
2 provincial, and national health and safety
3 standards and therefore present the same
4 health and safety risks as illegal grow
5 operations."

6 A That's correct.

7 Q I'm going to give the opportunity
8 now to tell me if your opinion has changed after our
9 discussion today.

10 A In what form?

11 Q That a significant number of
12 licensed producers appear to willfully ignore those
13 standards.

14 A In the cohort that I inspected, the
15 315, none of those locations took out or followed any of
16 the regulatory processes associated with some of the
17 guidelines that they're given when they receive a
18 licence. And I can also say that the remaining 900, but
19 I don't know where the locations are, did not apply for
20 zoning, electrical permits, building permits or permits
21 for altering their premises either. So my comment here
22 as appear and the term "willfully" isn't a -- is a
23 statement that I have made, believing that the
24 individuals are aware and know what they're supposed to
25 do and what regulations they're asked to follow, yet
26 don't.

27 Q So that's pure conjecture, isn't
28 it?

1 A That's my belief.

2 Q You didn't ask any of them, did
3 you?

4 A Any of which?

5 Q Any of the Licensed Producers who
6 were subject to your study and report. You didn't ask
7 any of them if they willfully ignored any standards or
8 loss.

9 A I did not.

10 Q So it's entirely possible that as
11 based -- that the reason that they weren't following
12 these standards is because they were unaware of them?

13 A I would have difficulty accepting
14 that theory, given that the guidelines that are issued,
15 which I'm led to believe are issued, which I've received
16 from Health Canada, outline -- I think there's three
17 bullets, it's contained in my report, but certainly
18 zoning, they are supposed to follow zoning and building
19 regulations and fire safety regulations and their issued
20 that. And I challenged the government of the day on
21 that and I received some communication from the Minister
22 at the time that basically advised me that they were
23 directed and that they do possess communications, each
24 and every licence, that they're to follow these
25 regulations; yet none of them have.

26 Q And that's entirely possible
27 because they just didn't know what they were. Correct?

28 A I assume that's possible.

1 Q And in fact we just discussed your
2 chart and you agreed with me that all these repair
3 notices had been issued and that that suggested that
4 people were wanting to comply with all the applicable
5 safety bylaws.

6 A I don't know if I would support the
7 term "wanted to comply". They were told to comply.

8 Q Okay, I think that actually you
9 agreed with me that they would want to because everyone
10 as a matter of common sense wants their home to be safe.

11 A That's one reason why to comply,
12 yes.

13 Q So, the repair notices is actually
14 evidence that they may want to comply with all the
15 applicable safety standards? That they are not
16 willfully ignoring them? Correct?

17 A Well, I would still adjust that
18 statement to say they were told to comply. They weren't
19 found in compliance.

20 Q All right. And you would agree
21 with me that it would be very helpful to know the
22 general rate of non-compliance with those safety
23 standards in all residences in Surrey?

24 A That's correct.

25 Q But you don't know that?

26 A That's correct.

27 Q So, it's entirely possible that the
28 same level of compliance exists in the general

1 population?

2 A That is possible.

3 Q Okay, at paragraph 28, this is
4 again the EFSI, you talk about it being a concept
5 developed in collaboration with a multi-agency task
6 force, the ground breaking initiative was driven by new
7 research quantifying the public safety hazards from grow
8 operations. As well as a marked increase in fires
9 attributed to MGOs in Surrey for 1995 to 2005.

10 A That's correct.

11 Q So, I take it that the new research
12 you are referring to is the study of Darryl Places? We
13 have already talked about?

14 A It was the study that looked at the
15 number and the rate of fires occurring in the City of
16 Surrey, and the 24 times more likely at that point in
17 time, yes.

18 Q Okay, and you also talk, I'm not
19 sure if it was here or another place, about I think you
20 said you were spearheading the initiative? You were
21 actively involved?

22 A That's correct.

23 Q And was Darryl Plecas also actively
24 involved?

25 A In this initiative? No.

26 Q Yeah. No, okay. So, when you say
27 multi-agency task force, who does that include?

28 A The electrical inspection division,

1 the building inspectors, our bylaw department, and our
2 fire department.

3 Q And the RCMP?

4 A The RCMP are part of this team as
5 you are aware, in terms of keeping the peace, yes.

6 Q So they are part of the multi-
7 agency task force?

8 A That's correct.

9 Q And when you say that driven by new
10 research quantifying public safety hazards, you are not
11 referring to fire statistics provided by the Office of
12 the Fire Commissioner, are you?

13 A No, I am talking about our
14 experience in the City of Surrey.

15 Q I believe you'll recall this
16 morning we looked at the statistics for all of B.C. --

17 A That's correct.

18 Q Which showed that in 2004, I
19 believe it was 25 fires?

20 A Yes.

21 Q And I can confirm that if you like,
22 but I believe that is what it was. Actually, just a
23 second.

24 A I will adopt that.

25 Q So, in 2004 there were 27. In
26 2005, the statistics don't provide a number, and 2006 it
27 was 18?

28 A Yes.

1 Q So, you didn't consult those
2 statistics?

3 A I did not.

4 Q And Surrey was approximately 9
5 percent of the population at that time, correct?

6 A That would be a fair estimation,
7 yes.

8 Q So, 9 percent of 27 is
9 approximately 2.6?

10 A Right.

11 Q In Surrey, if you did the
12 statistics. So, the statistics actually indicate that
13 there were something in the range of three fires from an
14 illegal grow-op in Surrey that -- in 2004?

15 A Right, I think if I could refer to
16 the chart, you might see exactly what they were.

17 Q Are you saying that the Fire
18 Commissioner's statistics are not accurate?

19 A No, you asked me if I would accept
20 that where 9 percent of the population of the province
21 and if there was 27 fires that are associated with grow-
22 ops, and that we would represent 9 percent of those. I
23 don't think that's an accurate way of reflecting it.
24 We'd probably -- our experience would be somewhat
25 different than that, as opposed to --

26 Q Okay.

27 A -- characterizing it by percentage.

28 Q But you don't have any statistics

1 in this report with respect to, for example, the number
2 of fires at a grow operation, an illegal grow operation
3 in 2004, do you?

4 A In Surrey?

5 Q It's not in this report, in Surrey.

6 A Yes, it is.

7 Q Where?

8 A On page 15, paragraph 55, in 2004
9 there was 10.

10 Q I stand corrected, Mr. Garis.
11 However, I point out that this is a chart that again
12 appears -- there is no citation, there is no raw data.
13 This is just a chart that you've prepared for this
14 report. Correct?

15 A That's correct.

16 Q So we have no way of verifying this
17 number?

18 A Yes, there is a way of verifying
19 that number.

20 Q But it's not in this report.

21 A It's not in this report, that's
22 correct.

23 Q Okay. At paragraph 29, this is the
24 following paragraph from what we were just talking
25 about.

26 A Yes.

27 Q So,

28 "The program was intended to reduce the

1 incidence of house fires and associated
2 public safety hazards caused by residential
3 MGOs, and was one of the first attempts in
4 B.C. to apply an administrative solution to a
5 problem they had previously addressed only
6 through the criminal justice system."

7 Okay?

8 A That's correct.

9 Q Now, my understanding is that the
10 criminal justice system actually has nothing to do with
11 house fires or public safety hazards. It's about
12 dealing with people accused with criminal offenses.
13 Isn't that correct?

14 A The context of this was to deal
15 with, as it says there, caused by residential marijuana
16 grow operations. And it was an attempt to use an
17 administrative approach to rendering those safety
18 hazards as being safe, rather than relying on the
19 justice system in order to administrate justice to the
20 illegal aspect of growing marijuana. That's what it was
21 intended to do.

22 Q And we were just talking about --
23 recently about this whole issue of you -- you saying
24 that it appears that medical marijuana growers willfully
25 ignore safety standards, et cetera.

26 A That's correct.

27 Q Okay, and I took issue with that.

28 A Right.

1 Q Said it was possible that they just
2 didn't know about them, or that they actually do want to
3 be in compliance. It's also possible, isn't it, that
4 people who have these medical licences who are ill and
5 have various health problems, they may be -- and they're
6 normal -- I'm putting to you in a general sense,
7 assuming that all these marijuana people being licensed
8 are normal people who are concerned about possibly being
9 stigmatized by being associated with marijuana at all.
10 Is that possible?

11 A That is entirely possible.

12 Q So one way to address this problem
13 could be, if this assumption is true, that these people
14 are concerned about stigma and privacy, would be to
15 provide a confidential process for reporting inspection.
16 Isn't that right?

17 A Sorry, could you repeat that again?
18 I'm sorry.

19 Q Well, we're assuming -- I'm
20 assuming, putting to you here that the medical licence
21 holders, they may have concerns about stigma.

22 A Yes.

23 Q And privacy.

24 A Yes.

25 Q And that may be a barrier,
26 something that's preventing them from contacting the
27 City and asking for the various permits and informing
28 the City that they have this licence for growing

1 marijuana.

2 A That would be one possible theory
3 of non-compliance, yes.

4 Q Right. And so, assuming that we're
5 correct, it would be possible to address those concerns
6 and that problem by way of a confidential reporting and
7 inspection model.

8 A If the first sense that you had
9 described is true, then potentially, yes.

10 JUSTICE: Why don't we take a ten-
11 minute break.

12 **(PROCEEDINGS ADJOURNED AT 3:04 P.M.)**

13 **(PROCEEDINGS RESUMED AT 3:16 P.M.)**

14 JUSTICE: Go ahead.

15 MR. JACKSON: Justice Phelan, I was
16 just discussing with my learned friend timing issues.

17 JUSTICE: Mm-hmm.

18 MR. JACKSON: I am hopeful to be done
19 by 4:30, but I'm not certain that I will be. And I
20 wanted to raise it to your attention to see if it's
21 possible to sit an extra half-hour today, or if Mr.
22 Garis could come back tomorrow.

23 JUSTICE: Well, it's a long way to
24 make him come in for a half-hour. Although he could
25 probably drive with you --

26 MR. JACKSON: Oh no.

27 JUSTICE: -- instead of Surrey.
28 that's not very far.

1 MR. JACKSON: It's environmentally
2 friendly.

3 MR. CONROY: Depends if he uses the
4 bridge or not.

5 JUSTICE: What is the preference of
6 counsel? You've got your re-exam.

7 MS. WRAY: That's right. I don't
8 anticipate there will be much on re-exam. Probably five
9 or ten minutes at most. I haven't actually broached the
10 topic with Chief Garis about coming back tomorrow.

11 JUSTICE: Would it be a problem?

12 A It might be. I'm dealing with a
13 death in my organization, and I have a lot of
14 uncertainty over the next couple of days. If it's the
15 wishes of the court, then I will adjust accordingly.

16 JUSTICE: Let's finish it today.

17 MR. CONROY: I'm going to be short
18 tomorrow, I understand.

19 JUSTICE: Are we going to be?

20 MR. CONROY: Or was it

21 JUSTICE: Brief tomorrow? I thought
22 tomorrow was a fairly --

23 MS. WRAY: We have two witnesses
24 tomorrow. Two cross-examinations of the defendant.

25 MR. CONROY: And I thought I was asked
26 to make sure they're both here in the morning, since you
27 thought you'd finish in the morning.

28 MS. WRAY: Well, I'm just speaking

1 here in terms of Chief Garis. I do understand there has
2 been -- he has reminded me, there was, I know, a serious
3 incident that happened in his organization. And so I'm
4 not sure of consequences of that, but it does appear
5 that if at all possible Chief Garis would prefer to
6 finish today.

7 MR. CONROY: Oh, I understand that. I
8 was just saying, my understanding is that we're -- we
9 were asked to have both witnesses here in the morning
10 because the estimate of the time for cross-examination
11 tomorrow is probably we were going to finish by noon.
12 That's what my understanding is.

13 MS. WRAY: Oh, I don't know if we'll
14 be finished by noon. There may be a possibility,
15 however, that we begin, if he is available, a cross-
16 examination of the second witness during the morning.

17 MR. CONROY: Okay.

18 JUSTICE: Got you. I'd like to follow
19 that.

20 MR. CONROY: Well, we'll see what we
21 can do.

22 JUSTICE: How is the court reporter
23 doing, actually? You're more important than me. I
24 mean, you can get along without me, I'll read about it
25 in the newspaper, but -- how about you?

26 THE COURT REPORTER: I'm fine.

27 JUSTICE: You can go a little longer?
28 You stay until the deed is done?

1 THE COURT REPORTER: Yes.

2 JUSTICE: And the dog is found. All
3 right. We'll finish it up today.

4 MR. JACKSON: Thank you. Having said
5 all that, I am going to try to finish as soon as I can.

6 JUSTICE: You will be commended for
7 it.

8 MR. JACKSON:

9 Q Chief Garis, taking you to
10 paragraph 33.

11 A Yes.

12 Q Now, here you cite a number. You
13 say, "Beyond the remediation of the former MGO sites,
14 the program has contributed to more than 80 percent
15 reduction in the number of MGOs in the community, and a
16 significant decrease in MGO-related fires." Correct?

17 A That's correct.

18 Q Okay. Now, my question here is,
19 I'm just not sure how you got at this number when as
20 we've already discussed, we have no idea how many
21 illegal marijuana grow-ops there are in Surrey.

22 A That 80 percent would be
23 information coming to our attention by the various means
24 which we described earlier on.

25 Q So, B.C. Hydro and the RCMP?

26 A B.C. Hydro, RCMP, and citizen
27 complaints, yes.

28 Q Okay, so there has been an 80

1 percent reduction in the number of complaints from those
2 sources?

3 A That's correct.

4 Q Fair enough. So, Mr. Garis, or
5 Chief Garis, paragraph 40, you make reference in this
6 paragraph to the initial concern of the FSI program was
7 primarily focused on electrical problems?

8 A Yes.

9 Q Now, at some point that changed to
10 a broader mandate?

11 A That's correct.

12 Q Okay, can you explain to me when
13 that change happened and what it was?

14 A As I paragraphed here as a
15 consequence, some of the issues relating to mould and
16 the presence of chemicals, came to our attention. As
17 part of the controlled substance bylaw and applying it,
18 and remediating those sites, or making those sites clean
19 for re-occupancy in the future, that process came to our
20 attention as being something that was very valuable.

21 Once again I would bring your attention
22 to a process that occurred, I believe it was in 2009,
23 which is one of my companion reports where we actually
24 sat down with the environmental engineering firms that
25 were doing work in the City of Surrey, and they brought
26 to our attention about some of their concerns about what
27 they were finding and how well or not well they were
28 being remediated, and they wanted to express those

1 concerns to us as well. So, it became I guess more of a
2 gratifying, if that was the term, outcome of making
3 these homes safe.

4 Q Okay, I guess -- you keep
5 mentioning this Controlled Substances Bylaw.

6 A Right.

7 Q I am unfamiliar with that. Could
8 you explain to the court what that is?

9 A The City of Surrey adopted a bylaw
10 which was referred to as Controlled Substance. So, in
11 other words, properties that were used for growing
12 marijuana, could be methamphetamines, the substance was
13 something that would be controlled under the legislation
14 federally in terms of control, like "a drug" illicit or
15 otherwise.

16 Q I understand. And what did the
17 bylaw say?

18 A The bylaw basically prohibits the
19 growing and propagation of a controlled substance in a
20 residential setting in the City of Surrey.

21 Q So it repeats what is already
22 illegal under the *CDSA*?

23 A It allows for the city to invoke
24 remediation, and gives us the authority to inspect those
25 property, and to conduct a process that will render them
26 safe after the inspection process. It allows us to
27 establish a fee for this service that is provided as
28 well.

1 Q I see. Now, this, of course, does
2 not cover medical marijuana licence holders?

3 A Well, I would differ. It's a
4 controlled substance. Marijuana, whether it's medical
5 or otherwise, it is still a controlled substance. It's
6 a bit of a grey area for the -- basically this process
7 that's occurring, that has been observed by the city.

8 Q So, if I understand what you're
9 saying, the City of Surrey has a controlled substance
10 bylaw --

11 A That's right.

12 Q -- and controlled substance is
13 defined as a substance controlled under the *Controlled*
14 *Drugs and Substances Act*?

15 A That's correct.

16 Q And under that bylaw, even if
17 someone has a medical marijuana licence, under the *MMAR*,
18 they are subject to the controlled substance bylaw?

19 A Yes, they are.

20 Q And so that means that EFSI teams
21 that attend at a legal marijuana site, they can use this
22 bylaw?

23 A The reason that they're there is
24 under the auspices of the bylaw. They don't invoke all
25 of the aspects of the bylaw in respect of a federal
26 jurisdiction, and the processes occurring that we're in
27 today.

28 Q Okay, so I'm not sure I understand.

1 Are you saying that they can but they don't use the
2 bylaw?

3 A That's correct.

4 Q Okay. So EFSI teams in Surrey are
5 not applying this bylaw to medical growers?

6 A Not in its entirety, no.

7 Q Well, what do you mean?

8 A We're conducting inspections, going
9 back to the conversation that we had about the medicinal
10 grow operations that were inspected and the repair
11 notices that were issued against those, and that's all
12 that was basically done, was inspections that are taking
13 place to make sure that they're safe, that there's no
14 electrical issues associated with them. Corrective
15 actions are taken on anything that's obvious in terms of
16 the *Safety Standards Act*, and the other aspects in terms
17 of remediation, removal of the plants or using the
18 property for a controlled substance is basically held in
19 abeyance in respect of the legislation and the processes
20 occurring today.

21 Q I see. So if you could confirm
22 with me then that the EFSI team is not requiring medical
23 licence holders to remediate their problem, or remediate
24 what the EFSI team determines to be a problem at their
25 property under that specific bylaw.

26 A Not all of the aspects. I still
27 would like to focus on the electrical safety aspect of
28 it, or anything that's obvious. They will ask for

1 repair notices that invoke those repair notices, yes.

2 Q Okay. The electrical and fire
3 safety, that would also be covered by the *Safety*
4 *Standards Act* and various regulations under that.

5 A Just to refresh, the electrical
6 inspector for the City of Surrey is there to enforce or
7 to monitor the *Safety Standards Act* for the province.
8 We're a delegated authority from the province.

9 Q Yes.

10 A So we have our own electrical
11 inspector in order to perform those services, yes.

12 Q Okay. So this brings me back to
13 another point. I don't know if we were quite clear on
14 the situation with respect to the EFSI team attending at
15 residences and then finding various problems, some of
16 them specifically related to the growing of marijuana.
17 But some of them may not be related to growing
18 marijuana, is that right?

19 A It could be apparatus or equipment
20 that is not in compliance with the safety standards,
21 yes.

22 Q So for example, if you find that at
23 a licensed -- well, restricted to anyone's house, if you
24 go there and you find that for example a bathroom has
25 been added to the house without a proper permit, is that
26 something that you would order to be remediated?

27 A We'll ask him to take out a permit
28 for the work that was conducted, and depending on the

1 nature of it or the extent of it an inspection might be
2 required.

3 Q And previously we talked about the
4 persons who were subject to EFSI inspections, and still
5 are, I take it. What they receive is a 48-hour notice
6 that's put on their door, is that right?

7 A That's correct.

8 Q And then what happens if they're
9 not home? What if they're away.

10 A Notice is posted and then a search
11 warrant would be applied for if you weren't able to get
12 in contact.

13 Q Okay. And are people specifically
14 informed that they have the right not to consent to
15 these inspections?

16 A Yes, they are.

17 Q That's part of the policy or is
18 that on the notice?

19 A That's correct.

20 Q Okay. Okay, so you have this new
21 controlled substance bylaw, and as a result you pay more
22 attention to mould and chemicals, is that right?

23 A It's not new. It was actually
24 brought into place in 2006.

25 Q Okay.

26 A And it addresses the assessment of
27 a home for environmental conditions such as mould and
28 chemicals, yes.

1 Q And that's why you started -- or
2 not you personally, but the EFSI teams were -- started
3 taking extensive photographs of things like mould and
4 chemical containers?

5 A They were there to document their
6 experience, so that they had some materials that were
7 evidence of what they had saw and done.

8 Q So let me give you give me an
9 example and tell me if you can comment on it. Am I to
10 understand if the EFSI team goes into a house, enters
11 the basement, and they find a shelf, like an open shelf
12 that you can see everything in it, and it's got a bunch
13 of containers, all of which are labeled "laundry
14 detergent" or something innocuous like that, that the
15 EFSI team would take a photograph of that, because
16 they're chemicals?

17 A Probably unlikely. If you talked
18 about detergent.

19 Q So they would only be chemicals
20 that they have some kind of suspicion about.

21 A That's correct. I would remind
22 that the *Fire Services Act* and the *Safety Standards Act*
23 of the province of British Columbia prohibit more than
24 one litre of gasoline on a residential premise. So a
25 lot of these materials can have those types of --
26 toluene, gasoline. There is other materials that
27 certainly they're going to be concerned about, and will
28 take every effort to document.

1 Q I'm curious that you mentioned
2 gasoline as an example, and you said there is -- you're
3 allowed to have one gallon. Is that right? Is that
4 what you said?

5 A A litre.

6 Q A litre.

7 A Yes.

8 Q Okay. I wasn't aware of that. But
9 I was aware that people are allowed to have gasoline at
10 their house.

11 A That's correct.

12 Q And that, of course, is an entirely
13 legal substance.

14 A That's correct.

15 Q If it's under a litre.

16 A That's correct.

17 Q But that gasoline is actually an
18 extremely flammable and potentially explosive substance.

19 A That's correct.

20 Q So it's something that could be in
21 every house in Surrey that could pose a -- as you call
22 it, a chemical hazard to --

23 A That's correct.

24 Q -- to anyone. First-time
25 responders, or the occupant.

26 A But the quantities and the amount
27 are certainly regulated and prohibited.

28 Q And again, that would apply as well

1 to motor oil or paint?

2 A Flammable and combustible materials
3 are slightly a different classification, but certainly a
4 concern, yes.

5 Q Right. So those are substances
6 again that many houses have in their -- in the house.

7 A Perhaps, yes.

8 Q Like, that are a potentially
9 serious fire safety hazard.

10 A Yes.

11 Q And what about -- you would agree
12 with me as well that hard alcohol in people's liquor
13 cabinets, those are also very flammable, aren't they?

14 A Yes.

15 Q And were these things that EFSI was
16 also photographing?

17 A No.

18 Q So really -- really you were only
19 concerned with chemicals, as you call them, relating
20 specifically to the growing of marijuana.

21 A They were recording large
22 quantities or quantities that they felt were relevant to
23 describing what the condition of the property were at
24 the time of the inspections.

25 Q I believe your answer is "yes",
26 then?

27 A That's correct.

28 Q And you would agree with me that

1 fertilizer from a garden store is a perfectly legal
2 product in any quantity?

3 A Yes, but it's highly worrisome.
4 The nitrates associated with fertilizers, mixed with oil
5 or any other product can be highly explosive. I think
6 it's referred to as ANFO and it's used in a -- it's
7 quite an explosive material under the wrong condition.

8 Q As is paint or gasoline, correct?

9 A To a lesser degree. A much lesser
10 degree.

11 Q Okay, so what I hear is you're
12 identifying a problem with very large quantities of
13 certain types of fertilizer?

14 A No, I would actually say a very
15 small amount of fertilizer especially around the
16 nitrates, as I said, mixed with an oil or any other type
17 of material are highly explosive and highly volatile.

18 Q An oil or any other type of
19 material.

20 A So, for example, that there's oils
21 or binders that are associated with pesticides. If
22 those two are to come in contact or be mixed, actually
23 create a highly explosive material.

24 Q And that is based on your practical
25 experience as a police officer, that opinion?

26 A I'm not a police officer. I'm a
27 fire officer.

28 Q Oh sorry, a fire officer. Yes.

1 A Yes, that would be in my training
2 as a fire investigator.

3 Q Okay. But you're not basing that
4 on any particular advanced knowledge in chemistry, for
5 example.

6 A It's basically an outcome. I can
7 tell you that there's been some horrendous explosions
8 associated with nitrates historically in our business.

9 Q Okay. And again, fertilizers are
10 legal substances that many gardeners have at their
11 house.

12 A That's correct.

13 Q So it's a potential concern of all
14 houses in Surrey.

15 A No, I would expect to see
16 fertilizers probably in an outbuilding or a storage shed
17 and in small quantities that are used seasonally, like
18 in the spring likely, fertilizers.

19 Q And that would be a safer way to
20 contain it, is that right?

21 A That's right.

22 Q So if a legal medical grower was
23 keeping their fertilizer in a shed outside, or outside,
24 that would be a way to mitigate that hazard.

25 A Depending on the quantities and if
26 it was in an approved container indoors or outdoors, I
27 would say that would be acceptable, yes.

28 Q And what about the quantity and

1 location could be dealt with by way of a city bylaw,
2 correct?

3 A That probably would not be the
4 case. We'd probably rely on a provincial or federal
5 regulation for that. I believe pesticides and
6 fertilizers are regulated that way.

7 Q All right. And if -- skip that
8 question.

9 In your report you talk a lot about
10 labeling and you mention it as being a risk to children
11 and you say because children might consume it because
12 they're curious, right? That's something you say in
13 your report?

14 A That's correct.

15 Q Okay. Now, I take it you're
16 talking about quite young children.

17 A That's correct.

18 Q Okay, who can't read.

19 A If you can start with the beginning
20 of the question, did you say unlabeled?

21 Q Yes.

22 A And then so if they couldn't read,
23 I don't know whether -- how I'd make that connection,
24 whether it would be -- matter or not.

25 Q Right. Well, you talk about
26 labeling versus unlabeled.

27 A Right.

28 Q So, and you talk about the

1 possibility of children consuming dangerous chemicals.

2 A That's correct.

3 Q That's also -- that's just a
4 problem that exists generally. Children could drink
5 laundry detergent, for example, labeled or unlabeled.

6 A That's correct.

7 Q So it's just, it's more a matter of
8 proper parenting.

9 A That would be true. But I'd also
10 be concerned about first responders in terms of if there
11 was a fire, or there was a medical emergency or
12 something that was occurring on the premises and they
13 were unable to determine what the product was because of
14 the fact that it was unlabeled. So that would become a
15 question of the unknown. So that would cause probably a
16 hazardous materials response that would require a
17 spectrum analyzer to determine what the basis of the
18 product was so they could determine toxicity,
19 contamination levels, et cetera, et cetera.

20 Q Okay. You don't provide any
21 statistics in your report about the number of instances
22 of this actually happening in Surrey.

23 A No, but I can reference the Office
24 of the Fire Commissioner that sent out a bulletin very
25 early in 2004, and also can reference a bulletin that
26 WorkSafeBC sent out in terms of electrocution hazards
27 for firefighters, and warnings against some of those
28 circumstances.

1 Q Including chemicals?

2 A Yes.

3 Q Okay. But you don't have any
4 examples or statistics about this being a problem at
5 medical marijuana sites, do you?

6 A I do not.

7 Q And this problem of labeling,
8 again, that could be something provided for by way of
9 city bylaw or provincial regulation?

10 A That's correct.

11 Q Okay. Fire Chief Garis, I'll take
12 you to a couple of sections of your report. Electrical
13 hazards at page 19. And actually you'll see on 18 there
14 is a picture there that says, "Overheated and potential
15 outcome of overheated transformers". See that?

16 A Yes.

17 Q Now, that -- even to me that looks
18 quite unsafe. That's not a picture from a medical
19 marijuana site, is it?

20 A This one is not, no.

21 Q Okay. In the next section, from
22 paragraph 63 all the way to the end of it at 73, you
23 talk about electrical hazards.

24 A Yes.

25 Q And again, you don't -- you're not
26 an electrician, you don't have any expertise in that
27 except for the extent that you have from your practical
28 experience in fire safety.

1 A That's correct.

2 Q Okay. I just wanted to confirm
3 with you, because I've gone through this, and it appears
4 the entire section is based only on illegal grow
5 operations. See at 63(a), it says, "First I had a
6 summary analysis conducted by -- conducted of the 1,401
7 case files of illicit grow operations."

8 A That's right.

9 Q And then you say, "The second
10 analysis was a detailed secondary inspection of the
11 photographs taken at the grow operations by the
12 investigators."

13 A That's correct.

14 Q And you're referring again to the
15 illegal grow operations.

16 A Yes.

17 Q The 1,541.

18 A And just to make a distinction in
19 the first instance, where it says "first", those are on-
20 site electrical inspections that were done by the
21 electrical inspector at the time of the inspection, and
22 those are the results in the table that's just below
23 that.

24 Q Right. But what I'm pointing out
25 here is all of the discussion and analysis in this
26 entire section is specifically related to illegal
27 marijuana grow-ops.

28 A Actually, no. I could tell you

1 that the figures are representative of conditions that
2 were found in both licensed and unlicensed grow
3 operations to deflect what the assessor said as being
4 extreme and then the next category would be high,
5 moderate, and low. And those would be applicable to
6 those gradings for both licensed and unlicensed
7 situations.

8 Q Okay. Fair enough. You're
9 pointing out that the photographs and definitions of
10 extreme and moderate that are found in here, figures 1
11 through 8 on pages 22 to 24 --

12 A Right. That's right.

13 Q Those -- that's from the reports
14 from your expert, I take, Darryl Woodall in this case.

15 A That's correct.

16 Q Right. And you're saying that
17 those categories and definitions were applied to both
18 illegal and legal.

19 A That's correct.

20 Q Okay, that's fine, but what I'm
21 saying is, in the body of the paragraphs, for that
22 entire section, you are talking only about the 1,541
23 cases of illegal --

24 A That's correct, that's correct.

25 Q Okay. And that is the same for the
26 next section on biological hazards?

27 A Which would be section 2, beginning
28 at paragraph 74>

1 Q That's correct.

2 A Yes.

3 Q Again, that's -- from my reading of
4 this, and you'll look at paragraph 77, it's made
5 explicit, summary of mould existence from photographs of
6 1,461 illegal grows?

7 A That's correct.

8 Q So, this whole section is about
9 illegal grows?

10 A That's correct.

11 Q And just a small point, but at
12 paragraph 74, you talk about, marijuana, like all
13 plants, is subject to blight and insect infestations.
14 Mould is a significant problem for grow operations.
15 Again, you have no expertise in biological -- in biology
16 or the growing of marijuana or mould science?

17 A That's correct.

18 Q And then you cite two or three
19 articles here, for the proposition that mould is a
20 potential hazard, correct?

21 A That's correct.

22 Q And these studies are -- one of
23 them, for example, is a study of dried tobacco and
24 marijuana in tobacco cigarettes?

25 A That's correct.

26 Q And it says that like all plants,
27 these plants -- well, that's not exactly -- it is a
28 study of the existence of mould in dried tobacco and

1 marijuana?

2 A That's correct.

3 Q And the study says that it exists
4 in both, and that it is a common pathogen for all
5 plants?

6 A That's correct.

7 Q And in that section again, only
8 about illegal marijuana grow operations, but you talk
9 about mould and fungal spores being a potential danger
10 to adults and to children?

11 A That's correct.

12 Q And that would be true of any house
13 with mould, even if it didn't have marijuana growing in
14 it?

15 A If it had mould, yes.

16 Q And I note that one of the articles
17 you cite about children in illegal marijuana grow
18 operations, the conclusion of the article is that it is
19 unclear whether there is danger to children in illegal
20 medical marijuana grow-ops, and that government
21 authorities should be careful in taking away peoples'
22 children on the basis that they live in a house with a
23 marijuana grow-op?

24 A I think that's what the report went
25 on to say, but I highlighted what the evidence or the
26 items or the issues that were associated with it leading
27 up to it.

28 Q I see. Okay, so -- and then in the

1 chemical hazards section, starting at page 31, at
2 paragraph 89, we have gone over quite a bit of this
3 already. You have a sort of general discussion of the
4 potential dangers of various chemicals. And then,
5 again, I just wanted to confirm with you that the
6 analysis that is done in this section is only with
7 respect to illegal grows. You'll find that at paragraph
8 101?

9 A That's correct.

10 Q And so these photographs at figure
11 12 and 13, these were taken from illegal grow
12 operations?

13 A Sorry, what page is that?

14 Q This is at page 34/35?

15 A No, I can say that there are
16 examples of chemical containers that were taken from the
17 photographs at the -- the items that were wanting to
18 bring to our attentions.

19 Q Okay, so you don't know either way?

20 A Either way.

21 Q Right. And so, for example, you've
22 got this blue barrel filled with some kind of liquid.

23 A Right.

24 Q Did you have that liquid tested to
25 see what it was?

26 A We did not.

27 Q And then there is the photo of what
28 appears to be a rack in some kind of basement or room,

1 and it looks like there is a number of medium sized
2 bottles, mostly labeled?

3 A Yes.

4 Q And it looks like some of them
5 might be fertilizer? Is that right?

6 A Yes.

7 Q In fact, I think they all have
8 labels.

9 Okay, so moving to the next section,
10 structural hazards, at page 38.

11 A Yes.

12 Q Well, before we go there, I just
13 wanted to ask you, so mould is a problem -- is a
14 potential problem for any house in British Columbia. If
15 a house is humid, it gets mould, and that is potentially
16 a health problem, right?

17 A That's correct.

18 Q So, would you agree with me, on the
19 basis of common sense, that most, perhaps all British
20 Columbians and Surrey-ites, would not want to have
21 dangerous mould in their house?

22 A I would hope that would be the --
23 that would be yes.

24 Q Right, and you would think that
25 people are seriously ill, like people who have medical
26 licences to grow marijuana, they could be especially
27 concerned about that?

28 A Yes.

1 Q So, if they were aware that there
2 was this problem, and they knew how to deal with it, and
3 were informed how it is quite likely that they would?

4 A I would hope that they would be
5 concerned about that, and they would have been able to
6 mitigate the effects of mould in their homes, yes.

7 Q And having mold in your home as
8 well, is also something that would reduce the property
9 value of the home?

10 A Potentially, especially with
11 building inspections that are taking place now, pre-
12 purchase I would imagine that would be the case, yes.

13 Q So, that would be another reason to
14 deal with mould?

15 A Possibly, yes.

16 Q Okay. So, back to the structural
17 hazards section.

18 A That would be page 38, beginning at
19 107?

20 Q Yeah, that is right. And again I
21 just wanted to confirm with you that this section, the
22 "Children and Marijuana Grow Operation" section that
23 follows, and the section after that, "Biological Hazards
24 of MGOs with Children", and the "Chemical Hazards"
25 section after that with children, all of these are
26 specifically limited to illegal grow operations.

27 A I believe so. I'm not exactly
28 certain on the children side whether or not it was

1 illicit or medical.

2 Q Okay.

3 A But I would lean towards the
4 majority, overwhelming majority would have been illicit,
5 yes.

6 Q Well, I certainly don't want you to
7 guess, so we can just go straight to it.

8 A Yes.

9 Q At page 41, "Children and Marijuana
10 Grow Operations".

11 A Yes.

12 Q I see "Electrical Hazards" and
13 there's a chart there. It says "Summary of Electrical
14 Issues from 1510 Illegal".

15 A Yes.

16 Q Right, and the next page,
17 "Electrical Risk Factors", again 1510 illegal sites.

18 A Yes.

19 Q And the next page, "Mould
20 Existence", 1461 illegal.

21 A Yes.

22 Q "Chemical Hazards" on the next
23 page, 1461 illicit sites.

24 A Yes.

25 Q The graph there. And the following
26 page, with respect to container labeling and chemical
27 identified in photographs, it says, "Photographs of
28 1,461 illegal growth sites."

1 A Yes.

2 Q And then you also include that --
3 you provide a sub-sample of data of children at 110 of
4 those 1461 illegal grow operations.

5 A Yeah, yeah.

6 Q Okay. And then the next section is
7 on first responders. I think we've covered that
8 sufficiently. Okay, so the section 4 at page 52,
9 "Differences between illegal marijuana residential
10 growing operations and medical ones." So I pointed out
11 in the first paragraph you state that 40 to 45 photos
12 were taken per property.

13 A Yes.

14 Q Okay. And then you say in the next
15 paragraph, "We were able to conduct comparisons of
16 electrical and other hazards."

17 A Yes.

18 Q You're talking about Darryl Woodall
19 there.

20 A Yes.

21 Q Okay. And so he reviews these
22 photographs, compiles the data, and gives it to you.

23 A Yes.

24 Q Right.

25 A But in the first paragraph I'd like
26 to point out that the first table was electrical
27 inspections that were conducted on site at the time, and
28 then Darryl's -- will follow that. There was two

1 instances of inspections that occurred electrically.

2 Q Okay, and then you note that
3 there's a chart here on page 53, a summary of electrical
4 issues from illegal and licensed. It notes that 1.4
5 percent of the licensed premises had an electrical
6 bypass.

7 A Yes.

8 Q Right, and that's a criminal
9 offence.

10 A Stealing power, yes.

11 Q Yes. And so that's 1.4 percent of
12 the 294.

13 A That's correct.

14 Q But there's actually, we know there
15 are 1225 approximately of licensed sites in Surrey.

16 A That's correct.

17 Q So the percentage could be much
18 lower than that.

19 A Well, that's the percentage of the
20 294 that we discovered.

21 Q Right.

22 A So it's 1.4 percent of the 294.
23 That's it.

24 Q Right, okay.

25 A And the percentage based on your
26 theory could be much higher because the reason they
27 steal power is to avoid detection, and so therefore high
28 power consumption wouldn't have been detected. So I

1 would say it likely could be higher.

2 Q So you're talking about a serious
3 criminal abuse. A criminal act by a licence holder.

4 A Theft of power.

5 Q One that would be subject to a
6 criminal investigation by the police.

7 A Yes.

8 Q Right. Okay, you say here, "Hydro
9 disconnected." What does that mean?

10 A It means that the electrical
11 inspector when he inspected the premises, he felt there
12 was sufficient enough safety hazards that he would
13 remove the -- or disconnect the power at the time to
14 render the property safe. So 10.9 percent of the 294,
15 he disconnected power because he felt that the
16 alterations to the electrical system were unsafe and
17 required immediate disconnect.

18 Q Okay. But we don't -- it's not
19 specified if those electrical problems relate to the
20 marijuana growing equipment itself. It could be an
21 electrical problem in the rest of the house.

22 A I wouldn't support that theory.

23 Q Okay. I appreciate you don't
24 support the theory, but it is possible.

25 A Remotely, yes.

26 Q Service panel action required.
27 What does that mean?

28 A The panel in which the electrical

1 circuits are contained. I would say that they had drawn
2 their -- drew their electrical inspector's attention to
3 it, that there had probably been alterations of some
4 kind. Either the panel was missing, which is often the
5 case, or they call them knock-outs. In other words,
6 metal that's designed to protect somebody from touching
7 the panel would not be able to touch the wiring
8 associated with it. There is examples of those, I
9 believe, in the photographs.

10 Q Okay. But we don't know, because
11 there is no statistics provided, about the percentage of
12 households in Surrey that have that issue, that don't
13 have marijuana --

14 A Out of the 100,000 homes in the
15 city of Surrey, no, we do not.

16 Q Okay. So it could very well be 20
17 percent as well.

18 A I wouldn't think so, but it's
19 possible.

20 Q It's possible. You don't know.
21 Same thing with the smoke alarm
22 detectors. You provide a percentage there, but we don't
23 know what the general rate is in Surrey.

24 A Actually, I do.

25 Q You do?

26 A I can give you the rates of fires
27 associated with the city of Surrey in 2014, based on the
28 number of residential structure fires that we attended.

1 That 53 percent of the smoke alarms functioned at that
2 time of that fire. I can tell you that the same number
3 reported across the province of British Columbia in 2014
4 was 41 percent of all the residential fires that
5 occurred. And in this particular case, on the illicit
6 side, there was 14.2 percent. In the licensed, it was
7 only 4.8 percent.

8 Q Okay. So what you're saying is
9 that at buildings that had fires --

10 A Yes.

11 Q -- only a percentage of those
12 buildings had working smoke detectors.

13 A That's correct.

14 Q Okay. But you don't know about the
15 vast majority of buildings that don't have fires.

16 A I do not. But I would say that
17 what I just described is a good proxy in what you would
18 expect to find across the province of British Columbia.

19 Q So, I don't want to belabour this,
20 Chief Garis, but that's a guess based on your
21 experience.

22 A I guess it was -- I'm not sure that
23 I would agree with that. I think it's a pretty good --
24 it's a pretty accurate description of what the
25 performance of working smoke alarms are in the province
26 of British Columbia when a fire occurs. And we
27 encourage the public to do a better job. We've been
28 inching those numbers slowly.

1 Q And again, at legal marijuana
2 sites, people don't want to have fires. So they would
3 want to have working smoke alarms, we would assume.

4 A We would assume, but you would also
5 assume that the amount of communication and advertising
6 that we have done on those that that 4.8 percent number
7 would be greater than what we have observed in the
8 province of British Columbia, which on average was 30.
9 Which has improved to 42. And that's at 4.8. You would
10 expect if there was some concerns about safety, et
11 cetera, that that number would be much higher.

12 Q And so he's saying these buildings
13 don't have a smoke alarm or detector at all?

14 A That's correct.

15 Q It's not that it's just that the
16 battery died?

17 A No.

18 Q Okay, at 156 you're talking about
19 mould again. You say that a quarter of legal sites had
20 some -- had clearly visible mould, right?

21 A That's correct.

22 Q And we have no idea what
23 percentage of houses in B.C. or Surrey have that
24 problem?

25 A That's correct.

26 Q Okay and just at the very end here
27 at page 58, talk about structural hazards again.

28 A Sorry. Yes.

1 Q You're talking about building
2 modifications without a permit --

3 A Yes.

4 Q -- contrary to zoning regulations?

5 A Yes.

6 Q Without a valid work permit. And
7 they you say this is clearly a blatant disregard for
8 that requirement?

9 A Yes.

10 Q Okay. And again we've basically
11 covered this already, but since it's here again, we have
12 no idea what the general rate of modifications without a
13 permit or contrary to zoning regulations is in the
14 regular population of Surrey, do we?

15 A We do not.

16 Q And you haven't personally
17 interviewed any of the legal growers to ask them about
18 their blatant disregard?

19 A The why? No, we have not.

20 Q Okay, and the last thing I'm going
21 to do is I'd like to take you to the affidavit of Tim
22 Moen.

23 A Which book is that, sorry?

24 Q I believe it's book 6. Yes, book
25 6 of the grey books. Tab 23.

26 A Yes. Tab 23?

27 Q Yes.

28 A Yes.

1 Q And I note that I mischaracterize
2 Mr. Moen as the fire chief. That was an error on my
3 part. He's a fire captain and acting battalion chief of
4 the City of Fort McMurray.

5 A Yes.

6 Q Just wanted to clarify that.

7 A Thank you.

8 Q Okay, so Mr. Moen is an expert
9 witness of the plaintiffs in this matter.

10 A Yes.

11 Q Who provides this report as a
12 rebuttal report to your report and only your report.
13 Have you had an opportunity to read this?

14 A Yeah, I read it briefly, yes.

15 Q Okay. I'm just going to take you
16 to a few paragraphs. At paragraph 22, Mr. Moen says,
17 "In response to paragraph 17 ..."

18 A Sorry, paragraph 22 on page?

19 Q Page 6.

20 A Sorry. Yes.

21 Q He says:

22 "Any serious examination of public health and
23 safety concerns should also take into account
24 the health and safety concerns of the
25 alternative, namely, prohibiting the
26 manufacturing or growing of medical marijuana
27 by individual patients or caregivers in their
28 residences or outbuildings or elsewhere. The

1 author does not address this at all. In my
2 opinion, licensing and regulation will reduce
3 risks and prohibition will increase them once
4 again."

5 Do you agree with that?

6 A No. I believe that we have
7 licensing and regulation in place right now that compels
8 the licence-holder, in order to follow the regulations
9 of the local government and the laws of the land, and
10 the 314 licensed locations that we went to, we weren't
11 able to find -- weren't able to support that comment in
12 evidence.

13 Q Okay. Well, you were aware that
14 one of the issues in this case is medical patients who
15 have licenses to produce at their home under the *MMAR*
16 program.

17 A Yes.

18 Q They've expressed a concern which
19 is subject to this case about affordability.

20 A Yes.

21 Q And it's been -- it's a suggestion
22 in this case that one possibility is that if the *MMPR*
23 regime is upheld --

24 A Right.

25 Q -- that they wouldn't be able to
26 afford to buy marijuana from the licensed producers.
27 You understand?

28 A Yes.

1 looking at that carefully. We have to find out what it
2 costs to comply fully in order to argue the next step.

3 Q Okay. Well, I'll give you a simple
4 example. The previously licensed producer, who would
5 then be illegal, who continued to grow at their home --

6 A Illegally.

7 Q Illegally, they wouldn't call the
8 city and ask for a fire inspection, would they?

9 A No, they would not.

10 Q And that would mean that they don't
11 have the benefit of having an inspection to ensure that
12 their growing facility is safe.

13 A That's correct.

14 Q Mr. Moen says, at paragraph 24,
15 "The author says", referring to you,

16 "... the program was intended to reduce the
17 incidents of house fires and associated
18 public safety hazards caused by residential
19 MGOS"

20 A Yes.

21 Q And then it says,

22 "The starting assumption of the Len Garis
23 work is that all marijuana grow operations
24 are dangerous, and all further research and
25 activity is directed at proving that point."

26 Would you agree that your starting
27 assumption is that all marijuana grow operations are
28 dangerous?

1 A No, we have a list of exceptions,
2 when we inspect a property, and what we do is we
3 identify that list of items that are associated with
4 that property, or whether or not they meet the safety
5 standards of the province, federal government, or the
6 city. And so, we basically grade them appropriately.
7 So I think it is completely objective.

8 Q Okay, so, if I understand what
9 you're saying, it is incorrect to say that you started
10 your report by assuming that marijuana grow operations
11 in Surrey were potentially dangerous?

12 A We looked at those properties
13 retrospectively to find out what was wrong with them.

14 Q I'll move on to paragraph 25. I'm
15 just going to refer you to the third sentence, he says,
16 "Repair notices on the rise, is evidence that
17 there is more engagement and inspection
18 happening. A cornerstone of inspection is
19 public education. The more engagement
20 inspectors have with citizens, the more
21 education occurs and the safer we expect
22 communities to be."

23 A Right.

24 Q Do you agree with him?

25 A Generally yes, but not the way that
26 those inspections of those properties came to our
27 attention. Were not by a voluntary inspection. It was
28 by looking at the safety thresholds asserted by B.C.

1 Hydro that was dangerous consumption. So, in the first
2 sense, as an afterthought, those properties were
3 regulated, but not by -- not willingly.

4 Q Okay, I understand your view on
5 that, but I am just asking you if you agree with that
6 principle that is being stated there. That, "Repair
7 notices on the rise is evidence that there is more
8 engagement and inspection happening," for example?

9 A I would say, as evidence of the
10 repair notices on the rise, I would not agree that you
11 would link it to the next part of it, but in terms of
12 education and inspection, in terms of getting
13 compliance, yes, I would agree.

14 Q Okay, at paragraph 29 Mr. Moen
15 says, "In my experience" -- this is the second sentence,
16 "In my experience mould is very common in regular
17 households, especially in washrooms." Do you agree with
18 that?

19 A Yes, but it wouldn't be my
20 washroom.

21 Q At paragraph 30 Mr. Moen says:
22 "In my experience almost all households and
23 small businesses have workplace hazardous
24 materials information system violations.
25 Labeling issues with chemicals is commonplace
26 and is not a problem unique to Canada's
27 growers in my experience."

28 Do you agree with that?

1 A No, I do not.

2 Q All right.

3 A Out of the 13,300 properties that
4 we inspect -- that we have that are inspectable
5 properties that have a business licence that would
6 constitute an inspection, workplace hazardous materials
7 system needs to be in place. It's a law of the
8 province, WorkSafe, and I would really be surprised to
9 suggest or assert that all of these places would have
10 violations.

11 Q Maybe I didn't state the question
12 properly.

13 A Right.

14 Q He says in his experience almost
15 all households and small businesses have WHMIS
16 violations.

17 A That may be in the province of
18 Alberta but certainly I wouldn't expect that in the
19 province of British Columbia because I'm not sure who
20 regulates WHMIS in Alberta.

21 Q So all I'm asking you, he says
22 that's his experience. Is that your experience as well?

23 A No.

24 Q Paragraph 35, Mr. Moen says:
25 "The legalizaton of medical marijuana use has
26 now created an environment where fire
27 prevention officers can interact and educate
28 medical marijuana growers about safety."

1 Do you agree with that?

2 A Sorry, just give me a second. That
3 has not been my experience.

4 Q Okay. Sorry. Bear with me Chief
5 Garis.

6 Mr. Moen says at paragraph 41, second
7 sentence:

8 "My experience is that many homeowners who
9 renovate do not get permits, nor have
10 professional electricians do their work, nor
11 have electrical inspectors vet and approve
12 their work."

13 Is that your experience as well?

14 A No.

15 Q Thank you Chief Garis, those are
16 my questions.

17 **RE-EXAMINATION BY MS. WRAY:**

18 Q Chief Garis, I do have a few
19 questions on you the examination.

20 A Yes.

21 Q You still have your report in
22 front of you? At page 15 paragraph 55.

23 A Yes.

24 Q See there's a chart there?

25 A Yes.

26 Q If you just hold that thought and
27 also go to page 50-51.

28 A 50-51.

1 Q At paragraphs 318 and 139.

2 A Yes.

3 Q You see there's a number of charts
4 there as well?

5 A Yes.

6 Q Now, my friend asked you about the
7 fact that you did not include source information on
8 which you based these charts and descriptions of causes
9 of fire in your report.

10 A Yes.

11 Q So on what basis were you
12 confident that the data contained in each of these
13 charts is accurate?

14 A I cross-referenced this material
15 with the City of Surrey and when I extracted it from the
16 database and I've used this material to answer other
17 questions in the past. We are a depositor of
18 information into this database from the City of Surrey.

19 As noted earlier, we have a large number
20 of fire reports that go into the system annually. We
21 were able to cross-reference that those numbers were
22 accurate, which led me to believe that I had a high
23 confidence level on what was being reported or was
24 accurately an example.

25 I also noted that the number of
26 residential fires reported in Mr. Moen's report were
27 very similar to the annual number that were being
28 reported here.

1 Q Thank you. Staying at pages 50
2 and 51 and looking at those charts, reference is made on
3 the left-hand side and you were taken to this a number
4 of times to a category called "MGO Fire Associated
5 Fires."

6 A Yes.

7 Q And my friend suggested that this
8 category might include fires at residences where a
9 medical grow is present but where grow operation
10 activities are not responsible for the fire. Can you
11 clarify whether those kinds of fires would be included
12 in this category and why or why not?

13 A Yes they would. And this
14 determination was an act or omission, so the
15 investigator that filed the report would have assessed
16 it as being an act or omission and it was associated and
17 he believed that it was caused by a medical or an
18 illicit grow operation.

19 Q So this category does not include
20 things like cooking fires from ordinary food
21 preparation.

22 A That's correct.

23 Q Thank you. You said during your
24 testimony that while it would have been desirable to
25 increase your study sample size to include all
26 residences in Surrey, you said that would be
27 problematic. What did you mean by that?

28 A Problematic means that in order to

1 get an equal sample size I would need to approach
2 everybody's home, or a sample size that would be
3 appropriate, to draw the inferences that would be
4 necessary to get that. And essentially inspect their
5 homes in order to get a cohort that would be
6 representative of homes that did not contain a grow
7 operation. I would need to assess them for building
8 code violations, electrical alterations, chemicals,
9 chemical containers, et cetera. This was not practical.

10 Q Thank you. In answer to your
11 question from my friend, you explained that you were not
12 aware of a situation where there has been an EFSI
13 investigation of a medical marijuana grow-op and the
14 grow-op was found to be compliant with all of the
15 applicable building requirements. So in other words,
16 all of these grows were found to be non-compliant.

17 A That's correct.

18 Q Now, my friend suggested that you
19 would not have such awareness since the inspections were
20 not done by you personally, but rather by your
21 subordinates or your employees. On what basis, then,
22 can you state that all of the medical marijuana grow-ops
23 that were inspected in Surrey were not compliant?

24 A Well, it's been reported by my
25 staff. I can also tell you that I have 13,300
26 commercial properties that -- and 10,000 of them are
27 inspected annually, and that information is loaded into
28 a database. I make policy decisions based on that, and

1 I'm confident that the information that they're
2 providing to myself in -- and the way that they were
3 collecting it, the number of supervision audits that
4 take place to make sure that they're being followed
5 would be -- I'd be satisfied at the results that we
6 have, and I'm relying on those as information to make
7 decisions.

8 Q In answer to a question from my
9 friend, you said it would be possible for Surrey to
10 conduct annual inspections of residences with medical
11 grow-ops who were the subject of repair notices, but
12 that Surrey does not do such annual follow-up
13 inspections. Why not?

14 A Because they don't fall within the
15 regulatory scheme of the city. They're not licensed
16 with the city. They don't have a business licence with
17 the city. They haven't applied themselves as a
18 commercial or a non-commercial operation. And our
19 concern is to make them safe, initially, and to
20 contemplate what the courts have to say on this
21 particular matter before we devise a strategy going
22 forward in the future.

23 Q I'm wondering if you could clarify
24 for the court exactly what the effect of a repair notice
25 is for the owner of a residence, or in other words what
26 would happen if the owner does not comply with the
27 repair notice.

28 A If the owner does not comply with

1 the repair notice the owner will be found in violation
2 of the *Safety Standards Act*. There is a number of
3 remedial issues that can be associated with that from
4 fines, to orders, to disconnect of power. There are a
5 number of consequences that could be associated with
6 that in order to obtain compliance so that the property
7 is made safe.

8 Q If I could take you, please, to
9 paragraph 33 of your report on page 9.

10 A Yes.

11 Q You were asked about the last
12 sentence of paragraph 33, and I'm just going to read
13 that to you.

14 "Beyond the remediation of the former MGO
15 sites, the program has contributed to a more
16 than 80 percent reduction in the number of
17 MGOs in the community and a significant
18 decrease in MGO related fires."

19 A That's correct.

20 Q Now, in response to a question you
21 said:

22 "There's been an 80 percent reduction in the
23 complaints from BC Hydro, RCMP and citizens."

24 Can you clarify if this is what you meant
25 to say, given that the sentence itself refers to an 80
26 percent reduction in the number of MGOs?

27 A Sorry, the information that comes
28 to our attention, which is assessed and the 80 percent

1 is a result of -- that's been observed and statistics
2 have been confirmed grow operations in the City of
3 Surrey, and that there had been an 80 percent reduction.

4 Q Thank you. You were asked by my
5 friend, finally, about a hypothetical, about a scenario
6 in which the government is successful in this case and
7 the *MMPR* is upheld, and how those people who used to be
8 able to grow under *MMAR* would react. He suggested that
9 many of these people would continue to grow illegally
10 but would not ask the City to inspect the safety of
11 their grow operations.

12 So I want to ask you this, to your
13 knowledge are *MMAR* grows who are currently able to grow
14 legally under the injunction contacting the City of
15 Surrey to ask for inspections now?

16 A They are not.

17 Q Thank you.

18 Those are all my questions under re-
19 direct, Justice Phelan.

20 JUSTICE: All right, thank you very
21 much, Chief, you're free to go.

22 THE WITNESS: Thank you.

23 (WITNESS ASIDE)

24 JUSTICE: Thank you everyone. We
25 will start at 9:30 in the morning.

26 (PROCEEDINGS ADJOURNED AT 4:30 P.M.)

27

IN THE FEDERAL COURT
(Before the Honourable Justice Phelan)

Vancouver, B.C.
March 10, 2015

T-2030-13

BETWEEN:

NEIL ALLARD, TANYA BEEMISH, DAVID HEBERT
and SHAWN DAVEY,

Plaintiffs;

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,

Defendant.

PROCEEDINGS

Mr. J. Conroy, Q.C.,

Mr. K. Tousaw,

Ms. T. Grace,

Mr. B. Vaze,

Mr. M. Jackson,

Appearing for the Plaintiffs;

Mr. J. Brongers,

Ms. B.J. Wray,

Mr. C. Januszczak,

Mr. P. Alma,

Ms. M. Nicolls,

Appearing for the Defendant.

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VANCOUVER, B.C.

March 10th, 2015

Volume 10

(PROCEEDINGS COMMENCED AT 9:37 A.M.)

JUSTICE: Good morning.

MR. CONROY: Good morning, Justice
Phelan.

JUSTICE: Go ahead.

MR. CONROY: This morning we have, at
the request of the defendants, Mr. Moen, who is a Fire
Captain and acting Battalion Chief, City of Fort
McMurray. So he's the -- one of our rebuttal experts.

JUSTICE: Mm-hmm.

MR. CONROY: To be followed by another
one, Scott Wilkins. And Mr. Jackson is going to lead
Mr. Moen, but just before he does, it's -- you have his
affidavit.

JUSTICE: I do?

MR. CONROY: Which is in tab 23 of
volume 4 of the book of experts. Sorry, volume 6 of the
book of experts.

JUSTICE: Mm-hmm.

MR. CONROY: Paragraph 11, we noticed
that some words somehow magically disappeared in the
word processing, we assume. At the bottom of that page,
you'll see it says, "Mr. Garis's expert report and
opinions say more about his bias."

JUSTICE: Mm-hmm.

1 MR. CONROY: And then there's words
2 missing that should be "that marijuana grow operations
3 are more dangerous than other conceivable" --

4 JUSTICE: Yes.

5 MR. CONROY: Just so that that's
6 clear.

7 JUSTICE: I figured that out from the
8 context.

9 MR. CONROY: Right.

10 JUSTICE: I don't think it caught
11 anyone by surprise.

12 **TIM MOEN, Affirmed:**

13 THE REGISTRAR: Please state your
14 name, occupation, and address for the record.

15 THE WITNESS: My name is Tim Moen. My
16 occupation is Fire Captain and Acting Battalion Chief
17 for the City of Fort McMurray. My address is 2459
18 Pauline Street, Abbotsford, B.C.

19 JUSTICE: Go ahead.

20 **EXAMINATION IN CHIEF BY MR. JACKSON:**

21 Q Mr. Moen, you are here today as an
22 expert witness for the plaintiffs in this matter?

23 A Yes.

24 Q And you've provided an expert
25 report for these proceedings?

26 A I did.

27 Q And that's the affidavit of Tim
28 Moen, sworn on December 19th, 2014?

1 A Yes, that's correct.

2 MR. JACKSON: If we could have that
3 marked as the next exhibit, please.

4 THE REGISTRAR: Exhibit 32.

5 JUSTICE: Twenty-two?

6 THE REGISTRAR: Thirty-two.

7 JUSTICE: Thirty-two. Okay.

8 **(AFFIDAVIT OF TIM MOEN MARKED EXHIBIT 32)**

9 MR. JACKSON:

10 Q Mr. Moen, I understand you're the
11 Fire Captain and Acting Battalion Chief of the City of
12 Fort McMurray?

13 A That's true, yeah.

14 Q In Alberta?

15 A Yes.

16 Q And I understand that you are here
17 today to provide expert evidence with respect to issues
18 of fire safety at residences that contain licensed
19 medical marijuana grow operations?

20 A Yes, sir.

21 Q And that you are here to provide
22 specific rebuttal evidence to the affidavit and expert
23 report of Len Garis?

24 A Yes.

25 Q And you've attached a copy of your
26 curriculum vitae at Exhibit A? It's at page 13 of your
27 affidavit. Page 13, it's at the top.

28 A Oh, at the top, okay. Sorry. Yes.

1 Q And this curriculum vitae fully and
2 accurately describes your experience with respect to
3 your training and work experience in the area of fire
4 safety?

5 A Yes.

6 Q And you also have a Master of Arts
7 Degree in Leadership from the Royal Roads University?

8 A That is correct.

9 Q Could you please briefly explain to
10 the court in a summary way your work experience as it
11 relates to your expertise in fire safety?

12 A Sure. Well, I have been involved
13 in the fire service for just over 20 years. I started
14 as a volunteer firefighter in '93, spent my career
15 working as a firefighter and a paramedic. After the
16 last 14 years I've been employed with the City of Fort
17 McMurray as a professional municipal firefighter and
18 paramedic, and since 2004 I've had the rank of -- an
19 officer rank within the fire department.

20 My role in the fire department is one of
21 responding to emergency and fire and medical calls, and
22 it's also to provide public education with regards to
23 fire safety, to provide inspections and educate
24 occupants about fire safety and report infractions to
25 our Fire Investigation and Prevention Branch for
26 enforcement.

27 Q And when you say provide education
28 with respect to fire safety, would that be the causes of

1 fires and how to mitigate or remedy those causes?

2 A Yeah, there's a number of aspects
3 to education that go on in the fire service, and it's
4 the duty of a firefighter to prevent fires from ever
5 happening. And so, you know, one of the roles obviously
6 is going into schools and providing information to the
7 kids about playing with matches and stop, drop and roll
8 and those types of things. But a large part of what we
9 do is also go into businesses, occupancies, and
10 residence and just educate people about things that we
11 see that could endanger them in terms of fire safety
12 and, you know, make them aware of fire codes and help
13 them comply with those codes for their own safety.

14 Q And you have knowledge on the
15 causes and ways to remedy issues of fire danger or fire
16 safety based on your experience and training.

17 A Yes.

18 Q Mr. Moen, in your affidavit you
19 provide under "Summary of opinions expressed" some
20 discussion of confirmation bias, cultural confirmation
21 bias, and Texas sharpshooter fallacy. Is that correct?

22 A Yes.

23 Q I understand you -- it appears that
24 you included your discussion of these well-known
25 concepts in order to inform the court that -- of your --
26 the methodology that you were applying with respect to
27 your analysis of Len Garis's expert report?

28 A Yeah. The analysis of pointing out

1 that there is some fallacies that weren't necessarily
2 addressed or controlled for in Mr. Garis's report, I
3 thought would be interesting to the court.

4 Q Now, I understand that you are the
5 leader of the federal Libertarian Party?

6 A Yes, sir.

7 Q And as the leader of the federal
8 Libertarian Party, have you expressed views in favour or
9 against legalization of marijuana?

10 A Yes. Our broad view is that
11 cannabis ought to be legalized, and I've expressed those
12 views publicly.

13 Q Could you briefly describe what
14 those views are?

15 A Sure. The -- you know, the
16 philosophical underpinnings of the Party are essentially
17 that we want to reduce harm in society. And my
18 experience as a paramedic and a firefighter, and my
19 philosophical and political understanding, you know, in
20 my own personal life, have led me to see cannabis
21 prohibition as causing far more harm than good. And so
22 it's a view that I advocate with the party. We want to
23 reduce harm.

24 I'm in no way here as an -- advocating
25 for any type of public policy. I'm here in my primary
26 life, career role as a fire safety professional,
27 concerned about the safety of citizens in my community.
28 And I'm here to provide my expert testimony in that

1 regard today.

2 Q And at Exhibit C of your affidavit,
3 I see you have attached the certificate concerning Code
4 of Conduct for expert witnesses, which you swore on
5 December 19th, 2014? That's at page 219.

6 A 219.

7 Q At the very end, the last page.

8 A Yes.

9 Q Yes. So I take it in swearing that
10 certificate, you did in fact read the Code of Conduct
11 for expert witnesses which states that you are to be an
12 impartial and objective witness on areas within your
13 expertise.

14 A Yes, sir.

15 Q And that's the role you were here
16 today, as you said.

17 A Absolutely.

18 Q Thank you. Please answer the
19 questions of my friend.

20 **CROSS-EXAMINATION BY MR. JANUSZCZAK:**

21 Q Good morning.

22 A Good morning.

23 Q I've heard your name pronounced two
24 different ways, so I just want to make sure.

25 A Yeah, it's Moen as in the fine
26 faucets and plumbing fixtures.

27 Q All right, thank you. Now, you
28 have the Consolidated Book of Expert Reports Volume 6 in

1 front of you, I believe.

2 A Yeah.

3 Q You've just been referring to it.
4 And if you turn to tab 23, again that's where your
5 affidavit or report is found.

6 A Yeah.

7 Q You have that in front of you?

8 A Yes, sir.

9 Q And as I think you're aware now as
10 a result of the direct examination, there's page numbers
11 on the centre top, every page of that document.

12 A Yes.

13 Q And so for ease of reference, where
14 necessary I'll refer to those page numbers.

15 A Okay.

16 Q Okay? Now, what I'd like you to do
17 first is to turn to page 3. We were just looking at
18 this under a summary of the opinions expressed. You
19 have that in front of you?

20 A I do.

21 Q All right. And I'd like to start
22 there. You were -- or you have expressed two opinions
23 in this matter, and if I can begin with paragraph 9,
24 your opinion is that:

25 "The Garis report contains numerous
26 methodological and analytical issues and
27 contains a number of assertions of fact that
28 directly contradict my experience --"

1 I'm sorry.

2 JUSTICE: No, that's 8.

3 MR. JANUSZCZAK: That's 8.

4 Q At paragraph 9 the opinion you
5 express is with respect to the whole of the Garis report
6 and you say:

7 "It's undermined by the well-known phenomena
8 of confirmation bias, cultural confirmation
9 bias, and the Texas sharpshooter fallacy."

10 You see that.

11 A Yes, sir.

12 Q All right, and so that's one of the
13 opinions you've expressed.

14 A Yeah.

15 Q And paragraph 8, the second opinion
16 I'll refer to and the one I began to read earlier
17 relating to the Garis report, you say:

18 "It contains numerous methodological and
19 analytical issues and contains a number of
20 assertions of fact that directly contradict
21 my experience as a fire safety professional."

22 You see that?

23 A Yes, I do.

24 Q And that's the second opinion
25 you've expressed with respect to the Garis report,
26 correct?

27 A Yes, that's fair to say.

28 Q Okay. Now, in respect of the first

1 opinion, so the one in paragraph 9, in providing your
2 rebuttal to the Garis report, were you asked to
3 specifically opine on the subject of bias, or was that
4 your idea?

5 A No, I wasn't asked to opine on it
6 at all, no. That was my idea.

7 Q All right.

8 A I looked at the whole of the report
9 and that was what jumped out at me on that first blush.
10 So that's the approach I took.

11 Q All right, and in your direct
12 examination just a few moments ago you said you thought
13 that would be interesting for the court, correct?

14 A Yeah.

15 Q Now, you claim to be qualified to
16 give that opinion concerning bias by referencing your
17 thesis, your Master's thesis. So if you could look at
18 page 2 of your affidavit at paragraph 4.

19 A Yeah.

20 Q This is where you refer to your
21 Master's of arts degree.

22 A Mm-hmm.

23 Q And this, I believe this is where
24 you're saying you have qualifications to give that
25 opinion concerning bias. So you reference your thesis.
26 And the thesis that you're referring to here, it was
27 completed, as you say, in satisfaction of part of the
28 requirement for your Master of Arts in Leadership

1 Degree, correct?

2 A Sure.

3 Q All right, and that was from Royal
4 Roads University?

5 A Correct.

6 Q And in terms of obtaining that
7 degree, you did the work from 2010 to 2012.

8 A I believe it might have been 2009
9 to 2012. I took an extension to finish it, so I'm -- I
10 can't remember off the top of my head which -- I
11 completed it in 2012.

12 Q All right. And you convoked in
13 -- I checked online. It was June 19th of 2013. Does
14 that make sense?

15 A That may be true, yes. Yeah.

16 Q And the Master of Arts in
17 Leadership, that is associated with the Faculty of
18 Social and Applied Sciences?

19 A Correct.

20 Q Now, if you turn to page 10 of your
21 affidavit, right at the bottom, the paragraph numbering
22 changes a little bit in your affidavit here, but at page
23 10, down at the bottom, there is a heading, "(I) A
24 summary of the methodology used". Do you see that?

25 A Yes. A summary of the methodology.
26 Correct.

27 Q Right at the bottom of the page.

28 A Yeah.

1 Q And there is nothing -- you don't
2 provide any information under that heading.

3 A No.

4 Q So, in giving your opinion
5 regarding bias, you haven't offered any analysis or
6 testing of bias, have you?

7 A Well, I'm not sure that's
8 necessarily fair to say. I think I point out in the
9 body, in the context of my report, what bias is. I
10 think they're well-known fallacies that don't require an
11 explanation, other than -- I mean, I'm sure you're aware
12 of them.

13 Q So it is what it is.

14 A Sure.

15 Q Yes? If you turn back to page 4 of
16 your affidavit, paragraph 12.

17 A Yes.

18 Q You could take a look at that
19 paragraph, and specifically the last sentence.

20 A The last sentence?

21 Q Yes.

22 A "In my opinion, his bias determined
23 his results."

24 Q Right. And then if you go back to
25 the previous page, page 3, you talk about confirmation
26 bias.

27 A Sure.

28 Q And you go over to page 12, and

1 then you continue on and have a discussion of cultural
2 confirmation bias and then the Texas sharpshooter
3 fallacy on page 5.

4 A Yes.

5 Q You see that. So at least with
6 respect to confirmation bias, all you're doing is
7 referring to that as a concept. You're saying it's
8 well-known like the others. And then you're stating
9 that Chief Garis, his results were determined as a
10 result of bias. That's your opinion.

11 A It seems to indicate that, yeah.

12 Q Well, it does indicate that.

13 A Yeah.

14 Q Just a moment ago when you were
15 referring to your analysis of bias, you -- and I can't
16 remember your exact words, I don't want to misquote you,
17 but you suggested that I would know about these things
18 too, correct?

19 A Yeah, they're well-known fallacies.

20 Q All right. So any person with the
21 ability to consult resources on the internet, including
22 Wikipedia could arguably make the statements that you've
23 made in your affidavit regarding bias, correct?

24 A Potentially, yeah.

25 Q All right. So you have no
26 specialized knowledge in the area of the study of bias,
27 you'd agree with that?

28 A Well, I have specialized knowledge

1 in the sense of qualitative research and scholarly --
2 production of scholarly papers requires that you control
3 for those things and know how to spot them, and consider
4 them in advancing a thesis, and especially one that has,
5 you know, enormous public policy implications. I would
6 imagine there is a high burden of proof to make. And I
7 saw no evidence in Garis's report that he considered the
8 alternative conclusions to the evidence he was seeing,
9 and that led me to point out the obvious fact of bias.
10 And so, my contention is that Mr. Garis should know this
11 as a qualitative researcher, and I'm pointing that out.

12 Q If you turn back to page 2 of your
13 affidavit, in paragraph 4 again, you say -- the second
14 sentence of that paragraph, you say, "Part of the
15 requirement for this degree," your Master's in
16 Leadership degree, "was completion of a thesis wherein I
17 had to control for a logical fallacies such as
18 confirmation bias."

19 A True.

20 Q What you state. Now, I can take
21 you -- you have a green volume in front of you. This is
22 the joint book of documents. It's volume 11 of 13. Do
23 you have that in front of you?

24 A Yes.

25 Q All right. And if you turn to tab
26 18, which is about in the middle of the volume, and then
27 there is the first tab after 18 is A. If you could turn
28 to that.

1 A Yes. Oh, A.

2 Q Okay.

3 A This is the SAM --

4 Q No.

5 A No?

6 Q I don't know that you have the
7 correct joint book of documents.

8 A I've got my thesis in front of me.
9 Is that what you're --

10 Q Yes.

11 A Okay.

12 Q Okay. So just to confirm, you're
13 at tab 18A.

14 A Yes, I am.

15 Q Oh, as a -- yeah. And these are
16 page-numbered at the bottom.

17 JUSTICE: 4105?

18 MR. JANUSZCZAK: 4105.

19 A Yes.

20 MR. JANUSZCZAK: Thank you.

21 Q Now, this is the thesis that you
22 referred to, that you prepared as one of the -- or as
23 part of the requirements to get your degree, correct?

24 A Yes.

25 MR. JANUSZCZAK: And, Justice Phelan,
26 I'd ask that this be marked as the next exhibit. I
27 believe it's 33.

28 **(T. MOEN'S THESIS MARKED EXHIBIT 33)**

1 MR. JANUSZCZAK:

2 Q Mr. Moen -- I'll let you pour your
3 water.

4 Beginning on page 67 of that document,
5 and the lower right-hand number is 4171. This is where
6 you list the references to your report, correct?

7 A Correct.

8 Q Now, although you don't
9 specifically refer to textbooks, at least from what I
10 could see, on bias in the social and behavioural
11 sciences area as references in this report, I gather
12 you're familiar with the leading text on bias in this
13 area of study?

14 A They're endemic in textbooks on
15 qualitative and quantitative research. So some of them
16 that are listed, for example research decisions on page
17 70, quantitative and qualitative perspectives. Any book
18 essentially that deals with qualitative research, Action
19 Research is another one, would contain within it
20 information about bias and how to account for it.

21 Q Okay, so along the lines of what
22 you've discussed in your affidavit.

23 A Yes, sir.

24 Q If you can just keep looking at
25 that document, if you go back to the first page, so 4105
26 which is the cover page, the report here is titled
27 "Self-Organizing Emergency Teams in the FMFD". FMFD is
28 Fort McMurray Fire Department, correct?

1 A Correct.

2 Q Now, what I'd like you to do is to
3 direct us to that part of your report that includes the
4 analysis of where you control for logical fallacies such
5 as confirmation bias.

6 A Sure.

7 MR. CONROY: I just wonder if my
8 friend could distinguish between the thesis and the
9 report, so that we don't get the two mixed up.

10 MR. JANUSZCZAK: Oh, I'm sorry, I've
11 referred to this as a report. I've referred to it as
12 the thesis. I'm talking about the same document.

13 JUSTICE: All right, so let's -- the
14 report will be his opinion and the thesis will be this
15 document. We'll make it easier --

16 MR. JANUSZCZAK: Yes, I understand.

17 A So if you scroll through, the first
18 thing that you have to do in presenting any scholarly
19 data is wrestle with the two sides of the issue or the
20 multiple facets or opinions from scholars. So, you
21 know, if you look at things like, for example on page 13
22 of the thesis, even in the lit review you have to do,
23 you know, I write -- I talk in one sentence under self-
24 organization about how some scholars view self-
25 organization as a holistic approach, and then how
26 another author, Stinger, rejects this approach, the
27 holistic kind of spiritual approach and maintains that
28 it's the emergence of self-organization is both

1 reductive and materialistic.

2 And so we're presenting opposing views,
3 and the goal of scholarship is to wrestle with those
4 opposing views and try to come to some sort of
5 understanding. And so part of controlling for bias and
6 alternative viewpoints is written in the very language
7 of a scholarly paper.

8 And then if you turn further to -- there
9 should be a titled called "Scope and Limitation". It
10 talks about the limits of what we can conclude from the
11 data that we've analyzed here. And so part of it is
12 recognizing the weaknesses and the limitations of what
13 you're doing, acknowledging those things and talking
14 about ways, you know, that future inquiry could resolve
15 those issues.

16 And I think it's also important to note
17 that, you know, that the process of writing a thesis is
18 a multi-staged process wherein you have a faculty
19 adviser, you have an ethics committee, you have a
20 project sponsor, all continually giving you feedback,
21 and that's part of the way that you control for bias in
22 qualitative research is you have other people telling
23 you -- pointing those things out to you. And so it
24 directs your thesis that way.

25 So, you know, the fact that there's not a
26 heading in my thesis called "Control for confirmation
27 bias" doesn't mean that it wasn't accounted for in the
28 process of developing this document.

1 MR. JANUSZCZAK:

2 Q You've referred -- a couple of
3 times when you've been referring to the thesis, you have
4 used the word "we", as in the authors. But when you say
5 "we", you're talking about the group of individuals that
6 you just described, right? The supervisor, the people
7 who are giving you feedback.

8 A I guess I'm -- maybe I mis-spoke
9 and was using it in the royal sense, but I was talking
10 about when a scholar develops. So I was talking about
11 other scholars.

12 Q All right.

13 A Not just -- so, I should say --
14 should rephrase that to say when I approached this as a
15 scholar, that's --

16 Q Okay.

17 A -- the approach I have to take.

18 Q As a scholar. You mentioned that
19 there is no heading, "Bias". In fact, the terms
20 "confirmation bias", "cultural confirmation bias" and
21 the "Texas sharpshooter fallacy" don't appear anywhere
22 in your thesis.

23 A Correct.

24 Q All right? In fact the word "bias"
25 doesn't appear once in your thesis, correct?

26 A That's correct, yes.

27 Q The word "tablecloth" -- or the
28 plural, "cloths", which on occasion you technically

1 described as "World Café tablecloths", however, appear
2 numerous times in your thesis. So for example, if you
3 turn to page 29, at the bottom right-hand corner it's
4 page 4133, you have that in front of you?

5 A 4133?

6 Q Yes. Page 29 of the thesis.

7 A Oh, yes, okay.

8 Q Okay. So, in the middle of the
9 page there is the first full paragraph, the only full
10 paragraph on that page, and when I look down about the
11 middle of that paragraph, "The facilitator acted as a
12 World Café table host", and then reading down from there
13 I see the word "tablecloth" or "tablecloths" three
14 times, before I hit the end of the paragraph.

15 A Sure.

16 Q And the other places where I've
17 noticed that term, or those terms, appear, and I'll just
18 point this out for the record, and if you have any
19 difficulty with this, please let me know. But at
20 paragraph 32, that's page 4136, there are also
21 references to -- at least one reference to the word
22 "tablecloth" or "tablecloths". And the same applies on
23 page 40. If you look under a heading on page 40, under
24 "Appreciative inquiry sessions", you'll see a reference
25 to tablecloths there, in the last sentence. And again,
26 I don't know that it's necessary to do this, but again
27 on page 41, 42, and 45, there are also references to
28 those terms. In any event, you'll agree with me that

1 the term "tablecloth" or "tablecloths" appears numerous
2 times in your report.

3 A Yes, sir.

4 Q Or you -- sorry, the thesis. And
5 you repeatedly refer to that term, or those terms,
6 because they figure prominently in the methods you used,
7 correct?

8 A It was one method of gathering
9 data, yes.

10 Q Right.

11 A Yeah.

12 Q And it's fair to say, other than
13 how you've described it, the concept of controlling for
14 bias didn't figure prominently in this work, did it?

15 A I don't think that's fair to say.
16 No.

17 Q You didn't mention the word "bias"
18 once.

19 A It was endemic in the process. It
20 was part of the developing of the thesis, as I said, is
21 controlling for that and having faculty and third
22 parties, independent parties review your work and
23 correct for that bias. That's part of the process. I
24 mean it's not something that you go through and list all
25 the different logical fallacies. There's probably 40-
26 plus logical fallacies you could engage in, so you
27 wouldn't write a heading about all the different logical
28 fallacies and how you control for them. It's just part

1 of the scholarly process. It's well understood. It's
2 endemic.

3 So I don't think it's fair to say that it
4 wasn't part of this. It certainly was.

5 Q If you turn to page 16 of your
6 affidavit, so this is back in Volume 6 of the
7 Consolidated Book of Expert Reports, tab 23, and top of
8 the page this is in your CV or your résumé at page 16.

9 A Yes, sir.

10 Q You see that?

11 A Yeah.

12 Q And down at the very bottom there
13 you have is the heading "Leader of a Federal Political
14 Party". You see that.

15 A Correct.

16 Q And since May of -- I believe I
17 have the month right -- May of 2014 you have been the
18 leader of the Libertarian Party of Canada, correct?

19 A Yes.

20 Q That party has a website at
21 *www.libertarian.ca*?

22 A That's correct, yeah.

23 Q And that website includes a
24 biography of you, correct?

25 A Yeah, I believe so.

26 Q Okay. Are you familiar with what
27 your biography says on the website?

28 A Not off the top of my head, no. It

1 was --

2 MR. JANUSZCZAK: Justice Phelan, I'm
3 just going to put a copy of Mr. Moen's biography from
4 the website in front of him. I don't propose to have it
5 marked as an exhibit, but I just want him to have it
6 there so that when I quote from it he can confirm
7 whether that in fact is the case.

8 JUSTICE: Okay.

9 MR. JANUSZCZAK:

10 Q Mr. Moen, I have given you a
11 printout of what I take is the biography page from the
12 Libertarian Party website. Can you confirm that?

13 A Yeah, that's what it looks like to
14 me.

15 Q Okay.

16 A I trust you took it from there.

17 Q Well, if you look down at the
18 bottom of the page it'll actually show the web address.

19 A Sure.

20 Q All right, and I had indicated to
21 you when I gave you that piece of paper where I was
22 going to be reading from, so I'm just going to quote
23 here. Part of the biography states as follows:

24 "In 2014 he..."

25 meaning you,

26 "...ran a highly visible by-election that
27 caught the attention of Fox Business, CNN,
28 Reason Magazine, Gawker, This Hour Has 22

1 Minutes and numerous other media outlets.”

2 Then it goes on to say:

3 “Tim has extensive experience leading high
4 performance teams and has a graduate degree
5 in leadership where his thesis examined the
6 ways in which high performance teams employ
7 libertarian principles.”

8 Do you see that?

9 A Yes, sir.

10 Q Now, we can go back to your thesis
11 if you'd like, but you'll have to agree with me that
12 like the word “bias”, the word “libertarian” doesn't
13 appear anywhere in your Master's of Arts thesis,
14 correct?

15 A That's correct, yeah.

16 Q Okay. Because the concept of teams
17 employing libertarian principles didn't figure at all in
18 your thesis, correct?

19 A Sorry, say that, help me understand
20 that question.

21 Q The reason why the word or the term
22 “libertarian” does not appear in a single instance in
23 your thesis is because the concept of teams employing
24 libertarian principles was not what you were looking at
25 when you were preparing your thesis.

26 A Well, that's not true. I mean the
27 whole thesis is centred around self-organizing fire
28 teams, and so we looked at the ways in which coercive

1 management of fire teams was eliminated and examined how
2 performance emerged from that. So I mean, not using
3 coercion as kind of a libertarian principle, that's what
4 the philosophy is essentially founded on, and that is a
5 fair way to characterize what my thesis was about.

6 Q If we can go back to the Joint Book
7 of Documents and your thesis again, so this is tab 18A,
8 do you still have that open in front of you?

9 A Yes.

10 Q All right. If you go back to the
11 cover page of that document that's at page 4105.

12 A Yes, sir.

13 Q Now, I note on this page you don't
14 refer to this as a thesis. It's called an
15 "Organizational Learning Project Report submitted in
16 partial fulfillment of the requirements for the degree
17 of Master of Arts in Leadership." Do you see that?

18 A Correct.

19 Q You describe the document this way
20 because when you were doing your degree you had an
21 option, correct? There were two tracks you could take.
22 You could have written a thesis or, as you did, you
23 could complete an organizational project report,
24 correct?

25 A I'm not sure that that was --
26 whether we were presented with an option. So we -- I
27 did take a year extension to finish it. When I started
28 working on the thesis, we were told that we were the

1 last class wherein this would be considered a thesis.
2 It would be called an OLP or an organizational learning
3 project, but it would meet the standards of a thesis and
4 be eligible to be submitted to the -- I think it's
5 called CPADS or something. It's a repository for
6 thesis. And so that was -- we had to meet the
7 requirements of a thesis in producing this document.

8 Now, I took a year extension, and so my
9 understanding is that my document didn't get submitted
10 to CPADS because I missed the deadline where they were
11 going to do that for future cohorts. And so as far as I
12 know it's a thesis because it met all the requirements.
13 It was called a thesis in my cohort when it was referred
14 to by faculty, and my understanding is it met all the
15 requirements of a master's thesis, but that that was the
16 last year they were going to be doing it that way. In
17 the future they were going to not have the stringent
18 requirements to meet that level. But as far as I know,
19 and my understanding is that I did meet that level.
20 Those were the guidelines I was operating under, when I
21 created the document.

22 Q All right. So you're -- I just
23 want to be clear on this. You're acknowledging that
24 there is the option of completing a thesis or doing what
25 you did, to do this --

26 A Well, I'm not acknowledging that,
27 no. No, no. I'm not acknowledging that. I'm saying
28 that an OLP -- when I was going through and when I

1 started my cohort, was considered a thesis. It had to
2 meet the requirements of a thesis. It was called an
3 "OLP", an organizational learning project. My
4 understanding is that's because it essentially examined
5 an organization and was to be used to apply
6 organizationally, but that it was still technically a
7 thesis, and that it would be submitted to CPADS.

8 Now, I mis -- I guess I found out
9 retrospect -- and actually after I submitted my
10 affidavit, that we didn't meet the deadline, that my
11 document wasn't submitted to CPADS. That was news to
12 me. I was explained, because they just stopped doing
13 that as a policy after my cohort. And because I had
14 taken a year extension to complete the degree, they
15 didn't submit my OLP as a thesis to CPADS.

16 Q CPATS? CPAS?

17 A Well, I may be -- my understanding
18 is that there's a repository of theses that, when you
19 submit a thesis, that it goes then to this repository.

20 Q Well, usually a thesis at -- there
21 is a number of places where they are sent, and one is
22 the Library and Archives of Canada.

23 A That could have been, then, the --

24 Q All right. When I looked at Royal
25 Roads University's website, and it indicated that a
26 thesis must be submitted for publication in three
27 places. So, Royal Roads University's digital archive.
28 Did you understand that to be the case?

1 A I didn't understand, no. I wasn't
2 sure what -- what the process was.

3 Q All right.

4 A I was told by faculty that that's
5 what it was, so. I understood that it was submitted to
6 it -- that they would submit it to a number of places,
7 and then it would be -- but --

8 Q Okay, so --

9 A I'm not sure whether that was done
10 or not.

11 Q So you understood your work was to
12 be published. Correct?

13 A I'm not sure "published", but
14 archived or put somewhere, in a repository. That's what
15 I understood.

16 Q Okay. But I mean there's a
17 difference between having something published and being
18 put in a filing cabinet, which is a repository
19 somewhere.

20 A Agreed, yeah.

21 Q Okay, so what was your
22 understanding of what was happening?

23 A That it was going to be put in a
24 repository where other scholars would be able to access
25 it and use it for -- to reference, and work. So I'm not
26 sure whether -- what -- whether that classifies as
27 "publication" or "archiving", I'm not sure. But it
28 wasn't submitted for a peer review process, if that's

1 what you mean by publishing.

2 Q That's not what I meant.

3 A Okay.

4 Q So, this document at page 18A, this
5 is something that's not publicly -- what you referred to
6 as your thesis, this is not publicly available.

7 A Apparently not, no. I don't
8 believe so. I'm not a hundred percent sure on that.
9 But --

10 Q It's fair to say you haven't
11 published in any area of study that's relevant to what
12 you opine on in your affidavit in this case?

13 A That's fair to say. Not published
14 in the sense of peer reviewed, or -- yeah.

15 Q I want to turn now -- again, if you
16 go back to your affidavit, so volume 6 of the
17 consolidated book of expert reports at tab 23. And you
18 have that in front of you?

19 A Page 23?

20 Q No, I'm sorry. Tab 23.

21 A Oh, yes. Sorry.

22 Q So that's the beginning of your
23 affidavit.

24 A Yes, I'm at my affidavit, yes.
25 Right.

26 Q And if you turn to page 3, and from
27 just the heading, "A summary of the opinions expressed".

28 A Sure.

1 Q This time paragraph 8. So this
2 is your second opinion where you say that the Garis
3 report --

4 JUSTICE: Pardon me. What page are
5 you on?

6 MR. JANUSZCZAK: I'm sorry. Page 3.

7 JUSTICE: Of 41 --

8 MR. JANUSZCZAK: So, tab 23. It's Mr.
9 Moen's affidavit.

10 JUSTICE: I'm sorry, I've been playing
11 in the thesis. Okay. Sorry.

12 MR. JANUSZCZAK: It's all right.

13 JUSTICE: Too many toys. Okay, now
14 I'm fine. So, page 3.

15 MR. JANUSZCZAK: So back with -- top
16 centre, page 3.

17 Q And then, Mr. Moen, you're with me
18 there, paragraph 8?

19 A Yes.

20 Q All right. So, this is your second
21 opinion, that "the Garis report contains numerous
22 methodological and analytical issues and contains a
23 number of assertions of fact that directly contradict my
24 experience as a fire safety professional."

25 A Yes, sir.

26 Q If I understand this correctly, if
27 you look on page 2, paragraph 3 --

28 A Mm-hmm.

1 Q -- this is a summary of your
2 qualifications, which are set out in more detail in your
3 resume or CV, correct?

4 A Yes.

5 Q All right. So, my understanding
6 is, you claim to be qualified to give this particular
7 opinion based on your experience as a fire safety
8 professional. Is that fair to say?

9 A Yeah.

10 Q And in your direct examination, you
11 indicated that you'd been working as a firefighter and
12 paramedic in Fort McMurray, Alberta, for the last 14
13 years?

14 A Correct.

15 Q You were here yesterday when Chief
16 Garis testified.

17 A Yes, sir.

18 Q And of course he's the Fire Chief
19 in Surrey, British Columbia.

20 A Mm-hmm.

21 Q Correct?

22 A Yes.

23 Q Now, in terms of Fort McMurray, my
24 understanding, and you can correct me if I'm wrong, but
25 Fort McMurray itself has a population of about 75,000
26 people, is that fair?

27 A That's about right, yeah. And then
28 a shadow population of close to 20,000 depending on oil

1 prices.

2 Q Okay. Because it's kind of the
3 urban hub of what I understand to be the Regional
4 Municipality of Wood Buffalo.

5 A Yeah. It's actually -- I believe
6 it's the largest fire protection area in North America,
7 in terms of the boundaries that our department covers,
8 and is responsible for.

9 Q So you're saying the total
10 population of that area would be 75,000 plus --

11 A No, the population of the urban
12 service area would be about 75,000 or 80,000. But then
13 we also cover outlying --

14 Q Right.

15 A -- areas. There is a shadow
16 population in terms of work camps that can be up to
17 20,000. And then there's a bunch of small communities,
18 including Fort Chipewyan to the north, and Anzac,
19 Conklin, Janvier -- there's a large rural demographic as
20 well.

21 Q That's my understanding too. If
22 you look at paragraph 3 again on page 2 of your
23 affidavit, you -- in the second sentence, you say that
24 you have responded to hundreds of structure fires and
25 inspected thousands of occupancies, including
26 residential, commercial, and industrial structures. You
27 see that.

28 A Correct.

1 Q But you make no mention of
2 attending a single *MMAR* -- do you understand what I mean
3 when I say *MMAR*? *Medical Marijuana Access Regulation*?

4 A Correct.

5 Q All right. You make no mention of
6 attending a single *MMAR* residential grow operation in
7 your professional capacity, and that's because you
8 haven't done so. Correct?

9 A That is true. We don't have a
10 policy of green teams in our department.

11 Q And you'd also agree with me,
12 unlike Chief Garis who you heard yesterday, you've never
13 conducted any sort of a study looking at the safety of
14 *MMAR* residential grow operations, correct?

15 A That's true.

16 Q If you look at page 6 of your
17 affidavit, paragraph 20 under heading F, do you have
18 that in front of you?

19 A Yes, I do.

20 Q In this paragraph you state your
21 disagreement with Chief Garis's opinion. You say:

22 "I disagree with all of the findings and
23 conclusions in Mr. Garis's report with
24 respect to medical marijuana grow operations
25 that have been properly constructed in
26 accordance with all laws as posing an
27 increased risk of fire to residential
28 buildings."

1 Right?

2 A That's true, yeah.

3 Q Now, presumably you said that for a
4 reason, and I'm unable to find in the findings and
5 conclusions in the Garis report the point that you
6 appear to be addressing there. In other words, where is
7 it stated in the Garis report that medical marijuana
8 grow operations that have been properly constructed in
9 accordance with all laws pose an increased risk of fire?
10 I can take you to the Garis report --

11 A Sure.

12 Q -- if you'd like to take a look at
13 it. So it's in the Consolidated Book of Expert Reports
14 Volume 3. It's at tab 10. There's a short two-page
15 affidavit and then it's followed by the report. Again,
16 are you able to point us to a finding or conclusion in
17 the Garis report that states that medical marijuana grow
18 operations that have been properly constructed in
19 accordance with all laws pose an increased risk of fire
20 to residential buildings?

21 A So Mr. Garis draws conclusions that
22 based on the -- let me see if I can find it here. They
23 conducted a number of inspections on *MMARs*, I
24 understand, with their inspection teams, and -- trying
25 to find where he makes the statement -- let me see if I
26 can find it here.

27 Q I don't mean to make this an
28 onerous task.

1 A No.

2 Q It's just that I've read the report
3 carefully and I don't see that specific point that
4 you're rebutting in your evidence. And it certainly
5 doesn't -- you'd agree with me, it certainly doesn't
6 appear to reflect what Chief Garis's testimony was
7 yesterday. And because you haven't referenced a
8 specific paragraph or page or item in the Garis report,
9 I don't know what you're talking or speaking to.

10 A Right. I would need a bit of time
11 to review and look for the exact part. I seem to recall
12 that he had drawn some conclusions that *MMARs* posed a
13 public health and fire safety hazard. Is that not his
14 conclusion or his findings?

15 Q Well, that's not the same thing
16 though, is it? I mean, you're saying that -- what's
17 being suggested in your statement in paragraph 20 is
18 that the Garis report concludes that medical marijuana
19 grow operations that have been properly constructed in
20 accordance with all laws pose an increased risk of fire
21 to residential buildings.

22 A Right. So what you're suggesting
23 is you read through it and you find no -- where he's not
24 made the statement properly constructed in accordance
25 with all laws.

26 Q Let me just -- I'm going to restate
27 it and then I'll ask you a question.

28

1 Is it your understanding that the Garis
2 report concludes that medical marijuana grow operations
3 that have been properly constructed in accordance with
4 all laws pose an increased risk of fire to residential
5 dwellings?

6 A I think it would be more accurate
7 to say that I disagree with respect to the -- I don't
8 think Mr. Garis has presented a case that *MMARs* pose an
9 increased risk to fire in residential buildings, in that
10 he's -- it's -- positing that *MMARs* pose a risk,
11 increased public safety risk. And I'm disagreeing with
12 that. I don't think he's made his case.

13 Now, I may have misspoken here where I
14 said "properly constructed in accordance with all laws".
15 I mean, we'd be -- there is fire code violations in any
16 building you go into. So, you know, one could make the
17 argument that there is no occupancy -- or it's very rare
18 to find an occupancy that is constructed and maintained
19 in accordance with all laws. There is certainly fire
20 code violations you could probably find in this building
21 today.

22 So, I would -- you know, it might be more
23 accurate to say with respect to marijuana -- he hasn't
24 made the case for *MMARs* being an increased risk to fire
25 to residential buildings in general.

26 Q You're not --

27 A So it might have been unfair to say
28 if you find one, that a rare case of a *MMAR* or any

1 occupancy that has no fire code violations, it might be
2 unfair to say that he's making the case that that would
3 be a fire safety hazard. So, I'll grant you that.

4 Q Are you saying that you
5 fundamentally misunderstood what the conclusions were in
6 the Garis report?

7 A No. I didn't misunderstand what
8 the conclusions are. I probably worded that
9 incorrectly. You know, probably have been more accurate
10 to say that I disagree with him in respect to *MMARs*
11 posing an increased risk of fire to residential
12 buildings.

13 Q You are not suggesting that
14 personal or designated marijuana production sites under
15 the *MMAR*, because they're supposed to be regulated --
16 you're not suggesting that they are as consequently
17 compliant with all laws, are you?

18 A No, that's not what I'm suggesting.

19 Q Okay. And you'd agree that
20 residential medical marijuana grow operations that have
21 not been properly constructed in accordance with all
22 laws do pose an increased risk of fire, correct?

23 A Well, I wouldn't agree with that.
24 I wouldn't see the evidence of that.

25 Q You would agree with me that there
26 does not have to be a fire for a risk of fire to exist.
27 Correct?

28 A Correct.

1 Q You'd also agree, I take it, that
2 the only way to really ensure that there is a decreased
3 risk of fire is to conduct inspections of premises,
4 correct?

5 A Well, I mean, I think the best way
6 to decrease the risk of fire would be just to ban houses
7 altogether, because then you would never have anything
8 to ignite. But, you know, as a fire safety
9 professional, it's about a balance of harms. What is --
10 when you inspect a building, our goal is education, and
11 helping people be safer. So, there are hazards, just by
12 virtue of having a house built that has electricity in
13 it, and a kitchen.

14 Q So, short of doing away with all
15 residences, your position is that residential medical
16 marijuana grow operations that have been properly
17 constructed in accordance with all laws, and those that
18 are inspected regularly by professionals like yourself--

19 A Yes.

20 Q -- and electricians and structural
21 engineers, those would pose a decreased risk of fire.

22 A Absolutely.

23 Q If we can go back to your
24 affidavit.

25 A Sure.

26 Q Paragraph 25, this is on page 7 of
27 your affidavit. Again the page number is on the top
28 middle. And again paragraph 25 is what I'm referring

1 to.

2 A Sure.

3 Q All right. And I think it would
4 assist here if you also open the Garis report up. So
5 this again is in Volume 3, and once you get past the
6 two-page affidavit the page numbers for the report are
7 in the bottom right-hand corner, and if you go to page
8 11. Do you have that in front of you?

9 A Yes.

10 Q So that particular page begins with
11 paragraph 41 and there is a chart that shows the pattern
12 of inspections from 2005 to 2013 inclusive. Do you see
13 that?

14 A Yes, I do.

15 Q Okay. Now, going back to paragraph
16 25 of your affidavit, you state that the graph shows,
17 and you use the word "regulation" is working. Now, I
18 take it what you mean by "regulation" is that
19 inspections are taking place and deficiencies are being
20 noted, correct?

21 A Yes, sir.

22 Q And Chief Garis testified in his
23 testimony yesterday that the repair notices are
24 electrical repair notices. Do you recall hearing that?

25 A Yeah, I don't recall that but --

26 Q Okay.

27 A -- I take your word for it.

28 Q So looking at paragraph 41 and

1 looking at the graph or chart that appears there, you
2 would agree that the graph shows that inspections, when
3 done, have revealed safety problems. Correct?

4 A Yes, I would.

5 Q And they've done so for residential
6 medical marijuana grow operations.

7 A Yeah.

8 Q You'd agree with that, looking at
9 the information? All right. And a significant number
10 of problems or hazards identified required repair
11 notices being issued. Agree with that as well?

12 A That's true.

13 Q I'm going to have you move around
14 in both of these again.

15 A Okay.

16 Q Going back to your affidavit, if
17 you could turn over to page 8 and specifically paragraph
18 31.

19 A Yeah.

20 Q All right. In that paragraph you
21 are responding to a paragraph 48(e) in the Garis report
22 and we'll go to that in a moment. But in your paragraph
23 31, in dealing with that paragraph 48(e) in the Garis
24 report, you say or state:

25 "This appears to contradict paragraph 146,
26 which shows illicit grow operations to be far
27 bigger culprits of safety violations."

28 So that's what you say in that paragraph,

1 correct?

2 A Yes.

3 Q All right now, let's look at
4 paragraph 48(e). So in the Garis report, which is
5 Volume 3, do you have that in front of you?

6 A Yes, I do.

7 Q All right. At page 13. So again,
8 it's 13 of the report, page 13's at the bottom right-
9 hand corner. And you'll see paragraph 48.

10 A Yes.

11 Q This is in the section "Summary of
12 key findings". And if you go down to paragraph (e),
13 that's what you're referring to here, right?

14 A Right. Yes.

15 Q Okay.

16 A Yeah, I was wondering where he got
17 this 71 percent, I think.

18 Q You're wondering where he got those
19 numbers from? Why don't --

20 A Oh, no. Right now I'm pointing out
21 that I think it's -- that the numbers seem to contradict
22 each other here.

23 Q Yes. Between this paragraph and
24 paragraph 146.

25 A Right.

26 Q So, I don't know the best way to do
27 this. If you can put your finger on page 13, or slide
28 something in there so you don't lose the page --

1 A Sure.

2 Q And then if you could turn again in
3 the Garis report to page 52 and 53. This is where we'll
4 find paragraph 146.

5 MR. CONROY: I will just give the
6 witness this, if that works.

7 MR. JANUSZCZAK: Thank you.

8 Q Do you have paragraph 146 in front
9 of you?

10 A I do, yes.

11 Q All right. So, it begins at the
12 bottom of page 52 under the heading "Electrical
13 hazards", and then it carries over to the next page, and
14 there is a summary of the electrical issues in chart
15 form. So you see that?

16 A Yes.

17 Q Okay. Now, I take it you say in
18 your paragraph 31 that this appears to contradict -- and
19 you use the word "appears" because you're unsure what
20 you're looking at?

21 A It wasn't apparent to me -- readily
22 apparent where he arrived at these numbers, what his
23 source was between the two paragraphs.

24 Q Okay. Since preparing your report
25 in December of last year, have you taken the opportunity
26 to take a closer look at this, and definitively confirm
27 your observation?

28 A I have not.

1 Q If you can just keep a tab at
2 paragraph -- or page 52 and 53, and go back to paragraph
3 48(e) on page 13.

4 A Right, yeah.

5 Q So if you look at page 48 -- or
6 page 13, paragraph 48(e), and you read that paragraph,
7 you'll see that it deals with structural issues,
8 structural risks. Do you see that?

9 A I see that, yeah.

10 Q All right. And if you turn to page
11 58 and 59 of the Garis report, on page 58 you'll see the
12 heading "Structural hazards". Do you see that?

13 A Yes.

14 Q All right. So under "structural
15 hazards" there is -- begins at paragraph 165. And then
16 runs down to paragraph 168 on page 59. If you would
17 just take a moment to look at those, but if you can read
18 in particular paragraph 168.

19 A 168.

20 Q Which is on the top of page 59.

21 A Right, so he's talking about risk
22 regarding structural hazards.

23 Q Right. And if you look on that
24 chart where the risk is characterized as high, you'll
25 see that for illicit grows he has the number of 10.7,
26 approximately 11 percent, and for licensed it's 72.3
27 percent, so 72 percent roughly.

28 If you go back and reread paragraph 48(e)

1 on page 13, which again is Summary of Key Findings,
2 you'll see that those percentages are reflected in the
3 paragraph. And again what I want you to do here is just
4 to confirm for yourself that paragraph 48(e), as it
5 states, deals with structural hazards.

6 A I see that, yeah.

7 Q Okay.

8 A Yeah.

9 Q Now, if you go back to paragraph
10 168 -- or sorry, 146, which is at page 52 and 53.

11 A Yes.

12 Q This and these figures, these deal
13 with something completely different, correct? This is
14 not structural.

15 A That's correct, it's electrical
16 hazards.

17 Q It's electrical.

18 A Yeah. Yeah, so it's interesting to
19 me why there would be a discrepancy. Why would you see
20 an increased number of violations in licensed MGOs when
21 it comes to structural and not see the same thing when
22 it comes to electrical. And I don't see any explanation
23 as to why there would be that discrepancy.

24 Q So when we go back to your
25 paragraph 31 on page 8 of your affidavit, when you talk
26 about the apparent contradiction, is that what you're
27 referring to?

28 A Yes, I believe that's what I was

1 referring to, the fact that in one hand we see they
2 appear to be at greater risk, and on the other hand when
3 it comes to electrical they're at a lower risk and
4 there's no -- there doesn't seem to be any explanation
5 as to what accounts to that or any attempt to understand
6 what accounts for that discrepancy, why we would be more
7 compliant in electrical and less compliant in
8 structural.

9 Q It's not that you didn't realize
10 that the two paragraphs were dealing with two completely
11 different hazards.

12 A No, it wasn't that. It was that
13 there seems to be some contradictions.

14 Q I'd like you to turn to page 9 of
15 your affidavit. You can close of the Garis report book
16 now. So back to the Consolidated Book of Expert Reports
17 Volume 6, at tab 23, this is your affidavit, and if you
18 can flip to page 9.

19 A Yeah.

20 Q And I'm looking at paragraph 34, if
21 you could take a look at that.

22 A Sure.

23 Q All right. And you've alluded to
24 this, I think, in your direct examination, but here you
25 say:

26 "The question that is forefront in my mind as
27 a fire officer when you are talking about
28 medically disabled people growing their own

1 medicine is how can we help people with
2 medical disabilities grow their medicine more
3 safely?"

4 Correct? That's what you say?

5 A Sure.

6 Q And that's because your personal
7 view is that individuals should be allowed to grow their
8 own marijuana for medical purposes, correct?

9 A I think it would be more fair to
10 say that it's because that as a fire officer, educating
11 the public is the best way of creating fire safety, a
12 culture of fire safety in your community. And so,
13 whatever their activities that they engage in, I want to
14 make sure that they're doing it in a safe manner and
15 support them doing it in a safe manner.

16 Q So --

17 A And so, you know, I'm trying to
18 comprehend why that wouldn't be at the forefront of his
19 mind.

20 Q So this is not indicative of your
21 personal view here?

22 A Well, it's my professional view
23 that fire safety officers, people charged with public
24 safety and fire safety, ought to help people do things
25 in a safe manner, the things that they're doing; the
26 things that they're doing that are legal. And so that's
27 -- you know, trying to understand that is -- you know,
28 the reason I put that in there is because that should be

1 our primary concern, I believe, as public safety
2 officials, is to help and support people doing things in
3 a safe manner.

4 I don't personally support the use of
5 cannabis; I don't use it myself, and I don't recommend
6 its use. But it's not -- I'm not an advocate for
7 cannabis, but --

8 Q Well, in fact, your personal and
9 political view is that marijuana -- and you indicate
10 this in your direct examination before I got up to
11 question you, that marijuana should be completely
12 decriminalized.

13 A I don't think that force should be
14 used against people for doing peaceful activities.
15 That's my political view.

16 Q All right. So the
17 decriminalization -- let me put it to you this way.
18 When I had a look at the Libertarian Party of Canada
19 website, the platform is there for the party, correct?

20 A Correct.

21 Q And again, you indicated this to
22 some extent in your direct examination, but to quote
23 what I read, "the Libertarian Party of Canada would end
24 the war on drugs by decriminalizing the consumption and
25 possession of drugs." That's the party platform?

26 A Yes, sir.

27 Q And drugs would include marijuana.

28 A Yes, sir.

1 Q Presumably all drugs that are --
2 you could face criminal penalty for using or possessing.
3 Is that fair?

4 A That's probably fair, yeah.

5 Q Okay. Well, I'm assuming it is,
6 because it's just the blanket word "drugs". Nothing
7 specific.

8 A Yeah.

9 Q And in the joint book of documents,
10 so it's the big book you've got, volume 11 of 13, have
11 that in front of you?

12 A Okay. Yes.

13 Q It's the largest one. So if you
14 can flip back to tab 18, but this time not tab A, tab B.

15 JUSTICE: You want to give a page?

16 MR. JANUSZCZAK: Yes. 4191.

17 JUSTICE: 4191?

18 MR. JANUSZCZAK: Yes.

19 JUSTICE: Thank you.

20 A Yes, I'm there.

21 MR. JANUSZCZAK:

22 Q When we had been discussing your
23 biography on the party website, it had referred to the
24 highly visible by-election campaign that you ran. The
25 document at 18B, this is one of the advertisements you
26 used for yourself as part of that campaign, correct?

27 A Well, I don't know if
28 "advertisement" would be correct, but it was a

1 provocative meme that we put out, yes.

2 Q And it was being used to promote
3 yourself to become leader of the party, correct?

4 A No, I had no intentions of becoming
5 the leader of the party. It was to try to draw people
6 into the message that I was promoting as part of my
7 platform in the by-election.

8 Q Okay, and this is a photo of you.

9 A Yeah.

10 Q And this message is something you
11 would have approved.

12 A Yes.

13 Q Okay.

14 If we could have that marked as the next
15 exhibit.

16 JUSTICE: Yes.

17 THE REGISTRAR: 34.

18 JUSTICE: You're going to have to give
19 me a number again; 4191 was it?

20 MR. JANUSZCZAK: 4191 is the page
21 number, bottom right-hand corner.

22 JUSTICE: Thank you.

23 **(TAB 18[b], PAGE 4191, LIBERTARIAN PARTY ADVERTISEMENT,**
24 **MARKED EXHIBIT 34)**

25 MR. JANUSZCZAK:

26 Q So your message is, I want gay
27 married couples to be able to protect their marijuana
28 plants with guns.

1 MR. CONROY: I was going to ask him
2 whether his opinion was the first one or the second one,
3 given the paragraphs, but --

4 JUSTICE: Well, good enough.

5 MR. CONROY: Our next witness is Scott
6 Wilkin [sic], and his evidence or his affidavit appears
7 at tab 26 of the Book of Experts. We should have that.

8 **SCOTT WILKINS, Sworn:**

9 THE REGISTRAR: Please state your
10 name, occupation, and address.

11 THE WITNESS: My name is Scott
12 Wilkins, 2459 Pauline Street, Abbotsford, British
13 Columbia. I'm a Commercial Licensed Insurance Broker.

14 MR. CONROY: So if his affidavit could
15 be marked, I think we're up to Exhibit 35.

16 **(AFFIDAVIT OF SCOTT WILKINS MARKED EXHIBIT 35)**

17 **EXAMINATION IN CHIEF BY MR. CONROY:**

18 Q Mr. Wilkin, you mentioned that
19 you're a Licensed Insurance Broker, and as indicated in
20 the first paragraph of your affidavit you indicate the
21 name of the company, LMG Insurance Brokers, and you
22 indicate that you specialize in insuring all types of
23 commercial, residential properties and that you have
24 been insuring Health Canada licensed medical marijuana
25 facilities since April of 2010?

26 A Yes.

27 Q Can you tell us -- most of us have
28 dealt with an insurance broker at one time or another

1 but for the record, what does an insurance broker
2 actually do?

3 A Well, an insurance broker will
4 place insurance policies for individuals looking for
5 insurance, whether they be commercial. We use an
6 application process to impart the data of a risk to
7 underwriters. And a broker also means we can deal with
8 more than one underwriter. So we will often shop to
9 many underwriters the same risk in order to get their
10 input on the insurability of it.

11 Q And this is a private business
12 corporation?

13 A Correct.

14 Q And you're in it to make money?

15 A Profit, yes.

16 Q And so how do you do that?

17 A Well, we -- based on the revenues
18 generated by the premiums, but further to that we have
19 what we call loss ratios, because we can have large
20 claims get paid out and a loss ratio would indicate the
21 profitability of a certain class of business. If there
22 is a hundred percent loss ratio for a class of business,
23 it's probably not good, because every dollar taken in on
24 a claim has been paid out on a claim, plus
25 administration and what-not. So, we like lower loss
26 ratios.

27 Q But the lower the loss ratio, the
28 more profitable the business?

1 A It's an indication to the
2 underwriters to stay or go.

3 Q Now, you've produced -- and we have
4 as Exhibit A to your affidavit, an expert report
5 together with a number of exhibits. Fair enough?

6 A Yes.

7 Q And that sets out your evidence in
8 rebuttal and particularly to the witnesses Len Garis and
9 Shane Holmquist?

10 A Yes.

11 Q And you have also, at Exhibit B to
12 the affidavit, you have signed the certificate
13 concerning the Code of Conduct for expert witnesses?

14 A Correct.

15 Q And you're here to give us your
16 expert evidence as an insurance broker --

17 A Yes.

18 Q -- involving the insurance
19 industry.

20 A To assist the court, yes.

21 Q And especially in relation to the
22 insuring of medical marijuana --

23 A Yes.

24 Q -- Health Canada licensed *MMAR*
25 sites.

26 A It's become my specialty.

27 Q Okay. So just to quickly take you
28 through parts of your affidavit, as you say, at 4A(e),

1 and I should be giving the page -- so that's page 2.
2 You say that your report addresses assumptions and
3 alleged risks of producing medical marijuana under the
4 licenses from Health Canada, and specifically those
5 raised by Len Garis and Shane Holmquist. Fair enough?

6 A Yes.

7 Q You then say you're a Level 2 --
8 and this is the next paragraph. A Level 2 provincially
9 licensed insurance agent since 1999. Anything
10 significant about Level 2, or --

11 A Level 2 versus a Level 1 gives you
12 an ability to operate outside the office, and sign
13 policies without being supervised.

14 Q Okay. And as you say, you've been
15 writing policies on these types of sites since 2010.

16 A Yes.

17 Q And you indicate who you've
18 consulted, what entities and persons and so on, in terms
19 of risk, risk management. Fair enough?

20 A Yes.

21 Q And you talk at the bottom of that
22 page under (d) about reviewing hundreds of insurance
23 applications, and you describe other information and
24 experiences that you rely upon?

25 A Yes.

26 Q And you -- the next page, under
27 (e), address what you understand to be the common risks
28 associated with these types of facilities?

1 A Yes.

2 Q And you have not had anything to do
3 with unlawful operations, as I understand it.

4 A No.

5 Q Okay. So the risks and so on that
6 you address are in proper legally-licensed facilities.

7 A Yes.

8 Q Okay. And you indicate at (f) your
9 particular disagreement with Mr. Garis and Cst.
10 Holmquist, and again you then go on to provide the basis
11 for your opinions at (g) and over onto the next page.
12 Fair enough?

13 A Yes.

14 Q In your expert report, you do
15 indicate that you have had a number of claims over the
16 roughly four- to five-year period you've been writing
17 these.

18 A Yes.

19 Q Can you just comment on that
20 briefly?

21 A Sure. We've, I believe, had six
22 claims with the *MMAR* properties that we insure. And two
23 have been a fire, but one was set by a roofer who was
24 re-roofing a building that housed a medical marijuana
25 operation. So it had nothing to do with the facility in
26 that regard.

27 And the other fire was a fire that
28 started in an outbuilding, an unknown ignition source.

1 Again, had nothing to do with the actual production
2 building which was adjacent to it, but it did suffer
3 damage.

4 And then we've had a number of what we
5 would call non-causation ones, meaning sewer backups in
6 a residential home where there was an outbuilding that
7 had the medical marijuana facility. And because we
8 insured the entire property, we still had to call it a
9 claim. However, the two sewer backups really were in
10 residential houses, and had nothing again to do with the
11 grow. As a matter of fact, we have no claims at all as
12 a result of any of the growing in the over 300 policies
13 we've written.

14 Q 300 policies, between 2010 and
15 present?

16 A Yes.

17 Q And six claims. Did I get that
18 right? But none of them the cause of -- caused by the
19 site.

20 A Correct. Not a one.

21 Q Okay. Would you answer any
22 questions my friend has, please.

23 A Yes.

24 **CROSS-EXAMINATION BY MR. ALMA:**

25 Q Good morning, Mr. Wilkins. Before
26 I start the questions a quick housekeeping. So you used
27 the term or the phrase "Health Canada licensed medical
28 marijuana facilities" in your report, and I understand

1 that to mean sites where people cultivate marijuana
2 under *MMAR* licences, is that right?

3 A Yes.

4 Q Okay, so Health Canada licensed
5 medical marijuana facilities is kind of a mouthful for
6 me, and so just for the purposes of our discussion today
7 I'm going to just use the term "*MMAR* site".

8 A Okay.

9 Q Okay, thank you. So you mentioned
10 you're an insurance broker.

11 A Yes.

12 Q And you've been an insurance broker
13 since 1999?

14 A Yes.

15 Q And you work for LMG Insurance
16 Company.

17 A Yes.

18 Q Okay. And are you an owner or
19 partner in that company?

20 A No.

21 Q You're not, okay. And your
22 expertise today is as an insurance broker, correct?

23 A Yes.

24 Q And so as such you have knowledge
25 of property insurance policies and procedures?

26 A Yes.

27 Q And you also specialize, I noted in
28 your report, in hard to place commercial insurance.

1 A Yes.

2 Q Okay. And that's insurance for
3 properties for which it's difficult to find an insurer,
4 is that fair?

5 A Yes.

6 Q Okay. And insurance companies will
7 not insure or are loath to insure hard to place
8 insurance properties because of their perception of risk
9 related to those properties.

10 A No. We have different markets
11 available to us as brokers. We have standard or AAA
12 markets where they will take commodity style risks, and
13 then we have more special risk markets where, if there's
14 a frequency of claims or people have had issues with
15 mortgages, that sort of stuff. So the harder to place
16 markets are different insurance companies than the other
17 ones.

18 Q Okay. But you'd agree that *MMAR*
19 sites are difficult to insure. Like most mainstream
20 insurance company will not insure *MMAR* sites.

21 A Yes.

22 Q Okay. And in fact the majority,
23 the vast majority of insurance companies will not insure
24 *MMAR* sites.

25 A Yes.

26 Q And you would agree that yours is
27 one of the only companies that insures *MMAR* sites.

28 A Yes.

1 Q Are you aware of any other company
2 in Canada that insures *MMAR* sites?

3 A It's been on and off. There are
4 the odd -- I have some competitors that have attempted
5 to do what we're doing but with varied success. I'm not
6 fully aware of what their numbers are, but at this
7 particular moment I don't think anybody else can do
8 this.

9 Q Okay, so really your company is, to
10 your knowledge, the only company that consistently
11 insures *MMARs*.

12 A Sure. I'd like to clarify that
13 we're a broker and we're LMG Insurance, and the company
14 that actually is insuring these is Lloyds of London.

15 Q Okay. Now, turning to the issue of
16 insurance, if an *MMAR* site property owner had a regular
17 home policy and they didn't declare that they had an
18 *MMAR* site in their home, and if there was an accident
19 relating to marijuana cultivation, their insurance
20 company wouldn't cover those damages, right?

21 A Typically they would go in with the
22 basis of a denial. However there are some cases where
23 there was a non-disclosure of a garden, there was a
24 fire, and in the end they did receive some coverage.

25 Q But that's kind of an outlier,
26 right? That's an exception.

27 A Correct.

28 Q Okay. And similarly, people are

1 completely uninsured. They have an *MMAR* site and an
2 accident happens as a result of the marijuana
3 cultivation in their home, their residence, on their
4 property. They won't be covered at all. There's no --

5 A It even goes further than that even
6 if it has nothing to do with the actual garden. Just
7 the fact that it was not disclosed to the insurers could
8 possibly give them the right to deny.

9 Q Okay.

10 A So they're in actual violation of
11 their policy by doing it.

12 Q Okay, and it's the disclosure
13 that's important. Insurance is -- you have to disclose
14 risk, correct?

15 A Yes.

16 Q Okay. Now, in your report I've
17 heard over, I've heard approximately 300 *MMAR* grow
18 sites. Is that accurate?

19 A Yes.

20 Q Okay, and you classify these sites
21 as either residential, agricultural or commercial?

22 A Yes.

23 Q Okay. How many of those 300 or so
24 sites are residential?

25 A We probably would do about 70
26 percent of those perhaps but maybe a little bit less,
27 because some would be agricultural/residential.

28 Q Okay, so sorry, residential and

1 agricultural combined are 70 percent?

2 A Yeah, we have quite a few
3 properties where it's agricultural but there's a
4 residential home with some farming operations and an
5 outbuilding that may have a facility, an *MMAR* garden in
6 it. So it's not quite a residential property but it
7 falls under the same. So I just want to clarify.

8 Q Okay, and the rest then would be
9 commercial properties.

10 A Yes.

11 Q So 30 percent.

12 A Approximately.

13 Q Okay. And the conclusions you draw
14 about the safety of the *MMAR* sites in your affidavit, in
15 your report, and in the schedules attached to your
16 report, all those conclusions about the safety of *MMAR*
17 sites are based on the sites that you insure, correct?

18 A Yes.

19 Q Okay. And so you're not travelling
20 around Canada and visiting *MMAR* sites that you don't
21 insure, right?

22 A No.

23 Q Okay. And you mentioned this
24 earlier but just to clarify, you don't insure illegal
25 grow-ops, do you?

26 A Correct.

27 Q Okay, and so you wouldn't have the
28 data required to do an analysis of illegal grow-ops.

1 A Not from an insurance point of
2 view.

3 Q Okay. And you don't insure illegal
4 medical marijuana production. I just want to draw the
5 distinction.

6 A Absolutely not.

7 Q Okay, and so in your report you say
8 that you have insufficient data to form an opinion on
9 those locations.

10 A Yes.

11 Q Okay. I'd like to talk now about
12 risk, and my learned friend talked or directed you to
13 part of your affidavit to talk about the risks
14 associated generally with medical marijuana cultivation.
15 And I just want to make sure we're on the same page. So
16 you'd agree that the risks associated with medical
17 marijuana cultivation can fall under the rubric of
18 electrical risks, correct?

19 A Yes.

20 Q And those risks could involve or
21 include non-code wiring?

22 A Yes.

23 Q Ballasts?

24 A What about ballasts, pardon me?

25 Q The incorrect use or incorrect I
26 guess --

27 A Installation?

28 Q -- installation of ballasts.

1 A Yes.

2 Q Okay. Bypassed electrical panels?

3 A Yes.

4 Q Also high wattage bulbs not secured
5 or hung incorrectly?

6 A Yes.

7 Q Okay, those are all, those are all
8 risks.

9 A Yes.

10 Q Okay, and moving on to structural
11 risks, holes in floor boards?

12 A Potentially.

13 Q Right. Holes in ceilings?

14 A Yes.

15 Q Holes in walls?

16 A Yes.

17 Q And they're also environmental
18 risks. Misuse and mishandling of fertilizer.

19 A Yes.

20 Q Misuse and mishandling of
21 pesticides.

22 A Yes.

23 Q Misuse and mishandling of
24 fungicides?

25 A Yes.

26 Q And just generally misuse and
27 mishandling of chemicals.

28 A Yes.

1 Q Okay. And the incorrect disposal
2 of those products as well.

3 A Yes.

4 Q And that could connect to plumbing
5 problems. Say people were disposing of them in the
6 municipal sewer system, that could cause dangers to the
7 public as well, correct?

8 A Yes.

9 Q Okay. And also it could cause
10 plumbing problems in a facility's plumbing network?

11 A I'm not a plumber. You know, in
12 what regard? It would block them or --

13 Q Yeah, it could cause plumbing
14 backups.

15 A That's a stretch, but I'll agree.

16 Q Okay. And also you mentioned
17 public health risks. So excessive heat and humidity
18 leading to the development of toxic mould?

19 A Yes.

20 Q Those are risks. Chemicals on the
21 site?

22 A Yes.

23 Q And more specifically the improper
24 storage of those chemicals?

25 A If they're there, yes.

26 Q Okay. Thefts as well?

27 A Yes.

28 Q Okay. Also known as grow rips?

1 A Yes.

2 Q Fires?

3 A Yes.

4 Q Now, the risk of danger to any
5 children on the site?

6 A Mm-hmm, yes.

7 Q And then also financial risk, so
8 the risk of not having an insured property or a property
9 on which -- at which insurance will be denied because of
10 the failure to disclose. That also is a risk, correct?

11 A Yes.

12 Q Okay. And you would agree, and
13 this is probably common sense as an insurance broker,
14 you would agree that it's important to mitigate these
15 risks, correct?

16 A Yes.

17 Q And it's important to take the
18 steps required to locate and understand these risks?

19 A Me as a broker?

20 Q From the perspective of insuring
21 the reduction in risk on an *MMAR* grow site. It's
22 important to recognize those risks and to mitigate them,
23 right?

24 A If they're present.

25 Q And similarly, in order to mitigate
26 them it's important to remediate a property so that it
27 complies with the --

28 A To continue the insurability

1 process, yes.

2 Q Okay, good. And really your
3 report, it's focused on insurance, right? So when you
4 talk about *MMAR* sites' risk, you're talking about that
5 from an insurance perspective, correct?

6 A Correct, to financial.

7 Q Right, okay. I'd like to
8 understand how your sample population, so your 300-plus
9 *MMAR* sites, kind of came to be. So these are people who
10 came to you, is that right?

11 A Yes, in a roundabout way.

12 Q Okay, and now, do you advertise?

13 A No.

14 Q You don't, okay, so how did they
15 know to knock on your door so to speak?

16 A Well, I'm a self-promoter. I have
17 access to the internet and it's just a matter of some
18 emails and getting the word out.

19 Q Okay, so it's word of mouth.

20 A Pretty much, yes. I also have
21 attended some medical marijuana trade shows.

22 Q Okay, so in a sense you don't
23 perhaps formally advertise with commercials or jingles
24 on the radio, but your name is out there in the wider
25 community, right?

26 A Yes.

27 Q And by wider community I mean
28 community of people who have *MMAR* licences to grow

1 marijuana.

2 A It's gotten that way.

3 Q And so people then would be able to
4 find you if they wanted to insure their property.

5 A The majority of my referrals come
6 from other insurance brokers who don't know what do with
7 the client.

8 Q Oh, I see, so it's even not just
9 *MMAR*.

10 A The industry working with me as
11 well.

12 Q Okay, great. So people would know.
13 Either they'd come to you directly or they might be
14 directed to you from an insurance broker.

15 A Right.

16 Q Okay, great. And these clients
17 now, they're people who may not have started growing
18 marijuana under the *MMAR* but who want to begin, and so
19 they want to come to you for insurance, is that right?

20 A I'm not sure I follow that.
21 Rephrase it if you could.

22 Q Of course. So I guess one class of
23 your clients are people who have not yet started growing
24 under their *MMAR* licence, correct?

25 A Most of the people are already
26 established and set up by the time they find me.

27 Q Okay. And so they come to you and
28 you take them through what you described as your risk

1 management process?

2 A Yeah.

3 Q Okay, and this involves a number of
4 questions. And is there a questionnaire that they fill
5 out?

6 A Yeah.

7 Q Okay, but you didn't provide the
8 questionnaire on your report.

9 A No, we have an application that we
10 use.

11 Q Okay, it's like a form.

12 A Yes.

13 Q Okay, but you didn't put that form
14 in your report.

15 A No.

16 Q Okay. I'd like to turn to your
17 report. It's tab 26. Do you have the report in front
18 of you, sir?

19 A I do.

20 Q Okay. Now, at the top, the top of
21 the pages, or top of the pages there are page numbers.
22 So whenever I refer to a page number I'm going to refer
23 to those page numbers, the one at the top of the page.

24 A Okay.

25 Q So I'd like to take us to page 9.
26 And this is a page where, close to the top, there is a
27 heading, "Electrical system architecture". Do you see
28 that?

1 A Yes.

2 Q Okay. Now, in your report you
3 indicate that the question just below the electrical
4 system architecture heading are questions you ask in the
5 application form process. Is that fair?

6 A Yeah, in the safety and security
7 section, actually.

8 Q Okay, good. And you ask if their
9 facility, so by this I mean your *MMAR* site, is that
10 right?

11 A Pardon me?

12 Q You asked that their -- if their
13 *MMAR* site --

14 A It's already established at this
15 point, prior to arriving at that part of the
16 application.

17 Q Okay. But you want to know if
18 their site has been inspected by a licensed electrician.

19 A Yes.

20 Q Okay. And if it hasn't, you will
21 tell them to go get their site inspected, correct?

22 A Correct.

23 Q Okay. And how often do you have to
24 go get a *MMAR* site, a potential client, to inspect their
25 site?

26 A Out of all the policies we've
27 written, there is probably maybe a dozen that did not
28 have an electrical permit or a scenario where they had

1 somebody go through, and they just were able to contact
2 somebody, have the electrical professional come and do
3 the assessment, and in a couple of cases they were just
4 okay that it was done correctly. And in some cases a
5 box needed to be changed, and -- but about 12.

6 Q Okay. And that's an expense that
7 would be covered by the *MMAR* site owner?

8 A Yes.

9 Q Okay. How much does it cost? A
10 couple of hundred dollars?

11 A I would think so.

12 Q Okay. And if any work needs to be
13 done, that would also be an expense of the *MMAR* site
14 property owner?

15 A Yeah. Like the electrical work you
16 get done to your house.

17 Q Okay. Including the installation
18 of any electrical equipment.

19 A Yeah.

20 Q For example, a ballast.

21 A Yeah. I know ballasts can be
22 plugged in by consumers, so the plugs, anyways.

23 Q Okay. And that work would be done
24 by a licensed electrician?

25 A Yes.

26 Q Okay. And it's important that the
27 electrical work be done by a licensed professional.

28 A Yes.

1 Q You would agree with that. And in
2 fact, you make that a necessity. It has to be done per
3 -- by a licensed professional, correct?

4 A Yes.

5 Q And all of this, all of the
6 remediations and the work and the labour, that's all
7 paid for by the homeowner? By the site owner?

8 A Yes.

9 Q Okay. And how much on average
10 would that cost?

11 A The cost of setting up a garden?

12 Q From an electrical perspective,
13 yeah. All the work that goes into it, in your
14 experience.

15 A There is -- I mean, it could vary
16 wildly depending on the sophistication of the setup and
17 how many circuits are there. So -- I'm not aware.

18 Q Okay. But anything from a couple
19 of hundred dollars to many thousand dollars?

20 A Yes.

21 Q And you're not going to insure the
22 property unless all of this work is done, correct?

23 A By a licensed electrician?

24 Q Yes.

25 A Yes, and they also need to confirm
26 that the circuits are adequate for the operation. We've
27 had a scenario where the consumer can keep on plugging
28 things in, and to the point where they possibly would

1 over-extend their circuits. So we have that question
2 built in there as well.

3 Q Okay. And how often does the
4 electrician come back to re-check the circuits in a home
5 that you've insured?

6 A It would depend. We ask for an
7 annual report as far as if there has been any
8 modifications done to the system that was first okayed.
9 If we come back with a "yes", we ask if that was done by
10 a licensed electrician.

11 Q Okay. And that again is something
12 that the home -- the *MMAR* site owner would pay for.

13 A Correct.

14 Q Okay. And any work that comes from
15 that, or that flows from that, is also something that
16 they would pay for.

17 A Yes.

18 Q Okay. Now, I mentioned -- I notice
19 that you mention an HVAC system, again at page 9. It's
20 the paragraph that begins kind of middle of the page.
21 "Through the above pre-underwriting and application
22 process, we end up with applicants who are compliant
23 with all Health Canada licensing in having safe HVAC and
24 electrical systems." What's an HVAC system?

25 A Heating, ventilation, and air
26 conditioning.

27 Q Okay. And you require a property
28 owner to have someone come in to ensure the adequacy of

1 their HVAC system?

2 A Yes.

3 Q Okay. And what -- is this same
4 electrician that we were talking about before, or is
5 this a different person?

6 A No, it's -- well, an electrician
7 would need to do the electrical work to the HVAC.

8 Q Yeah. But then who else would
9 inspect --

10 A There are -- inspect the HVAC
11 system?

12 Q To make sure that it's compliant
13 and it's safe.

14 A There -- it can be done by
15 homeowners. There are do-it-yourself HVAC systems. But
16 the electrical portion of the HVAC system is what we are
17 looking for to be done by the electrician.

18 Q Okay. And if any new equipment or
19 a new system is acquired, then it would be up to the
20 owner to pay for that as well.

21 A Yes.

22 Q Okay. And how much do HVAC systems
23 go for, in your experience?

24 A I don't know. I mean, a lot of
25 these guys are buying used ones. But I know from trying
26 to get one for my house, for my air conditioning,
27 because it's -- they're the same units, they're, you
28 know, an average of 1500 to \$2,000.

1 Q Okay. And it's important to have
2 these HVAC systems because they address the issue of
3 high humidity and potential toxic mould developing in
4 your home. Is that your understanding?

5 A Yeah.

6 Q Okay. And that's why it's
7 important that those systems are above-board, and that
8 they operate correctly. Is that right?

9 A Yes.

10 Q And it's important from a risk
11 perspective to make sure that those systems are all
12 above-board.

13 A Yes.

14 Q Okay. Again, your report doesn't
15 attach the questionnaire, so I'm going to ask some more
16 questions about what else is done by you to ensure the
17 safety and security of the home. Now, do you have a
18 security expert attend the residence and determine what
19 safety needs or what safety --

20 A No.

21 Q -- requirements have to be met?
22 You don't have a security expert come in. Okay. So,
23 you wouldn't have somebody who has expertise tell the
24 *MMAR* site owner that they need a specific kind of alarm.

25 A No. I refer to when they were
26 under the application, that they list the additional
27 security for the site under the Health Canada form, and
28 I also have a section where I ask for them to include

1 any additional security that they may have done over and
2 above the Health Canada application.

3 Q Okay. So you're leaving it to them
4 to determine what their security needs are.

5 A It's very eclectic, has been my
6 experience. So I will -- I'm not necessarily leaving it
7 to them. I assist them in, you know, giving the
8 information that's required.

9 Q Okay. And so there would be
10 someone to say, "Look, such a site needs cameras," for
11 example.

12 A I don't know if sites need cameras
13 or not. I know we want them to have -- the insurers
14 want them to have monitored alarms, but we don't
15 necessarily require them to have cameras. It's not a
16 requirement from an insurance point of view.

17 Q Okay. Or recording equipment to
18 record what those cameras capture. That's not a
19 requirement.

20 A It's not a requirement from us, no.

21 Q Okay. And you don't require
22 specific locks, a specific grade of lock.

23 A No.

24 Q Nor do you require any kind of
25 reinforcement to the structure.

26 A No.

27 Q Okay.

28 A It's not under regulation, like the

1 *MMPR*, I do work with *MMPR* applicants as well as for *MMPR*
2 clients where that's a whole different world. Under
3 regulation they need to comply with those types of
4 regulations. But my understanding is the *MMAR*, it's not
5 necessary.

6 Q Okay. And in terms of a monitored
7 security system, one where the alarm is tripped, a
8 signal is sent to a centre, you don't require that
9 either?

10 A Yes, we do.

11 Q You do require it.

12 A On the majority of our properties,
13 we do, yes.

14 Q Okay. And that's an expense that's
15 borne by the property owner?

16 A Yes.

17 Q Okay. And as well as the
18 monitoring costs?

19 A Yes.

20 Q Okay. And those systems, do you
21 know how much your site owners are paying for them?

22 A They -- most of the security
23 contractors I'm aware of will include a system with a
24 monthly fee. So, on average, between 70 to -- well,
25 I've seen \$20 monthly fee, but upwards of \$70 a month, I
26 think.

27 Q Okay. And so because a security
28 expert hasn't come through it, you don't actually have a

1 document or report from an expert saying specifically
2 that this sites meets security requirements.

3 A Why would it be needed? It's not
4 needed for the insurance company.

5 Q So you don't have a report like
6 that.

7 A No, we don't.

8 Q Okay. I want to go back to the
9 issue of plumbing that we were talking about and the
10 dangers of backflows or having liquids leaking into
11 municipal water supply. Now, do you have someone, a
12 plumber or a licensed professional, go in and rate and
13 inspect the plumbing in an *MMAR* site to make sure that
14 it's safe for the cultivation of marijuana?

15 A We don't have one go in. It's not
16 necessary by Lloyds, the insurers.

17 Q Okay, and so you don't have any
18 reports from a plumber that confirms that all of your
19 sites are adequate for a *MMAR* cultivation of marijuana.

20 A No, it's -- no, we don't. But we
21 have our own methods to determine that with a different
22 process.

23 Q And moving along, you mentioned
24 about the toxic mould and the moisture relating to the
25 risks of marijuana cultivation. Do you have an
26 industrial hygienist or any kind of expert go through a
27 home at any time to make sure that the moisture content
28 and the toxic mould, if it exists, has been dealt with

1 adequately?

2 A No, the only time that's ever
3 required by an insurance company is if an occupation
4 permit has been pulled by a municipal authority.

5 Q Okay, so you don't have any reports
6 from any --

7 A It's not necessary.

8 Q Okay.

9 A No reports.

10 Q Okay. And so no reports that the
11 homes are at all times free of mould?

12 A No.

13 Q Or free of toxins.

14 A No.

15 Q Or free of harmful chemicals.

16 A No, these are places where families
17 live though and people are going to, in my opinion, you
18 know, extreme cases to make sure that that doesn't
19 happen.

20 Q Okay. And there are no reports to
21 ensure that the cultivation is being done safely in
22 accordance with public health bylaws and codes relating
23 to the handling of chemicals and toxins?

24 A Not necessary.

25 Q Okay.

26 A The same as many other risks that
27 we insure that aren't -- you know, manufacturing
28 processes for example.

1 Q Okay. Now again, because we don't
2 have the form, I'm going to ask a little bit more about
3 this. So police, do you ever alert the police at any
4 time to seek their input to make sure that *MMAR* site is
5 safe, that it's not in a crime-ridden neighbourhood,
6 that you have as much information as -- that you can to
7 ensure the safety and security of the *MMAR* site owners?

8 A No.

9 Q Okay. What about fire departments?
10 Do you go to fire departments at any time in the process
11 or during the insurance of the *MMAR* site and ask them to
12 inspect the property?

13 A No.

14 Q You don't, okay.

15 A I would like to add I have had many
16 of my clients on their own go to the local authorities
17 though, and I've been given reports that they've had
18 very good reception in that regard. And so it has
19 happened occasionally but it's not required by me. It's
20 done by them.

21 Q Okay, and apart from those reports
22 that are done occasionally, you don't have any reports
23 for the rest of the sites to confirm that they're in
24 line with fire codes.

25 A I wouldn't have reports, no.

26 Q What about health inspectors? Do
27 your policies require that health and safety inspectors
28 or any kind of professional go through the home at any

1 time to ensure that the chemicals are stored in a safe
2 way, that pesticides and fungicides and fertilizers are
3 used in a safe way?

4 A No.

5 Q You don't. So you don't have any
6 reports then --

7 A I don't have any reports, no.

8 Q -- from those professionals.

9 A Unnecessary for what I'm doing, so
10 I wouldn't have them.

11 Q Okay. What about, then, structural
12 engineers or contractors? Is it a requirement of your
13 policy to have structural engineers, contractors, or
14 people who are experts in structural issues and
15 buildings to go in at any time and make sure that the
16 property is properly constructed to house and perform
17 medical marijuana grows?

18 A No, it's the same process we would
19 do with the *MMPRs*. They are relying on -- we just ask
20 them that they've done that process and it's confirmed.
21 There's no reports necessary.

22 Q Okay, and you don't have any
23 reports from them.

24 A No.

25 Q Okay. What about bylaw inspectors,
26 do you go to the municipality and ask the inspectors to
27 confirm that these properties abide by all bylaws
28 applicable to homes?

1 A No.

2 Q You don't. Okay. So there are no
3 reports there either.

4 A No.

5 Q Do you -- does your policy require
6 that somebody inspect a home to ensure that the *MMAR*
7 site owners grow only the amount of plants they're
8 legally allowed to grow under their licence?

9 A You mean, count them?

10 Q Yeah.

11 A No.

12 Q You don't, okay.

13 A No.

14 Q So you don't know if, as of right
15 now, any of your policy holders are over-growing.

16 A Right. I would like to add I am --
17 you know, with many of the growers that I know, they
18 take the plant count very seriously, and you know, I
19 don't know a single one that would violate that.

20 Q Mm-hmm. But you don't know for
21 sure, because you don't have someone --

22 A Based on my five years of talking
23 to people that are doing it, I have a pretty good
24 indication, but I don't know for sure.

25 Q Okay. Similarly, in terms of
26 storage of marijuana, you're aware that the *MMAR* had
27 storage limits for marijuana, correct?

28 A Yes.

1 Q Okay. And did you have anybody go
2 through and ensure that the homes of the *MMAR* sites that
3 you insure were storing only the amount that they were
4 allowed to store under their licence?

5 A No.

6 Q No, okay. Do your policies require
7 that *MMAR* site owners avoid using certain chemicals that
8 are dangerous? For example, carcinogenic, that could
9 cause --

10 A No.

11 Q No? You don't? Okay. And do you
12 -- does your policy require *MMAR* site holders and
13 marijuana cultivators to test their own marijuana for
14 toxins?

15 A No.

16 Q It doesn't. Okay. So you don't
17 have reports that their marijuana is free of toxins?

18 A That's right.

19 Q Okay. And similarly, you don't
20 have any reports that their marijuana is free of insects
21 or other infestations?

22 A That's right.

23 Q Okay. Because there is no expert
24 that goes in or inspector that goes in and checks their
25 marijuana, correct?

26 A It's -- yeah, not necessary for
27 what I do.

28 Q Okay. All right. And what about

1 ensuring that the growers are handling chemicals
2 correctly? Do you require that they take a course in
3 handling chemicals?

4 A No.

5 Q So no fertilizer handling courses,
6 no pesticide handling courses, nothing.

7 A I know of some that have done that.
8 But it's not a requirement. They've just done it to be,
9 you know, more aware, I guess.

10 Q Okay. And the same thing, they
11 don't have to take any tests.

12 A By whom? Who's testing? By the
13 insurers?

14 Q Yeah.

15 A No.

16 Q At page 8 of your -- well, let's
17 take you to page 8. It's actually page 2 of your
18 report, but page 8 at the top of the document. At the
19 bottom there is the last sentence of the paragraph, and
20 it says, "We have very specific photo requirements in
21 order to properly assess the buildings and electrical
22 installations and the risk overall." What are these
23 photo requirements? Like, what -- what role do they
24 play in the entire scheme of insurance?

25 A Well, the photo requirements will
26 tell the underwriter basically the physical nature of
27 what we're looking at. And we require front and rear of
28 the building. We require photos of the ballast area

1 that's being used. We require photos of the electrical
2 panels that service the grows. And any other
3 information that they may have revolving around the
4 installation of their garden. And in some cases, I get
5 very comprehensive reports, right down to engineer
6 reports with B.C. Safety Authority inspections, and
7 other times we just get some photos showing some good
8 electrical work was done.

9 Q Okay. So, then, sometimes -- you
10 don't actually go to the sites, you rely on the
11 reporting --

12 A Not a hundred percent of the time.

13 Q Okay. How many *MMAR* growers have
14 come to you and who you refused to insure because they
15 were unwilling to have the property inspected?

16 A None.

17 Q So they're all willing to do that.

18 A Sure, yes.

19 Q Okay. What about people who are
20 unwilling or unable to remediate their properties, and
21 to pay for electricians, for contractors?

22 A We've probably had under half a
23 dozen that I may not have heard back from.

24 Q Okay. And so you wouldn't have
25 been able to insure these sites because they weren't
26 complying with the requirements of your -- the insurance
27 policy.

28 A Yeah.

1 Q Okay. I just want to ask about the
2 costs of insurance and I have a more general question.
3 So one way an insurance company could mitigate risk is
4 not just to do the remediation as you mentioned, but
5 sometimes a way to do it is to charge a little bit more
6 money, more expensive premiums. Is that fair?

7 A Yes.

8 Q Okay. And so if there were two
9 identical properties but the only difference was -- say
10 Property A and B. If Property B for whatever reason had
11 something that had an increased risk, an insurance
12 company may charge a little bit more for that.

13 A Yes.

14 Q Okay. How much more do you charge
15 for an *MMAR* site versus that same property if it weren't
16 an *MMAR* site?

17 A I get that question all the time
18 from my clients and it's hard for me to explain based on
19 how the insurer's rate structures in different
20 communities, and I'll just give an example.

21 If you have a structure that's within
22 five years old and it's made of wood frame and it's
23 within 1,000 feet of a hydrant and within five miles of
24 a fire hall, that would get a certain rating in a
25 certain community. But you can take that same example
26 and put it in a different community in British Columbia
27 and there's a different fire rating based on the local
28 community. So it's not a commodity for me to just say

1 it's going to be the same here and there. It varies,
2 based also on age of construction, what updates have
3 been done to the structures. So it's hard for me to
4 give you an example.

5 Q But would it be fair to say that
6 there is -- it would be a little bit more expensive?

7 A Absolutely, yeah, and I mean I
8 could, you know, give you an indication. If you had a
9 residential house that was, you know, a \$1500 annual
10 premium and there was no commercial activity going on
11 there, it's just normal homeowners with an outbuilding
12 that's being used for personal use. Now they decide
13 that they require the outbuilding to be an *MMAR* garden,
14 that \$1500 policy might jump up to 2,000 to 2200 and
15 then we're going to require them to put at minimum a
16 liability policy for the *MMAR* garden on the outbuilding.
17 And then if they would like they could also insure the
18 structure and whatnot. And at present our liability
19 premiums start at \$1200.

20 Q A month?

21 A No, annually.

22 Q Annually, okay.

23 A Yes.

24 Q How about the deductibles? Would
25 the deductibles be more expensive too on an *MMAR* site
26 versus not an *MMAR* site?

27 A They're not more expensive.

28 They're higher. So yeah, the standard deductible on our

1 policies is \$2500 on the *MMAR* portion and \$1,000 on the
2 homeowner's.

3 Q Okay. So I'm trying to understand
4 then, in terms of surveillance, you don't have 24-hour
5 surveillance at these *MMAR* sites, right? You're not
6 peeking through the windows.

7 A Well, the insurers that I place
8 this business with, they're the ones that would
9 determine that. And no.

10 Q Okay.

11 A They don't require it.

12 Q So there's no 24-hour surveillance.

13 A Not on all of them, no. Some do.
14 Some do have it.

15 Q And are there surprise inspections?

16 A By?

17 Q Anyone. Any kind of inspector.
18 Health and safety --

19 A Insurance? I wouldn't know other
20 than -- for insurance purposes, I'm here to help the
21 court with insurance, but I don't know. You know, each
22 community may have a different scenario, but not that
23 I'm aware of.

24 Q Okay, and so there are no insurance
25 inspectors who would come in and determine whether or
26 not there had been an incident that wasn't reported.
27 That doesn't happen under the *MMAR* site insurance
28 policies.

1 A No, although we do have a standard
2 question, if they are aware of any incidents that have
3 occurred, you know, whether they were covered or not.

4 Q Okay.

5 Q And so it's a self-reporting
6 system? Is that -- would that be fair?

7 A Yeah.

8 Q Okay. And so as you mentioned,
9 you'd become aware of an incident if there was a report
10 by a homeowner.

11 A Well, claimed.

12 Q A claim.

13 A We become aware with claims.

14 Q Okay. Good. So they'll declare
15 the damage in a claim.

16 A Well, yes.

17 Q Okay. It's possible that because
18 the deductible is \$2500 but say the damage is only
19 \$1,000 to repair, it's possible that they wouldn't
20 declare the damage.

21 A Sure. I've gotten quite a few
22 phone calls where we had sewer backups and there was
23 about \$1200 worth of damage. We need to record those as
24 incidents. But the insurers, they don't claim them,
25 they remediate them themselves. I have a claims example
26 in my affidavit where that's the exact scenario that had
27 happened. They fixed it themselves.

28 Q Yes. At the end of your report,

1 and I'll take you to page 11 -- actually page 5 of your
2 report, but page 11 right on the top there. The four
3 last -- penultimate paragraph says:

4 "It has been our experience that a majority
5 of Health Canada medical marijuana licensed
6 facilities fall into the 'good operator'
7 category and therefore qualify them as
8 insurable."

9 So this is based on your experience with your 300-plus
10 *MMAR* sites, the ones that you've helped locate insurance
11 for, right?

12 A Yes.

13 Q Okay. Now, how many *MMAR* sites are
14 there in British Columbia?

15 A Well, if you extrapolate, I have
16 estimated that there is probably 9,000.

17 Q Okay. Do you know how many there
18 are in Canada?

19 A Probably double that.

20 Q Okay. Would it surprise you that
21 there are actually 16,000 licenses for production in
22 British Columbia alone?

23 A Right. Well, I look at it, at the
24 majority of the ones that I work with have four licenses
25 per location, so I'm not counting licenses. I'm just
26 counting locations.

27 Q Locations, okay. But -- so you
28 said 300 *MMAR* sites that you insure, but even if it were

1 to divide the 16,000 in British Columbia by 4, it would
2 take us to 4,000. 300 *MMAR* sites out of 4,000 isn't a
3 majority, is it?

4 A No.

5 Q No. Okay. And similarly Canada,
6 if there are 32 or 38 multiplied by four, if I can do
7 that, and say -- what would that be? We'll say 8,000.

8 A Right.

9 Q 300 of 8,000 isn't the majority, is
10 it?

11 A No. We look at time, though.
12 We've been doing this for five years, okay? And the
13 loss ratios and whatnot, in my business, come out over
14 time. And we have determined that the 300 sampling that
15 we have will probably be the case for the majority of
16 them that are out there. And we have business plans
17 where -- we would like to sell them all insurance.

18 Q Right. And I'm going to get to
19 that in just a minute. But before we go there, I'd like
20 to turn you to page 44. Again, now, this is the
21 schedule 4 to your expert report. I'll wait for us all
22 to get there.

23 A Yes.

24 Q And there, there are two final
25 paragraphs there. It says "In contrast ...". And here
26 you're comparing *MMAR* sites to illegal sites. You say:

27 "In contrast, there is very little to no risk
28 data available for the legal medical

1 marijuana operation, even though they have
2 been in operation in Canada for over 10
3 years. However, once the data is found, you
4 will see there is not a history like the
5 illegal trade."

6 And then you go on to say:

7 "The risk data for the legal medical
8 marijuana operations will show that it is an
9 injustice to compare the legal operation to
10 the clandestine operation. Yet this is what
11 is done constantly and it's not only done in
12 my trade. The word 'marijuana' carries an
13 unjust stigma when it comes to reviewing the
14 *MMAR* participants."

15 So, you then go to say that you compiled
16 some information based on your experience. What I'd
17 like to know is, this is a document that was prepared
18 for municipalities and bylaws? What was the document?

19 A It was a general document that was
20 prepared to be used where we would come across
21 individuals that would have the stigma of marijuana.
22 And you know, even when I started doing this, when I
23 would be in meetings with people, when I'd be saying the
24 word "marijuana", I would say, "Yeah, your marijuana
25 garden," we would always bring our voices down and
26 whatnot. It's almost been ingrained into us.

27 In this particular document it kind of
28 takes some of that away to the individuals that aren't

1 aware that there is a difference between what's going on
2 with the legal trade versus, you know, the stigma of the
3 old illegal trade. And often I would find myself in
4 conversations with professionals, underwriters, where
5 I'd be almost defending the illegal trade where that's
6 not what I'm here to do, and so I wanted to sort of
7 clarify the difference between them and what our
8 experience has been, based on the policies we've
9 written.

10 Q Okay, and to, in your words,
11 "inform the uninformed". That's in the last sentence.

12 A Yes.

13 Q Okay. And the uninformed would be
14 the municipalities? Is that who you'd prepare this for?

15 A In general this document, I could
16 have altered that a little bit. I've used it for a
17 number of different things, and in the end if I would
18 have known it was coming into this I would have maybe
19 changed it a little bit. But yeah, in general that's
20 for anybody who is not aware, who needs to -- wants to
21 be aware.

22 Q And it's part of sort of an
23 educational campaign?

24 A Sure. May I give an example?

25 Q Okay.

26 A In our local municipal offices we
27 have bylaw guys and city councillors who were in the
28 midst of writing a bylaw for the *MMPR*. It was put in

1 the local newspaper that they were doing this, and I
2 contacted the council and I had a discussion with them,
3 explained to them that I've been operating as an
4 insurance agent insuring these facilities, many in your
5 community and that would you like to come and look and
6 see exactly what is being done?

7 And so they took me up on it and that's
8 partially why I created this document, it was the first
9 one, and we toured a facility where there was an
10 individual who was growing his own medicine, and they
11 were all very impressed. They had no idea that things
12 were being done at that level. And I assisted in
13 removing the stigma from the bureaucrats, as they put
14 it, who were drawing the bylaw. They should be drawing
15 it without the stigma, and that was the idea of this
16 particular document.

17 A So an educational document.

18 Q Yes.

19 A Okay, and one that would, I guess,
20 kind of go towards the advocacy that you'd do on behalf
21 of the people who are afflicted by this stigma.

22 Q I don't know if you'd call it
23 advocacy. I'm motivated by placing policies and I want
24 the risks to be good, whether it's a wood shop or a
25 medical marijuana facility.

26 A Okay. Now, in this document and in
27 your report you draw a couple of conclusions, and I have
28 a better appreciation now that your report is really

1 written from the perspective of insurance and the risk
2 associated with insurance, right? You're not an expert
3 in -- you know, you're not a qualified electrician, so
4 you can't provide your expert opinion about the
5 electrical safety of these sites, correct?

6 A Correct.

7 Q Right, and you're not an electrical
8 engineer or anything like that.

9 A No.

10 Q And when it comes to structural
11 dangers you're not a structural engineer or a civil
12 engineer or --

13 JUSTICE: Sir, he's not a hockey
14 player either.

15 MR. ALMA: He's not a hockey player.

16 JUSTICE: The qualifications have
17 already been pointed out. Don't waste time.

18 MR. ALMA: Okay. Very good.

19 Q Just to go back to your comment
20 about you were interested in placing policies. You
21 mentioned that the *MMAR* site policy is a very low loss
22 ratio.

23 A Yes.

24 Q And so they're very profitable.

25 A Yes.

26 Q Okay. And the loss ratio is 6
27 percent? So for every \$100 that's paid by a site owner,
28 you would only have to pay out \$6.

1 A Yes.

2 Q Okay. And so would you -- how does
3 that work? Do you get a commission? Is that how it
4 works?

5 A On the loss ratios?

6 Q No, on each policy.

7 A Well, yeah. There is an agency
8 commission, a revenue stream that goes back to the
9 agency, and then the broker has their own deal with the
10 agency.

11 Q Okay. So for every commission you
12 sell, you get a certain percentage.

13 A Yeah. As any insurance broker,
14 that's --

15 Q Okay. And do you get any other
16 financial incentives for the sale of each of these
17 policies?

18 A No.

19 Q Okay. But it would be good for
20 your company's general profitability.

21 A Sure. We've identified a niche
22 market, and you know, we're in an economic development
23 boom right now where there is no real areas to expand
24 our businesses, and this is an area where we're doing
25 it.

26 Q Good. And so it would be good for
27 your business, but also good for you professionally, in
28 that it might lead to raises, right? You might get a

1 better salary as a result of the good work you're doing
2 here.

3 A Absolutely, yes.

4 Q Okay. And also maybe promotions?

5 A Yeah. I'm at the highest I can
6 achieve with my company, so I -- there is no ceiling
7 above me.

8 Q Okay. Now, you have an
9 authorization to possess under the *MMAR*. Correct?

10 A Yes, I do.

11 Q And your daily dosage is 40 grams?

12 A That's what the document says.
13 It's 20, actually.

14 Q Twenty? But this document says 40,
15 but you only use 20. Well, I'll put it this way. What
16 is your daily dosage limit?

17 A I believe -- well, I'm probably
18 using about 1 to 3 grams now.

19 Q Okay. And your possession limit is
20 about -- what is your possession limit?

21 A 1200.

22 Q Grams?

23 A Yes.

24 Q Okay. And your storage limit is
25 how much?

26 A I don't know.

27 Q Okay.

28 A I don't store it. It's not

1 necessary.

2 Q You don't -- okay. Are you -- you
3 also have a PUPL licence which allows you to cultivate
4 up to 195 plants?

5 A Yes.

6 Q Okay. And are you currently
7 cultivating?

8 A Not all those plants, no.

9 Q Not all of them, but some of them.

10 A Yes.

11 Q Okay. And you're interested in
12 buying marijuana from licensed producers as well, aren't
13 you?

14 A I am actually in the market right
15 now for an LP, yes.

16 Q Okay. Are you registered with any
17 LP?

18 A I haven't yet.

19 Q Okay. But it's something that
20 you're going to do.

21 A Sure. I've talked to every one of
22 them.

23 Q Okay, thank you.

24 A As a patient.

25 Q If I could take you to page 4.

26 Page 4 is your affidavit. And at the bottom of that
27 there is a section K. And I'll read out what it says
28 there. It says,

1 "Particulars of any aspect of the expert's
2 relationship with the party to the proceeding
3 or the subject matter of his or her proposed
4 evidence that might affect his or her duty to
5 the court."

6 Do you see that?

7 A Yes, I do.

8 Q And then below that, it's "N slash
9 A". Do you see that?

10 A Yes.

11 Q And N/A, when you wrote that, it
12 just means not applicable?

13 A Yes.

14 Q Okay. And so you didn't there
15 write the fact that you earn a living selling *MMAR* site
16 policies, right?

17 A It's not the only thing that I
18 sell. It's probably 20 percent of my insurance
19 portfolio.

20 Q Okay. And there you didn't explain
21 that you had an ATP and you're authorized to possess.

22 A No. I'm here to assist the court
23 with insurance purposes, not -- and that's the only
24 reason why I'm here.

25 Q Okay. Okay. But you didn't write
26 there that you had --

27 A I didn't think it was necessary.

28 Q Okay.

1 A It was also personal.

2 Q Okay. And you didn't declare that
3 you have a PUPL licence which allows you to grow up to
4 195 plants.

5 A No.

6 Q Okay. Those are my questions,
7 thank you.

8 JUSTICE: Re-exam?

9 **RE-EXAMINATION BY MR. CONROY:**

10 Q Why do you have an authorization to
11 possess?

12 A I was involved in a car accident
13 and I had a C7-C6 spinal cord fusion operation.

14 Q And the result?

15 A I'm left with 85 percent motion in
16 my neck and severe pain at night.

17 Q And were you on other medications
18 for --

19 A No.

20 Q No, before --

21 A Yes. I was on gabapentin, the
22 maximum dose. It's a nerve blocker. I need it -- oh,
23 excuse me -- about three T3s a day to sleep. I have
24 lots of family, I have seven kids and it was causing
25 problems with me, and I -- my next move was my doctors
26 were talking about Oxycontin. I tried some and it
27 turned me into an animal and I didn't want to do that
28 any more. And at the time I had been aware of the

1 medical marijuana, and as a younger man I did partake in
2 the consumption of marijuana. It made me sleep. So I
3 tried it and it worked.

4 Q How does it impact your insurance
5 business and your job?

6 A It's given me an advantage as a
7 broker. It's given me the ability to understand the
8 Health Canada application process. It's given me the
9 ability to understand more or less the issues that a lot
10 of the people are going to be up against. And it's also
11 given me an understanding of the legal liability issues
12 that no other broker is aware of.

13 Q You said that you aren't using the
14 full amount allowed under your licences and so on, and
15 then my friend asked you about Licensed Producers. And
16 I think you earlier on said you were acting for them in
17 your insurance capacity, or some of them.

18 A Yes.

19 Q And you said you are now looking
20 for a Licensed Producer for yourself.

21 A Yes.

22 Q Can you expand on that briefly?

23 A Well, I don't require the large
24 doses that I initially had my licence for. Things have
25 settled down. Again, the logistics of establishing and
26 maintaining an area where I need to go and do, it's just
27 become onerous. I can afford 1 to 3 grams a day. The
28 company that I work with, we've got a Green Shield

1 program that two months ago will allow my medical plan
2 to actually pay for the costs of medical marijuana. So
3 I'm motivated to get onto the program.

4 Q Can you explain that a little bit
5 to us, how your insurance program covers you?

6 A Yeah. Green Shield has -- the
7 extended benefit program that we have has a health care
8 savings account component to it that can be used for a
9 list of things that aren't covered on the main plan.
10 For example, I have 50 percent of my medication covered
11 but no glasses. So I can choose to pay for -- the 50
12 percent to cover my medication for 100 percent, and I
13 also can cover my glasses 100 percent if I choose to do
14 that as well. And medical marijuana is now on that
15 list. And so use that now.

16 Q Is that recent? Pardon me? Is
17 that recent or --

18 A I've been watching for years and
19 it's now just -- it's happened in the last three months.

20 Q Okay. And so if I am understanding
21 correctly, this isn't the government insurance program
22 or medical insurance, it's --

23 A Private.

24 Q -- combin -- Green Shield is the
25 private. Yeah. Okay.

26 Does the dosage matter in terms of your
27 coverage?

28 A Well, only if it -- no.

1 Q Okay. It doesn't matter what your
2 dosage is.

3 A No.

4 Q They've now decided that they'll
5 cover it.

6 A Yeah.

7 Q All right. Let's just go very
8 quickly to the beginning. My friend asked you about the
9 300 MMAR grow sites, residence 70 percent and commercial
10 you said 30 percent, approximately. In giving your
11 answer, you talked about some being
12 agricultural/residences -- are you able to break that
13 down into a percentage at all for us?

14 A If we were to take the 70 percent
15 of them, we're probably 30 percent of that would be the
16 agricultural/residential.

17 Q Okay. And in terms of that 300,
18 you didn't go out and select them, did you?

19 A No.

20 Q They came to you randomly?

21 A Yes.

22 Q Okay. The questionnaire my friend
23 raised a number of times, are all the questions that you
24 do have on the questionnaire covered in your report?

25 A Oh, more or less. They're -- as I
26 mentioned, there were some sections where we asked the
27 individual what additional security things had been
28 done, and so they would add it there. But --

1 Q Other than that?

2 A That's it. That's all that's
3 required. It's --

4 Q But other than that, are most of
5 the questions from the questionnaire covered in your
6 report?

7 A Yes.

8 Q Okay. My friend asked you a number
9 of questions about backflows and municipalities,
10 industrial hygienists coming in, all these sorts of
11 things. Do you do that for any houses whatsoever?

12 A No.

13 Q Okay. All right. And my friend
14 asked you about toxins and insects and fertilizers and
15 so on. You remember that?

16 A Yes.

17 Q You insure agricultural properties?

18 A I do.

19 Q And do you have experts go in to
20 tour through the --

21 A Negative.

22 Q For checking for whether things are
23 stored safely, that sort of thing?

24 A No. If we are in a commercial
25 application for -- you know, a large-scale agricultural,
26 they may ask if there are certain pesticides and certain
27 flammables on premises. And if it's a "yes", then we
28 just want to make sure they're being stored in the

1 proper ULC-approved container.

2 Q So is it fair to say that you rely
3 primarily on the honesty of the people that you're
4 dealing with?

5 A Pretty much, yes.

6 Q And then you don't become involved
7 with them further -- well, you see -- I think you said
8 every year they presumably renew their --

9 A Well, we do a renewal. And the
10 process at renewal, we already try to capture if there's
11 any changes that have been made since the last time we
12 had discussions. And if there are any changes, we like
13 to capture them and advise the insurers that there is
14 changes.

15 Q And otherwise you never hear from
16 them unless there is a claim.

17 A Correct.

18 MR. CONROY: Okay. Thank you, sir.

19 JUSTICE: Thank you very much. Now
20 you can go.

21 THE WITNESS: Thank you.

22 (WITNESS ASIDE)

23 JUSTICE: Well, I guess we're
24 concluded for the day, are we?

25 MR. CONROY: Looks like it. We've
26 been --

27 JUSTICE: All right. I'll see
28 everyone tomorrow at 9:30.

1 MR. CONROY: Yeah.

2 JUSTICE: We have two people tomorrow?

3 MR. BRONGERS: Two international
4 experts tomorrow.

5 JUSTICE: Yes.

6 MR. BRONGERS: One from the United
7 States, and one from Israel.

8 JUSTICE: They're here?

9 MR. BRONGERS: They are.

10 MR. CONROY: Ms. Grace will be
11 covering the expert from the U.S. She'll be joining us,
12 and I'll be doing Mr. Baruch, and we'll be having
13 hopefully a video played. That will take up some time.

14 JUSTICE: Oh, right. All right.
15 We'll get entertainment as well.

16 MR. CONROY: That's right.

17 JUSTICE: What more could we ask?

18 MR. CONROY: That's right.

19 JUSTICE: Stay tuned, see you
20 tomorrow.

21 MR. CONROY: Okay.

22 (PROCEEDINGS ADJOURNED AT 12:28 P.M.)

23

IN THE FEDERAL COURT
(Before the Honourable Justice Phelan)

Vancouver, B.C.
March 11, 2015

T-2030-13

BETWEEN:

NEIL ALLARD, TANYA BEEMISH, DAVID HEBERT
and SHAWN DAVEY,

Plaintiffs;

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,

Defendant.

PROCEEDINGS

Mr. J. Conroy, Q.C.,

Mr. K. Tousaw,

Ms. T. Grace,

Mr. B. Vaze,

Mr. M. Jackson,

Appearing for the Plaintiffs;

Mr. J. Brongers,

Ms. B.J. Wray,

Mr. C. Januszczak,

Mr. P. Alma,

Ms. M. Nicolls,

Appearing for the Defendant.

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VANCOUVER, B.C.

March 11th, 2015

Volume 11

(PROCEEDINGS COMMENCED AT 9:36 A.M.)

JUSTICE: Good morning.

MR. CONROY: Just to let you know, Justice Phelan, that Mr. Jackson's going to be joining us, but he'll be coming in. We've sent him off to do an errand, so --

JUSTICE: Oh, well --

MR. CONROY: Just so you know.

JUSTICE: As long as he's going about God's work.

MS. WRAY: Absolutely.

JUSTICE: Thank you.

MR. ALMA: Good morning, Justice Phelan. The next witness is Professor Robert Mikos. Professor Mikos is being tendered by the defendant as an expert in the evolution of legislation and social policy regarding medical marijuana in the United States. His report is found at the 15th tab of the consolidated book of expert reports. It's tab 15. And --

ROBERT MIKOS, Sworn:

THE REGISTRAR: Please state your name, occupation, and address for the record.

THE WITNESS: It's Robert Mikos. I am a law professor at Vanderbilt University in Nashville, Tennessee. My address is 131 - 21st Avenue South,

1 Nashville, Tennessee, 37202.

2 THE REGISTRAR: Thank you.

3 MR. ALMA: And if we could make his
4 report the next exhibit, please.

5 THE REGISTRAR: Thirty-six.

6 MR. ALMA: Thirty-six, thank you.

7 **(EXPERT REPORT OF ROBERT MIKOS MARKED EXHIBIT 36)**

8 **EXAMINATION IN CHIEF BY MR. ALMA:**

9 Q Professor Mikos, you're a professor
10 of law at Vanderbilt University in Nashville, Tennessee,
11 correct?

12 A Yes.

13 Q And at page 35 of your report, if I
14 could ask you to turn to that, and it's at 35 in the top
15 right-hand side of the page, you'll find your resume.

16 A Yes.

17 Q And I see there you've been a
18 professor at Vanderbilt from 2008 to the present.

19 A Correct.

20 Q And one of the courses you teach is
21 "Marijuana, law and policy". Is that right?

22 A That's correct.

23 Q Okay. And before being a professor
24 there, you taught law at Notre Dame University Law
25 School?

26 A Correct.

27 Q As well as University of California
28 Davis Law School?

1 A Correct.

2 Q And before that at the University
3 of Michigan Law School.

4 A Correct. Correct.

5 Q And that's in fact where you got
6 your law degree and graduated *summa cum laude* from the
7 University of Michigan Law School.

8 A Correct.

9 Q Thank you. Now, I notice a number
10 of your articles and presentations in symposiums
11 outlined in your resume. Now, I notice under articles
12 there are a number of articles about marijuana and the
13 evolution of legislation of policy regarding marijuana
14 in the United States. Is that right?

15 A Yes.

16 Q And similarly for presentations and
17 conferences, there were also articles and presentations
18 you've given pertaining to the evolution of legislation
19 and policy surrounding marijuana -- medical marijuana in
20 the United States. Is that right?

21 A Correct.

22 Q Now, for the purposes of this
23 action, you were asked to answer three questions. And
24 if you could turn to your report, it's page 4. It's
25 actually page 1 of your report, but page 4 in --

26 A I see it.

27 Q And there there's the mandate, and
28 there are three questions there that you were asked to

1 answer. Question 1 is, "In states in the United States
2 that permit the use of marijuana for medical purposes,
3 how are qualified residents supposed to obtain the drug?
4 In particular, how do states regulate the supply of
5 medical marijuana?" Second question is, "Are there any
6 trends with respect to state laws regulating the supply
7 of marijuana and if so can these trends be explained?"
8 And finally question 3, "What explains the approaches
9 that states have taken with respect to regulating supply
10 of marijuana for medical purposes?"

11 And your report answers all of these
12 questions, correct?

13 A That's correct.

14 Q Could you take the court through
15 your report, provide a bird's eye view of the answer to
16 those questions, specifically questions 2 and questions
17 3.

18 A Yes. In the United States we have
19 34 states and the District of Columbia that have allowed
20 certain residents to use marijuana, or parts of the
21 drug, for medical purposes, even though the federal
22 government to this day continues to ban the drug
23 outright.

24 In my report I've tried to analyze the
25 three different ways, the three different sources of
26 supply the states have used to provide the drug to
27 patients. I have identified a significant shift in
28 their reliance on these different sources of supply and

1 I've tried to explain why that shift occurred and when
2 it occurred. So let me elaborate on those points
3 briefly.

4 So the states have used three different
5 sources of supply to get marijuana to patients. One
6 source is what I've referred to as personal cultivation,
7 and that's where a state allows a patient to grow
8 marijuana him or herself in their own residence. This
9 also includes states that allow caregivers to grow
10 marijuana on behalf of a single or maybe a small number
11 of patients.

12 A second model they've used, a second
13 source is commercial cultivation, and that's where a
14 state allows a third party organization to supply
15 marijuana to qualified patients. The organizations are
16 called different things in different states:
17 Alternative Care Centers, Compassion Centers and so on.
18 But the key among all of them is that these are scale
19 operations. They're large operations that serve more
20 than one or just a few patients. In fact some of these
21 will serve thousands of patients.

22 The third source of supply is government
23 cultivation, which for constitutional reasons in the
24 United States I won't get into, in the context of the
25 United States requires federal cultivation. So the
26 federal government bans marijuana but allows people to
27 use it for certain clinical research studies. The
28 states can't grow it themselves, but in theory one could

1 get marijuana from the Federal Grow Site at the
2 University of Mississippi to supply to patients.

3 Now, in choosing among these three
4 different sources of supply, the states have really been
5 animated by a couple of different broad concerns, and
6 you see these permeating the debates in the States. One
7 is the concern over patient access to the drugs. So
8 these states think that marijuana might benefit some of
9 their residents. They want to provide a way for those
10 patients to have access to the drug, and ideally they
11 would like to give patients a high quality supply that's
12 reliable, that's convenient, that's a consistent dosage,
13 and that's safe, free of contaminants and so on.

14 The second big concern that's animating
15 the states are concerns over what I would call third
16 party harms from marijuana. So in most of these states
17 they continue to believe that marijuana should only be
18 used by a small portion of the population, maybe one
19 percent. At the time of my report there were only two
20 states in the United States that had legalized marijuana
21 for the general population for recreational marijuana.
22 There are now three additional jurisdictions that have
23 done so: Alaska, Oregon, and the District of Columbia.
24 But outside of those states, the states wants marijuana
25 to be used but only by say the one percent or the two
26 percent, not by the rest of the population. So there's
27 a concern over diversion.

28 There's also some concern over how

1 marijuana is produced, concerns with fires, concerns
2 with how people are using water, concerns with property
3 damage and so on.

4 So these are the two concerns that sort
5 of permeate a lot of debates in the United States. Now,
6 interestingly, initially, so in the early period, the
7 states gravitated heavily towards personal cultivation.
8 And in fact from the time that California, in 1996,
9 became the first state to legalize medical marijuana, up
10 until 2008 we had 13 states that legalized medical
11 marijuana and every single one of them legalized
12 personal cultivation.

13 Indeed, it was the only source of supply
14 that ten of these states used. There are only three
15 states during this early period from 1996 to 2008 that
16 legalized anything akin to commercial cultivation. It's
17 California, Montana, and later New Mexico.

18 So these first 13 states chose personal
19 cultivation. That wasn't necessarily because they
20 thought this was the best model of supply, but rather
21 from 1996 to 2008 this really was the only feasible
22 source of supply that the states could use. And that's
23 because during this period the federal government in the
24 United States was still trying to vigorously enforce its
25 own medical marijuana ban.

26 Now, federal law prohibits both personal
27 cultivation and commercial cultivation, but
28 realistically the federal government doesn't have the

1 resources or willpower to go directly at personal
2 cultivation. There is simply too many targets for the
3 federal government to clamp down on it, and instead it's
4 always focused on commercial cultivation. A few states
5 tried to get commercial cultivation up and running --
6 California among them, in 2003 -- but the federal
7 government cracked down on these operations. In fact,
8 there were reportedly 200 raids of California medical
9 marijuana dispensaries during this period by the federal
10 government.

11 For the -- in 2009, things started to
12 change at the federal government. President Obama was
13 inaugurated, Attorney General Eric Holder took office in
14 the Department of Justice. And the federal government
15 started to signal a new tolerance toward State medical
16 marijuana programs. This was in 2009. And at this
17 point, really for the first time, the states could make
18 a meaningful choice among those different sources of
19 supply. And in fact at this point we see two big trends
20 emerge.

21 The first one is that states show a lot
22 more openness to commercial cultivation. In fact, from
23 2009 to the present day, we had 22 additional
24 jurisdictions that have legalized medical marijuana in
25 the United States. Of those 22 jurisdictions, 14 of
26 them have explicitly legalized commercial cultivation of
27 marijuana for medical purposes. The other eight either
28 haven't bothered to address the supply issue, or a

1 handful of them have opted for that government supply
2 model that I've talked about before.

3 So that's the new jurisdictions that came
4 into the fold. Those earlier jurisdictions that already
5 had medical marijuana laws on the books, the ten that
6 didn't already -- hadn't already legalized commercial
7 cultivation, eight of those went ahead and did so.
8 Seven that I identified in the report, and then more
9 recently, this last fall, Alaska legalized recreational
10 marijuana at the same time for the first time legalized
11 commercial cultivation of the drug.

12 So there is now only two states that do
13 not allow commercial cultivation in the United States,
14 among those early jurisdictions. Hawaii has a task
15 force that has recommended legalizing commercial
16 cultivation and there is a proposal that's been kicked
17 around in Michigan, the last outlier to legalized
18 commercial cultivation as well.

19 So the State showed a new openness to
20 commercial cultivation, and in part that was because
21 they viewed this as a value to patients. They adopted a
22 number of regulations that were designed to help and
23 assist patients through these commercial cultivation
24 centres. Requirements, for example, of testing the
25 marijuana that is sold at commercial cultivation
26 centres, inspecting these commercial cultivation centres
27 to make sure that they're free of contaminants, making
28 sure that these commercial cultivation centres have a

1 reliable source of supply, and so on. So they saw a
2 real value and for the first time they were able to tap
3 into that.

4 The second big trend that we see *circa*
5 2009 is the States showed a lot less openness toward
6 personal cultivation. Again, if we look at those States
7 that legalize medical marijuana in 2009 and beyond,
8 those 22 states, only three of them legalized personal
9 cultivation, and then they did so under very limited
10 circumstances. So Arizona, for example, in 2010
11 legalized personal cultivation but only if someone lives
12 more than 25 miles away from the nearest commercial
13 cultivation centre. And that's only, at this point in
14 time Arizona has 70 commercial cultivation centres in
15 operation. It's only about two percent of the general
16 population that would even qualify under that provision.

17 Massachusetts is very similar. They
18 allow people who, either because of financial hardship
19 or because they live too far away from commercial
20 cultivation centres, to grow their own. Again,
21 Massachusetts has approved 15 commercial cultivation
22 centres. They expect 98 percent of the population will
23 live, once those are open, 98 percent of the population
24 will live within 25 miles.

25 D.C. is a little bit of an unusual
26 circumstance. D.C. did legalize personal cultivation
27 for recreational users, up to three plants, so a fairly
28 small plant limit. But in a sense this was the only

1 choice that D.C. voters had in their initiative last
2 fall, and that's because this legalization measure was
3 passed by a voter initiative. In D.C. the voters can't
4 pass a law that requires the expenditure of government
5 funds. And if you were to set up a commercial
6 cultivation model it's going to require the expenditure
7 of funds to license, supervise and so on. So if they
8 were going to have recreational marijuana it was either
9 personal cultivation or nothing.

10 So you see this trend towards a less
11 openness toward personal cultivation in these new
12 states. None of those original states, those 13
13 original states, has since banned personal cultivation
14 outright, although at least one State has significantly
15 narrowed access to personal cultivation. Nevada has
16 passed a statute that basically bans personal
17 cultivation unless you are more than 25 miles away,
18 again, from a commercial cultivation centre.

19 I think sort of the explanation for why
20 the states have been reticent or less open to personal
21 cultivation really goes to that second concern that I
22 raised before, which is the concern over diversion and
23 non-compliance with different regulations that the
24 States try to impose on commercial cultivation centres.
25 They've adopted all sorts of regulation for those
26 centres, 24/7 video monitoring, RFID tags on marijuana
27 plants. They have testing requirements, inspections
28 that go on, things of that sort. And the states feel

1 that as long as there are only a few of these commercial
2 cultivation centres, they can actually go in and
3 supervise them and ensure compliance. In some states
4 you have 20. You might have more -- in Colorado you
5 might have a thousand commercial cultivation centres,
6 but still far less than the number of patients you have.
7 In Colorado, for example, I think my report mentions
8 there are 120,000 medical marijuana patients who in
9 theory could be growing their own marijuana at this
10 point in time.

11 So in a sense, the shift in time has been
12 towards greater reliance on commercial cultivation and
13 less reliance on personal cultivation in the United
14 States.

15 Q Thank you, Professor. Would you
16 please answer any questions that my friend has for you?

17 A Yes.

18 **CROSS-EXAMINATION BY MS. GRACE:**

19 Q Professor Mikos, my name is Tonia
20 Grace. I'm going to ask you questions on behalf of the
21 plaintiffs.

22 When you were instructed to prepare your
23 report, were you provided with the documents of the
24 plaintiff as well as the documents from the Crown?

25 A I was provided a brief overview of
26 the case that was being made against the medical
27 marijuana regulations here in Canada -- I believe a copy
28 of the complaint that was issued.

1 Q So you're aware that the situation
2 proposed here by the Canadian federal government is not
3 a dispensary system, but a Licensed Producer system
4 that's by mail order. Are you aware of that?

5 A I am aware of the general outlines
6 of this system. I think the terminology "dispensary" --
7 again, in the United States, we use different terms to
8 describe commercial cultivation centre. In some states
9 we call them dispensaries; in other states we call them
10 different things, commercial cultivation centre,
11 compassion centre, and so on. So the terminology is
12 different in the United States, is what I would say.

13 Q It's not just the terminology, is
14 it? In Canada, there is no storefronts. You're aware
15 of that? That's the difference.

16 A Well, there is one court in the
17 United States which is that a State would never be
18 allowed to mail medical marijuana. It would be a
19 violation of federal law and it would be shut down
20 immediately. So it's one thing for the states to allow
21 private parties to -- in some states, New Mexico for
22 example, has a courier system where they deliver. They
23 don't have storefront operations. But in the United
24 States, that's just a non-starter. So that -- you know,
25 using the mail system to deliver medical marijuana,
26 unlike other prescription drugs, it's a non-possibility
27 in the United States.

28 Q But the law in the states that

1 you've mentioned allows for patients to go into those
2 stores and select their medication. That's the model in
3 the United States, isn't it?

4 A That's what most states have done.
5 They have retail operations. But again, there are some
6 states that are different. New Mexico doesn't have
7 storefront operations; instead has -- they're very
8 secretive about their commercial cultivation centres,
9 but they have a delivery service. Some other states,
10 Massachusetts, for example, has proposed a delivery
11 service to reduce reliance on personal cultivation for
12 people who live too far away from a dispensary, for
13 example.

14 Q So it's not mail order exclusive,
15 then, is it? It's an add-on to a storefront system. Is
16 that what you're suggesting?

17 A Well, again, the mail order just --
18 you couldn't do that. The Post Office in the United
19 States is run by the federal government, and the Post
20 Office would seize any marijuana that's going through
21 it, and throw you in jail. Even though the federal
22 government will tolerate States doing this on their own,
23 they won't let people use federal lands to grow
24 marijuana, they won't let people use the federal postal
25 system.

26 Q Well, the federal postal system.
27 But the courier system would be available, wouldn't it?

28 A Well, there are a number of States

1 that have, you know -- that allow deliveries by private
2 entities. But again, those would be local deliveries,
3 that would be the only option that you would have.

4 Q And they are not exclusive. They
5 are an add-on to a storefront, then, aren't they?

6 A Not in all the states, no. Again,
7 you have New Mexico that doesn't have storefront
8 operations.

9 Q Okay. And does New Mexico allow
10 for personal production?

11 A New Mexico allows for personal
12 production if you get a personal production licence.

13 Q Right. So people aren't forced in
14 New Mexico to buy through mail order, they have the
15 option of growing their own. Is that right?

16 A As long as they qualify under the
17 State for a personal production licence, they could do
18 so.

19 Q Okay. I'm going to ask you now a
20 little bit about your CV, so if I can you to -- it's tab
21 15 and I think you've already got your affidavit there,
22 and your CV is at the back of that section starting at
23 page 35. Do you have that there, page 35?

24 A Yes.

25 Q So if we're looking at your
26 education, you have a J.D. from University of Michigan
27 Law School, and that's a law degree, is it?

28 A Correct.

1 Q Okay. And you're not a lawyer,
2 though. You've never taken the bar exams or --

3 A Correct.

4 Q Okay. And you have no Master's
5 degree.

6 A That's correct.

7 Q And you have no Ph.D.

8 A That is correct.

9 Q Prior to your J.D., the law degree
10 there, it says at your CV that you have -- or you
11 attended Princeton University and the qualification
12 "A.B.", is that the qualification that you received?

13 A That is Princeton's Latin
14 terminology. It's equivalent to a bachelor's --

15 JUSTICE: Arts Baccalaureate from the
16 full name of that.

17 A Exactly. And that throws people
18 off, but they insist on using that for some odd reason.

19 MS. GRACE:

20 Q So that would be like a bachelor's
21 degree.

22 A Correct.

23 Q And that bachelor's degree was in
24 what subject?

25 A That was in political affairs and
26 public policy.

27 Q Okay. So nothing to do with
28 marijuana then.

1 A No, this was back in the early '90s
2 when it wasn't such a hot topic.

3 Q Okay. 1995 is I think when you
4 graduated with that degree.

5 A That's correct.

6 Q Okay. And if we can go over now to
7 page 40, the last page of the CV. So 1995 you graduate,
8 we've established, from Princeton with your bachelor's.
9 And it says under Professional Experience, Braxton
10 Associate, Business Analysis, August '95 to April '96,
11 and then leading from then the Parthenon Group,
12 strategic consulting firm, principal senior associate
13 and associate from May 1996 to May 1998. What was your
14 job? What did you actually do in those roles?

15 A So it varied from client to client,
16 but I did what's generally referred to in the United
17 States as strategy consulting. So our firm would be
18 hired, both Braxton and later Parthenon, would be hired
19 by sometimes a company that is struggling in business
20 and they're trying to figure out essentially how to make
21 more money. So sometimes it might be a struggling
22 client, sometimes it might be a startup client, but they
23 basically want advice about how to make more money, how
24 to increase profits, how to increase shareholder value.

25 Q And what kind of businesses would
26 these be?

27 A This could be anything from a tiny
28 maker of frequency control devices that are used in your

1 cell phones, to Tomahawk missiles, to a big investment
2 firm like Goldman Sachs.

3 Q Okay. And given this is again the
4 mid-90s, this wasn't marijuana businesses, for example,
5 that you were involved in consulting with.

6 A Correct.

7 Q And your role now at the university
8 involves you keeping up to date with all the
9 developments in the United States as far as marijuana
10 legalization, whether for medical uses or for
11 recreational purposes. That would be something that you
12 do on a regular basis, is that right?

13 A That's what I spend much of my time
14 on, yes.

15 Q And you are a guest blogger,
16 according to page 37 of your CV, on a website called
17 *Marijuana Law, Policy and Reform*.

18 A Correct.

19 Q And it's right that that website
20 regularly updates with whatever the latest news is as
21 far as a state announcing a proposal for legalization,
22 for example.

23 A Whatever catches the attention of
24 the different bloggers, yes.

25 Q And is this a website that you look
26 at on a regular basis, on a daily basis or weekly basis?

27 A Not a daily, not a daily basis. My
28 teaching duties, research duties, writing duties take up

1 more of my time, but I do refer to it from time to time,
2 yes. With apologies, my co-bloggers on there.

3 Q So you prepared your report for the
4 Crown in October of 2014.

5 A Correct.

6 Q And since then, there have been a
7 number of developments, haven't there, in the -- both
8 the medical and the recreational legalization movement,
9 if I can put it like that.

10 A There have been several
11 developments, yes.

12 Q Okay. So perhaps if we deal with
13 some of those developments by starting by looking at the
14 joint book of documents. You should have a green book,
15 volume 12, in front of you.

16 A Yes.

17 Q If you turn to tab 26, which is the
18 middle of the book.

19 A Yes, I think I have it.

20 Q Okay. I'm going to -- there's a
21 series of articles, let me put it like that. I'm going
22 to ask you about a few of them, as far as the -- what
23 dating of the position in some of the states. So if we
24 start with tab A, that's an article headed, "American
25 Academy of Pediatrics calls for rescheduling cannabis".
26 Are you familiar with this article?

27 A I've read the article, yes.

28 Q Okay. And the article is written

1 by Paul Armentano? Do you know Mr. Armentano?

2 A Yes. I have met Mr. Armentano in
3 the past.

4 Q And he is the NORML deputy
5 director?

6 A That's what the article says.

7 Q Okay. Are you familiar with the
8 organization, NORML?

9 A I am familiar with it, yes.

10 Q What is it?

11 A It stands for the National
12 Organization for the Reform of Marijuana Laws. And
13 their stated mission is to -- I'll hopefully quote them
14 accurately -- make marijuana boring.

15 Q Okay. So, within that article, as
16 you can see in the middle of it, there is a quotation
17 begins "A Schedule 1 listing ..." Do you see that there?
18 It's in the middle of the article.

19 "A Schedule 1 listing means there is no
20 medical use or helpful indications, but we
21 know that's not true..."

22 And there's a comment there from somebody
23 called Dr. Seth Ammerman, co-author of the new policy
24 statement.

25 A Yes, I see that.

26 Q Can you explain what "Schedule 1"
27 means, and how that affects marijuana's distribution in
28 the United States?

1 A So, the United States has the
2 *Controlled Substances Act*. This is the federal statute
3 that governs all controlled substances. It's similar to
4 statutes in other countries as well. Drugs are placed
5 on any of five schedules, according to a number of
6 criteria. Schedule 1, placement on Schedule 1, that
7 makes it the most restricted category. Placement on
8 that category means that a drug can only be accessed for
9 clinical research trials.

10 As you move down the scheduling process,
11 there are still a lot of controls in place. There are
12 lots of controls for the manufacture, storage of the
13 drug, distribution of the drug, but they become
14 progressively less strict.

15 Q And are you aware of something
16 called the *CARERS* bill that was announced yesterday in
17 the media?

18 A I'm familiar only with the media
19 reports of that bill. I haven't seen it myself, but I'm
20 familiar with the -- you know, what the media is talking
21 about.

22 Q Could you explain to the court what
23 the *CARERS* bill is proposing?

24 A Again, this is only from what I've
25 read in the newspapers, and there is always a danger in
26 the newspapers misinterpreting the law. But basically
27 this would pass into law an obscure provision of the
28 federal budget that was passed last fall. That

1 provision in the federal budget basically said to the
2 Department of Justice, the federal Department of
3 Justice, we are going to fund you but we don't want you
4 to spend any of the money that we give you blocking the
5 implementation of medical marijuana laws in these listed
6 -- I think there were 33 or 34 states listed at the
7 time. My understanding -- this is something that if
8 we're to have an effect, has to be passed with every new
9 budget. This budget restriction.

10 A It's intended, or at least its
11 proponents suggest it's supposed to block the Department
12 of Justice from enforcing the federal medical marijuana
13 ban in those states that allow the drug. And what this
14 new proposal would do is simply to make that permanent
15 rather than an annual feature of the budgeting process
16 that they fight over.

17 Q So in effect, the Bill would make
18 medical marijuana federally legal, is that right?

19 A No.

20 Q Why not?

21 A So under federal law it would still
22 remain either a controlled or a controlled Schedule 2
23 substance. Even if it were moved, apart from the
24 enforcement issues, you know, simply saying that the
25 Department of Justice won't go out there and arrest
26 people for using or distributing medical marijuana
27 doesn't make it legal under federal law, any more than
28 what the Department of Justice has done today when it

1 said we're not going to enforce this law. It still
2 remains illegal. You still run into problems under the
3 law. Private plaintiffs bringing civil RICO lawsuits
4 against people who sell the drug.

5 So this statute, as far as I can tell,
6 wouldn't change that. It would, in addition to the
7 enforcement measure, it would move marijuana from
8 Schedule 1 to Schedule 2, but cocaine in the United
9 States is on Schedule 2. It's still not legal for me or
10 anyone else to go out there and use it, sell it, for the
11 same purposes as states would like people to use medical
12 marijuana.

13 Q So what would be the impact on a
14 medical marijuana patient with respect to it now being
15 Schedule 2 compared to Schedule 1? What's the benefit?

16 A For a patient there's probably no
17 benefit because that patient today already is not going
18 to be a target of a federal criminal prosecution. So
19 they don't have to worry about criminal liability under
20 federal law. The only benefit it might have is it might
21 make it easier, especially in those states that allow
22 for government cultivation, it might make it easier for
23 them to get the drug from the federal government.

24 Q So it would enable testing to be
25 done, for example.

26 A It would allow testing, more
27 research, things along those lines. So there would be
28 long-term benefit to patients but probably no immediate

1 impact on them.

2 Q And what about the provision with
3 respect to veterans? Are you aware of whether the Bill
4 deals with veterans?

5 A I am not aware of that provision,
6 no.

7 Q Are you aware of a recent
8 appearance by the Surgeon General of the United States
9 on a television program called *CBS This Morning* in which
10 the Surgeon General stated, "We have some preliminary
11 data showing that for certain medical conditions and
12 symptoms that marijuana can be helpful." Are you aware
13 of that announcement by the Surgeon General in February
14 of this year?

15 A I have passing familiarity with
16 that, yes.

17 Q And that is a significant
18 concession, isn't it, by the federal government as far
19 as the helpfulness of marijuana.

20 A I don't know if it would be
21 significant or not. There's still a split of opinion at
22 the federal level. Many different agencies have their
23 hand on this in the United States. So I wouldn't call
24 it significant necessarily, but you know, it's another
25 move in the same direction that we see from other
26 quarters.

27 Q Well, has the Surgeon General of
28 the United States, prior to this comment in February,

1 ever conceded that medical marijuana has medical
2 benefits?

3 A I'm not aware of any other surgeon
4 general doing so.

5 Q Okay. If we can turn over then
6 please to number -- sorry, to B of the documents that
7 are in front of you. This is an article by somebody
8 called Keith Stroup, again from NORML. Do you see that
9 there?

10 A Yes, I do.

11 Q Have you read this article before?

12 A Yes, I have.

13 Q So if we -- this article deals
14 with, doesn't it, the more recent developments in the
15 United States. Is that right?

16 A Yes.

17 Q Dated the 5th of November 2014.

18 A Correct.

19 Q So it postdates your report. So if
20 we go through some of this, please, if you see Measure
21 91 in Oregon, it says:

22 "In a convincing victory, Oregon voters
23 approved Measure 91 which legalizes the use
24 and cultivation of marijuana by those 21 and
25 older and established a system of licensing,
26 taxing, and regulating marijuana sales under
27 the auspices of the Oregon Liquor Control
28 Board."

1 So Oregon now allows the legal use and
2 cultivation of marijuana by those over 21. You agree
3 with that, do you?

4 A Under state law in Oregon, people
5 who are over 21 can use and cultivate marijuana,
6 although Oregon allows localities in the state to ban
7 commercial cultivation of the drug.

8 Q So, but Oregon have decided, since
9 you did your report, to allow people to cultivate up to
10 four plants.

11 A That's correct, but --

12 Q Right.

13 A One thing that's important to keep
14 in mind, in a sense we now know from the federal
15 Department of Justice back in August of 2013 that the
16 federal Department of Justice would not try to block
17 commercial recreational marijuana in the states so long
18 as it's legal under state law. But the states are now
19 facing some new opposition from within. So in states
20 like Oregon and Alaska that have legalized personal
21 cultivation or recreational marijuana, there's still
22 concern that they want to allow people to use this drug,
23 but you may not be able to buy it commercially because
24 your locality is still allowed to ban it.

25 Q So, but these aren't medical
26 patients. These are -- the Oregon people have decided
27 that the Oregon residents can cultivate up to four
28 plants irrespective of any medical need.

1 A Correct.

2 Q Okay. And that's to begin in July
3 of 2015. Do you agree with that?

4 A Yes. At least as far as the
5 articles. I've read the provision but I can't remember
6 directly with the provision, what the effective date is.

7 Q So let's turn over now the page to
8 Measure 2 in Alaska. So it says here:

9 "In a somewhat closer victory, voters in
10 Alaska approved Measure 2 which legalizes the
11 possession of up to one ounce of marijuana
12 and the cultivation of up to six plants and
13 the possession of marijuana produced by those
14 six plants."

15 Yes?

16 A Yes.

17 Q So Oregon has approved, since your
18 report, cultivation of four plants for recreational use,
19 and Alaska now has legalized the cultivation of up to
20 six plants for recreational use.

21 A Correct.

22 Q Okay. It says further down in
23 there, the second -- the next paragraph, in the middle
24 of the next paragraph:

25 "The initiative does permit individual cities
26 to ban marijuana dispensaries but not to ban
27 private marijuana possession or cultivation."

28 A Correct.

1 Q So in other words the cities can't
2 stop somebody growing those six plants in their home.

3 A That's my understanding of the law,
4 yes.

5 Q If we move down then to the I-71
6 and the District of Columbia. This is D.C. We've done
7 Oregon, Alaska, now D.C. If you see the second
8 paragraph there it states:

9 "I-71 legalizes the possession of up to 2
10 ounces of marijuana for personal use by
11 adults, and the private cultivation of up to
12 six plants of which no more than three may be
13 mature in one's personal residence."

14 A Correct.

15 Q So, the trend seems to be is that
16 private cultivation is permissible for recreational
17 purposes. If you look at those three so far, those
18 three decisions by those three states. Would you agree
19 with that?

20 A Well, if you look only at three
21 states, and they all do the same thing, of course you'll
22 find a trend in those three states. But it's important
23 to point out a few things. One is that Oregon and
24 Alaska were two of the first states that legalized
25 medical marijuana, and they -- when they legalized
26 medical marijuana, they also legalized at that time
27 personal cultivation and in some respects the reason why
28 they may be extending that same privilege to

1 recreational users may be different than the reasons why
2 states are not going for personal cultivation for
3 medical marijuana purposes.

4 Q So, in D.C., is it legal to
5 cultivate plants for medical purposes?

6 A It is not.

7 Q So. In D.C. we have a situation
8 where, if you're a patient, you can't grow your own.
9 But if you just want to smoke it for fun, you can grow
10 your own. Is that the situation in D.C.?

11 A And the reason for that situation,
12 I think that's an accurate --

13 Q No, sorry, the question --

14 A That's an accurate --

15 Q Sorry. Sorry to interrupt you.
16 Could you just say yes or no, whether you agree with
17 that?

18 JUSTICE: I think he was about to.

19 MS. GRACE: Oh, sorry. I thought he
20 was moving on to an explanation as to why.

21 JUSTICE: No, I think he was -- what
22 he was about to say is, that was an accurate
23 description.

24 A Yes. It's legal to grow for
25 recreational or medical purposes, because it doesn't say
26 you can't grow it for medical purposes. In theory,
27 someone could do it for either in D.C. at this point.

28 MS. GRACE:

1 Q So the reality is in D.C., though
2 the law says you can grow recreationally and you cannot
3 grow medically, or it doesn't provide for it to grow
4 medicinally. The reality is, medical patients can grow
5 recreationally.

6 A That's correct.

7 Q Initiative -- so it's going back to
8 the page here. Same paragraph. "Initiative 71 does not
9 establish medical ..." Oh, sorry. "... marijuana
10 dispensaries although the city council expected to
11 pursue that goal over the coming months."

12 So where do medical patients, bearing in
13 mind there is no dispensaries, and they're not permitted
14 to grow their medicine, where do they get their medicine
15 from in D.C.?

16 A I think you might be misreading
17 this. When it says Initiative 71 doesn't set up
18 recreational marijuana dispensaries, but D.C. already
19 has commercial cultivation centres for medical
20 marijuana. Initiative 71, as I explained before,
21 couldn't set up recreational marijuana dispensaries
22 because that would require the expenditure of funds, and
23 that's not something that citizens are allowed to do.

24 Q So there are not dispensaries,
25 there are commercial -- they're cultivation centres.

26 A That's -- dispensaries and
27 commercial cultivation centres are -- they're one type
28 of commercial cultivation centre, as I explained before.

1 Q Okay. And how else might a
2 commercial cultivation centre operate? You say there is
3 a dispensary, but what else? What is a commercial
4 cultivation centre?

5 A Dispensary is just the one name
6 that some states have applied to it. Others call it an
7 alternative treatment centre. Others call it a
8 compassion centre. These are just the names they apply
9 to it. But as I mentioned, for my definitional
10 purposes, when I refer to commercial cultivation, I mean
11 it's a third-party group. It's not the patient or the
12 patient's necessarily the -- the patient's immediate
13 caregiver that's providing it, it's some third-party
14 organization that's doing that, and it's doing it on
15 some scale level.

16 Q So just the same thing, but
17 different names. Is that in effect what a commercial
18 cultivation centre is? It isn't any different to a
19 dispensary necessarily, or any other form of sale by a
20 third party to a patient. It's just a name, a different
21 name.

22 A Correct. As long as it's not --
23 again, as long as it has some scale to it. Again,
24 United States, we allow -- some states allow a
25 designated caregiver to provide marijuana to a patient.
26 They might even allow a designated caregiver to supply
27 two or three patients. Once you get beyond a small
28 number like that, it transforms into the commercial

1 model. We start calling them in some states
2 "dispensaries", other states again it's a different
3 name. But those are all commercial cultivation.

4 Q So if we move then on to Florida
5 Amendment 2, the next one down on this list, it says:

6 "Only in Florida where 60 percent support is
7 required to enact a voter initiative did a
8 statewide marijuana-related initiative fail to
9 gain approval."

10 I think it says it was at 58 percent
11 voted for it but it didn't get the required 60. So that
12 amendment failed that would have legalized medical use
13 of marijuana for seriously ill patients.

14 A Correct.

15 Q So in Florida, medical marijuana is
16 not legal, is that right?

17 A Medical -- CBD is legal in Florida
18 but marijuana containing THC is not.

19 Q And CBD is a compound of marijuana,
20 is that right?

21 A Correct.

22 Q And plants when grown come with
23 THC, that's right, isn't it?

24 A That's my understanding. They come
25 with different levels of THC. The states that have
26 these CBD laws, and I can't remember, Florida's
27 particular -- when I say they don't allow THAT'S
28 CORRECT, they might allow a small portion of THC in

1 there.

2 Q Are you familiar with CBD and the
3 extraction process?

4 A I am not.

5 Q I won't ask you any questions about
6 it.

7 A Thank you.

8 Q Yeah, but you're aware it's an
9 extraction, I think you've agreed that.

10 JUSTICE: You will have to say yes.

11 A Yes.

12 MS. GRACE:

13 Q So if we go over to the final page
14 of this article by Keith Stroup, the third paragraph
15 from the bottom says:

16 "But with our victories two years ago in
17 Colorado and Washington now reinforced by our
18 victories in Alaska, Oregon and D.C., the
19 issue of marijuana legalization has come
20 front and centre and we will now be seeing an
21 increasing number of states and national
22 elected officials climbing aboard the
23 legalization train."

24 So leaving the kind of choice of words
25 aside, would you agree with the sentiment that it seems
26 that the issue of marijuana legalization is going to
27 lead to an increased number of states climbing aboard
28 the legalization train? Is that something you agree

1 with?

2 A Yes. I think we will see in the
3 future more states legalizing recreational and medical
4 marijuana in the United States.

5 Q Okay. So if we can turn over,
6 thank you, to the next article, number C, this is an
7 article headed "2015 Legislator: Who should be arrested
8 for marijuana in Washington?" Have you read this
9 article?

10 A I have.

11 Q This article is written by somebody
12 called Jake Ellison. Do you know Mr. Ellison?

13 A I do not.

14 Q So if I can take you to -- the crux
15 of this article, would you agree, is that there are two
16 potential Senate Bills, kind of rivals in that sense, by
17 two different senators being proposed in Washington.
18 Would you agree with that? As a general outline before
19 we get into the detail.

20 A Well, that is a detail. I would
21 need to go back and reread the article.

22 Q Okay. Maybe if we go through it,
23 you can -- so if we go under "Heavy Lifting", see the
24 title "Heavy Lifting".

25 A Mm-hmm.

26 Q It says:

27 "The latest state Senate bill to drop in this
28 debate - SB 5519 - is by Sen. Jeanne Kohl-

1 Welles..."

2 and she's a Democrat from Seattle,

3 "...and she ushered her bill into public light

4 Tuesday with a news conference. The event

5 includes backers of the main idea behind her

6 bill, which is to fold the "Wild West"

7 medical marijuana market into a regulated,

8 state-licensed system."

9 And it says:

10 "Her plan was echoed in a bill submitted

11 earlier by Sen. Ann Rivers...

12 There are lots of detail differences

13 between the two plans..."

14 the article states.

15 "Kohl-Welles' bill would fold medical *almost*

16 entirely into Initiative-502 recreational

17 system with caveat meant to help patients get

18 the medical marijuana they need at an

19 affordable price, tax free."

20 And then it says here that the

21 "Rivers bill would create a new, standalone

22 regulatory system for medical marijuana.

23 Both would, in effect, end the "collective

24 garden" approach that's causing so much

25 turmoil."

26 It goes on to say:

27 "The key differences between the bills -

28 possibly the key element to any effective

1 change in our marijuana laws - is the Kohl-
2 Welles provision to allow up to six plants to
3 be grown at home and the legal right to share
4 up to an ounce with anyone over 21.

5 [Whereas] Rivers is against this idea because
6 it might make pot more accessible to kids."

7 So you agree that the difference between
8 the two bills seems to be, from this article, or one of
9 the differences, is that the Kohl-Welles' bill would
10 allow six plants to be grown at home, whereas Rivers is
11 against that idea.

12 A I am uncomfortable endorsing that
13 description, again, just because this -- I haven't seen
14 either of these two bills. I haven't read the actual
15 text of the bills. That's an accurate description of
16 how Jake Ellison describes these two measures and the
17 differences between them. But I know from experience
18 that oftentimes news reports of what a state is
19 proposing can be off the mark.

20 Q Well, this article has been in the
21 book of authorities, Professor Mikos. When were you
22 first directed by counsel to read these articles -- this
23 article here, for example?

24 A I believe this was back in January.

25 MR. ALMA: Sorry, I just want to
26 object. My friend, she's going into the kind of
27 conversation that we'd had --

28 MS. GRACE: No.

1 MR. ALMA: She hasn't --

2 MS. GRACE: Don't intend to go into
3 any conversation. I'm just --

4 JUSTICE: So far the question is, when
5 did -- when were you instructed to read it? I'm not
6 sure that that's covered by solicitor/client.

7 MR. ALMA: Well -- okay. So I heard
8 that when -- when were you instructed.

9 JUSTICE: You've got the pitter-patter
10 of solicitor/client. At some point.

11 MR. ALMA: We have -- yes.

12 JUSTICE: We haven't come there.

13 MR. ALMA: Okay. And hopefully we
14 won't. But I just wanted to --

15 JUSTICE: But it -- just building.

16 MS. GRACE: Thank you.

17 MR. ALMA: I'll try to stay seated.

18 MS. GRACE: It won't be that exciting,
19 because I don't intend to ask anything about
20 solicitor/client communications. I'm establishing that
21 Professor Mikos was provided with an article in January,
22 and we're now, what, today, March.

23 Q Have you checked any of this
24 information?

25 A Well, in addition to this article,
26 and the other 22 articles and affidavits that you
27 provided, I read all of this. But I did not go back and
28 verify the sources and research these provisions. There

1 are -- as I mentioned, 35 states in the United States
2 that have legalized medical marijuana. It's a lot to
3 keep up with.

4 Q Well, with respect, you're here as
5 an expert witness on behalf of United States policies.
6 You were provided with this article in January. You're
7 aware that you may be asked questions on this article.
8 You say that you're not familiar with the natures of
9 this bill, but you chose despite that not to check out
10 whether this was accurate or not.

11 A Well, if your question is, you
12 know, what does the article say, you know, I'm fine
13 saying the article says this. But if you're asking me,
14 is the article accurate, did these people actually say
15 these things, I'm not comfortable doing that. That's, I
16 think, beyond the scope of the mandate I was given.

17 Q So the counter verse would be that
18 you have no information to suggest that this is
19 inaccurate. Do you agree with that?

20 A Well, I have no independent
21 information to say that this is an accurate portrayal of
22 current proposals before the Washington legislature.

23 Q So did you say "inaccurate", or
24 "accurate"?

25 A "Accurate".

26 Q So, and also that if you've no
27 information to suggest this is inaccurate. Correct?

28 A Correct.

1 Q Thank you. So if we turn over to
2 (d) -- I'm not going to take you through all of them,
3 just to give you that as a heads-up, in case you're
4 getting concerned. But I'll take you over to (d). And
5 this head's, "Iowa officials slow to implement medical
6 marijuana oil law". Are you familiar with the issues in
7 Iowa as far as medical marijuana oil?

8 A I am more familiar with Iowa
9 because I was born and raised there.

10 Q Okay. So, this says
11 "Davenport, Iowa. Iowa officials have been
12 moving slowly to implement a law allowing for
13 an extract of marijuana to be used for
14 medical treatment, and advocates say they'll
15 keep pressing for more access to the drug."

16 Do you know if there is anything that's
17 happened since this article? As far as implementing the
18 law to allow for an extract of marijuana to be used for
19 medical treatment?

20 A As far as I'm aware, there has been
21 no developments. So it's consistent with what I say in
22 my report, that Iowa failed to provide for supply of
23 this drug.

24 Q Okay. If I can take you to (n)
25 now. So you can fast-forward to (n). This is an
26 article in the *Vancouver Sun* on January 17th, 2015. Have
27 you read this article before?

28 A I have.

1 Q This article deals with the issues
2 with respect to medical marijuana and commercial
3 dispensaries. Is that right?

4 A I believe that's correct.

5 Q Okay. Let's take some of the
6 content. It says,

7 "In Washington, where supply problems and
8 slow licensing hampered the industry after
9 sales began in July, the state collected
10 about \$50 million in taxes this year. The
11 latest states to legalize marijuana, Oregon
12 and Alaska, have different concerns, but
13 officials there are nevertheless paying
14 attention to Colorado and Washington as they
15 work out rules for their own industry."

16 Could I ask you a question about that.
17 It's right, isn't it, that there isn't a streamlined
18 approach between the states, as far as how to go about
19 providing medical marijuana and accessing medical
20 marijuana and dealing with recreational marijuana.
21 States are different, aren't they?

22 A Correct. States are different.
23 They do, as this article mentions, they oftentimes talk
24 to each other. Lawmakers in one state will survey
25 lawmakers in other states to find out what's worked,
26 what hasn't worked, what did they try. But each state
27 ultimately gets to choose its own path.

28 Q So there is no, for example, in the

1 United States, no kind of model that most of the states
2 are following that maybe only a few are opting out of.
3 There isn't that kind of approach yet.

4 A There are similarities among the
5 law, but there is no -- in contrast to contract law,
6 some other areas of law, there is no model legislation
7 that's been put forth that the states have sort of opted
8 into.

9 Q Okay. So if we go on in the
10 article, it says,

11 "Alaska doesn't have commercial medical
12 dispensaries, so licensed stores there won't
13 face direct competition. And in Oregon,
14 taxes on recreational pot are set at just \$35
15 an ounce, which officials hope will minimize
16 competition from the medical side."

17 It says,
18 "In Seattle, however, six licensed
19 recreational stores face competition for
20 medical pot shops that are believed to number
21 in the hundreds."

22 Yes?

23 A Correct.

24 Q I'm at -- so you are aware that in
25 Washington there are problems with recreational and
26 medical marijuana stores being in kind of competition
27 with each other.

28 A Yes. The transition from -- yeah,

1 a purely medical regime to a recreational one has caused
2 a lot of problems and conflicts.

3 Q And if you go over to the second
4 page, it says -- oh, one, two, three, four, five, six --
5 six lines down. The paragraph says,

6 "Ideas from the discussion include reducing
7 pot taxes to make recreational stores more
8 competitive, and eliminating medical
9 dispensaries, which have been largely
10 tolerated by law enforcement even though they
11 aren't allowed under state law."

12 Are you aware of what those discussions
13 are, or whether there have been some formal discussions,
14 or what's meant by ideas under discussion include
15 eliminating medical dispensaries?

16 A I have a sense of what is going on.
17 I'm not sure if it's necessarily what this author was
18 referring to.

19 Q Well, can you expand on what your
20 understanding is, please?

21 A Well, one of the difficulties
22 states are having now as they move from a purely medical
23 marijuana regime to a recreational marijuana regime,
24 there are certain privileges that are oftentimes
25 bestowed on people who have medical issues. For
26 example, in the United States we tend not to tax
27 medicines. So one of the issues they have to confront
28 when they move from a medical regime to a recreational

1 regime is that the states want to make money from
2 recreational marijuana. They're imposing taxes on
3 recreational marijuana to try to address some of the
4 harms created by recreational marijuana. But they're
5 not taxing medical marijuana, and they're concerned, for
6 example, that more people will try to take advantage of
7 those pre-existing medical marijuana exemptions to take
8 advantage of what is in a sense a tax break.

9 So that's one of the issues that I'm
10 familiar with, that I assume they're referring to here
11 with pot taxes.

12 Q So as far as eliminating medical
13 dispensaries, are you aware how that idea would work, as
14 far as where people would get the medicine from?

15 A Well, in Washington they do allow
16 recreational or commercial cultivation. So individuals
17 could in theory go to a recreational store to buy their
18 marijuana, if that sort of proposal were to pass. And
19 Washington is also, as I mentioned, one of the states
20 that allows personal cultivation of the drug.

21 Q So people could grow their own
22 medicine or they could go to just one store, one store
23 that would enable them to purchase it whether medically
24 or recreationally if they were recreational users.

25 A If that proposal passes, yes.

26 Q As I've, and you've agreed, that
27 the area of legalization with a medical or recreational
28 is -- changes, doesn't it, on a kind of daily, weekly

1 basis in the United States.

2 A Yes.

3 Q So since your report in October
4 we've gone through some of the changes set out in tab B
5 with respect to some of the states. There are also some
6 more states as well.

7 My Lord, the situation is that we have a
8 number of articles from recent, you know, within the
9 day's as well announcements. I have now got copies of
10 these but my friend has not seen them yet. I would like
11 to put them to this witness or certainly ask him about
12 the states, which is Ohio and New York and Rhode Island,
13 but I'm conscious that it would be unfair to do that
14 without my friend having looked at the documents first.

15 I know it's only 20 to 11:00, but we have
16 been going a while.

17 JUSTICE: How long do you think --
18 your friend has to look at them.

19 MS. GRACE: He does.

20 JUSTICE: Has the witness seen them
21 before?

22 MS. GRACE: The witness has not seen
23 them either, so that would be a --

24 JUSTICE: Unless he's a speed reader
25 he might take a little bit of time to review them. How
26 long do you think you need?

27 MS. GRACE: Well, most of the reports
28 are simply kind of a news kind of report.

1 JUSTICE: Okay, those are the quick
2 and dirties.

3 MS. GRACE: Those are the quick ones.
4 The only lengthy one is something that I don't
5 necessarily need to deal with at this stage. I can deal
6 with it when we go through the individual state. But
7 it's also a task force report from Hawaii, so that would
8 take some more time.

9 JUSTICE: Okay, 20 minutes.

10 MS. GRACE: Thank you.

11 **(PROCEEDINGS ADJOURNED AT 10:39 A.M.)**

12 **(PROCEEDINGS RESUMED AT 11:03 A.M.)**

13 MS. GRACE:

14 Q Professor Mikos, in the break you
15 were given a copy of two news articles, one relating to
16 Rhode Island and one relating to Ohio. Have you had the
17 opportunity to read both of those?

18 A Yes, I have.

19 MS. GRACE: If I can hand a copy up to
20 the court. So that's for Justice Phelan.

21 Q If we can start please by looking
22 at the Rhode Island article. So this article is dated
23 the 5th of March of this year, is that correct?

24 A Yes.

25 Q And this article states that there
26 are House and Senate bills to end the state's marijuana
27 prohibition and that they have been introduced. Would
28 you agree with that?

1 A Yes.

2 Q So Rhode Island is looking at total
3 legalization, recreational legalization, is that right?

4 A That's what these proposals would
5 do.

6 Q And that also includes growing one
7 mature marijuana plant in an enclosed locked space. Do
8 you agree with that?

9 A That's what the proposal is, yes.

10 Q Thank you. Now, if we turn then to
11 the next article, Ohio, it's headed "What, Ohio a trendy
12 pot state?" this article says, you agree, looking at the
13 top, second paragraph, a bit way through:

14 "...voters in November could make Ohio the
15 first state to go directly from a total ban
16 on marijuana to one allowing production and
17 consumption of both medical and recreational
18 marijuana."

19 Is that right?

20 A That's correct.

21 Q And this is headed that this is the
22 first state to vote from a total ban to total
23 legalization, is that right?

24 A That's correct.

25 Q And this article is dated the 10th
26 of March of 2015.

27 A Correct.

28 Q Okay. So if we look at the third

1 paragraph and it begins:

2 "And what happens here could reverberate
3 across the country next year when as many as
4 two dozen other states are expected to vote
5 to decriminalize marijuana or to permit its
6 legal production and consumption."

7 Are you aware of what as many as two
8 dozen other states are, what that means?

9 A There are proposals that have been
10 submitted by legislators in that number of states to
11 decriminalize or otherwise allow marijuana.

12 Q So are these two other dozen states
13 states who already have medical marijuana, or are these
14 states that would go from a total ban to legalization
15 like Ohio, or don't you know?

16 A I don't know which ones the
17 Marijuana Policy Project source is referring to here.

18 Q But presently there are five states
19 that allow for total legalization, and they suggest as
20 many as two dozen other states are expected to vote to
21 decriminalize or permit. Is that accurate?

22 A That's what the article says, yes.

23 Q And is it your understanding that
24 that's accurate, though, that there are that kind of
25 number -- around that number of states looking at total
26 legalization?

27 A Yes, I wouldn't have an exact
28 count. Two dozen may be a little bit small, it may be a

1 little bit large.

2 Q Okay.

3 A But there are always a lot of
4 proposals before state legislatures regarding marijuana.

5 Q Okay. And the difference between
6 Ohio and the other states is that they don't currently
7 have the medical marijuana, which legalization for
8 recreational purposes is often seen as an extension of.
9 That's correct?

10 A Correct.

11 Q Thank you. If you can turn over
12 the page, please, of that article. And there is a
13 heading there, "Local versus federal law". You see
14 that?

15 A Yes.

16 Q So, it says,
17 "In December, Congress approved and President
18 Obama signed a spending bill that defunds
19 federal prosecution of medical marijuana
20 sales, yet a U.S. Attorney in Oakland
21 continued to campaign to shut down
22 California's largest medical marijuana
23 dispensary."

24 See that?

25 A Yes.

26 Q Are you aware of what this campaign
27 is, to shut down California's largest medical marijuana
28 dispensary?

1 A I am somewhat familiar with the
2 Harborside Healthcare Cooperative in California. This
3 was a very notable cooperative, because it had its own
4 TV reality show. It's a very large-scale, you know,
5 commercial cultivation centre in California.

6 Q And are you aware of the -- what it
7 means by "campaign to shut it down"? Is there kind of
8 legal proceedings, or is it just kind of public opinion,
9 or --

10 A I'm not sure. You know, this would
11 be legal proceedings, because this is involving the
12 United States Attorney. There have been a number of
13 legal issues waged against Harborside, ranging from
14 civil forfeiture to violation of the federal tax codes.
15 So I'm not sure which one exactly it's referring to
16 here.

17 Q And does this suggest -- when it
18 says the U.S. Attorney, does it mean in his or her
19 official capacity as a member of the federal legal
20 services, or does it mean just a lawyer who is an
21 American lawyer?

22 A No, this would be -- the U.S.
23 Attorney is an official position in the United States.
24 It's broken up into 92 or 93 districts, each of which
25 has a chief legal officer of the United States.
26 California has four of these districts. There is one
27 that encompasses Oakland. And presumably they're
28 talking about that U.S. Attorney.

1 Q Okay. So if we go into the next
2 paragraph,

3 "Obama has not only instructed the Justice
4 Department to not interfere with state laws
5 legalizing marijuana, he also has even
6 encouraged most states to "experiment" with
7 such laws."

8 Are you aware of what's -- of what that
9 could mean, experiment with laws?

10 A I believe what President Obama
11 meant by that remark, because I've read his direct
12 remarks, was that states could try different models,
13 when it comes to regulating marijuana.

14 Q Okay. I'm going to -- you were
15 provided with a third document which is quite detailed,
16 and this is a task force response report dated January
17 2013. Have you -- it's a very detailed report. Are you
18 aware of the report? Were you aware of the report
19 before I gave you a copy of it?

20 A Yes.

21 Q Okay. So this isn't a situation
22 where you didn't have knowledge of any of this content
23 until 20 minutes ago, for example.

24 A Correct.

25 Q I'm going to not go through this
26 report now. I'm going to go through now many of the
27 different states and their models, and when we get to
28 Hawaii we'll deal with this. Okay? Maybe you can just

1 put that one side. Otherwise it kind of takes us out of
2 order.

3 So if we can turn now please back to your
4 report at tab 15. At page 6, your page 3 but page 6 of
5 the tab, you've set out a table showing states that have
6 legalized the medical use of marijuana. Do you see that
7 there?

8 A Yes.

9 Q And this table obviously was
10 accurate as to October 2014.

11 A Correct.

12 Q Okay. Now, before we go into some
13 of these particular states, I just want to ask you to go
14 back to page 5, so if you go to the previous page. I'm
15 going to ask you about your methodology.

16 At paragraph 5 of your report, so at page
17 2 of your report, page 5 of the tab, you say:

18 "To complete this report, I have consulted a
19 wide range of primary sources including the
20 laws of 35 states that have legalized
21 marijuana for medical purposes, judicial
22 opinions interpreting those laws where
23 applicable, federal laws governing marijuana,
24 judicial opinions interpreting those federal
25 laws and their relationship to state laws
26 governing medical marijuana, and other
27 federal and state government documents
28 concerning the issues in this report

1 including memorandum from the U.S. Department
2 of Justice. I also drew upon my own
3 previously published legal research, other
4 scholarly literature on state medical
5 marijuana laws, and relevant news media
6 reports."

7 So which -- do you have a list of the
8 judicial opinions that you're relying on?
9 Interpretation, for example?

10 A It would be a very long list
11 because any time a state adopts a medical marijuana law,
12 there are always legal issues that arise and a need for
13 courts to interpret the meaning of those laws.

14 Q What about the memorandum from the
15 U.S. Department of Justice? What memorandum was that
16 that you've relied on?

17 A There are several and I discuss
18 these in some detail in the report, starting with the
19 Ogden memorandum from 2009. And there were, subsequent
20 to that, two additional enforcement memoranda from the
21 Department of Justice to these United States attorneys
22 that we discussed earlier, as well as one from I believe
23 the Department of the Treasury that was discussing
24 banking issues regarding marijuana dispensaries.

25 Q Okay. Did you consult or consider
26 reports, for example, or information from growers?

27 A I considered any information that I
28 could get that I considered credible. That oftentimes

1 would include scholarly literature, but it could include
2 information that I had from states, for example, that
3 includes affidavits or reports from growers as well.

4 Q So how many kind of affidavits
5 would you look at from growers in coming to conclusions
6 in your report?

7 A I can't recall off the top of my
8 head, but in forming the conclusions of this report,
9 I've looked through literally, you know, hundreds, if
10 not thousands of different documents regarding medical
11 marijuana and marijuana laws in the United States.

12 Q Because your paragraph here talks
13 about "other federal and state government documents
14 concerning the issues in this report, memorandum from
15 the U.S. Department of Justice". It doesn't suggest
16 that there's documents that you've considered that
17 weren't state or federal government documents?

18 A Well it also mentions, as I noted
19 before, scholarly research, news and media reports and
20 so on, that also included additional information.

21 Q What scholarly research have you
22 done with respect to, for example, the problems or --
23 that growers might have in growing marijuana?

24 A Well, there are a number of
25 scholarly reports and things produced by think tanks,
26 for example, that try to analyze the different ways that
27 people are allowed to supply marijuana in the states.
28 The RAND Corporation, for example, has produced a number

1 of reports, but they are just one among many that has
2 looked at some of these issues in their reports.

3 Q And who is the RAND organization?

4 A RAND Corporation is a big think
5 tank in the United States that has a group of academic
6 scholars and researchers who examine all sorts of public
7 policy issues, including drug law issues.

8 Q So, these aren't growers, for
9 example, or patients involved, these are academics
10 looking at laws and discussing laws?

11 A These are people who would also
12 talk to patients and growers, but these are not
13 themselves growers and patients.

14 Q Okay. Did you talk to any patients
15 yourself with respect to any issues that they have?

16 A Not for completion of this report.

17 Q Did you interview anybody at
18 dispensaries, for example, about issues?

19 A I have toured dispensaries, and
20 discussed with them some of the issues that they
21 confront, yes.

22 Q And what kind of issues were those
23 that they talked about?

24 A The issues including how they
25 comply with state and local regulations as well as, you
26 know, more my area of expertise, what they do about the
27 fact that the federal government continues to ban this
28 drug.

1 Q Okay, what about personal
2 production sites? Have you ever been to personal
3 production sites?

4 A No, I have not.

5 Q So, when I mean that, I mean
6 whether in somebody's residence or whether they grow in
7 an outhouse, for example? You've never been to any of
8 those?

9 A No, I have not.

10 Q Have you ever talked to growers
11 about any problems they have with -- as far as their
12 strains, or getting the supply of the seeds? Or any of
13 those kind of issues?

14 A I haven't toured their sites, but
15 on many speaking occasions I have been approached by
16 people who grow marijuana. They haven't identified
17 themselves as whether it is a personal grow, or a
18 commercial grow operation, but I have talked to them,
19 yes.

20 Q Okay. And is that in recent times
21 that you have had conversations with growers?

22 A Yes, every time I have a speaking
23 engagement there is usually a group of individuals that
24 will approach me afterwards, and I have done a lot of
25 recent speaking engagements on this.

26 Q And what kind of things do you talk
27 about at your speaking engagements?

28 A Oftentimes I will be talking about

1 the conflict between state and federal law.

2 Q Now, if we can turn to the appendix
3 of your report. That's at page 20 of the tab, page 17
4 of your report. The appendix sets out a kind of --
5 brief kind of summary, would you put it like that, of
6 each of the individual states that you've referred to in
7 your table?

8 A Yes.

9 Q Okay. Before we go through that
10 appendix, in addition to Rhode Island and Ohio, I've
11 shown you articles, are you also aware that Utah, on
12 March the 9th, so that was Monday, voted down a bill to
13 allow medical marijuana? Are you aware of that in your
14 --

15 A I'm not aware of that bill, no.

16 Q Okay. Are you aware of a recently
17 proposed bill in New York to allow total legalization?

18 A I have some familiarity with that,
19 yes.

20 Q So going back now to the appendix,
21 I'm going to not ask you about every single state. I'm
22 going to ask you primarily about the states that allow
23 THC.

24 A Okay.

25 Q Okay? And we'll deal with CBD
26 maybe a bit later on. So Alaska, at paragraph 60, you
27 say

28 "Personal cultivation has been the only

1 source of supply since the state legalized
2 medical marijuana in a 1998 ballot
3 initiative."

4 So, you're aware, are you, that the
5 plaintiffs had an expert called Paul Armentano from
6 NORML provide a rebuttal report to your expert report.
7 You've seen that, have you?

8 A Yes.

9 MS. GRACE: And, Justice, that's at
10 tab 18. Plaintiff's rebuttal report.

11 Q So if you'd also like to have a
12 look at tab 18, I'm going to refer you to some of the
13 pages within the rebuttal report for your comments.

14 You will see at tab 18, from page 15
15 onwards of that tab, that Mr. Armentano has taken
16 extracts from each of the -- well, from most of the
17 states that you refer to, and they had a little bit more
18 detail. Would you agree with that?

19 A Yes.

20 Q Okay. So, dealing with Alaska, at
21 page 15 of tab 18, that's the rebuttal section. And you
22 have paragraph 60. So you have already read out what
23 your summary of Alaska was. Can I now look at the
24 summary provided by the plaintiffs' rebuttal expert, at
25 page 15, and you'll agree, will you, that there is an
26 amendment to the bill that took effect in 1999, and the
27 amendment was on the 2nd of June of 1999. And it states
28 -- this is in the middle of page 15.

1 "Senate Bill 95, which took effect in June,
2 '99, mandates all patients seeking legal
3 protection who decide to enroll in a state
4 patient registry and possess a valid
5 identification card, patients not enrolled in
6 the registry will no longer be able to argue
7 the affirmative defense of medical
8 necessity."

9 Can you just explain what's meant by that
10 to the court?

11 A So, a number of states -- in fact,
12 the majority of states that have medical marijuana laws,
13 require qualified patients to first register with the
14 state, which means they have to pay a fee to a state
15 agency and they have to submit documentation to the
16 state agency demonstrating in advance that they qualify
17 for the protections of state law.

18 Oftentimes, not exclusively but
19 oftentimes, as in Alaska, if you don't go through that
20 process you are not allowed to assert the medical
21 marijuana defence in a state prosecution.

22 Q And it's right, isn't it, that most
23 states require registration.

24 A Correct.

25 Q And there hasn't been a trend, for
26 example, away from that. The trend has been towards
27 registration.

28 A Correct.

1 Q And some states, and we'll see as
2 we go through them, allow a medical necessity defence
3 even if there hasn't been registration.

4 A That is true.

5 Q But some say you have to register,
6 otherwise you're not going to be allowed to argue that
7 if you're caught with marijuana. And that's true as
8 well.

9 A That's correct.

10 Q Okay. So Alaska allows for
11 personal production. It doesn't allow for a dispensary
12 or a licensed producer system. It requires registration
13 and it limits the right to take medical marijuana to a
14 list of illnesses. Would you agree with that?

15 A That's correct.

16 Q So if we move on then to Arizona,
17 you will see Arizona is at page 17, the next one in the
18 plaintiffs' rebuttal and it's your paragraph 61. So
19 your paragraph 61:

20 "Commercial cultivation has been the
21 preferred source of supply since the state
22 legalized medical marijuana in 2010."

23 And then if you look at the NORML, it
24 talks about the law took effect in 2011. There was a
25 kind of five-month delay from when the proposition was
26 approved and when the law took effect?

27 A That is commonly the case in the
28 United States, that a law may be voted on and signed at

1 one period in time, and then it doesn't actually start
2 to kick in until a later period of time.

3 Q And I think we'll see when we go
4 through this that can be a range of a week or it can be
5 six months or longer. It depends on the state as to --

6 A Right.

7 Q Okay. And Arizona, like Alaska,
8 limits the medical marijuana to a list of conditions.
9 It needs to be written. But Arizona allows for
10 dispensaries or term dispensaries, but they are non-
11 profit dispensaries, aren't they?

12 A I believe that is correct, yes.

13 Q So for example, in Arizona, people
14 can't make money out of medical patients having to buy
15 cannabis from them or marijuana from them, other than to
16 cover their own costs of selling it.

17 A Correct.

18 Q So it isn't a free market, in other
19 words.

20 A Correct.

21 Q You agree with that? Okay. And
22 Arizona allows, though, doesn't it, for personal
23 production if a qualified patient doesn't live within 25
24 miles of a state licensed dispensary.

25 A That's correct.

26 Q It doesn't say, "Or you have to get
27 it by mail order, by courier service," for example. It
28 says, "If you don't live near one, you can't go to one

1 to buy it, then you can grow your own within the 25
2 miles."

3 A That's correct.

4 Q And that's been the law since 2010,
5 yes? In Arizona?

6 A Yes.

7 Q So this is a state that brought in
8 in one go, the right to personally produce if you didn't
9 live within the 25 mile radius, and brought in a
10 dispensary, a non-profit system all at once. It was a--

11 A Correct.

12 Q Okay. Because some of the other
13 states, and we'll see, have had a stage system, haven't
14 they? They've allowed one and then they've amended it
15 and maybe added a dispensary system. That's common with
16 a few of the states.

17 A That's correct. As I mentioned at
18 the outside -- or at the outset, around 2009 many of
19 those states that had previously allowed personal
20 cultivation moved on to also allow commercial
21 cultivation.

22 Q And in the United States, marijuana
23 dispensaries or cultivation centres or stores, they are
24 cash businesses, aren't they?

25 A That is correct.

26 Q There is no banking allowed by
27 federal law, is that right?

28 A That is correct.

1 Q So, every single thing that a
2 dispensary buys has to be paid for in cash, yes?

3 A Either in cash, or you need to be
4 able to find a bank that is willing to risk legal
5 sanctions for dealing with you.

6 Q Are there any such banks?

7 A Yes.

8 Q Which banks are those?

9 A I am not going to name them.

10 Q Is it -- why aren't you going to
11 name them?

12 A Well, in part, this has been told
13 to me by commercial cultivation centres in confidence
14 that -- yeah, it is not as if they have easy access to
15 these things.

16 Q Oh, I see.

17 A These banks don't want to publicize
18 themselves of committing violations of federal law.

19 Q I see, you don't want on the record
20 who the bank is, because you don't want to prejudice the
21 relationship that those people have with their banks
22 that they've told you about, is that fair?

23 A Correct.

24 Q Okay. So, this isn't a case where
25 you can go online and Google which bank you could go to,
26 a friendly bank. This is a kind of a bit of a secret?

27 A That would be tough to do, yes.

28 Q Okay, so apart from the ones, or

1 the ones who have found the bank that will do it,
2 despite the fact that they are not allowed by law to do
3 it, the rest of the dispensaries are required to operate
4 a cash system?

5 A Correct.

6 Q And that means also that their
7 money is not allowed to be put into a bank either?

8 A Correct.

9 Q So, the money has to be kept in
10 cash somewhere?

11 A Correct.

12 Q Okay, and are you aware of the
13 *CARERS* Bill, that was announced yesterday, the federal
14 bill, seeks to change that? Are you aware of that
15 aspect to the bill?

16 A I am not.

17 Q Okay. So, in Arizona, there have
18 been no amendments, there has just been the one bill?
19 That's right, isn't it?

20 A I believe that is correct.

21 Q Okay. So, California, now over the
22 page at page 18, and your next 62 down. 62, you say,
23 "Personal cultivation was the only source of
24 supply formally recognized by the state from
25 '96 to 2003. The state legalized the medical
26 use of marijuana in '96, which also repealed
27 the prohibition on marijuana cultivation by
28 qualified medical patients. In 2003 the

1 state legislature passed a new statute, SB-
2 420, that formally authorized cooperatives
3 and collectives to cultivate and dispense
4 marijuana, though some organization had
5 already done so before SB-420 was adopted."

6 So, can I take you then to the rebuttal
7 page 18, and it says there, if you look at amendments,
8 "Senate Bill 420 which was signed into law
9 October 2003 and took effect on January 1st,
10 2004, imposes statewide guidelines outlining
11 how much medical marijuana patients may grow
12 and possess. Under the guidelines, qualified
13 patients or their primary care givers may
14 possess no more than 8 ounces of dried
15 marijuana, and/or six mature or 12 immature
16 marijuana plants. However, SB-420 allows
17 patients to possess larger amounts of
18 marijuana when such quantities are
19 recommended by a physician. The legislation
20 also allows counties and municipalities to
21 approve and/or maintain local ordinances
22 permitting patients to possess larger
23 quantities of medicinal pot than allowed
24 under the new state guideline."

25 So, would you agree with that summary of
26 the 420 amendment?

27 A That seems like an accurate
28 summary.

1 Q And then it went on to establish
2 voluntary medical marijuana patient registry and issue
3 of identification cards.

4 A Correct.

5 Q So California has a voluntary
6 system. Does that mean that some states have a
7 mandatory registration system, or are all voluntary?

8 A No, the other states all have --
9 the states that have medical marijuana registries other
10 than California all have mandatory registries. And by
11 mandatory that simply means if you want to take
12 advantage of the protections afforded by state law, you
13 must register first. If you don't do so then you're out
14 of luck.

15 Q So it says, "To date, however, no
16 such registry has been established." Now, we're not
17 sure what date this was prepared, but is there now a
18 registration system in California, are you aware?

19 A It is a voluntary registration
20 system. Yes, there's a system now.

21 Q Right, so the registry has been
22 established.

23 So if I take you to the next paragraph it
24 says that the Bill 420 grants implied legal protection
25 to the state's medical marijuana dispensary, stating:

26 "Qualified patients, persons with valid
27 identification cards, and the designated
28 primary caregivers of qualified patients who

1 local governments to begin to licence these
2 dispensaries.

3 Q Okay. So it didn't create the
4 change, in other words. The change had already been
5 there by the market demand for medical marijuana, would
6 you agree with that?

7 A It certainly facilitated that
8 change. There was a proliferation of these medical
9 marijuana dispensaries in California after the adoption
10 of this measure.

11 Q And I think it mentions somewhere
12 and no doubt we'll get to it, that there were
13 significant problems that California experienced about
14 five years or so later when the federal government
15 decided to start closing some of these down. Is that
16 right?

17 A Even before then the federal
18 government had initiated legal proceedings against a lot
19 of these cooperatives, yes.

20 Q So despite the bill allowing from a
21 state level no criminal sanctions, the federal
22 government chose to intervene on a federal basis and did
23 in fact prosecute people, is that right?

24 A Correct.

25 Q So California allows for personal
26 production, agreed?

27 A Correct.

28 Q And it also established, kind of

1 formally recognized a system of dispensaries or suchlike
2 in October of 2003?

3 A Correct.

4 Q And it was amended once and that's
5 what, in 2003, by establishing a voluntary registry and
6 limiting the number of plants to the six mature or
7 twelve immature. Yes?

8 A One note on the statute. Some of
9 those limitations that were imposed by the Senate Bill
10 were struck down by the state court system as being in
11 violation of the *Compassionate Use Act* that was passed
12 in 1996.

13 Q So is that why there's the proviso
14 that unless your physician recommends a higher amount,
15 you can have more plants if you don't -- is that what
16 you mean by there was some problem?

17 A Well, the problem was that the
18 courts viewed Senate Bill 420, some of the restrictions
19 that were placed on patients in the state as conflicting
20 with the earlier adopted constitutional amendment, the
21 *Compassionate Use Act*, and then, yeah, threw those out,
22 yes, some of the quantity limitations, I know.

23 Q From a -- when you say some of the
24 restrictions, what were the restrictions on patients?
25 Was it just the amount, or --

26 A It was -- the quantity restrictions
27 are the ones I'm familiar with, that were struck down by
28 the California courts, or at least some of the

1 California courts.

2 Q So when we see, under the heading
3 "Amendments", at the page 18, a NORML document, it says
4 the very last sentence,

5 "Legislation also allows counties and
6 municipalities to approve and/or maintain
7 local ordinances permitting patients to
8 possess larger quantities than allowed under
9 the new state guidelines."

10 What does that mean?

11 A In the United States, this is
12 referring to localism. It's where local governments are
13 allowed to do some things -- local governments too have
14 a say in United States over marijuana policy, at least
15 in some states. So what this sentence is referring to,
16 it's half the story, but it's saying that local
17 governments can actually allow people to go beyond the
18 protections afforded by state law.

19 What it leaves out is that local
20 governments in California are also allowed to ban
21 marijuana dispensaries and I think there's at least one
22 instance of it, they've also banned cultivation. So
23 local governments have a say in crafting marijuana
24 policy in the United States and especially in
25 California.

26 Q So does that mean that it would be
27 up to a municipality, for example, if it -- it would
28 have within its power to licence -- sorry. To permit 20

1 plants, for example, if it chose to.

2 A Correct.

3 Q Okay. And in California, these are
4 profit organizations? Or non-profit?

5 A They are non-profit.

6 Q And is that a state requirement,
7 that they are non-profit?

8 A I believe that's a state
9 requirement. It is part of the definition that the
10 state was -- cooperative and part of the -- what are
11 non-binding guidelines that the Attorney General issued
12 back in 2008, from Jerry Brown, the current governor.

13 Q Thank you. So let's move on to
14 Colorado. Your paragraph 63 of page 21 of tab 15. You
15 say, with respect to Colorado,

16 "Personal cultivation was the only source of
17 supply from 2000 to 2010. The state
18 legalized medical marijuana in 2000 and the
19 state legislature passed a statute in 2010
20 that formally legalized commercial
21 cultivation. Though some commercial
22 cultivation centres had opened before the
23 statute was adopted, their legal status is in
24 doubt in light of state regulations that have
25 been promulgated in 2007, and 2009."

26 So when you say "formally legalized
27 commercial cultivation", are you saying "formally"
28 because it was already going on at that time? It wasn't

1 starting something new, for example.

2 A Well, I think it's safe to say,
3 then, in every state there are people who are growing
4 and selling marijuana to others. That was occurring in
5 Colorado, ostensibly under the framework of medical
6 marijuana. And what the legislature stepped in to do
7 was to legalize those activities, you know, under state
8 law and also provide a regulatory structure to oversee
9 them.

10 Q So, when you say there was some
11 commercial cultivation centres had opened before the
12 statute, how many commercial cultivation centres had
13 opened? Are you aware of how many there were?

14 A I'm not sure of the exact count
15 before then, because almost by definition these were
16 operating outside the boundaries of the law, so no one
17 was keeping track of them necessarily. I know that
18 there were many within a year of the adoption of the
19 2010 regulations.

20 Q Okay. So, if we look at page 20 of
21 the rebuttal of the NORML Colorado medical marijuana
22 information, if you see that there?

23 A Yes.

24 Q There is a voluntary registry,
25 you'd agree with that. It says towards the bottom of
26 the first paragraph of summary.

27 "The law establishes a confidential state-run
28 patient registry that issues identification

1 cards, and patients who do not join the
2 registry or possess greater amounts of
3 marijuana than allowed by law, may argue the
4 affirmative defence of medical necessity."

5 So, that is the opposite situation, where
6 it is voluntary, and even if you haven't registered you
7 can still use medical necessity as a defence in law to
8 charges, is that right, in that state?

9 A So, there are two different
10 protections that the law might afford. So if you
11 register, you have much greater legal protections if the
12 police try to arrest you. They are not allowed to
13 arrest you, you have committed no offence. If you don't
14 register, the problem here, and the reason why I would
15 still call this a mandatory registration state, is that
16 the patient is still allowed, unlike Alaska, you are
17 still allowed to raise this affirmative defence of
18 medical necessity, but now you have to prove all the
19 elements of a medical necessity defence, which is very
20 tough to do.

21 Q Okay. So, being registered makes
22 it easier. You've got your card, you don't need to go
23 through, "I need this for medical necessity and there is
24 nothing else that works for me," and that kind of legal
25 process?

26 A Correct.

27 Q Okay. So, there was an amendment,
28 so Colorado initially allowed personal production, and

1 in fact still allows personal production. But in 2010,
2 there was an amendment that allowed for the
3 establishment of dispensaries or -- I think it is
4 actually called dispensaries in this particular section.
5 Do you agree with that?

6 A I -- that's correct.

7 Q Now, why was there a moratorium?
8 So the amendment in June 7, 2010, this is page 20, under
9 amendments, "The law requires medical marijuana
10 dispensing facilities to obtain state and local
11 licencing approval and to be in compliance with zoning
12 codes" and then it goes on about what the fees are, et
13 cetera. But the paragraph below that says, that there
14 was a Bill, Bill 12-84 also imposed a state-wide
15 moratorium on the establishment of new dispensaries,
16 beginning in July of 2010. So that is within a few
17 weeks of this law being signed.

18 A Correct.

19 Q So, it sets up the legal framework
20 for dispensaries, but then says you can't open anymore?

21 A Correct.

22 Q And that was because the law was
23 catching up, wasn't it, to the market reality in
24 Colorado where there was lots of stores already in
25 existence, hence why the need for a moratorium, is that
26 right?

27 A Since -- yeah, since that first
28 Ogden Memorandum, 2009, many people had started to try

1 to set up these dispensaries, and this law was the one
2 that formally said that is legal now under state law.

3 Q Okay, and that is why there is
4 moratorium though, because they'd already, as far as the
5 state was concerned, got enough, is that fair?

6 A At that point in time, the state
7 thought enough is enough.

8 Q Are you aware that there isn't a
9 legal dispensary system in Canada? That there isn't a
10 federally recognized dispensary/cultivation centre
11 system, store system in Canada, are you aware of that?

12 A I am not intimately familiar with
13 Canada.

14 Q Okay. So, in Colorado, can the
15 dispensaries be profit or non-profit?

16 A I can't recall off my -- the top of
17 my head what business model they've adopted, whether
18 it's profit, non-profit, collective, incorporation,
19 that's --

20 Q I just noticed I forgot to ask you
21 something about California. So I'm sorry, if I can just
22 flip you back to the previous page. I just want to
23 confirm that California actually allows cultivation by
24 patients based on an oral recommendation from their
25 doctors, as well as a written one.

26 A California is unique in a lot of
27 ways. It was the first state that legalized medical
28 marijuana in a very brief citizen initiative. It's the

1 only state that has done this. But yes, all that's
2 formally required under state law is that your doctor
3 speak to you orally and say that you might benefit from
4 marijuana.

5 Q Okay. Is it right that Maine also
6 allows oral recommendations?

7 A I do not believe that's the case,
8 and I think this is a unique California feature. But
9 it's possible.

10 Q But they -- it's true to say that
11 virtually all of the states require written
12 authorization.

13 A Correct.

14 Q It's a written document.

15 A Correct.

16 Q And California doesn't restrict
17 medical marijuana to a list of qualifying conditions.
18 That's right, isn't it?

19 A Again, it's the only state I'm
20 aware of that does that, but yes, it's in the opinion of
21 whether or not --

22 Q Sorry. If we go over, then, we've
23 done Colorado. If we move on to Delaware, you see page
24 22? Now, Delaware is your paragraph 65. It says,
25 "Commercial" -- your paragraph 65 says,

26 "Commercial cultivation has been the only
27 source of supply since the state

28 **legislature legalized medical marijuana in

1 into that constitutional issue. Even Americans don't
2 want to get into that.

3 MS. GRACE: I'm not going there. I've
4 got enough to get into.

5 JUSTICE: Yes, on the record.

6 MS. GRACE: No, I'm dealing with
7 Canada as a former Brit. The Constitution, I've done
8 two. I'm not moving on to a third.

9 JUSTICE: That's because you burnt the
10 place.

11 MS. GRACE: Yes, I shall stay away. I
12 thought it was Canadians burnt the place. The War of
13 1812.

14 JUSTICE: Oh, that's just a rumour.

15 MS. GRACE:

16 Q So in D.C., the federal enclave,
17 does it allow for -- doesn't allow for personal
18 cultivation.

19 A The -- post my report, as we
20 discussed, I think it's Initiative 71 in the district,
21 legalized recreational marijuana and allows the
22 cultivation of a small number of plants.

23 Q Okay. So, in effect medical
24 patients can't grow medical marijuana but medical
25 patients could grow recreational marijuana and therefore
26 obtain their supply that way.

27 A Any adult could grow marijuana for
28 whatever purpose they want.

1 Q Okay. But in 2010, when the
2 legislation was enacted, it initially set up a system of
3 dispensaries, is that right? Eight facilities were
4 allowed under the law. You agree with that?

5 A That's correct. Again, the D.C.
6 government has the power to spend money in a way that
7 the initiative process doesn't permit.

8 Q Okay. And both profit and non-
9 profit are permissible in D.C.

10 A I believe that's the case.

11 Q And was it as a result of the fact
12 that there was more profits that brought about the
13 provision that was enacted in 2011 -- if you turn over
14 the page to page 24 of the rebuttal report you'll see
15 there:

16 "A separate provision enacted as part of the
17 2011 D.C. budget caused the retail sales of
18 medical cannabis to be subject to 6 percent
19 sales tax. Low income will be allowed to
20 purchase medical marijuana at a greatly
21 reduced cost under the plan."

22 Do you know why that had to be included in a separate
23 provision for low income people?

24 A I don't know why that was addressed
25 in a separate provision. As I discussed before, many
26 states have taxes on the sales of marijuana. It doesn't
27 matter it's a non-profit or a for-profit institution.
28 You would still have to pay sales taxes. But many

1 states have exempted medical marijuana from those taxes.

2 Q Well, if low income people could
3 easily get their medication from the already established
4 dispensaries, there wouldn't have been a need, would
5 there, for a separate provision actually codifying that
6 they're allowed to purchase at greatly reduced cost.
7 Doesn't that signify that there were difficulties with
8 affordability?

9 A That could have been something that
10 the D.C. Council noticed. I'm not aware of why exactly
11 they went through this. And under -- I'm not sure
12 about, in D.C. again, this gets into the difficulties of
13 their status. One difficulty that the states encounter
14 is that they're not allowed to subsidize medical
15 marijuana. You couldn't cover it under state supported
16 health care like Medicare. Again that would be
17 preempted by federal law.

18 Q So are you aware of what the terms
19 were though, the low income will be able to purchase at
20 greatly reduced cost. You say that the state is unable
21 to subsidize. So was this a case of legislating that
22 they couldn't sell for more than a certain amount to
23 people on low income?

24 A Different states have tried
25 different things. One thing they've done, and this may
26 be what D.C. did, is to set price schedules.

27 Q So if we move on now to Hawaii, so
28 page 25 and the rebuttal and your paragraph 68. So:

1 "Personal personal cultivation..."

2 this is your page 68,

3 "...has been the only source of supply since
4 Hawaii legislated in 2000. Section 1 of the
5 statute acknowledges that federal law poses a
6 challenge for the supply of marijuana."

7 And you put a quote in here:

8 "'The legislature is aware of the legal
9 problems associated with the legal
10 acquisition of marijuana for medical
11 patients, and the legislature is currently
12 considering proposals that would legalize
13 commercial cultivation to supply medical
14 marijuana patients.'"

15 Okay. So before we move on to the new
16 document which I gave you earlier, at the time that you
17 wrote this report in October of 2014, there were
18 proposals, weren't there, from Hawaii about what to do
19 about a state-wide dispensary system. Is that fair to
20 say?

21 A That's correct. They had initiated
22 or called up a task force to study the issue.

23 Q So there was concerns, wasn't
24 there, that the people that couldn't grow or didn't know
25 how to grow, were unable to grow, didn't have a source,
26 a legal source of supply and had to buy on the black
27 market in effect.

28 A That is one of the concerns the

1 task force expressed, yes.

2 Q And as a result of the task force
3 being set up, there was a report published which is
4 simply dated on the front January 2015, and I provided
5 you with a copy of that report today.

6 A Correct.

7 Q And this is a report that you're
8 familiar with.

9 A Yes.

10 Q And if I take you to the
11 recommendations of the report, there were a number of
12 recommendations that were set out in relation to the
13 findings of a task force, is that right?

14 A Yes.

15 Q So if we look at page -- well, it
16 says I at the bottom of mine but I think it might be
17 page 1. It says, "Number and location of dispensaries,"
18 so there were recommendations about how many
19 dispensaries there could be, where they would be
20 located, that kind of thing. Is that right?

21 A I believe I see the same page
22 you're on, yes.

23 Q Yes. And I wont' ask you about
24 those. And then if we go over to roman number II, put
25 it that way, it says at the top of this page, it's about
26 four pages on, "B. Framework for cultivating and
27 manufacturing medical marijuana products." Do you see
28 that there?

1 A Yes.

2 Q And there's a number of
3 recommendations with respect to the heading "producers"?

4 A Correct.

5 Q And the first recommendation, the
6 recommendation 5,

7 "The legislator shall preserve the right of
8 qualifying patients to continue to cultivate
9 their own medication if they wish to do so."

10 A That is correct.

11 Q So, this task force looked at a
12 statewide system of dispensaries, which it later on
13 recommends, and we'll go into that, you agree with that.
14 And in its study, it chose to keep in place the
15 individual patients' right to continue cultivating their
16 own medication.

17 A That is correct.

18 Q Okay. And then there were other
19 recommendations to the number of producers, number of
20 plants, how they could dispense, the range of products
21 for example, as well. There were recommendations about,
22 for example, recommendation 11,

23 "No dispensary or producer shall produce or
24 distribute any candy with medical marijuana
25 provided that lossenges should be permitted."

26 And it defines that as a small tablet
27 intended to dissolve slowly in the mouth, for example.
28 Goes, recommendation 13, another one,

1 "Oils and extracts are permitted provided
2 they are clearly labeled with potency and
3 content of the product."

4 You agree with that? This is a very
5 comprehensive report, would you agree with that, that
6 looked at all the aspects of marijuana, growing, and
7 taking, what patients require, the forms administration,
8 edible or oils. Would you agree that this was a
9 comprehensive report?

10 A It is a comprehensive report, yes.

11 Q Okay. With respect to
12 recommendation 5, which is -- they mentioned earlier,
13 was the patients continuing right to continue to grow,
14 was there an explanation as to how that came about
15 further to the reports at page 10? Number at the bottom
16 of page 10. And the same heading, "Framework for
17 Cultivating and manufacturing medical marijuana
18 products," with the under-heading of "Producers".
19 You'll see there that the recommendation is reproduced
20 and in bold this time.

21 "The legislator shall preserve the right of
22 qualifying patients to continue to cultivate
23 their own medication if they wish to do so."

24 And it goes on to say,

25 "A common patient concern expressed at
26 numerous taskforce meetings at the public
27 hearing conducted by the taskforce was a need
28 to retain qualifying patients' ability to

1 continue cultivating medical marijuana on
2 their own. After 14 years of individual
3 cultivation, many patients have developed
4 particular strains that are especially
5 effective for their medical conditions. The
6 establishment of a dispensary system should
7 not require that patients use dispensaries
8 and should not prohibit qualified patients
9 and their caregivers from cultivating medical
10 marijuana for their own personal use, as
11 currently allowed by their medical marijuana
12 laws."

13 Is that right? That's what it says?

14 A You read it correctly.

15 Q Okay, thank you. So, this wasn't a
16 situation, was it, of a kind of trend away from growing,
17 in Hawaii, and into dispensaries. It wasn't -- we don't
18 need that system anymore, we can now have dispensaries,
19 that federal government isn't going to start raiding
20 them anymore, so we don't need personal cultivation. In
21 Hawaii, it was specifically addressed that patients
22 should still maintain their own plants if they chose to
23 do so. Is that right?

24 A That is what Hawaii has decided,
25 yes.

26 Q Okay. And that's common, isn't it,
27 with states that allowed personal production. There's
28 only one state, Nevada, which we'll get into but perhaps

1 you know the answer off the top of your head, but Nevada
2 is the only state that sought to limit a patient's right
3 to grow their own subsequent to the establishment of
4 dispensaries.

5 A I know it is at least one state
6 that has done so. It limited that right to individuals
7 who were living beyond 25 miles of a commercial
8 cultivation centre. There may be other states. There
9 is no state that I'm aware of that has banned outright
10 personal cultivation by every one in the state that
11 previously allowed it. There may be other states that
12 have restricted that right in ways that I'm not aware
13 of, either through limitations on quantity or through
14 their local governments passing bans on possession. But
15 at a state level the only one I'm aware of is Nevada.

16 Q So we'll go through them just to
17 demonstrate that there are no other ones, but you said
18 that you're not able to think of any, but I appreciate
19 that it's not a memory test, which is why we're going to
20 go through them all. I raise it at this stage as a kind
21 of contrast. We will deal with the state position with
22 respect to personal production in order.

23 And Hawaii, like most of the states, has
24 a list of illnesses that are covered, that you have to
25 fall into in order to qualify the medical marijuana
26 patient.

27 A Correct.

28 Q So if we turn now to Illinois, over

1 the page to page 27 of the rebuttal, you'll see Illinois
2 medical marijuana and a summary there, and yours is at
3 your paragraph 69 of page 22, tab 15. So you say:

4 "Illinois. Commercial cultivation have been
5 the only source of supply since the state
6 legislator legalized medical marijuana in
7 2014 and the state authorized the operation
8 of state regulated centres but rejects
9 personal cultivation by adding medical use to
10 include only..."

11 and we have the acquisition of administration, delivery,
12 possession, transfer and transportation or use but we
13 don't have cultivation as distinguished some of the other
14 states.

15 A Correct.

16 Q Okay. So Illinois only has a
17 dispensary, or cultivation centre they call them, and up
18 to 60 licensed dispensaries. Could you tell me what the
19 difference, if we look back to the rebuttal at page 27
20 you'll see the program creates up to 22 state licensed
21 cannabis cultivation centres and up to 60 state licensed
22 dispensaries.

23 A Correct.

24 Q What's the difference between
25 those?

26 A This is true of other states as
27 well. One is the place where they will actually produce
28 the marijuana. The other one is the place where they

1 will distribute the marijuana. So you can think of it
2 more as a manufacturer versus a distributor operation.

3 Q So a cannabis cultivation centre
4 wouldn't be selling direct to the public. They're
5 supplying the product to the dispensary to sell to the
6 public, is that the way it works?

7 A I believe that's correct, yes.

8 Q And Illinois, like the majority of
9 the states, requires registration and limits the
10 obtaining of medical marijuana to patients who are on a
11 defined list of illnesses.

12 A Correct.

13 Q So if we can turn to Maine. Maine
14 is over the page. Page 28, 29 and 30 of the plaintiffs'
15 rebuttal and you have it at your 72. So at your 72 it
16 says:

17 "Personal cultivation was the only source of
18 supply from 1999 to 2009."

19 So that's a ten-year period.

20 "Implicitly authorizes personal cultivation
21 by providing that a patient can possess both
22 useable marijuana and marijuana plants."

23 And then you set out the question 2 there:

24 "A patient with physician authorization will
25 not be able to possess an amount greater than
26 one and a quarter ounces of harvest marijuana
27 and six marijuana plants of which no more
28 than three may be mature and flowering."

1 So you then go on to talk about a 2009
2 amendment. And you say,

3 "In 2009 the state expressly authorized
4 commercial cultivation to supply medical
5 marijuana in a ballot initiative."

6 Okay?

7 So if we look now at the NORML
8 information, at page 28, you will see there that there's
9 a suggestion that there was an amendment in 2002.
10 Senate Bill 611. And that increased the amount of
11 useable marijuana from the one and a quarter to two and
12 a half ounces.

13 A Correct. The mandate asked me to
14 look at the supply of marijuana. This I consider a
15 regulation of users of marijuana. So the states are
16 going through amendments concerning how much patients
17 may use marijuana, what conditions qualify over time,
18 and my summary does not capture those changes that apply
19 to patients outside of production of marijuana.

20 Q So, but it shows that they -- the
21 movement was towards increasing the amount of marijuana
22 in a patient's possession, not limiting it.

23 A That is what one state did here,
24 yes.

25 Q Okay. And there was also in 2009
26 the identification and registry system was brought into
27 effect by Maine as well. Would you agree with that?

28 A Correct.

1 Q And in Maine, the dispensaries are
2 non-profit.

3 A I believe that's correct.

4 Q They're not allowed to be for
5 profit. And also in 2009, there was an expansion of the
6 list of qualifying illnesses. You would agree with that
7 as well?

8 A That may be correct. I'm not sure
9 what happened on that issue in Maine in 2009.

10 Q Well, you would agree, would you,
11 that the trend has been to increase -- if there is a
12 trend, it's been to increase the amount of conditions
13 which are covered by medical marijuana. We've seen that
14 with a number of states, not to decrease it. To add
15 things rather than to take things away. Would you agree
16 with that?

17 A That's outside the scope of my
18 mandate. Again, that's dealing with who qualifies for
19 these amendments, rather than sort of how they're
20 supposed to get the drug.

21 Q Well, irrespective of your mandate,
22 is it within your knowledge as somebody who is an expert
23 on marijuana law, that that has been the progression of
24 the legislation, that there has been an expansion to
25 include more patients rather than a decrease?

26 A Well, in the sense that I know of
27 at least some states that have expanded the number of
28 conditions. Yes, there have been states that have done

1 that.

2 Q And there is no states that have
3 decreased the conditions, are there? There's no states
4 have taken away illnesses off their list.

5 A There is none that I'm aware of.
6 But again, that's an issue that I have not looked into
7 in detail.

8 Q So, in -- if we say -- if we look
9 at the next page, 29, of the NORML information there,
10 we'll see that there is another amendment, and that was
11 April of 2010. So, the amendment that you were talking
12 about, in 2009 the state expressly authorized commercial
13 cultivation. Is this the same amendment?

14 A So, in the United States when you
15 have a voter initiative like question 5, oftentimes the
16 legislature has to follow up afterwards and pass
17 implementing legislation. That is what this 2010
18 legislation refers to. It's implementing the
19 question 5.

20 Q Okay.

21 MR. BRONGERS: Mr. Justice Phelan, I
22 hesitate to interrupt my friend. There's just a small
23 time management issue. The witness has a flight
24 scheduled for 3 o'clock this afternoon. He was under
25 the understanding that he would be going until 12:30 and
26 then would be able to go to the airport. At the rate my
27 friend is going through each state, I'm concerned that
28 she's perhaps intending on going into the afternoon.

1 And we have another witness from Israel who is supposed
2 to start then. So --

3 JUSTICE: Ms. Grace, can you help?

4 MS. GRACE: I'm going to be some more
5 time. Unfortunately for me, the United States decided
6 to do new things in the last few months, which have
7 added to the need to ask more questions. I will be
8 going through Maine, Maryland, Massachusetts, Michigan,
9 Montana, Nevada, New Hampshire, New Jersey. Some of
10 those are very small, because they don't have the level
11 of provision that Maine has, for example. Oregon, Rhode
12 Island, Vermont, and Washington. So there are a number
13 that I'll still be going through.

14 After that, there will be some general
15 questions with respect to some of the observations that
16 have been --

17 JUSTICE: Would you be finished by
18 one? Quarter after twelve.

19 MS. GRACE: I'm unlikely to finish by
20 -- everything by one. I'd likely finish this by one,
21 this particular aspect by one. So --

22 JUSTICE: Well, that puts the witness
23 in a bit of a quandary, but there's nothing improper
24 with your cross-examination. So I'm afraid, Professor,
25 you're here for a little bit longer. Sorry the weather
26 couldn't be better for you.

27 MS. GRACE: The witness can be assured
28 that I'll try and, you know, do my best to accommodate

1 him.

2 JUSTICE: What are we going to do
3 then? We have a second witness in the afternoon.

4 MS. GRACE: I understand the second
5 witness is not going to be very long, from what -- but
6 there is a video that my friend Mr. Conroy wanted to
7 play.

8 JUSTICE: Okay. Since we're not going
9 to be able to get you out, I'm afraid. Sorry, your play
10 is coming in from the bench, there.

11 MR. BRONGERS: I understand, My Lord.
12 My colleague reminds me of our other witness having some
13 commitments as well.

14 JUSTICE: Yes, Ms. Wray.

15 MS. WRAY: Yes, as you know, Dr.
16 Baruch has flown in from Israel. So he is here as well,
17 just as Professor Mikos is, for a very limited period of
18 time due to his other commitments on the trip. I also
19 am not aware of this, but understand that Professor
20 Mikos is in the middle of a semester at this point.

21 A Yes.

22 MS. WRAY: And I'm not aware if you do
23 have teaching duties tomorrow as well.

24 A I do. I teach marijuana law and
25 policy and a constitutional law course tomorrow morning,
26 and then I have a faculty hiring meeting in the
27 afternoon.

28 JUSTICE: Okay, well, I'm sorry. Your

1 students are going to be able to get a double bill.
2 When you show up you'll be able to talk about Canadian
3 marijuana. But that's the only comfort I can offer you.
4 You're, I'm afraid, stuck in the box and you'll have to
5 stay there till it's done.

6 Now, with respect to the doctor from
7 Israel, what are the logistical problems there?

8 MS. WRAY: I believe he also has a
9 flight scheduled for tomorrow morning. I'm not sure
10 about his schedule this evening. I'm assuming he could
11 sit late if that is required.

12 JUSTICE: Okay. Well, if he has -- is
13 it a trip back to Israel or --

14 MS. WRAY: To be honest, I don't know
15 his itinerary that well, but I do know that he was not
16 supposed to be in --

17 JUSTICE: It's one thing if he's going
18 to Victoria.

19 MS. WRAY: Correct.

20 JUSTICE: It's another thing if he's
21 going to Tel Aviv.

22 MS. WRAY: Yes.

23 JUSTICE: So let's get that
24 straightened away as to whether we sit later tonight.
25 But that's always an option and we can get him done. I
26 guess it depends on where we are. We'll have to visit
27 that after lunch and no doubt be able to figure out what
28 the real logistics are there.

1 MS. WRAY: Absolutely.

2 JUSTICE: Okay. We've spent enough
3 time on logistics. Let's keep going.

4 MS. GRACE: I can also tell the court
5 that in efforts to try and keep it as short as possible,
6 we did have a video to play of the press conference
7 yesterday, the federal press conference which was over
8 half an hour, but we decided to sideline that given my
9 concern about timing. So there's an option if people
10 are interested later on.

11 JUSTICE: That's a wise move. We can
12 live without the entertainment. Okay, let's keep going.

13 MS. GRACE: Okay.

14 Q So I was asking you about Maine as
15 I understand it, so let me go back to that. And you
16 were explaining the amendment of 2010 which is at page
17 29 of the NORML document. So there was an additional
18 amendment, wasn't there, in 2011. You can see that
19 there in the --

20 JUSTICE: Excuse me, Ms. Grace. Can
21 you remove your papers from the microphone? You're
22 driving the court reporter crazy.

23 MS. GRACE: Sorry.

24 JUSTICE: I know you may not want to
25 drive the judge crazy, but you do not want to drive the
26 court reporter crazy.

27 MS. GRACE: I've rearranged the
28 microphone so I'm not touching it.

1 JUSTICE: All right, you're back in
2 her good books. Keep going.

3 MS. GRACE: Sorry.

4 Q So in 2011 there was an amendment,
5 you see that there? It says LV-1296?

6 A Yes.

7 Q And that amendment limited the
8 ability of law enforcement to seize cannabis from lawful
9 patients and mandate the return of any seized property
10 within seven days. Do you know why that came about?
11 Why there had to be a legislation to stop the police
12 taking medical plants from lawful patients?

13 A I don't know in Maine. But in
14 other states, the concern has been that state law
15 enforcement are not on board with medical marijuana
16 reforms, and might seize marijuana from a qualified
17 patient and then refuse to return it, ostensibly because
18 doing so would violate federal law.

19 Q And there was also an additional
20 amendment, the very last lines of that section, which
21 says that in addition to this protection from seizure,
22 there was an increase in the number of plants, mature
23 plants, that a qualifying patient could cultivate from
24 three to six.

25 A Yes.

26 Q So the increase -- so the plant
27 amount was doubled. You would agree with that?

28 A Again, that was a detail that I

1 didn't look into for my report, but that looks to be
2 correct.

3 Q So you would agree that that
4 suggests that rather than legislature wanting to
5 suppress -- or to limit further a patient's individual
6 right to grow, it was recognizing that it needed to be
7 more. Is that correct?

8 A It looks like they thought that
9 three plants, which is very low compared to other
10 states, was low -- too low for patients.

11 Q Okay. So I asked you earlier about
12 California being an oral recommendation. Can you have a
13 look at the Maine summary on page 28. I think it's the
14 fourth -- the third line. It says it "removes state
15 level criminal penalties on the use, possession, and
16 cultivation of marijuana by patients who possess an oral
17 or written professional opinion." Is that something
18 that you're familiar with? That Maine also has an oral
19 system, or allows for an oral opinion?

20 A Again, that's something I didn't
21 look into for this report. It's possible, but again, it
22 strikes me as odd, because I was under the belief that
23 California was the lone system that does this. But
24 again, with so many registration states, it's possible
25 there's another one like Maine.

26 Q Okay. And we'll also see, won't
27 we, at the final amendment that Maine made in June 26,
28 2013 and was to expand the list of qualifying conditions

1 to include post-traumatic stress disorder, inflammatory
2 bowel disease such as Crohn's, and there's a few others,
3 Parkinson's, Huntington's. And that took effect in
4 September of 2013.

5 A That's correct.

6 Q So, and Maine itself, does it
7 require registration or doesn't it require registration?
8 It seems that it was one thing and then the other, then
9 back to the other.

10 A Correct. So they initially did not
11 have registration. They instituted registration. They
12 backed off of it at a time when the federal government
13 -- a couple of U.S. Attorneys had tried to tap into
14 state medical marijuana registries for use in
15 prosecutions against suppliers of medical marijuana.
16 They grew fearful of that and decided to abandon the
17 registration system.

18 Q So, Maine introduced a non-profit
19 medical dispensary system in 2002 to add to the personal
20 production that was allowed from 1999. And it hasn't --
21 far from restricting people to grow their own since the
22 inception of the dispensary, this in fact allowed people
23 to grow more and be covered for more illnesses. You'd
24 agree that that was a summary of the amendments for
25 Maine?

26 A Yes.

27 Q We move on to Maryland now, please,
28 at page 31. I'll try and pick up the pace a little bit

1 on the more easier states, I'll put it like that. And
2 you have also summarized Maryland in your report at
3 paragraph 74. I'm dealing with Maryland before
4 Massachusetts. We'll go -- I think there was --
5 Maryland comes before Massachusetts, so I've not missed
6 out Massachusetts.

7 A My mistake.

8 Q Okay. And so with Maryland, it's
9 right that there is no personal production allowed.

10 A That is correct.

11 Q And is a dispensary system allowed?

12 A There is a development in 2014
13 where they did allow dispensaries, or commercial
14 cultivation. There was a statute in 2013 that allowed
15 distribution only by -- I believe it was academic
16 medical centres. But no one stood up to do that. They
17 were worried about federal -- losing federal funding.
18 So the legislation passed another law some time in 2014
19 explicitly authorizing commercial cultivation centres.

20 Q Is there actually effectively any
21 medical marijuana in Maryland as of today's date? For
22 patients.

23 A Oh, I don't believe Maryland has
24 any commercial cultivation centres up and running since
25 that law was passed within the last year.

26 Q So if we go over then, please, to
27 Massachusetts, that's your paragraph 73. And our page
28 32 of the NORML information. So this is a registration

1 system, would you say? Sorry, from the NORML document.

2 And you say in yours,

3 "Commercial cultivation has been the
4 preferred source of supply since the state
5 legalized medical marijuana in 2012. Section
6 11 of the initiative authorizes state
7 regulated treatment centres. But it also
8 allows patients to request authorization to
9 self-cultivate if they demonstrate certain
10 defined hardships, including verified
11 financial hardship, a physical incapacity to
12 access reasonable transportation, or the lack
13 of a treatment centre within a reasonable
14 distance of the patient's residence."

15 So, for example, it didn't require people
16 who couldn't physically get to a dispensary to use a
17 courier system, and have it sent to them. It allowed
18 that inability to get to the actual dispensary or the
19 cultivation centre, as a reason why you could carry on
20 growing your own. Is that right?

21 A So, the State Department of Health
22 had to pass regulations to put this measure into effect.
23 And they had to comply with these provisions set out in
24 the measure, and so they said they are trying to
25 establish a courier system to help those people. But
26 you're correct, in the sense that if you live outside of
27 25 miles, as of this day, you don't have to go the 25
28 miles. They said you can grow it yourself.

1 Q Okay. Now, does Massachusetts
2 actually specify 25 miles? Because within the quote, it
3 says "within a reasonable distance of the patient's
4 residence".

5 A Correct.

6 Q Do you have a definition?

7 A I believe that's the way that the
8 State Department of Health has interpreted that. That's
9 an administrative agency that's charged with executing
10 the statute.

11 Q So that's their interpretation.
12 But is there actually a legal definition of what it is?

13 A Well, the legal definition would be
14 found in the implementing regulations. That would be
15 law.

16 Q Okay. And does that say 25 miles?

17 A I believe that says 25 miles.

18 Q Okay. And verified financial
19 hardship, there was an exception therefore made that
20 people could continue to grow their own if it was
21 financially hard for them to buy from a dispensary, or a
22 cultivation centre?

23 A Correct.

24 Q And do you know the terms of that
25 hardship, what the kind of rules are?

26 A That again, the Department has had
27 to interpret what this provision means and how to put it
28 into practice. I think they define it as one in a

1 third, or below the federal poverty line. So the
2 federal government sets a poverty line. I believe the
3 State Department of Health has said if you're below that
4 poverty line you meet this qualification.

5 They've also, in their documents and
6 hearings, tried to find other ways to provide marijuana
7 to these patients who are financially needy and
8 financially eligible apart from growing it themselves,
9 including a provision similar to one we discussed
10 earlier that would have these commercial cultivation
11 centres provide marijuana to these patients at a
12 discount.

13 Q And that would be a legislated
14 requirement that they must provide low prices to people
15 who are verified to be financially suffering hardship?

16 A The agency might try to do that
17 through regulations. Again there are some difficulties
18 under federal law in doing that, but they might try to
19 do something like that, yes.

20 Q Okay. But the fallback is that
21 those patients can grow their own if they want to, if
22 they can do.

23 A Correct, correct.

24 Q And this is against the background
25 of a non-profit system, isn't it, in Massachusetts.

26 A I believe so, yes.

27 Q So it's not the patients who suffer
28 financial hardship because they can't buy from the free

1 market. It's patients who can't afford to to buy from
2 non-profit dispensaries. That's the situation in
3 Massachusetts at least, do you agree?

4 A Yes, although I want to make sure
5 that we're on the same page as to what a non-profit,
6 what that status means. I work for a non-profit
7 venerable university that pays its top coaches and its
8 leader, you know, enormous salaries. So non-profit
9 doesn't mean you don't make a profit in the United
10 States. It means that you can't distribute that profit
11 to shareholders. Instead you typically have to reinvest
12 it in the community, use it to pay your workers, things
13 along those lines.

14 Q Yeah, you can't -- you don't have
15 shareholders that want to have -- that have control or
16 input into how big the margins are and you don't have
17 that system in a non-profit, do you?

18 A It depends on how it's organized.
19 You might have a board of directors. They don't have a
20 financial stake. They can't pull money out of it but
21 they may help direct the operations of the program.

22 Q But like any non-profit, of course,
23 a non-profit could pay its staff huge wages if it wanted
24 to.

25 A Right.

26 Q And still be a non-profit.

27 A Correct.

28 Q Okay. So, and there are 35 and

1 there was a creation of up to 35 state licence non-
2 profits in Massachusetts, you agree with that? That's
3 at page 32.

4 A Correct. That's the ceiling that
5 the state law imposed.

6 Q Okay. And are there any of these
7 medical marijuana treatment centres in operation? In
8 Massachusetts?

9 A I know the State Department of
10 Health has issued the licences and permits to 15. I
11 believe the first one is scheduled to open on -- they're
12 estimating sometime in the coming weeks, so another
13 development.

14 Q So this law, and there's only been
15 one law. There's been no amendments, have there, to
16 Massachusetts, which was passed in November of 2012 and
17 came into effect in January 2013 that despite it coming
18 into effect in 2013, we're now in 2015, and we're yet to
19 have them open the door. Is that right?

20 A That's correct. In Massachusetts,
21 as in many other states that we've walked through, what
22 typically happens is the law takes effect, and then a
23 state agency or the state legislature has to figure out
24 how to actually implement the legislation. So in
25 Massachusetts, for example, it took effect in January
26 2013. I believe the state administrative agency spent
27 about four or five months crafting its regulations, how
28 these commercial cultivation centres would be run, where

1 they would be, you know, what areas of the state they'd
2 be located.

3 It then went through a multi-stage
4 vetting and permitting process that is now just
5 completing. That's why I say now they've issued the 15
6 permits that they're going to issue and the first one
7 should open sometime in the next weeks if not months.

8 Q So it can be quite a long process
9 between the legislator giving consent for dispensaries
10 or such-like to open, and them actually able -- being
11 able to provide patients with their medicines?

12 A Yes. There is typically a delay
13 between the time the law takes effect and the time that
14 the dispensaries or the commercial cultivation centres
15 start to open.

16 Q Okay. And in this particular case,
17 November was when it was passed. We still haven't seen
18 the doors open yet. Two and a half years? Is that a
19 typical length of time? Or is this longer, or shorter,
20 for any reason that you know?

21 A It really runs the gamut in the
22 United States. And again, the starting date on this is
23 really January, 2013. The state agency couldn't do
24 anything before then, because the law wasn't taken
25 effect. But there is typically a similar process that's
26 followed in the states. They try to open up all the
27 rule-making procedures to notice and comment, bringing
28 the public -- the agency will promulgate some

1 regulations. Those may have to be passed or validated
2 by the state legislature. And then you start the
3 process of opening up applications for people to come in
4 and seek the licenses and so on, and then they have to
5 get their businesses up and running, start to grow the
6 drug.

7 In some states, it's taken less time, and
8 in other states it's taken a little more time. There
9 are different things that affect the amount of time
10 that's required. Some of it is based on the procedures
11 of state law. Sometimes it's concerns over federal law.
12 New Jersey, for example, Arizona, Delaware, all had
13 concerns that the federal government might step in and
14 prosecute state officials who were dealing with these
15 issues.

16 And so even though they had a law on the
17 books, the governors in those instances tabled the laws
18 for different periods of time to get some -- you know,
19 clear the air, and figure out whether they were allowed
20 to proceed under federal law.

21 So again, it runs the gamut. But
22 Massachusetts would probably be in that median range.

23 Q You mentioned Delaware, but it's
24 right, isn't it, that Delaware, which doesn't allow for
25 personal production, and only allows a dispensary or
26 such-like scheme, that law came into force in 2011. And
27 there are no dispensaries in Delaware still to this day,
28 2015.

1 A Right. It didn't come into force
2 in 2011. It was passed by the legislature, signed by
3 the governor. It was supposed to start to take effect
4 in mid-2012, I believe. It was about that time that the
5 governor who supported the measure received a letter
6 from the United States Attorney in Delaware saying that,
7 you know, this is all still a federal crime. Seemingly
8 flouting that Ogden memorandum that I talked about. The
9 governor tabled the program from July of 2012 up until
10 -- I think it was August of 2013.

11 August, 2013, central Department of
12 Justice, to get more of these U.S. Attorneys in line,
13 issues clear, stronger guidance to them. The governor
14 resuscitates the program at that point. It's at that
15 point that they really get the process running.

16 So again, you have some situations where
17 -- yeah, it's not an inherent part of the process, but
18 it's, you know, concerns over a federal law that have
19 tripped up the implementation of the commercial
20 cultivation centres, even post-2009.

21 Delaware, I believe, is scheduled again,
22 like Massachusetts, to open the first commercial
23 cultivation centre in the next month. It's a small
24 state. I think they have 150 or 160 patients who are
25 registered. So they may be finished at the end of the
26 month, although I think they have allowed more
27 commercial cultivation centres, if they become
28 necessary.

1 Q So, 150 or 160 patients. What have
2 they been doing, for the past three years, as far as
3 medication, whilst Delaware's got its act together, if I
4 can put it like that?

5 A Well, it's one of the interesting
6 things that these states that have allowed patients to
7 use medical marijuana but have said you have to get this
8 through commercial cultivation centres, all of them knew
9 that there would be a time lag, and yet, as I mentioned
10 before, it's striking that very few of them outside of
11 Massachusetts and Arizona, very few of them allowed
12 patients to go ahead and grow it themselves for the time
13 being. Instead, they basically said we're leery enough
14 of personal cultivation that you've got to wait until we
15 have a commercial cultivation centre up and running.

16 Q So the States' attitude is you --
17 the 150-160 in Delaware, you can wait three years or so
18 for your medication. That was basically their response
19 to the situation of providing marijuana access to
20 medical patients?

21 A I think for them it was less than
22 idea, because they see a medical benefit from the drug,
23 but they thought it is better than the alternatives.

24 Q Well, was there any discussion of
25 going back and did anybody kind of table a bill to say
26 this is taking forever, we need to have personal
27 production now, because that is the only way to ensure
28 that these patients do get the supply because the

1 State's failing in its duties?

2 A There may have been a proposal.
3 There are lots of proposals floating out there, I am
4 just not aware of any.

5 Q Okay, and the same is true of
6 Massachusetts, isn't it, in that Massachusetts only
7 allows for very limited amount of personal production
8 and we've gone through, you know, the such as,
9 difficulty accessing the centre or financial hardship.
10 Bearing in mind that there are no approved sites or
11 dispensaries or such like, in Massachusetts, what has
12 been happening or has anything been happening to supply
13 medical marijuana to patients who don't fall within the
14 physical disability exception or financial hardship? Or
15 have they just got to wait until the day comes?

16 A Well, in Massachusetts, they might
17 fall under one of the other exceptions, which is that if
18 you are not a reasonable distance from commercial
19 cultivation centre because there aren't any open yet,
20 they might be allowed to grow their own.

21 Q Okay, so because there isn't any
22 centres, then therefore they can't fall within the
23 provision that requires them to buy from their -- if
24 they are within the 25 miles?

25 A Correct, until that centre opens
26 up, they would be allowed to personally cultivate.

27 Q Okay.

28 JUSTICE: I think we'll take lunch

1 now. We've gone a little past. We'll start again at
2 quarter to. Bang on. Thank you.

3 (PROCEEDINGS ADJOURNED AT 12:37 P.M.)

4 (PROCEEDINGS RESUMED AT 1:46 P.M.)

5 MS. GRACE:

6 Q So, Professor Mikos, we were
7 talking about the different states and going through
8 them before the break. And I'm going to try and speed
9 things up a bit by asking you to agree with propositions
10 for some of those states. If we turn to Michigan, which
11 I think was the next one, it's page 33 of the rebuttal.
12 And you deal with it in your appendix --

13 JUSTICE: Seventy-five.

14 MS. GRACE: Seventy-five. That's
15 right.

16 Q So, would you agree that as far as
17 Michigan is concerned, that since 2008 there has been
18 personal production permitted? Sorry, did you say yes?

19 A Yes.

20 Q And that in Michigan, there is no
21 system of dispensaries or such-like. That's right,
22 isn't it?

23 A Correct.

24 Q And that there is an amendment to
25 the 2008 law which allowed for personal production, and
26 it had amongst the amendments, restrictions on whether
27 you could see an outdoor site, for example, and it
28 amended the renewal period to be two years as opposed to

1 one year. And those are set out in -- at page 34 of the
2 NORML document. You can see that there? Those were the
3 amendments and that was -- it said in late 2012, and
4 they took effect in 2013.

5 So, it's true to say that there wasn't
6 any suggestion of amendments, though, that could
7 establish dispensaries, for example, in 2012/2013. It
8 was just limitations on the current system that was in
9 place. Is that right?

10 A There had been proposals in
11 Michigan discussing the establishment of commercial
12 cultivation. None of it's yet passed.

13 Q Okay. And with respect to moving
14 on to Montana, with respect to Montana, again you can
15 produce personally. So a patient can grow their own,
16 and that's been that way since 2004. And again, like
17 Michigan, they don't have a dispensary system. Is that
18 right?

19 A No, that is incorrect.

20 Q Okay. So what does Montana have?

21 A Montana has both personal
22 cultivation and commercial cultivation. The status of
23 Montana law at the time of my report was somewhat
24 uncertain. But a judge has issued another ruling in a
25 challenge to the Montana medical marijuana regulations
26 that basically blocks some restrictions that otherwise
27 would have been imposed, enabling commercial
28 cultivation. So the bottom line is, today commercial

1 cultivation and personal cultivation are legal in
2 Montana.

3 Q Okay. So there are now -- is there
4 now a dispensary system in place in Montana, or
5 something like a dispensary system, where people can go
6 to stores and buy marijuana? Or is it a proposal and
7 it's not yet been implemented?

8 A Well, they've had commercial
9 cultivation for some time now. Arguably it was
10 legalized under the state's original 2004 law. There
11 was some uncertainty, though, about the import and
12 effect of that provision. So, they have had these
13 commercial cultivation centres in place. It's just that
14 the latest round of litigation helps to clarify their
15 legal validity.

16 Q So when did the commercial
17 cultivation centres start in Montana?

18 A Really as far back as 2004. The
19 mechanism that was used, this is where personal
20 cultivation, there is a need to distinguish personal
21 cultivation and commercial cultivation. As I explained
22 in the report, once you allow a caregiver to supply
23 marijuana to a thousand patients, that really becomes a
24 scale commercial cultivation operation as opposed to a
25 small personal cultivation operation, and that is what
26 Montana originally did.

27 Q But in 2011 there were amendments
28 to the law which prevented any profit or monetary

1 compensation to be provided to growers. So, in other
2 words, there was no profit to be made in growing for
3 somebody else. So, how does that establish a system of
4 dispensaries? I'm unclear.

5 A Well, the legislature tried to step
6 in and clarify that 2004 law, and also adopt additional
7 regulations. Those were challenged again as being in
8 conflict with that 2004 initiative. Those are the ones
9 that have been litigated for the past few years. As of
10 right now, those sorts of restrictions do not stand.

11 Q So, if we look at page 35 in which
12 the NORMLs set out there of what Montana's law is, we
13 can see that their amendments were -- came into effect
14 on the 1st of July of 2011, which included that
15 caregivers may accept no monetary compensation for
16 providing cannabis to qualified patients. And then if
17 you go down the page a little bit further, it says,

18 "Several provision of SB-423..."

19 Which is the name of the bill, the amendment bill,

20 "...are presently being litigated in court."

21 So, are you saying that there is some
22 update to that, in that there has been some resolution
23 by the courts that permits profit growing marijuana or
24 by dispensaries? Or --

25 A Correct. There has been some
26 developments in the case of decision, again, I think it
27 is by lower court, not necessarily by the final court of
28 appeal, but as it stands, some of these provisions of

1 SB-423 have been permanently enjoined.

2 Q So, are there commercial facilities
3 where you can go today, in Montana, to buy medical
4 marijuana if you are a patient who is registered?

5 A I believe so, yes.

6 Q Okay. But the State itself, wasn't
7 going in that direction. That's a result of court
8 action which has allowed that to take place?

9 A Well, the State initially approved
10 it. Again, this is a rare instance where a legislature
11 tried to tent down on that, but the legislature was --
12 the legislation was thrown out.

13 Q Okay. So, if we go on to Nevada,
14 and that is over the page to page 37. So, Nevada
15 established personal production by patients in 2000, and
16 that was subsequently limited in 2013, in a couple of
17 areas. Is that right?

18 A Correct.

19 Q And those areas being, and we can
20 see at page 37, it sets out the amending bill of 2013,
21 imposes limits on home cultivation. This is the bottom
22 paragraph at page 37, the home cultivation of cannabis,

23 "...if patients reside within the 25 miles of
24 an operating dispensary. However, patients
25 who are cultivating specific strains of
26 cannabis not provided by a local dispensary,
27 may continue to engage in home cultivation of
28 such strains."

1 So, you couldn't grow your own any more
2 if you lived within 25 miles of a dispensary, in Nevada,
3 that is from 2013, unless you were also -- unless, you
4 were cultivating particular strains that they didn't
5 have those strains in the dispensary?

6 A I -- that particular provision of
7 the law, I am not sure if this is a correct assessment
8 of it. I know that there is a limitation on this
9 grandfathering period, and I'm not sure if it applies
10 just to individuals who are growing, or if it also
11 applies to individuals who are growing what they claim
12 to be unique strains.

13 Q Well, we'll see here from the way
14 the paragraph is written,

15 "However, patients who are cultivating
16 specific strains not provided by a local
17 dispensary, may continue to engage in home
18 cultivation of such strains. Patients who
19 have an established history of cultivating
20 medical cannabis prior to the 1st of July,
21 2013, may also continue to do so until March
22 31st, 2016."

23 So, it would seem to suggest that
24 grandfathering as a general concept is available until
25 March 31st, but it wouldn't from this suggest that that
26 was limited -- that thereafter you couldn't grow your
27 own if your strains weren't available at the dispensary?

28 A Well, that all depends on whether

1 this is an accurate depiction of the law, since it is
2 not quoting the law. I would have to look at it myself.
3 I don't recall the, you know, whether the grandfathering
4 provision applied across the board or only to certain
5 people who are previously allowed to grow the drug.

6 Q So, your evidence is you don't know
7 whether this is true or not?

8 A Correct.

9 Q Okay, so then it goes on to say,
10 "The Bill also amends possession limits from
11 one ounce to two and a half ounces, and
12 increases plant cultivation limits from three
13 plants to twelve plants."

14 Would you agree that that happened?

15 A I believe that's correct.

16 Q So Nevada was signaling that you
17 could grow more by the amendment because previously it
18 said 3 and now it says in 2013 you can grow 12, albeit
19 there's restrictions as to who the people now are who
20 can grow that. You agree with that?

21 A Correct. Fewer people, roughly
22 today about 3 percent of the general population might
23 qualify for these exceptions, can grow more.

24 Q Okay. And it's a significant
25 increase from 3 to 12. Do you know why that was?

26 A I do not know. Again, the 3 plant
27 limit, I haven't looked at all the states, but that is
28 on the -- I know that's on the lower side.

1 Q Okay. So if we turn then to New
2 Hampshire, which is page 39, very quickly. So New
3 Hampshire is the kind of new model, if I can put it like
4 that, in that there's no -- it's a relatively new law
5 and it's 2013. There was no personal production allowed
6 and there are full facilities created as a dispensary or
7 dispensary-like, and commercial producers. Is that
8 right?

9 A Yes. They call for the creation of
10 a small number of commercial cultivations centres.

11 Q It's right, isn't it, that actually
12 in New Hampshire, there's nothing operating yet. You
13 can't actually buy medical marijuana in New Hampshire as
14 of today's date.

15 A That is correct. The bill only
16 came into effect within the last 12 months. And they,
17 like some of the other states, are in the final
18 permitting process and are expecting one of these
19 commercial cultivation centres to open soon.

20 Q Okay. So if we move on to New
21 Jersey which is over the page, as far as New Jersey is
22 concerned, again there was no personal production
23 allowed. But by law 2010, six facilities were created,
24 commercial facilities were created called Alternative
25 Treatment Centers. So is this something that's
26 different to the others or is it just a different word
27 again?

28 A It's a different word.

1 Q Okay. But they would be a store
2 front and people could go to these Alternative Treatment
3 Centers and buy and see the marijuana and buy what they
4 wanted.

5 A Correct.

6 Q Okay. Now, if you go down to --
7 I'm looking at page 40 of the NORML document,
8 Amendments. It says:

9 "There was an amendment in September 2013 to
10 provide production and sale of multiple
11 strains of cannabis and allow for the
12 distribution of cannabis-infused edible
13 products, but the use of edible products is
14 limited to 18 years or younger."

15 So this is a provision which isn't
16 included, am I right, in any of the other states, that
17 allows edibles but edibles only to be eaten by children?

18 A I can't speak to that issue. It's
19 not one that I addressed in detail because again, it
20 gets into what patients are allowed to do and some of
21 the details of what's supplied.

22 Q But do you know why there was an
23 amendment necessary to provide for the production and
24 sale of multiple strains of cannabis? What was the
25 problem before that there needed to be an amendment for
26 multiple strains? Was there any problem with quantity
27 or availability or --

28 A I can't speak to that issue either.

1 I don't know why they -- what exactly this bill did from
2 this description, and hwy it was necessary.

3 Q Okay. So if we turn to New Mexico
4 now then, page 42 and 43. So New Mexico initially
5 legalized patients to produce their own medicine in 2007
6 and introduced the licensed kind of producer -- what is
7 it? I don't know if it's called a dispensary. A state
8 organized marijuana distribution system, in 2009. Is
9 that right?

10 A In 2007, New Mexico legalized both
11 of these things, and then it wasn't until 2009 that the
12 agency promulgated implementing regulations.

13 Q So does that mean in 2007 you could
14 grow your own, or you couldn't grow your own?

15 A You could not, even though you knew
16 down the line this was going to happen.

17 Q Okay.

18 A You could not.

19 Q So when it says amendments, 2009,
20 is that when basically everything came into force
21 thereafter, and it sets out a list of illnesses that
22 people need to kind of fit within to qualify as a
23 medical patient?

24 A Some states will go ahead and
25 authorize patients to use marijuana even before a supply
26 chain is established. So I'm not sure -- you know, this
27 sets out the specific conditions and so on. I'm not if
28 patients had access or were legally allowed to use and

1 possess marijuana before this point.

2 Q Okay.

3 A But I know that in 2009 is when
4 they started the creation of their commercial
5 cultivation system.

6 Q Okay. And in 2009, as well as
7 creating that commercial system, they also set out that
8 a patient could have 16 plants, 4 mature, 12 immature,
9 under the Act, and six ounces of medical cannabis or
10 more if authorized by their physician. And that was the
11 kind of patient, the personal patient aspect compared to
12 the state licensed producer part of that amendment.

13 And these are non-profits in Mexico --
14 New Mexico? Are these non-profits, or profits --
15 organizations?

16 A I believe these are non-profit
17 entities.

18 Q Okay. So if we go on to Oregon,
19 then, please, at page 44. I've only got another four or
20 so to do. 1998 was when Oregon brought in the patient's
21 right to be able to grow their own plants. Is that
22 right? 1998?

23 A Correct.

24 Q And Oregon does not have a system
25 for dispensaries or such-like, is that right?

26 A They do now.

27 Q Okay. And the system now is?

28 A The system is, they still have

1 personal cultivation, but they also have commercial
2 cultivation.

3 Q And when was that brought in?

4 A I believe that was 2013.

5 Q Because if we go through this
6 document, the NORML document, we can say that there was
7 an amendment that initially -- sorry, going back to the
8 original. Originally there was no more than 3 mature
9 plants, or -- may cultivate no more than 7 plants of
10 which 3 may be mature. That was initially what was
11 considered. And then there was an amendment in 1999
12 that patients couldn't -- may only cultivate marijuana
13 in one location. And do you know why that -- what
14 brought that about? One location?

15 A I don't know what exactly triggered
16 that particular amendment.

17 Q Okay. Okay. And then it -- if we
18 go over the page, at page 45, there was a bill that took
19 effect in 2006, and that raised the quantity of cannabis
20 that authorized patients might possess from seven plants
21 with no more than three mature, and three ounces of
22 cannabis, to six mature plants, eighteen immature
23 seedlings, and twenty-four ounces of useable cannabis.
24 That's right, isn't it? And that was 2006?

25 A Again, it's not an issue I looked
26 it, but the report seems correct.

27 Q Okay. So it didn't, for example,
28 establish a dispensary or such-like system and curtail

1 the patient's right to grow. It established them in
2 harmony, you say? We had a system of dispensaries or
3 such-like established. And then an increase, quite a
4 significant increase, in a patient's also right to grow.

5 A Well, the commercial cultivation
6 system technically wasn't allowed in Oregon until even
7 after this point.

8 Q Okay. So at that stage in 2006 it
9 was depending on the patient growing themselves.

10 A Correct.

11 Q Okay. But when the law was amended
12 to allow for dispensary, there wasn't any suggestion of
13 removal of the patient's right or a reduction back to a
14 lower plant limit that had been initially in 1998, was
15 there?

16 A There was no -- as far as I'm
17 aware, there was nothing that was passed.

18 Q Okay. So moving on to Rhode
19 Island. So Rhode Island in 2006 established the
20 patient's right to grow their own, and in 2009 it
21 established a kind of dispensary system or suchlike, is
22 that right?

23 A Correct.

24 Q Now, this was suspended, the
25 dispensary system? If we look at --

26 A Correct.

27 Q And why was that?

28 A The governor at the time had

1 concerns that setting up a commercial cultivation centre
2 could subject state residents, the people who actually
3 operate the centres, to federal prosecution.

4 Q And when we talk generally about
5 patients growing for themselves, are we talking about
6 them growing in their residences, or do they have to
7 grow in a barn, or you know, an outbuilding? Is it both
8 or does it depend on the state?

9 A It depends on the state.

10 Q So do any of the states prevent a
11 patient from growing in their own residence?

12 A It would be either at the state
13 level, on some local jurisdictions, I would say on that
14 as well.

15 Q So which states prevent somebody
16 growing in their own residence?

17 A I'm more familiar with some of the
18 local jurisdictions that do this. There are a number of
19 counties in California that have adopted ordinances that
20 bar people from using property in this way.

21 Q Okay.

22 A Sometimes that issue is pushed down
23 into the local level rather than handled at the state
24 level in the United States.

25 Q Okay, so we're talking about kind
26 of bylaws. Are you familiar with the term "bylaw", that
27 a municipality makes its own law regarding what can
28 happen in its town, for example.

1 A It would be something along those
2 lines.

3 Q Okay.

4 A And typically called "ordinances"
5 in the United States, but it's the same thing.

6 Q Yes, okay. And the dispensary
7 system in Rhode Island is non-profit, that's right,
8 isn't it?

9 A I believe that's correct.

10 Q Okay. So the final amendment in
11 Rhode Island within 2012, when the governor signed into
12 law -- this is second to bottom paragraph at page 47, it
13 says on Tuesday, May 22nd that the governor allowed three
14 -- "to license three small-scale compassion centers."
15 So when it talks about small-scale it says as
16 explanation under this:

17 "Under the law, compassion centers will not
18 be allowed to cultivate more than 150 plants
19 on the premises at any one time, of which
20 only 99 can be mature."

21 Yes, so if that's -- is there a
22 definition of what small scale is in the United States
23 as far as -- or does it again depend on the state as to
24 how it defines small scale?

25 A These tend to be defined based on
26 federal law, actually, because there are certain
27 penalties under federal law that kick in once you get to
28 50 plants, 100 plants, 1,000 plants. Again, Rhode

1 Island was particularly worried, given some
2 conversations with the U.S. Attorney there, that there
3 could be some federal action against these centres.
4 They took steps to try to make sure that the centres
5 would be vulnerable to lower sanctions if something did
6 happen.

7 Q So keep the plants small because
8 that keeps the potential federal liabilities smaller
9 than if you were large scale and made --

10 A Correct.

11 Q Okay. What's the -- is there a
12 minimum number if you're a commercial grower? Is there
13 a minimum number you have to grow? Or a maximum number
14 you can grow?

15 A There is usually a maximum set, but
16 I am not aware of any minimum that is set by law.

17 Q So, for example, if they set up --
18 you know, if the *Act* allows for dispensaries or
19 cultivation centres, there isn't a definition that to be
20 a cultivation centre you have to have 200 plants or for
21 example, there isn't anything like that?

22 A No, not that I am aware of.

23 Q Okay. And Rhode Island, I don't
24 know if I've covered this with you, is a non-profit
25 organization?

26 A I believe that's correct.

27 Q So, if we move then on to Vermont,
28 second to last. So with Vermont, 2004, patients were

1 given the right to grow their own, and that was followed
2 in 2011 by four state facilities being established by
3 amendment, is that right?

4 A That's correct.

5 Q And you can see from the document
6 at page 49, the NORML document, it says here that there
7 was another amendment that took place in 2007, but that
8 was expanded, the medical conditions, and also it
9 increased -- raised the quantity of medical cannabis
10 patients legally possess under state law, from one
11 mature and/or two immature plants to two mature, and/or
12 seven immature plants.

13 So, amendment that took place before
14 dispensaries were permitted was to expand those who were
15 covered by the law, and also to increase the amount that
16 those people could grow, is that accurate?

17 A Again, this isn't something that I
18 have looked at in detail, but it appears accurate.

19 Q Okay, and that would be a Senate
20 Bill 7, the bill itself is set out there. And Vermont,
21 is there any requirement that they're non-profit or --

22 A I am not familiar with what
23 corporate structure they've adapted in Vermont.

24 Q Okay. Now, if we turn finally to
25 Washington. So, Washington established the patients
26 right to grow in 1998, that's accurate?

27 A Correct.

28 Q And according to the NORML document

1 at pages 51 to 52, it wouldn't seem that there was a
2 commercial aspect to medical marijuana, i.e.
3 dispensaries, committed under the statutes?

4 A Correct.

5 Q And I think we've talked about
6 this, that the anomaly between recreational use now,
7 which permits stores, is that right?

8 A Correct.

9 Q Okay, so in 2008 there was an
10 amendment, wasn't there, to the Washington law, and that
11 allowed patients -- there was new limits, 15 plants was
12 equivalent to a 60-day supply, is that accurate? That
13 there was an amendment 2008 which sets out the
14 guidelines allowing patients to cultivate up to 15
15 plants and/or possess 24 ounces of usable marijuana,
16 taking effect in 2008?

17 A Again, I didn't look at the
18 particulars of these, but I believe that is correct.

19 Q Okay. Now, Washington doesn't have
20 a registration system, is that right?

21 A That's correct. It is one of the
22 few that does not.

23 Q Okay. And also, there is no
24 requirement in Washington for dispensaries obviously to
25 be non-profit, because dispensaries aren't allowed for
26 medical -- or they are not provided for within the
27 statute?

28 A There are commercial marijuana

1 centres in Washington State, but they are not dedicated
2 to medical marijuana. They serve both the medical
3 marijuana market and the recreational marijuana market.

4 Q Okay, and as nice as it sounds,
5 there wouldn't be such thing as a non-profit
6 recreational store. So somebody wouldn't be going out
7 the goodness of their health to promote recreational
8 use, so those will be profit stores. That's a fair
9 assumption. Yes? That the recreational stores are
10 profit stores?

11 A Again, people can make a lot of
12 money from a non-profit, so you could do that, but yes,
13 it would seem strange.

14 Q Yeah, you could pay yourself a
15 huge, large salary if you wanted to, but there is no
16 requirement to be a non-profit so there is no advantage
17 to be one, is there?

18 A Correct.

19 Q Okay. Can I ask you about
20 advertising restrictions. In the United States, are you
21 allowed to advertise marijuana if you're a dispensary or
22 a cultivation centre?

23 A That's an issue that I haven't
24 looked into in detail, and can't really speak to.

25 Q Mm-hmm. Have you seen
26 advertisements in the United States for dispensaries,
27 just saying what product that they have, for example?

28 A Oh, yes. You can Google online,

1 find dispensary websites. They will advertise on
2 certain web pages. There are magazines and newspapers
3 in the United States that cater to this industry and
4 will also advertise.

5 Q And do you know whether those
6 advertisements would set out what the strain of the
7 marijuana was, its name, and what its therapeutic
8 qualities are? Is that generally how they're
9 advertised?

10 A Again, I don't know.

11 Q Okay. Have you seen therapeutic
12 claims with particular strains? Good for appetite?
13 Will help pain? Or is that not allowed? Or you haven't
14 seen it?

15 A I've seen some of those. I don't
16 know what's allowed and what's not. So you may see it,
17 but it may still be unlawful.

18 Q Okay. So you have seen it, but you
19 don't know whether it's been -- all right. Well, we've
20 finished going through the -- that aspect of the book.
21 I have some more questions for you.

22 Now, as far as food grown in the United
23 States, do you have the knowledge or -- of the laws as
24 far as what rules there are about whether you can grow
25 your own food? Whether there's any restrictions as to
26 what kind of food you can grow yourself, or not? I
27 don't want to put you in an area you're not familiar
28 with.

1 A Again, that's -- yeah, that's going

2 --

3 Q Okay.

4 A -- well beyond my mandate for this.

5 Q Are you aware of whether herbs are
6 allowed to be grown for medicine?

7 A Again, it's going beyond the
8 mandate.

9 Q And what about tobacco? Is tobacco
10 allowed to be grown in the United States, or are people
11 allowed to grow a small amount of tobacco?

12 A Again, I don't know the particular
13 rules about what is and what is not allowed.

14 Q Okay. So I'm going to ask you
15 about some comments that are made -- if we look to tab
16 18 in the book of experts of the plaintiffs, I'm going
17 to ask you about some of the things that Mr. Armentano
18 has queried about your reports.

19 So, first of all, if I can -- if we can
20 look at CBD, because we haven't dealt with those, and I
21 didn't go through those strains, but you'll see at page
22 2 of the expert report of Paul Armentano, and it's page
23 4 of the actual exhibit, of the tab there, the bottom
24 paragraph begins, "Moreover, 11 additional states ..."
25 And it sets out 11 states. They're Alabama, Florida,
26 Iowa, Kentucky, Mississippi, Missouri, North Carolina,
27 South Carolina, Tennessee, Utah, and Wisconsin, "enacted
28 statutes in 2014 that limit qualified patients to the

1 possession of oil extracts predominant in a specific
2 plant cannabinoid known as cannabidiol" -- CBD. That's
3 why they call it CBD, I'm sure.

4 "So these statutes do not permit
5 qualified patients to possess the actual cannabis plant
6 or its flowers." Is that right? Do you agree with
7 that?

8 A That's correct. No one is allowed
9 to grow marijuana in order to obtain CBD.

10 Q B-D. Okay.

11 A In these states. No individual
12 patient, I should say.

13 Q Okay. So, and in fact it goes on
14 to say,

15 "These statutes do not permit qualified
16 patients to possess the actual cannabis plant
17 or flower and in fact only two of these
18 states, Florida and Missouri, possess
19 existing statute language permitting the
20 state to licence private cultivators to grow
21 in-state the source material, -- the cannabis
22 plant strains possessingt elevated CBD
23 content necessary for the manufacturing of
24 these high CBD extracts."

25 Would you agree with that?

26 A No, I would actually include a
27 third state.

28 Q Okay.

1 A In that categorization. There is a
2 provision of law in Tennessee that arguably provides for
3 an entity to grow this. And that's actually turned out
4 to be at Tennessee Technical University, I believe it
5 is.

6 Q And Tennessee is where you live,
7 isn't it?

8 A Correct.

9 Q Okay.

10 A There is also a provision in Utah
11 law that arguably permits commercial cultivation,
12 although it remains to be seen whether or not it's to be
13 interpreted in that way. So there could be as many as
14 four states, but there are at least three states that do
15 so.

16 Q Okay. So we're talking about the
17 source material necessary for manufacturing of these
18 high CBD extracts because we've -- I think we've agreed
19 before that CBD is an extraction from the plant. The
20 plant ordinary grows itself with THC.

21 A Correct.

22 Q And then allowed to -- you're not
23 allowed to have THC. And hence you're not allowed to
24 grow marijuana because your marijuana would come with
25 THC and that's not permitted. Is that fair, accurate to
26 say?

27 A Correct. There is some processing
28 required, and again it's just these three, possibly four

1 states that have provided for some third party entity to
2 provide it that's not the federal government.

3 Q So what happens in the other states
4 that don't have this existing statutory language
5 permitting private cultivators? We have a law which
6 says you can use CBD in some of these states, but most
7 of these states do not actually have a process in place
8 to supply the CBD. Is that true?

9 A So there would be two things might
10 happen. One is that three additional states, apart from
11 those that I had mentioned, specifically say that it is
12 permissible under state law to use CBD that is provided
13 by the federal government. Again the federal government
14 has the grow facility at the University of Mississippi.
15 So there are states that provide it ostensibly through
16 the federal government. Arguably any state you could
17 obtain federally provided marijuana. You wouldn't need
18 the state's permission. The federal government can do
19 that.

20 The other states out of these 11 simply
21 haven't addressed the supply issue, at least explicitly
22 any detail. That includes Iowa, for example, which we
23 talked about earlier. So they've allowed people to use
24 the drug but haven't specified how they're supposed to
25 obtain it legally. And the suggestion has been made by
26 state officials that individuals in these states should
27 go to other states where they can obtain CBD legally,
28 bring it back, because it'll be legal to possess it.

1 You just can't -- they have no within state mechanism to
2 supply the drug.

3 Q So in other words, they say it's
4 legal to do it but you just can't buy it here. You can
5 buy it from someone else and bring it here but you just
6 can't buy it there at present in order to --

7 A You can't, right.

8 Q Okay.

9 A You can't buy it. You can't
10 produce it.

11 Q And what about bringing it from one
12 state into another state, is that a criminal offence?

13 A Well, all of this is a criminal
14 offence under federal law, but it wouldn't be a criminal
15 offence under state law.

16 Q Okay. So if we go over to page 5
17 of the Senate report, the next page, at the bottom it's
18 marked 3. It says:

19 "The laws in the States of Alabama and
20 Kentucky only permit patients to access CBD
21 if they participate in a state sponsored
22 university trial."

23 Is that still the case of Alabama and
24 Kentucky?

25 A I believe that's correct, yes.

26 Q Okay. In which case the U.S.
27 federal government, not any state agency, would be the
28 sole legal provider of the compound. So if you were in

1 a university trial, state sponsored, you'd get your CBD
2 through the federal government? Is that basically the
3 right word?

4 A Correct. These are two of those
5 federal cultivation states and there are a couple of
6 others. Some of them require that patients go through
7 an approved university, and the state statute will list
8 which universities then you do that through, through a
9 state university medical centre for example, and these
10 are two of those states.

11 Q So if we go on to the next
12 paragraph, that the bottom half of that paragraph -- the
13 beginning half of that paragraph is with respect to
14 another witness's evidence about jurisdictions, about 22
15 jurisdictions, that do permit either state qualified
16 patients or state licensed providers to produce cannabis
17 for therapeutic purposes.

18 I'm going to ask you about the comment
19 below that. It says, "However, to date, most state
20 programs mandating state licence providers are the sole
21 legal cultivators and distributors of medical cannabis
22 to qualified patients, are not yet, and therefore
23 prohibit patients from growing on their own, so the
24 ones..." We're talking about the ones where there is no
25 personal production and you have to go to a store, or a
26 dispensary or such-like.

27 It says here, "are not yet fully or even
28 partially operational". Do you agree with that?

1 A This includes -- so, the 22 states
2 I see that are listed here are the THC states. I don't
3 know the numbers for how many actually have a commercial
4 cultivation centre that is open. Again, this is
5 changing daily. As I mentioned, this -- I guess this
6 report itself was written a few months ago as well.
7 Massachusetts, New Hampshire, Delaware, for example, are
8 on the verge of opening their commercial cultivation
9 centres. I don't know whether they've done so today, or
10 whether it's going to be a week from now, a month from
11 now, two months from now. So I can't say --

12 Q Okay.

13 A -- with certainty exactly how many
14 of these are fully operational. I do know -- I can give
15 you some examples that I'm more familiar with. Arizona,
16 for example, has 70 or more of these centres -- it might
17 be 80 at this point -- scattered throughout the state.
18 New Mexico has 23. Colorado again has a very large
19 number, it's probably around 1,000.

20 So you do have states that have a large
21 number of commercial cultivation centres up and running.
22 But many of these other ones, especially the recent
23 adopters, are still in the process of getting them up
24 and running.

25 Q You have seen the paragraph that
26 follows that one, and this was sworn on the 16th of
27 December, so it was a few months ago. It sets out some
28 of the states that have only partially implemented or

1 not yet implemented the program. Connecticut, Delaware
2 -- I think we've talked about some of these. Illinois,
3 New Hampshire, Maryland, New Jersey. Some of them are
4 partially and some of them are not yet implemented.

5 So, is there any of those that you know
6 have kind of changed position, of the ones that I
7 mentioned there, Connecticut, Delaware, Illinois,
8 Maryland, New Hampshire, New Jersey? Or are they still
9 as they were in December?

10 A It's not clear to me what "partial
11 implementation" means, because oftentimes these states
12 have been -- they set up commercial cultivation centres.
13 It's always a moving target how many they think they
14 need. It's based on the number of patients. Sometimes
15 it's based on geographic dispersion. They want a
16 commercial cultivation centre in each of the states --
17 you know, X number of counties. So I'm not sure what
18 was meant here by, you know, not yet -- or partial
19 implementation.

20 But as we discussed, there are some of
21 these states that are clearly on the cusp of actually
22 opening the doors, and other ones that are in the final
23 process of approving of these commercial cultivation
24 centres.

25 Q Okay. And the paragraph that
26 follows from that, I think we've already discussed the
27 fact that some of these states have issues as far as
28 they passed laws a few years ago and long ago, and there

1 still isn't any supply. In the expert report here, in
2 the middle of the paragraph, it says Massachusetts voted
3 -- enacted -- so it has enacted initiative legislation
4 2012 to provide for the state-licensed production and
5 distribution of medical cannabis to qualified patients,
6 but to date no such production or distribution
7 facilities are operational. And I think we may have
8 talked about that aspect, Massachusetts. And is that
9 correct? That's still the position, isn't it, in
10 Massachusetts?

11 A Correct. And again, Massachusetts
12 enacted this initiative in late 2012. It took effect,
13 or got started, in early 2013. There is implementing
14 regulations that had to be passed, and then they started
15 this approval process for the centres. And again, they
16 approved in Massachusetts -- I believe at this point
17 issued the final permit to 15 of these commercial
18 cultivation centres. And I think the first and the
19 others as well -- at least some portion of them are
20 scheduled to open by the end of this year, and the first
21 one is supposed to open shortly.

22 Q Okay. Now turning over the page to
23 page 6 -- sorry, 6 at the top and 4 at the bottom. In
24 the middle of that page it says:

25 "Further commercial cultivation schemes such
26 as those favored by Mr. Mikos, will arguably
27 result in a more expensive cannabis product
28 because producers face significant costs up

1 front."

2 And then it goes on to set out some examples of
3 requirements so far as fees and permits and liquid
4 assets.

5 So you haven't done any kind of cost
6 analysis as far as how expensive it is for a person, an
7 individual patient potentially to grow in their own
8 home, compared to how much it costs a commercial grower.

9 A No, I have not.

10 Q Okay. So you've no idea or you
11 can't agree or disagree about what's more expensive,
12 what's cheaper, what's best. Your expertise here
13 relates to the U.S. state and federal laws as far as
14 permitting those to take place, rather than the reasons
15 behind, the pros and cons to the system. Is that fair?

16 A Well, I have no basis for
17 commenting on this particular beyond the regulatory
18 costs that the states are imposing on commercial
19 cultivation.

20 Q Okay. But it's a booming business,
21 isn't it, in the United States? Medical, commercial,
22 dispensaries and suchlike.

23 A Yes.

24 Q And people are going into business
25 because they think they can make money. Is that fair
26 comment?

27 A Yes.

28 Q Okay. Now, as far as the bottom

1 paragraph on that page, page 4 at the bottom, 6 at the
2 top, it says:

3 "Mr. Mikos's supposition that non-commercial
4 cultivation grow sites have become lucrative
5 targets for theft and violence due to excess
6 cash on hand is not supported by the
7 scientific literature."

8 And then it goes on to explain that.

9 I'm going to ask you about your comments
10 in your report about targets for theft and violence.
11 That isn't from your personal knowledge or experience.
12 Is that as a result of reading what government
13 literature has said about the pros and cons of personal
14 cultivation compared to commercial cultivation?

15 A Correct. That comes from the
16 statements made by law enforcement officials in reports
17 and cases and so on.

18 Q Okay. Because the reality, isn't
19 it, that given that there's no banking system in the
20 United States that allows the commercial growers to
21 actually put their money in the bank, the reality is
22 that it's the opposite way around, isn't it? That
23 there's more likely target for crime, et cetera, on
24 commercial providers who store large amounts of cash on
25 premises as oppose to somebody who's growing marijuana
26 in the basement of their home and has no cash to have to
27 kind of store or hide.

28 A Correct, and in the United States,

1 really the targets for theft I think are going to be --
2 for monetary theft are going to be the medical marijuana
3 commercial cultivation centres and the recreational
4 ones, precisely because of the inability to access
5 banks. Unless a patient is selling the drug they might
6 be, you know, a target for a theft. If they're
7 purporting to be growing for themselves a personal
8 cultivation operation, but really in disguise a black
9 market operation, then they too might be the target for
10 theft.

11 On the patient side, even patients that
12 aren't doing that though, the target of theft concerned
13 there is that people might have their crops stored,
14 because these are valuable plants. And depending on
15 what sort of security measures are taken, they might be
16 again targets for theft. But that wouldn't be financial
17 theft. That'd be theft of, you know --

18 Q The plant. Not because there's
19 cash on hand but because the plant itself would be
20 valuable potentially. Is that what you mean?

21 A Well, the cash on hand would be the
22 traditional concern with black market drug operations,
23 someone growing marijuana ostensibly for themselves, you
24 know, under the guise and protection of state law but in
25 reality selling some of that drug to other people.

26 Q So not patients. We're talking
27 about criminals, aren't we? People who grow and sell
28 marijuana to the black market are criminals.

1 A Well, these could be patients as
2 well, but they might also be committing something that
3 is beyond the scope of state law.

4 Q But if a patient was selling their
5 medicine to somebody else, they would be committing a
6 criminal offence both state and federal.

7 A Correct. That is something the
8 states do not allow.

9 Q All right. Somebody who works in a
10 commercial centre could be selling it through the back
11 door, couldn't they? To their friends, for example.

12 A That is true, that's a concern that
13 law enforcement has had. Although again, the advantage
14 on commercial cultivation is that at least you know, you
15 know, here are the 10, or 100 commercial cultivation
16 centres that you have to keep an eye on, and you have
17 24/7 video surveillance, web surveillance, all sorts of
18 security precautions and supervisory precautions in
19 place to try to prevent that.

20 Q But that depends on what the State
21 requires as far as its security measures? There is not
22 a blanket, everybody has to be monitored 24 hours a day,
23 for example?

24 A Correct, not every state has the
25 same regulations.

26 Q Now, going over to page 7 of the
27 report, so the next page, you'll see the middle kind of
28 top paragraph, it says "Finally"?

1 "Finally it should be acknowledged that to
2 date, no state that permits patients to
3 cultivate their own medical marijuana has
4 ever taken legislative action to eliminate
5 this legal right."

6 Now, you think you've already agreed that
7 that is true, there is no situation of marijuana being
8 banned, as is proposed by the federal government here,
9 for example. That patients who now have the right, will
10 have that right taken away from. That hasn't happened,
11 is that right?

12 A States have only -- one state,
13 Nevada has done that, just for patients who live close
14 to their medical marijuana commercial cultivation
15 centres. But no state has said there is not a single
16 person who can't grow marijuana today who is allowed to
17 do so before.

18 Q Okay. And I recall suggesting to
19 you that with Nevada, there was also the other caveat of
20 the limited strains. So it wasn't just those who live
21 within 25 miles, but also those that couldn't obtain the
22 strains that they used. That that is the other caveat
23 in Nevada to the restriction on the right to grow, if we
24 put it like that, as opposed to a ban?

25 A And again, I'd have to re-examine
26 the law to see whether that is an accurate
27 interpretation of the --

28 Q So, I'm just going to take you

1 briefly to your report now, which is at tab 15. Can I
2 ask you this: if we look at page 2 -- or sorry, the
3 number at the top is 5, but it's your page 2, and your
4 question 3. You were asked about what explains the
5 approaches that States have taken with respect to
6 regulating the supply of marijuana for medical purposes.
7 And you say,

8 "Although federal law governing marijuana has
9 not changed, the federal government announced
10 in 2009 a willingness to respect state
11 marijuana policy decisions. This shift in
12 the federal government stands on state
13 marijuana reforms, has enable states to
14 choose a supply model based on considerations
15 of good public policy, rather than one driven
16 largely by fears of a federal crackdown
17 against commercial marijuana suppliers."

18 Isn't it right that lots of these states,
19 dispensaries started ahead of the laws allowing them to
20 exist?

21 A In at least some states
22 dispensaries came up before the law allowed them.
23 Again, people have been selling marijuana for a long
24 time, so that's --

25 Q So, this wasn't the States decided
26 it's a good public policy that we have dispensaries. It
27 was more reactionary, wasn't it, to the fact that they
28 already existed in lots of those states?

1 A No, I don't believe that's true.
2 In part because the states, and many state officials
3 have expressed this sentiment, truly believed that there
4 was an advantage from the patients' perspective from
5 commercial cultivation centres. And in a sense, you
6 know, they were legalizing something that had occurred,
7 but just because you were selling marijuana and
8 operating as a commercial cultivation centre before
9 state legalization, didn't mean you were necessarily
10 going to be one of the ones who got to do it afterwards.
11 In fact, in some states, imposing regulations, the
12 people who were doing it illegally beforehand, were
13 bumped out of the system.

14 Q But the fact that there were these
15 dispensaries or such-like before, shows that there was
16 a market demand, and what the states were doing was
17 recognizing there is a customer demand for dispensaries
18 or such-like. There are people who want to go and buy
19 marijuana that don't necessarily want to grow it
20 themselves. That --

21 A Oh yes --

22 Q -- has been the shaping as well of
23 where these laws have come from, recognizing that market
24 demand?

25 A Well, you could say, yes, that the
26 laws were stemming from patient demand, that the
27 patients wanted access to, you know, a legitimate up-
28 front, legal, commercial supply of marijuana.

1 Q And that doesn't mean that patients
2 didn't want access to grow their own, it just meant that
3 some people wanted to buy, and the states preserved and
4 protected the rights of those who had been growing to
5 continue to do so, save as we've mentioned, for Nevada,
6 which puts some limitations on to it?

7 A Well of course, some people want to
8 grow their own and continue to do so. One quirk about
9 these states and sort of developing their laws over
10 time, particularly those early adopters that did so
11 through the initiative process, once you saw the
12 emergence of these commercial cultivation centres and
13 the approval for these commercial cultivation centres,
14 there was no sort of turning back the clock. In part
15 that's, for political reasons that once you've
16 established a right, it is natural that it is tough to
17 take that right away, politically speaking. But also in
18 those states, its, as I mentioned before, it's very
19 difficult to amend some of these initiatives that are
20 put into law. They are very, what we would called
21 sticky laws in a sense.

22 Q So, it wasn't just a case of
23 patients that want to grow their own, there was also
24 patients who have to grow their own for cost reasons.
25 Would you agree with that? Or do you not have any
26 knowledge about those kind of matters as far as patients
27 are concerned?

28 A That's, again, that is one of the

1 claims that has been made, but I have no basis for sort
2 of -- in specific cases, evaluating that claim.

3 Q So, when you carry on, on your
4 question three, your paragraph 4 there, it says,
5 "In particular, it appears that states have
6 recently turned to commercial cultivation,
7 and turned away from personal cultivation."

8 Why do you say "turned away"? Do you
9 mean in the sense of some of the new states,
10 particularly CBD states, don't allow for personal
11 production? Not -- you weren't suggesting that those
12 that did allow for personal production had turned away
13 from it, as opposed to expand accessibility to both the
14 store and the patients own?

15 A So yes, it's -- all the new
16 jurisdictions that came into the fold after the federal
17 government had given the green light. Those, or the
18 vast majority of them, limited personal cultivation,
19 even though there were claims from patients about needs
20 to get it, especially until the commercial cultivation
21 centres were set up. As I mentioned, Nevada, it may be
22 the only state that has done this, again I haven't seen
23 all the different laws concerning quantity and so on,
24 but Nevada was one state that added to the mix that did
25 start to role back this rights in one.

26 Q Because we can see from the Hawaii
27 example, can't we, the kind of hot off the press task
28 force report that Hawaii isn't turning away, for

1 example, from personal cultivation. It is not an
2 either/or, it can be a both situation, and work for
3 patients and work for the state. That's fair comment?

4 A It can be an either -- or it can be
5 a mixed supply system as I identify. Although again,
6 the trend here is that all the states that have gotten
7 into the fold that don't have these legacy laws that
8 were created in a different era, you know, all of these
9 states, or the vast majority of these states have chosen
10 against creating a mixed model, and are instead pursuing
11 a commercial cultivation model.

12 Q Because most of those states are
13 CBD states, though, aren't they?

14 A Well, there are a large number of
15 states that are not CBD states. I think it's 11 THC
16 states that have legalized medical marijuana since 2009.
17 Of those, depending on how you count them, only, you
18 know, at most, three have legalized personal
19 cultivation, and two of those under very limited
20 circumstances. That's Massachusetts, and that's
21 Arizona, and then we might through the District of
22 Columbia into the fold, but again, with the caveat that,
23 you know, the District of Columbia allowed personal
24 cultivation for recreational purposes, and arguably did
25 so, because they couldn't allow commercial cultivation
26 for recreational purposes.

27 Q Well, isn't it right that the trend
28 in realistic terms is towards legalization in general?

1 Would you agree with that?

2 A Oh yes, there's more and more
3 states that are legalizing the possession and use of
4 marijuana for medical purposes, and we have more and
5 more states that are legalizing it for recreational
6 purposes. But in terms of the supply model it's --
7 yeah, how are people supposed to get this substance if
8 they're allowed to use and possess? There's more and
9 more reliance on commercial cultivation as opposed to
10 personal cultivation.

11 Q But that's not true when it comes
12 to legalization completely, is it? Because the trend is
13 for recreational purposes to grow your own. The trend
14 is not to buy from a commercial --

15 A Again, the trend in recreational
16 marijuana, we have to be careful about sort of what's
17 motivating this and why these states are allowing
18 personal cultivation, for example. There are a couple
19 of reasons why, and all the states that have done this
20 so far, the four states that have done so were states
21 that had previously allowed personal cultivation for
22 medical marijuana. These states, the first two,
23 Washington and Colorado, when they legalized
24 recreational marijuana -- this is sort of a different
25 animal in the United States. When they did so in 2012
26 the federal government had not said at that point that
27 it's okay to do this.

28 So this is similar to the period that we

1 were in from 1996 to 2008. In fact you had the seven
2 former heads of the Drug Enforcement Agency calling upon
3 the federal government to crack down on recreational
4 marijuana in these states. So it's not surprising that
5 they embraced personal cultivation as an alternative, as
6 a fallback, because they were worried that the DEA might
7 come in and shut down a commercial cultivation system.

8 The other two states, Oregon and Alaska
9 as well as Washington and Colorado, the two first
10 adopters, have an additional concern which is that they
11 have empowered local governments to ban commercial
12 cultivation centres. So again, if they think it's okay
13 for someone to have this drug and to use this drug for
14 recreational purposes rather than medical purposes,
15 there may be no way to obtain it in those states unless
16 you allow people to personally cultivate the drug.

17 Q Well, we know there's no way to
18 obtain some medical marijuana if you live in Delaware,
19 but it hasn't made them bring in personal cultivation as
20 an option, has it?

21 A That's correct. I think they are
22 leery enough of personal cultivation that they decided,
23 we're going to stick this out and wait until we can get
24 a commercial cultivation centre up and running.

25 Q Exactly, so that would be an option
26 for everybody if there were concerns about the personal
27 production. It wouldn't be a case where they're forced
28 to legalize personal production. They could just choose

1 not to provide a supply, as has happened in a number of
2 the states that we talked about.

3 A Well, in those states you could
4 have said that back in 1996. There's an option --
5 California didn't have to legalize medical marijuana and
6 then these other 13 original adopters did. But as I
7 mentioned at the outset, I think what those states
8 decided is that personal cultivation may not be the best
9 but it's better than nothing. These later states now
10 have a choice. They could do personal cultivation
11 today. Delaware, Massachusetts, New Hampshire, New
12 Jersey and so on, they have that option. But now they
13 also have the option of commercial cultivation, and I
14 think they've decided that "We're going to go with
15 commercial cultivation because of the advantages, and we
16 don't want to deal with some of the headaches entailed
17 with personal cultivation."

18 Q Yet the personal production states
19 that existed, they are not now, given the fact that they
20 can establish dispensaries, taking away people's rights
21 to grow, are they?

22 A Again, it would be very difficult
23 to do so, politically, to take away a right from someone
24 -- a right that you've conferred in prior legislation.
25 It's also difficult legally.

26 As I mentioned before, in California,
27 Proposition 215 is a constitutional amendment. It was
28 an initiative that was passed through the process and

1 declared a constitutional amendment, that state
2 legislature even if it wanted to at some point couldn't
3 step in and say, we're going to ban personal
4 cultivation, because you've legalized this already
5 through a valid initiative.

6 Q Well, in Canada, that's exactly
7 what's trying to -- the federal government are trying to
8 do. You are saying that the reason why in America
9 nobody is -- in particular states nobody has taken away
10 the personal production rights of individuals is because
11 the laws would prevent them doing that? Is that what
12 you're saying? That the legislature wouldn't have the
13 power to say, "No, in the interest of public safety or
14 whatever the reason was, we are no longer going to allow
15 people to grow their own. We've got a perfectly
16 fantastic system now, dispensaries which meets
17 everybody's needs." Why hasn't that happened?

18 A I'm not familiar with the scope of
19 the right that's at issue here and whether that also
20 entails, you know, and it's been declared to entail for
21 some cultivation. What I know is that in the United
22 States, in the states that through the initiative
23 process, and whether the voters understood this or not
24 is another question, but through the states that
25 legalize personal cultivation it is harder to go back
26 and change that to a simple legislation. They can do
27 that in a state like Nevada on -- the state that I
28 identified as doing this, because in Nevada the

1 initiative, or the original measure simply said, "We
2 will provide a reasonable source of supply," and left it
3 up to the discretion of the legislature to decide what
4 is a reasonable source of supply. Other states in there
5 ballot initiatives, for example, has specifically
6 mentioned creating a right to personal cultivation.

7 So I don't know how that plays out in
8 Canada because I'm not familiar with the scope of the
9 right or the congruence between rights in the United
10 States and Canada.

11 Q But also this isn't a case of that
12 the states aren't taking away the personal rights to
13 grow because it had legal problems or too much hassle or
14 -- they're actually, many of them, increasing the amount
15 that people can grow. You agree with that, don't you?

16 A Well, there's a difference here
17 between saying to patients, they're worried that some
18 patients aren't able to grow enough. There's a
19 difference between that and saying that they're happy
20 with the system as it is. These states have expressed
21 frustration with some of the supervision problems that
22 are entailed with personal cultivation. So it's not as
23 if they're happy with this particular system. At the
24 same time -- so they don't know whether people are
25 actually following these rules. They're on the
26 assumption that people will. They want to go ahead and
27 allow people to grow more and to make sure that they
28 have an adequate supply.

1 then. It's my summary.

2 JUSTICE: And it's questioning a
3 witness, not arguing with a witness. So, Professor, if
4 you can answer that.

5 A I'll try. I think I have already.

6 JUSTICE: Why what would appear to be
7 a disconnect --

8 MS. GRACE: Yeah.

9 JUSTICE: -- between personal use and
10 commercial use in a federal enclave.

11 A So, you know, there are always
12 exceptions to trends. There are always outliers. But I
13 think there's a unique explanation for D.C. Again, it
14 was in the situation this last fall that those medical
15 marijuana states were in from 1996 to 2008. It didn't
16 have a choice. The people of Washington D.C. cannot
17 legalize recreational marijuana because legalized -- or,
18 legalize -- I'm sorry. The commercial cultivation
19 centres for recreational marijuana because that would
20 require expenditure of city funds. They're just not
21 allowed to do that under the initiative process.

22 So again, this is a situation where they
23 might not think this is the best idea, but they might
24 think this is the only way we can do this, is to allow
25 personal cultivation, if we want to legalize
26 recreational marijuana.

27 MS. GRACE:

28 Q And they could have set up stores

1 to do that?

2 A No. Again -- I mean, they could
3 have legalized -- yeah, basically said no more rules
4 regarding marijuana if they wanted to, and then people
5 could have set up stores. But they would have been
6 unregulated stores at that point, because again,
7 regulations entail costs, and that's something that the
8 people of D.C. cannot do.

9 Q So, can I just ask you with respect
10 to page 15 of your report, paragraph 52 -- paragraph 53
11 I'm going to ask you about. It's at page 15 of your
12 report, page 18 of the actual tab. And it's at tab 15.

13 So in paragraph 52 you set out some kind
14 of -- if I can put them, "assertions". This is the
15 second sentence. "Simply put, it is difficult if not
16 impossible for states to meaningfully -- enforce meaningful
17 restrictions on personal cultivation." And then you go
18 on then to talk about the task facing Colorado. And you
19 go on about the New Mexico Department of Health has
20 stated, personal production licenses are one area where
21 the department will often encounter law enforcement
22 concerns regarding diversion. And you go on later on to
23 quote an Oregon Department of Justice document,
24 irrigation of a large number of plants indoors often
25 produces a toxic environment with black mould.

26 With respect to those assertions, you're
27 adopting what those documents that you have read accept
28 as truthful. Is that right?

1 A I have looked at -- these are just
2 two examples of reports that express this particular
3 concern. I thought they did so in a nice succinct way.
4 But they are concerns that exist among state policy
5 makers, and state law enforcement officials elsewhere as
6 well.

7 Q And are these statements that
8 you've adopted, where are the statistics? What's the
9 factual analysis for these? Because there's a problem,
10 isn't there, that people can just adopt what police
11 officers say about mould or such-like. These aren't
12 issues that you personally have done any research in,
13 for example. I think you've -- is that right? Sorry.

14 A I know of no sort of empirical
15 research, if that's what you're looking for, that looks
16 at these issues credibly in the United States. There
17 are analogous areas of law, and I've done research and
18 this is some of what I relied on, looking at tax
19 enforcement in the United States. Looking at the
20 comparative tax gaps between individual proprietorships,
21 small businesses that would be akin to individuals who
22 grow marijuana versus the tax gap the federal government
23 faces with large companies and the taxes that they pay.
24 And there is a substantial difference there, again
25 because of the difficulty of supervising and inspecting
26 large numbers of small operations.

27 Q So, from your objective as an
28 expert, you're not saying that you have any expertise as

1 far as determining whether health or safety concerns are
2 valid or not. You're repeating what you've read as part
3 of your job, to find out why or what motivates
4 legislators from making -- making laws, whether that be
5 rightly or wrongly. And I think to be fair too, you do
6 say in one of your paragraphs, rightly or wrongly, when
7 you make that statement. Is that fair?

8 A Yes. I'm not an expert in, you
9 know, figuring out exactly how many instances of mould,
10 fires, and so on in the United States. Again, I don't
11 think anyone has hard data on those issues yet.

12 Instead, this is looking at what
13 explains, and why state law makers are doing what they
14 are doing.

15 Q Okay. Those are my questions, so
16 thank you very much for your patience and your time, it
17 is appreciated.

18 MR. ALMA: Just a very brief question
19 for re-examination.

20 **RE-EXAMINATION BY MR. ALMA:**

21 Q Professor Mikos, counsel for
22 plaintiffs asked you questions about a number of states
23 have very recently permitted some personal cultivation
24 for recreational purposes. You mentioned the number of
25 plants, one to six, or 12 plants roughly. Does this
26 change your opinion with regard to medical marijuana
27 legislative trends, in terms of whether states are
28 adopting a commercial production or a personal

1 production model for ensuring supply of medical
2 marijuana?

3 A No, it does not. The two markets
4 are distinct. As I mentioned before, recreational
5 marijuana is really a different animal than medical
6 marijuana in the United States. So, in a sense, there
7 are interesting trends in the recreational marijuana
8 field, but they don't necessarily portend anything for
9 the medical marijuana field.

10 Q All right, thank you. Those are my
11 questions.

12 JUSTICE: Thank you. Well, sorry
13 about that, Professor. You will be able to regale your
14 students with tales of the wild Canadian north, no
15 doubt. Thank you very much.

16 THE WITNESS: Thank you, it has been
17 an honour.

18 (WITNESS ASIDE)

19 JUSTICE: All right, where do we
20 stand?

21 MR. CONROY: Should we mark the
22 documents put as exhibits for identification?

23 JUSTICE: Well, for identification
24 only, yes.

25 MR. CONROY: Just so that's --

26 JUSTICE: We'll come back, we'll have
27 a break, we'll make sure we get the numbering straight.
28 Why don't we do that.

1 MS. WRAY: Yes, and after the break,
2 Dr. Baruch is here, and he will be able to begin his
3 testimony.

4 JUSTICE: Okay, good enough.

5 MR. CONROY: I have to advise to just
6 as we got back, that my friend will be objecting to the
7 video, which is the first notice I have of that. So we
8 may be taking up some time on it.

9 MS. WRAY: Probably two minutes.

10 JUSTICE: Yeah, two minutes. All
11 right, take 10.

12 (PROCEEDINGS ADJOURNED AT 3:00 P.M.)

13 (PROCEEDINGS RESUMED AT 3:13 P.M.)

14 MS. WRAY: Justice Phelan, the next
15 witness is Dr. Yehuda Baruch. And Dr. Baruch, if you
16 could please take the witness stand.

17 **YEHUDA BARUCH, Sworn:**

18 THE REGISTRAR: Please state your
19 name, occupation, and address for the record.

20 THE WITNESS: Yehuda Baruch. I'm a
21 physician. My address is 10 Pikul Street, Kadera,
22 Israel.

23 MS. WRAY: And Dr. Baruch's expert
24 report is at the consolidated book, volume 2, tab 6.

25 JUSTICE: Thank you. Yes.

26 MS. WRAY: And I believe we're at
27 Exhibit 37. Is that correct?

28 JUSTICE: Yes, we'll call it 37 and

1 we'll straighten out those other exhibits by tomorrow.

2 MS. WRAY: Very good.

3 (EXPERT REPORT OF DR. YEHUDA BARUCH MARKED EXHIBIT 37)

4 MS. WRAY: And just a bit of
5 housekeeping, just so the court is aware. English is
6 Dr. Baruch's second language. It's not his native
7 language. So, he may need to have a little more time
8 during cross-examination to be asking for questions to
9 be repeated or clarified as necessary.

10 And also Dr. Baruch is deaf in his left
11 ear, and he has a cochlear implant. So, if anyone is
12 asking questions, it's much preferable for him to be
13 able to look at the person who is asking the questions.

14 JUSTICE: Okay, I think we can follow
15 that.

16 MS. WRAY: Thank you.

17 Dr. Baruch is being put forward by the
18 defendants as an expert in two inter-related areas. The
19 first is the development and evolution of Israel's
20 medical use of cannabis program. And the second is the
21 medical appropriateness of dosages of cannabis
22 prescribed under that program.

23 **EXAMINATION IN CHIEF BY MS. WRAY:**

24 Q Dr. Baruch, you have a copy of
25 your expert report in front of you?

26 A Yes.

27 Q I understand you are a medical
28 doctor?

1 A Yes.

2 Q You obtained your degree in 1981
3 from the Sackler School of Medicine at Tel Aviv
4 University?

5 A Yes.

6 Q And your thesis was in the area of
7 cardiac medicine?

8 A Yes.

9 Q I understand you also served in the
10 Israeli Army Medical Corps from 1982 to 2004.

11 A Yes.

12 Q And you rose to the rank of
13 Colonel?

14 A Yes.

15 Q During that period of time, you
16 also completed two medical residencies?

17 A Yes.

18 Q One in psychiatry?

19 A Yes.

20 Q And another in health
21 administration.

22 A True.

23 Q And as a result of your medical
24 training and experience, are you familiar with addiction
25 and dependency issues?

26 A Yes.

27 Q And are you familiar with addiction
28 and dependency issues relating to the use of cannabis?

1 A Yes.

2 Q You were the head of the Israeli
3 program, that is the medical marijuana program in Israel
4 from 2003 to 2012?

5 A Yes.

6 Q And during that time you also had
7 other significant positions?

8 A Yes.

9 Q You were until recently the
10 Director General of the Abarbanel Mental Health Centre?

11 A Yes.

12 Q And prior to 2004, you were
13 director of the medical management division of the
14 Ministry of Health in Israel?

15 A Yes.

16 Q And I understand that there is an
17 update to these positions since preparing your report.
18 You also now have another position?

19 A Not another. I left the government
20 service.

21 Q And what is your current position?

22 A I'm head of the research
23 department, the research and regulation department, in a
24 private company, OWC, One World Cannabis.

25 Q And I understand that One World
26 Cannabis is focused on the research and development of
27 cannabis-based pharmaceuticals and treatments for a wide
28 variety of medical issues?

1 A That is one aspect. We are also
2 working on -- advise government concerning legislation
3 and implementation of medical cannabis systems.

4 Q And One World Cannabis is also
5 involved in conducting clinical research trials on the
6 use of cannabis?

7 A Yes.

8 Q I understand you are also an
9 associate researcher at the Gertner Institute of Medical
10 Policy, which is the largest hospital in Israel?

11 A It's in the largest hospital, yes.

12 Q In the largest hospital, yes. And
13 I want to take you back briefly to your role as head of
14 the Israeli Medical Marijuana Program. Can you please
15 describe what your responsibilities were as head of that
16 program?

17 A Well, actually I built the program
18 and implemented it, which means I certified the growers.
19 I gave them -- I put up the standards of growing. I
20 gave the permits and signed the permits to the patients,
21 decided what these permits should include, and also
22 implemented the first computerized system.

23 Q And did you also determine dosage
24 levels?

25 A Yes, this part -- in Israel it's
26 part of the permit that is issued.

27 Q Over the years you've made a number
28 of presentations on cannabis as a medical treatment?

1 A Yes, in various places.

2 Q And you're presently involved in
3 five clinical trials with respect to cannabis?

4 A Yes.

5 Q Just in the interests of time, I'm
6 going to briefly list what those clinical trials are.
7 First of all, you're involved in a study on the use of
8 cannabis with respect to PTSD?

9 A Yes.

10 Q A study that involves cannabis and
11 its use for violent dementia?

12 A Yes. Violent behaviour in
13 dementia.

14 Q Thank you. The third clinical
15 trial you're involved in is the use of other medications
16 while taking cannabis?

17 A Yes.

18 Q The fourth is a study on cannabis
19 as a treatment for melanoma?

20 A Yes.

21 Q And the final one is cannabis as
22 treatment for migraines.

23 A Yes.

24 Q Thank you. Now, I've already noted
25 you were asked by the Attorney General to prepare a
26 report on Israel's Medical Cannabis Program for these
27 proceedings, and I understand from reading your report
28 that when you led the program from 2003 to 2012 you saw

1 a substantial increase in the number of individuals
2 authorized to use cannabis.

3 A Yes.

4 Q And my reading of your report says
5 that increase went from 64 individuals in 2003 to over
6 14,000 in 2012?

7 A Yes.

8 Q And do you know how many are
9 currently authorized to use --

10 A By the end of January this year we
11 just passed the 20,000.

12 Q And I also understand from your
13 report that in the early days of the program,
14 individuals were permitted to grow cannabis in -- to
15 grow their own cannabis?

16 A Yes.

17 Q And individuals are no longer being
18 licensed to grow their own cannabis?

19 A There are no new licences given.
20 Very few grandfathered licences are still in place.

21 Q How is cannabis currently being
22 supplied to patients in Israel?

23 A We have eight growers and not
24 exactly dispensary but some kind of dispensaries. One
25 is in Tel Aviv in one of those main streets of Tel Aviv,
26 and the other was in hospitals.

27 Q Sorry, and just to clarify, you
28 said eight growers?

1 A Eight growers.

2 Q Eight, thank you. And when did the
3 program switch to commercial growers?

4 A It was gradual. In 2006 the first
5 one was allowed -- Safi Cohen was at the time allowed to
6 grow for free for patients, and he eventually became
7 Decolina (?) which is the biggest producer in Israel.
8 And up to 2010 there were a few more that a licence from
9 me to grow. All of them had to give the cannabis for
10 free. It was obvious only from that, from the beginning
11 that eventually we'd reach a number. I think my -- the
12 former expert opinion was 1,000 as a number, but it was
13 obvious eventually we'll have to allow them to ask money
14 for the growing for the production.

15 In 2010 there were allowed to take money
16 for giving cannabis, because Israel is part of the UN
17 Convention concerning 1961 UN convention under the
18 cannabis project. So the legislators, or actually the
19 legal department of Ministry of Health decided to be a
20 cannabis system, and you are not allowed to sell
21 cannabis by itself, as grams, but you sell a cannabis
22 system or a service. So, you pay only around 100 U.S.
23 dollars per month, with no connection to the amount that
24 you need.

25 Q And why did the medical marijuana
26 program in Israel switch from personal growers to these
27 larger commercial growers?

28 A There was three main reasons, and I

1 am trying to say they are not in any significant order.
2 The first one was cancer patients, that when they got
3 the permit to grow, they said they just now got the sad
4 news of having cancer, and they can't -- they don't have
5 the time to grow. They are starting chemotherapy next
6 week, they need the cannabis by next week. If they
7 grow, the first harvest will be in three months, so we
8 had to find a way of supplying them.

9 The second reason was security reason.
10 The police department or the internal security was very
11 worried about the trickling, or diversion I think it is
12 called here, of cannabis. We had a few -- it didn't get
13 to law, but we have a few incidents of diversion. Not
14 even for money, but for instance, one thought it was a
15 joke to give a cookie to his neighbour, when she came on
16 to coffee, didn't tell her that she had cannabis, and
17 she did a car crash on the way. Luckily -- on the way
18 to the kindergarten. But there were a few other
19 diversions that we knew about. Decided not to go to
20 court with them. Just to warn the patients. They were
21 all patients.

22 And the last one is actually for medical
23 reasons. It is a problem to grow cannabis. When you
24 talk to the growers, they have a lot of work on defining
25 the quality and making the strain viable and stable.
26 Because the strains tend to change within time, and they
27 have -- they can have very hard works in what we call
28 genetics banks, which is actually very hard to do on a

1 home production service.

2 Q And what forms of cannabis are
3 currently allowed under the Israeli program?

4 A Three forms. Buds or flowers that
5 are used for smoking or inhalation. Oil preparations,
6 and cookies are allowed. The only kind of edibles, the
7 dry cookies are allowed, and they are only allowed for
8 juveniles after the age of 15.

9 Q And when you say oil, what do you
10 mean by oil?

11 A It is an extract of the whole
12 cannabis, made either by alcohol or either by other
13 means, which have the extract of all the cannabis
14 ingredients, but mainly what we measure, at least now
15 are CBD and THC.

16 Q And why was the decision made to
17 permit the use of oil?

18 A Well, actually it started because
19 of religious purposes. In Israel, a lot of the Jew --
20 30 percent of the population is religious, Jewish
21 religion. Whether they are highly religious or just
22 religious or what we call traditionalist, they are not
23 allowed to smoke on Saturdays. So they had to get
24 something instead of smoking, and that is how the oil
25 preparation began. And a lot of them said that they
26 feeling fine, the oil preparation actually wanted to
27 move from smoking to oil preparation because it is much
28 neater, they didn't have problem with the neighbours,

1 and the smell, and that is how we started to work on
2 oil.

3 Q Now, from reading your report, I
4 understand that the average dose of medical marijuana in
5 the Israeli program is 33.5 grams per month?

6 A That wasn't a specific time point,
7 but it usually is around 33 to 35.

8 Q So, just over one gram a day?

9 A Yes.

10 Q And is that the average dose for
11 all forms of consumption?

12 A Yes, we didn't find any change,
13 although in the beginning we thought it might be a
14 change for inhalation or oil. It seems it has no
15 change. Only a little change.

16 Q And is it your opinion that the
17 prescribed dosages of cannabis under the Israeli program
18 are medically appropriate?

19 A I believe so, yes.

20 Q Why?

21 A Because we see this -- we measure
22 success rate within the patient, and the beginning, we
23 allow the patients to have much more, or at least twice
24 as much, up to 200 grams a month. And we didn't see any
25 more improvement, usually above 100 grams a month, which
26 is more than 3 grams a day.

27 Also when you look at the literature
28 around the world, especially the work of Aaron Rosenkop,

1 which I stated in my expert report, you see that around
2 the world, 3.3 grams a day is usually the maximum dose.

3 Q And when you say you don't see any
4 improvements over 100 grams a month, is that the -- I
5 believe you referred to it as an inverted "U"?

6 A Yes, it's an -- especially for CBD,
7 but also for THC, the inverted "U", or a bell-shaped
8 response. Which means eventually you reach a high point
9 where you don't get any better results even when you get
10 -- when you elevate the dose. And sometimes you
11 actually get worse results because of the side effects.

12 Q And in Israel you have found that
13 at what dosage does that occur?

14 A It's of course individual. That's
15 why the average dose is, as I said, one gram a day. But
16 the maximum dose is three grams a day. But usually we
17 found it above three grams, it's very seldom that people
18 need it.

19 Q Thank you. Those are my questions.
20 Now, could you please answer the questions my learned
21 friend will have for you.

22 **CROSS-EXAMINATION BY MR. CONROY:**

23 Q The clinical research trials that
24 you're involved in, do you have to -- well, let me put
25 it to you this way. My understanding is that in Israel
26 the government has supported the research to be done by
27 the --

28 A Yes, but not in financial ways,

1 only in the permits.

2 Q Yes. But they haven't blocked your
3 ability to carry out good research in Israel, have they?

4 A No. You have to get a permit from
5 the government, from the cannabis department.

6 Q Do you agree with me that it's one
7 of -- it's recognized as perhaps the leading country in
8 the world in terms of doing research in terms of
9 cannabis?

10 A I hope so.

11 Q And it's -- you've had great
12 success in managing to create strains of cannabis that
13 are significantly potent?

14 A Yes.

15 Q 28, 29, 30 percent THC, I read
16 somewhere?

17 A Yes. We don't -- we propose not to
18 allow -- now there's a discussion about it. It goes not
19 above 24 percent THC.

20 Q Yes.

21 A The highest strain in the U.S. I
22 saw from the NIDA is 37 percent.

23 Q But you know that in the U.S. there
24 is very little clinical research that's allowed to be
25 done.

26 A Because -- I know.

27 Q For political reasons.

28 A Political reasons, probably NIDA.

1 Q Probably NIDA. Ms. Volkow. Is she
2 the person behind NIDA?

3 A I don't know.

4 Q She's referred to in your CV, an
5 article by Nora Volkow.

6 A Yes, an article, but I don't know
7 what her position is.

8 Q Oh, you don't know. Okay. So, the
9 situation, though, in Israel is that there aren't the
10 obstacles that you have heard about, or perhaps know
11 about, from the U.S. in terms of conducting research to
12 try and produce a good-quality cannabis for patients.
13 Fair enough?

14 A I didn't understand the question,
15 sorry?

16 Q In Israel, you are -- you don't
17 have the problems of trying to conduct clinical research
18 to produce a good product of cannabis for medical
19 patients.

20 A And I understand it's easier in
21 Israel to do clinical research.

22 Q Compared to anywhere else in the
23 world.

24 A I didn't check everywhere, but --
25 but in order to compare with the U.S., it is.

26 Q Okay. Now, maybe in the interests
27 of saving a bit of time --

28 A I'm sorry, I can't see --

1 Q Sorry, in the interests of saving a
2 bit of time, you have a book, a green book to your left
3 there, and if you turn to tab 22. Sorry, it's Volume 11
4 of 13, of the joint --

5 A I'm sorry, it is --

6 Q The page would be 4261 I believe.

7 A "Israel sets a new standard for
8 legal medical marijuana research, production and sales",
9 this one?

10 Q Yeah, that is the first article
11 that's there. Have you had a chance to read that?

12 A Yes, I did.

13 Q Do you agree with it?

14 A Agree with what?

15 Q Well, does it accurately set out
16 the Israel setting the new standard in terms of
17 research, production, and sales?

18 A Partly. Not fully.

19 Q What parts did you have some
20 difficulty with?

21 A Well, we are still not satisfied.
22 I am still not satisfied with the stability of the
23 Undertaker, which is the high CBD strain.

24 Q Yes.

25 A There are a few debates, even when
26 it is not actually Charlottes Web, okay?

27 Q Yes.

28 A And --

1 Q And just for the record -- just for
2 the record, Charlotte's web, you are referring to a CBD
3 strain out of Colorado I think?

4 A Yes. Yes.

5 Q All right.

6 A And my main problem with the
7 conalam research, it wasn't published in let's say, in
8 the known medical papers.

9 Q Yes. But otherwise --

10 A They weren't peer reviewed as far
11 as I know.

12 Q Okay, otherwise, this article
13 accurately set out --

14 A As far as I know, it is fairly
15 correct, apart from that.

16 Q Okay. Okay. I'd like you to go to
17 tab D. Do you see that one? That article? It is
18 headed, "Marijuana in my medicine cabinet"?

19 A Yeah, I know -- okay.

20 Q Did you have a chance to read that
21 --

22 A I didn't -- what is the question?
23 I didn't read it profoundly.

24 Q Well, if you go to, let's -- page 3
25 of that document, which would be page 4-2 --

26 A 4291.

27 Q --9-1. Or actually, at the bottom
28 of 4289. You see the reference there to Tikun Olam?

1 A 4289?

2 Q Yes, at the bottom.

3 A "Tikun Olam is one of the few
4 medical organizations in the world enormous amount of
5 research behind it"?

6 Q Yes.

7 A Well, as I said, but they didn't
8 publish it in any known medical papers, so I am a bit
9 skeptical.

10 Q But they developed -- as I
11 understand it, there used to be, and maybe we'll take
12 you to the date -- in your report you talk about the
13 cannabis program existing since 19 -- I think it was '96
14 originally, was it not?

15 A I think it was '92.

16 Q '92, somewhere in there? And there
17 was a committee that had to approve each individual
18 patient.

19 A True.

20 Q And between that time, and was it
21 2003, when you took over, is that right?

22 A Yes.

23 Q There had only been 64 patients had
24 been approved?

25 A Yes.

26 Q And all of them were able to grow
27 for themselves in those days?

28 A Some of them got from police

1 holdings.

2 Q Of police confiscations and so on?

3 A Police confiscation, yes.

4 Q But growing for oneself was
5 permitted in those times?

6 A Yes.

7 Q And then that -- when you became
8 the director, it went from 64 to the approximately --
9 well, 14,000, and since you've left, up to 20,000,
10 correct?

11 A Yes.

12 Q What is the rough population of
13 Israel?

14 A Eight million.

15 Q Now, 20,000 approved medical
16 cannabis patients out of --

17 A There were more, a few died. It is
18 20,000 active permits.

19 Q Active, so is that significant
20 amount that --

21 A I think it will be about 28, a
22 total amount of permits that have been issued.

23 Q 28,000.

24 A I believe.

25 Q Somewhere in that area.

26 A Yes.

27 Q So about 8,000 patients have passed
28 on over the period of -- a long period of time we're

1 talking about.

2 A Yes.

3 Q Okay, fair enough.

4 A But a lot of them weren't even end
5 of life issues.

6 Q Yes. I notice that there was a
7 separate -- if you're a cancer patient in a hospital,
8 there's special provision to approve them or ensure that
9 they get the medicine quickly compared to going through
10 the regular process, correct?

11 A Yes.

12 Q Okay. Otherwise everybody now has
13 to go through the Director of Medical Cannabis Office.
14 Support from their doctor, letter of recommendation, and
15 once you took over it became your decision, as opposed
16 to the decision of a committee, am I right?

17 A Yes.

18 Q And that's developed over the years
19 so you have some -- or until you left and perhaps you're
20 aware of what's happened since. Now there's somewhere
21 in the 20 to 30 doctors that are involved making those
22 decisions.

23 A True.

24 Q Okay. And so if you've got --
25 well, let's go back to the article. Takem Olam, as I
26 understand it, was one of the original growers, and I
27 think you mentioned his name, Yitzak Sachi Cohen?

28 A Sachi Cohen, yes.

1 Q Taki Cohen? And he was a gentleman
2 who started Tikun Olam in 2006?

3 A As far as I remember, yes.

4 Q And he had returned to Israel from
5 the United States, hadn't he?

6 A He returned from abroad. I truly
7 do not remember --

8 Q You didn't know he'd come from
9 California and he'd been involved in the medical --

10 A I knew that he came there, but I
11 didn't know when.

12 Q I see. And he came back to Israel
13 and at that time I understand that when he first came
14 back there was only about 25 people who had the special
15 licences. And I'm looking at page 3 at the top of
16 article, if that assists you.

17 JUSTICE: Is that 4290?

18 A I don't think so. I don't remember
19 what's the --

20 MR. CONROY: Yes.

21 A I don't remember what's the number
22 in 2006 but I don't believe it's 25, because we were
23 only 64 when I started.

24 MR. CONROY:

25 Q Okay.

26 A So it doesn't seem likely.

27 Q So he says there, or this article
28 says that at the time when he came back only about 25

1 people in Israel had been given special licences to use
2 medical cannabis, and that he applied to the Ministry of
3 Health and was given a licence and was the first in the
4 State of Israel to grow and supply medical grade
5 cannabis for patients. Is that right?

6 A That's not a -- it's right that
7 that's what he's written. It's not exactly right.

8 Q What is the correct?

9 A Well, first there were more than 25
10 patients.

11 Q Yes.

12 A And were allowed home and a
13 factory. Secondly, by that time there were a few
14 patients that would have been allowed to grow up to five
15 other patients.

16 Q Let me ask you a little bit about
17 that. So one patient could grow for up to five. Would
18 this be like in a collective garden type of a situation?

19 A Yes, at that time.

20 Q Yes, and it wouldn't have to be in
21 a home. It could be in an outbuilding, in a barn,
22 wherever it was approved?

23 A No, has to be in a closed
24 environment and it was certified by the state.

25 Q Yeah, it had be approved by the
26 government.

27 A By -- yes.

28 Q By your --

1 A By me.

2 Q By yourself at that time.

3 A Yes.

4 Q Okay. All right. And he goes on
5 in the article to say that over the next four years he
6 developed various unique strains of the plant and that
7 by 2010 he was treating nearly 800 patients for free.
8 Is that fair?

9 A The 800 patients would be a valid
10 amount.

11 Q Right.

12 A I think it was a bit more really.

13 Q The reference is made to a
14 spokesperson for Tikun Olam called Myan Weisberg. Do
15 you know her?

16 A Yes.

17 Q And you've had dealings with her
18 over the years, I take it?

19 A A few.

20 Q Okay. And it was indicated then,
21 as I think you alluded to in your evidence, this was
22 going to become a financial problem for Tikun Olam to
23 keep supplying patients for free because the numbers
24 were --

25 A Were going --

26 Q -- going up.

27 A Yes.

28 Q And so from the time you took over,

1 there was this rapid exponential growth in terms of the
2 number of patients that were being approved to use
3 cannabis for medical purposes in Israel, isn't that
4 right?

5 A Yes.

6 Q Did you know that similarly that
7 was the situation in Canada, from about 2001 until
8 currently, that there was this exponential growth in --

9 A Did I know at the time or do I know
10 now?

11 Q Do you know now?

12 A Yes.

13 Q Okay. And as I understand it, Mr.
14 Cohen in 2009, and again this is in this article,
15 approached somebody called Maccabi who was one of
16 Israel's HMOs. Now, is that an organization or a
17 person?

18 A No, Maccabi is sick fund.

19 Q A what?

20 A In Israel according to the health
21 law there are four sick funds. HMOs. Health
22 Maintenance Organization.

23 Q Okay, so it's an organization.

24 A Maccabi is the second largest.

25 Q Second largest, okay. So what he
26 says -- what the author of it says, is that he went and
27 made a pitch to this fellow, and pointed out that he
28 could save 60 million shekels a year on health insurance

1 for its members. And I'm assuming -- so that's the
2 government health -- or is this a health insurance
3 supplied by Maccabi as a private insurer?

4 A It's not exactly a private
5 insurance. In Israel, the system is a bit --

6 Q It's a combination --

7 A It's a combination. It's a sick
8 fund that has -- that is financed mainly by the
9 government.

10 Q Yes. So, the proposal that he was
11 making was one of, "Listen, if you support me, I'll be
12 able to reduce your health insurance costs
13 substantially." Is that essentially it?

14 A I don't understand the question.
15 Is -- where he went, I don't know.

16 Q Let me put --

17 A As far as I know, the work that was
18 done with Maccabi was by me. It was presented to the
19 Parliament. And there was a big debate on it. I don't
20 know exactly who went and told them anything. But
21 maybe, I'm not --

22 Q According to this article, he
23 presented usage data on 3,000 of his past and current
24 clients to Maccabi, and that Maccabi appreciated his
25 idea and saw that the patients he was treating had
26 reduced their medication, were sleeping better, feeling
27 better, eating better --

28 A Again, from looking around, I can't

1 exactly understand the number, because in previous
2 session he said by 2010 he was treating 800 patients.

3 Q 8,000, wasn't it?

4 A 800.

5 Q Oh, sorry, 800. Right, yeah.

6 A And now he's -- by 2009 he's got
7 3,000.

8 Q No, now, I think what he's saying
9 is, usage data on 3,000 of his past and current clients.
10 So --

11 A You'll have to ask him, I'm sorry.
12 I don't know.

13 Q No, no. But the point that I'm
14 getting to is that he made this presentation to Maccabi
15 according to the article. And that Maccabi agreed to
16 support him. And they went together to the Ministry of
17 Health, and some sort of arrangement is then made with
18 respect to the payment of this \$100 a month. And what
19 I'm trying to understand is, does he, or Tikun Olam, get
20 paid by the government separately while the patient only
21 pays the \$100 a month?

22 A No.

23 Q So he still is producing cannabis,
24 Tikun Olam, one of the organizations producing cannabis
25 for the patients in Israel, and the patients don't have
26 to pay more than roughly \$100 U.S. a month equivalent
27 for their medicine.

28 A Most of the patients only? I think

1 I put it in my expert -- only a few get reimbursed.
2 Those are veterans under the Ministry of Defence. And
3 those that have -- how you say? Were recognized by the
4 social security in Israel as being the war work --

5 Q Oh, veterans.

6 A No, no. Had a casualty in work.

7 Q Oh, at work.

8 A Reimbursed by a different law.

9 Q All right, so if I'm understanding
10 you, health insurance, though, is available to Israeli
11 citizens through organizations like Maccabi. And --

12 A Yes.

13 Q And does the health insurance cover
14 all of the costs of their medications?

15 A Most of the cost. There is some
16 payment, usually about less than 15 percent.

17 Q Okay.

18 A But they do not cover cannabis.
19 Cannabis is outside of the Israeli (inaudible).

20 Q All right. So, do you know -- did
21 some sort of arrangement get made as a result of these
22 representations to the Ministry of Health to create a
23 situation where these growers of the cannabis would be
24 able to afford to keep doing it, even though the
25 patients would only have to pay \$100 a month?

26 A Again, I don't understand the
27 question, I'm sorry.

28 Q Well, how --

1 A I decided eventually in 2010, it
2 was my decision, to allow the companies, or the growers,
3 to get money -- to be paid by the patient.

4 Q \$100 a month.

5 A We did a cost analysis and we
6 decided on the price.

7 Q So your cost analysis, you
8 determined that that is what it would cost Tikun Olam,
9 as an example, to produce the cannabis for all of those
10 patients?

11 A Actually all growers said that at
12 that point it was around two and a half dollars a gram.

13 Q Yes.

14 A Their production, a bit less.

15 Q Yes.

16 A And they even said it would go down
17 as more patients would come in and they would grow more,
18 because --

19 Q Because they'd be --

20 A The volume will take the price
21 down.

22 Q So, the \$100 a month was determined
23 to be sufficient by these producers to cover their
24 costs, is that correct?

25 A Yes, obviously it is still
26 continues up to today. It only went up in 10 shekels
27 which is about two and a half dollars in --

28 Q No profit?

1 A As far as I know? Some of them
2 don't have enough patients to be sustainable, and they
3 have a problem, but most of them are sustainable.

4 Q And the cannabis that they get to
5 -- they produce it, each one of these, what is it, six,
6 seven or eight organize --

7 A Eight.

8 Q -- eight organizations. The
9 cannabis, they produce that themselves? The
10 organization produces the cannabis?

11 A Most of them do.

12 Q And according to the standards that
13 you set out when you were the director?

14 A As far as I know nothing has
15 changed on this subject, yes.

16 Q And I think you said in your
17 evidence you set the agricultural standards, didn't you?

18 A Yes.

19 Q So, in other words, there was some
20 education by your office towards these producers, in
21 order to tell them what standards they would have to
22 meet in order to produce a quality product for the
23 patients?

24 A Yes.

25 Q Okay. And as I understand it, the
26 quality of the cannabis that is produced by these groups
27 in Israel, is a very high quality, with high levels of
28 THC and CBD variations?

1 A I must say, the quality is not in
2 the high amounts of CBD or THC. It is mainly of the
3 stabilization of the strain, which means, if you say it
4 has a certain THC level, or a certain CBD level, this is
5 what the patient will get until it wants to change it.
6 Okay? That is the main point of quality, okay? It's
7 not about a high CBD or high THC. Each patient gets his
8 own, I don't know, strain, but it gets its own -- at
9 this point --

10 Q What is working for them.

11 A What is working for him. The
12 doctors at least know more today when they should use a
13 high THC level or a high CBD level.

14 Q Yeah.

15 A But when we talk about the quality
16 of the strains, we mean specifically the stability of
17 it.

18 Q Yes. So, the patients at Israel
19 are getting a highly stable strain or product, and it
20 doesn't cost them more than \$100 a month, no matter how
21 much their dosage is?

22 A True.

23 Q And there is provision in your law
24 that if you want more than the amount permitted, the 100
25 grams per month, maximum, you can, with the support of
26 your doctor, go to a committee in order to try and
27 convince the committee that you should be provided with
28 more?

1 A The permit, as I said, states the
2 amount you are allowed to get.

3 Q Yes.

4 A And according to your doctor.

5 Q Yes.

6 A If he wants to prescribe more than
7 100 grams, he has to turn to the accept committee --

8 Q To try and --

9 A -- and persuade them.

10 Q Yeah, so there is provision for an
11 exception to the general rule?

12 A Yes.

13 Q Okay. And so, I take it you'd
14 agree with me that if a patient is able to get a good
15 quality product, they will then be able to use less of
16 the cannabis than they would if they were not getting
17 such a good quality product?

18 A Again, as I said, it is not only a
19 point of less. Hopefully they would use less, but they
20 won't get intoxicated when the amount exceeds what they
21 were supposed to get. I mean, the relevance again of
22 THC and CBD, although it would not be sufficient if they
23 get suddenly a lower grade cannabis of THC and CBD.
24 That is why stability in medicine is so important.

25 Q And also the individualization in
26 terms of trying to determine exactly what works for this
27 particular patient?

28 A Okay, once we finish the

1 individualization.

2 Q Right. So, it's fair to say
3 though, that the average of one to three grams that is
4 supplied, is the average supply apparently in Israel, is
5 a supply of high quality product to these patients,
6 highly stable product for the patients?

7 A As far as I know it is.

8 Q And you'd agree with me that if a
9 producer is unable to provide that good quality, the
10 patient may be asking for more, because they are not
11 getting the same effect as the good quality?

12 A But they have an option to turn to
13 another producer. And we noted that some of the
14 producer had to destroy part of the harvest sometimes,
15 because it wasn't in good enough quality.

16 Q Yes. So, just curious then, when
17 you have this permit, and you are going to one producer
18 and the quality isn't up to par, or you don't find that
19 it is working for you as a patient, can you simply just
20 -- as if you are going to another store, just go to the
21 other producer?

22 A No.

23 Q Or is there a whole process you
24 have to go through?

25 A You have to pass all the process
26 again, and request a change of -- in the permit of your
27 producer.

28 Q So, your permit is per -- from a

1 particular producer?

2 A Yes, but you can -- the patient can
3 state his preference, and usually will get it.

4 Q Yeah, but you come back to the
5 direct -- or to your office, or the office you were in,
6 to get approval to do that. You can't just deal with --

7 A You can't just move around from
8 producers.

9 Q Okay. All right. If you've --
10 okay, so let's just go back to that article that we were
11 looking at. So, the suggestion there is that Mr. -- oh,
12 I'm sorry, Mr. Cohen worked something out with this
13 Maccabi, and through the proposal that he made, it was
14 attractive to Maccabi in terms of them saving a lot of
15 money as a health insurer, and through that arrangement,
16 Tikun Olam became one of the major or bigger producers
17 of quality cannabis in Israel?

18 A As far as I know, this is not true.

19 Q Okay, so you have no information
20 about whether he gets assisted in payment by one of the
21 health insurance companies?

22 A No, that I know, as I said, he is
23 not getting any assistance. That I know for sure.

24 Q Okay, you know that for sure?

25 A But whether he turned to Maccabi or
26 not, I think I would have known, because I am very good
27 contacts with all -- all the sick funds up to now.

28 Q Right.

1 A And I would have known, but --

2 Q There is a further statement there,
3 and I am about four paragraphs up from the bottom of
4 page 3, still --

5 A Page 3? Same page, okay.

6 Q Where he says, the author says,
7 "Since its founding..." do you see that paragraph?

8 A Mm-hmm. Yes.

9 Q "...Tikun Olam has provided
10 quality care for patients while developing
11 professional standards for growing medical
12 grade cannabis creating new standards for the
13 field. In the field of production, emphasis
14 is put on special methods with focus on
15 increasing production of the active
16 ingredients, mainly tetrahydrocannabinol,
17 THC, and cannabidiol, CBD, so that medical
18 grade plants may be grown."

19 Do you agree with that?

20 A I agree with that partly. We
21 believe that cannabis is, how shall I put it. THC alone
22 does not help. THC is a medication to -- dronabinol, or
23 marinol, that has been in the markets in the 1960s. We
24 believe that cannabis works because of an integration of
25 all its parts, all of its full 460 active ingredients.
26 So the terpenoids, and the flavinoids are important
27 also.

28 When you elevate the percentage of THC

1 and CBD, it usually goes on -- something has to pay,
2 okay? Which usually means that the flavinoids and the
3 other parts of the plants go -- are less. So, it
4 doesn't mean that it is better quality. That's why we
5 think you should not exceed 24 percent THC.

6 Q Okay. And do they have to have it
7 tested by a government laboratory or something like
8 that?

9 A It is not exactly government
10 laboratory. There are three laboratories in Israel that
11 are certified to check CBD and THC content. Actually
12 they check now, six -- or at least some of them check
13 six ingredients. They check also THCV, CVN, CBG, and I
14 forgot the last one, I am sorry.

15 Q Okay. So, if you've got -- so the
16 other seven organizations that are able to produce, are
17 they all organizations? Or are there some that are
18 individuals?

19 A No, all organizations.

20 Q And the grandfathering of -- is it
21 that group that's grandfathered? Or are there some
22 people who are allowed to go for themselves that are
23 still grandfathered?

24 A Again, I don't understand the
25 question. As far as -- I think I have stated it was 86
26 permits left of grandfathering. That's how I allowed
27 home cultivation. When it was decided, I don't remember
28 exactly when, that by the security -- by the police,

1 they asked us to close down on production.

2 Q Yes?

3 A We decided we'll not go to court
4 with the home growers. But each time the harvest didn't
5 come and they wanted to buy from one of the growers,
6 they had to, how do you say, to give up on the home
7 growing permit.

8 Q Okay.

9 A So that's how it came down to the
10 basics.

11 Q So the --

12 A As far as I know, it's even less
13 now.

14 Q All right. So there is still some
15 personal growers, but the real supply in Israel for the
16 patients comes from these eight organizations.

17 A Yes.

18 Q Okay. And these organizations came
19 from people who were growing for patients in the past.
20 Is that right?

21 A Some of them. Not all. Some of
22 them, new manufacturers led by business people.

23 Q Some of them are like a co-op,
24 cooperative? Of growers?

25 A I don't understand "cooperative",
26 sorry.

27 Q Okay. Well, I'm told that at Tikun
28 Olam, for example, that once a week the particular

1 grower who is part of the organization comes and his or
2 her product there on a certain day of the week, and that
3 on a different day of the week it's a different producer
4 who is still part of Tikun Olam. And that's how the
5 process works there. Do you know anything about that?

6 A I don't understand again the
7 question. Where?

8 Q Well, they come to the place to
9 acquire -- the patient comes to a place to acquire their
10 product. Do they go to Tikun Olam's place?

11 A There is a Tikun Olam place in Tel
12 Aviv, as I said.

13 Q Yes?

14 A All the other organizations have
15 another dispensary, or something like a dispensary, in
16 my former hospital, in Abarbanel medical centre. They
17 put out the building that it was specifically supposed
18 to be some kind of dispensary. Not exactly --

19 Q I'm sorry. So, one dispensary in
20 that place? Or are you -- that they all come to, is
21 that the idea?

22 A They all come to on different days,
23 there are different producers. I don't --

24 Q Yeah, I see.

25 A -- is only one producer. Tikun
26 Olam.

27 Q All right, so maybe that's my
28 misunderstanding of the information. What you're

1 telling me, then, is that there is an equivalent of a
2 dispensary in the hospital that you just talked about.

3 A Yes.

4 Q And that each producer comes there
5 on a different day with their particular product for the
6 particular patient.

7 A Yes.

8 Q And the patients come there, then,
9 to acquire that product at that location.

10 A Yes.

11 Q Okay. It's not shipped in the mail
12 or anything like that.

13 A No. It's not shipped in the mail
14 in Israel.

15 Q Okay.

16 A There is some -- you can get home
17 delivery but you have to pay for it more, usually 100
18 shekels, which is something again like \$25. And then
19 there is a security vehicle coming to your place, and
20 can only be opened from afar from this, and a certain --
21 how shall I say, a central registry. And a specific
22 package is given to the patient.

23 Q Okay. Do you know Dr. Shif Keren?

24 A Bereki.

25 Q Sorry?

26 A Berekashif, yes.

27 Q Okay, sorry.

28 A -- from the age of six.

1 Q Okay. She is quoted in this
2 article about -- as a doctor who is involved in the
3 dispensing of medical cannabis.

4 A Yes.

5 Q You are familiar with her work in
6 that regard?

7 A Yes. She is now number two in Ale
8 Yarok, which is the party that goes for legalization of
9 cannabis in Israel.

10 Q Oh, I see. Yeah.

11 A Because --

12 Q And --

13 A Israel does have an election next
14 Tuesday.

15 Q Next Tuesday? Okay. And what I'm
16 quoting here, she seems to indicate that the providing
17 of cannabis to the medical patients that she's had in
18 Israel has been a phenomenal success, with 85 percent of
19 her patients being completely satisfied with the
20 treatment, and now being able to participate once again
21 in their lives and they weren't able to before because
22 of the other types of medications they were on. Would
23 you --

24 A As far as I know, about 80 percent
25 of the patients are not fully satisfied, but are
26 satisfied with the treatment.

27 Q Yes.

28 A 50 percent stopped the treatment,

1 usually due to adverse effects.

2 Q Yes?

3 A That's our knowledge.

4 Q And the ones that were successful,
5 is it the case that they then stopped using other types
6 of medications that they were on, or can you --

7 A The work that I did with Maccabi,
8 and that's mine, not Sachi --

9 Q All right. Yes.

10 A It was a pilot study that showed
11 that people who use cannabis tend to lower the amount of
12 other medications they are using. And we are now doing
13 a better-quality study on the subject. Hopefully after
14 -- when I go back, I have a meeting with Maccabi
15 concerning how to do it, because there was a bit of
16 debate. Under our peer review, it said that our control
17 group was not good enough.

18 Q I was told about a video called
19 *Prescribed Grass*. I understand you've had a chance to
20 look at it?

21 A Yes, and for due diligence the
22 producer is now my colleague in OWC, Ole Glaville, and
23 the photographer Taki Klein is my student on an M.A.
24 thesis that he's doing on cannabis.

25 Q And it's produced through Tikun
26 Olam?

27 A Sorry?

28 Q Was it produced through Tikun Olam?

1 A Tikun Olam participates.
2 Q Participated, okay.
3 A It's not produced through Tikun
4 Olam, no.
5 Q All right, I just saw that
6 underneath the title it said Tikun Olam, but I wasn't
7 sure if they'd produced it.
8 A Part of the cannabis they've been
9 given is given by Tikun Olam.
10 Q Okay. And you've had a chance to
11 look at that video recently?
12 A Yes.
13 Q And would you agree that it
14 accurately represents what was going on or has been
15 going on in Israel in the period of time that it
16 depicts?
17 A Depends what accurately. My main
18 problem is -- with the movie, although I participated in
19 the movie.
20 Q You're in it twice, aren't you?
21 A Sorry?
22 Q There's two segments.
23 A Two segments, yes.
24 Q Right.
25 A It showed cannabis as a miracle
26 drug.
27 Q Yes.
28 A And I do not believe it's a miracle

1 drug.

2 Q No.

3 A I think it's a drug that should be
4 used in the pharmacafare (?) --

5 Q Are you familiar with the recent
6 book edited by Roger Pertwee, *Handbook on Cannabis*?

7 A Yes, I actually consulted him
8 before coming here.

9 Q And so on this issue of miracle
10 drug, is it more accurate to say that there's something
11 in cannabis that tends to modulate and regulate whatever
12 is going on inside the person? It's not a cure for
13 anything?

14 A It's not a cure. The
15 endocannabinoid system is being searched now. Actually
16 it's -- although it's a very ancient drug, the way it
17 works was only known, was only known, how do you say?
18 Only 2001.

19 Q Recently.

20 A Pardon the mistake. The retrograde
21 remission in the synapse. That was only recognized in
22 2001.

23 Q Okay, because Ralph Matullum is --
24 considered the grandfather of the determination of the
25 endocannabinoid system, isn't he?

26 A True.

27 Q And he's in Israel, isn't he?

28 A He is in the Hebrew University and

1 we were together at Prague last week.

2 Q And he's been -- sorry. He's been
3 one of the main people who has researched and advanced
4 the science in terms of the use of cannabis for medical
5 purpose.

6 A He still is. That's why he got
7 what we call Israel Prize.

8 Q Right.

9 A For his work.

10 Q And he's in the video too, isn't
11 he?

12 A Yes.

13 Q Okay. And as I understand it, up
14 until a famous film actor or film star, I think his name
15 is Teomi, do you know?

16 A Oded Teomi.

17 Q Sorry?

18 A Oded Teomi.

19 Q Oded Teomi. Until he came out and
20 explained how he was using cannabis for his leukemia,
21 that created a big change in Israel in relation to this
22 whole attitude.

23 A It's not specific of Oded Teomi. I
24 don't feel comfortable talking about him because he's my
25 patient.

26 Q Okay.

27 A Okay, have a problem here.

28 Q Is there anybody in the film that

1 you don't know?

2 A No, but not all of them are my
3 personal patients.

4 Q I'd like to play the film, but I
5 don't know, are you still --

6 A About 46 minutes?

7 Q Well, it's 45 minutes or so, but
8 I'm also trying to decide how best to use the time,
9 given your schedule. You're still scheduled to leave
10 tomorrow?

11 A Leave where? Leave Canada?

12 Q Yes.

13 A No, leaving Canada, I leave on
14 Friday. I was supposed to go to Tillery tomorrow.

15 Q Oh, I see.

16 A To visit Philip Lucas.

17 Q Okay, I just -- all right, well,
18 let me just carry on with a few other things and then
19 we'll see if we have time to do that.

20 I want you to have your report in front
21 of you and I'll just take you through a number of things
22 that stood out to me. So we're back at -- sorry, it's
23 Volume 2 and you're at tab 5. You have that? I'm
24 looking first at page 2 which sets out your
25 qualifications on the issue to be addressed. You see
26 that?

27 A Yes.

28 Q My friend, I think, took you

1 through most of that and it indicates at one part that a
2 certain part of your expert is psychiatry, isn't it?

3 A True.

4 Q And you've done quite a bit of
5 research and so on in terms of schizophrenia, haven't
6 you?

7 A Not too much, but some.

8 Q Well, there's a number of articles
9 and so on in your CV that deal specifically with
10 schizophrenia.

11 A Yes. Yes. Mainly with chronic
12 patients.

13 Q Chronic pain.

14 A Patients, chronic patients.

15 Q Patients. Patients who are
16 suffering from any type of chronic disease.

17 A Yes, but they are hospitalized for
18 a long time. Mainly work on their rehabilitation.

19 Q Okay.

20 A Psychiatric patients.

21 Q All right. And you then, in this
22 paragraph B you talk about the 10-year period of you
23 being in charge of the program and it going from 64 to
24 14,000, correct?

25 A Yes.

26 Q And how you then actually created
27 the program and was in charge of it, and as we
28 discussed, it then developed that there were more and

1 more doctors that were needed because of this demand for
2 the product.

3 A Yes.

4 Q You'd agree with me that this
5 demand for the product indicated that there were
6 obviously many doctors in Israel and many more coming
7 on-stream that thought that this product was effective
8 for the conditions that they were treating these
9 patients for.

10 A Yes, at the beginning of my main
11 work was to instruct doctors and to persuade them to try
12 and that they would not be persecuted.

13 Q Right.

14 A And they can turn to me whenever
15 they had a problem. And eventually they found the
16 quality of treating with cannabis themselves.

17 Q And so it became well known as an
18 effective alternative to other medications that patients
19 were --

20 A Mainly pain medications.

21 Q Mainly pain medications. And it
22 was also known from past research and the research that
23 was being done in Israel that there is no lethal dose
24 ratio for cannabis, is there?

25 A No?

26 Q Lethal dose?

27 A There's no lethal dose, although
28 there was some deaths reported by use of cannabis,

1 mainly cardiovascular.

2 Q I see.

3 A That's mainly in the past year --

4 Q Somebody having --

5 A -- past last year literature.

6 Q Somebody having a heart attack?

7 A Heart attack or a CVA.

8 Q Brain --

9 A Brain --

10 Q Yeah.

11 A -- hemorrhage.

12 Q Yeah, okay. And because I think
13 in your report you do at a certain point, point out that
14 the -- and I'll take you maybe to that. If you go to
15 page 7, at the bottom, you deal with the fear of side
16 effects, correct?

17 A Mm-hmm.

18 Q And as you say, most of the side
19 effects of cannabis use were considered minor like
20 vertigo, dizziness, red eyes and so on?

21 A Yes.

22 Q And they soon passed once a person
23 stops using cannabis?

24 A Yes, and they can be treated.

25 Q And then you indicate the major
26 side effects were mostly psychiatric?

27 A Yes.

28 Q And triggering psychosis or

1 schizophrenia?

2 A And I also talk about risk of
3 cardiac --

4 Q Yeah, that was the next one. And
5 so you then go on to deal with the two types of
6 cannabinoids in the human body at the next --

7 A Not cannabinoid. Cannabinoids
8 receptors. CB1 and CB2.

9 Q Kinds of receptor cannabinoids --
10 of receptors for cannabinoids is the way you've framed
11 it there.

12 A Yes, but we know already there's
13 also a non-CB1, non-CB2. We don't exactly know what
14 they are. But the non-CB1, non-CB2.

15 Q But you indicate CB1 and CB2 are
16 implicated mainly in pain management, inflammatory
17 processes and immune reactions.

18 A Correct.

19 Q And then you say it is stated that
20 CB1, CB2 receptors have opposing roles in cardio-
21 metabolic risk and atherogenic -- meaning generation of
22 plaque in the arteries -- inflammation.

23 A True.

24 Q Can you explain that?

25 A There is some work by Dr. Galili,
26 if I'm not mistaken, that CBD may actually help patients
27 with infarction and lower the degree of infarction.
28 While CB1 receptors elevate it and can cause the

1 infarction. So maybe the cardiac infarction is caused
2 by the THC which works mainly on the CB1 receptor, not
3 CBD, which works mainly on the CB2 receptors.

4 Q So what I was trying to -- does
5 this -- is says "Generating plaque in the arteries." So
6 does it contribute to the plaque or take it away?

7 A It's not exactly -- it's not the
8 generation of the plaque themselves, but on the plaque
9 the calculation of -- when there's a plaque, a
10 correlation of blood can become there and then the blood
11 vessel become occluded. CB1 receptor, because of the
12 inflammation that it might cause, while CB2 lowers the
13 inflammation reaction. Both are significant and you
14 need them both for the well being, okay? Inflammation
15 by itself is not a bad thing. Depends where it happens.

16 So it contributes to the plaque
17 generation, not the atherosclerotic plaque but the
18 plaque of the blood itself, which triggers the specific
19 infarction.

20 Q Okay. We're going to go back to
21 page 2 and try to take you through in the time we have
22 available, just quickly a number of points. In that
23 paragraph B there, about the middle of the paragraph you
24 refer to the committee and then you say:

25 "I was in charge of how to supply the
26 cannabis to the patients and later on issuing
27 the permits for growing cannabis, including
28 issuing the agricultural standards and the

1 security standards. I was also in charge of
2 building education programs on medical use of
3 cannabis for health workers, mainly
4 physicians and nurses."

5 And then you talk about being the head of the first
6 inter-ministerial committee.

7 So just to be clear, the program then
8 that you became in charge of did take some efforts to
9 not only educate the doctors and the nurses about
10 cannabis and its uses, but also these growers on how to
11 grow it properly according to set agricultural standard.

12 A We have to set the standards for
13 growers, not to teach them. They knew their work, but
14 we had to set the standards.

15 Q Yeah.

16 A Using of pesticides, using of all
17 the -- sorry, I don't know the word in English. But
18 using all the stuff that you have to sustain the plant,
19 and other things that have to be standardized. We had
20 to teach, as I said, the medical doctors and the nurses,
21 and we had to teach the patients themselves.

22 Q Did you have anything to do with
23 various types of equipment that have been developed over
24 the years to assist in the production of cannabis?

25 A Of course, for instance,
26 ventilators, we have only one -- sorry, inhalator that
27 has a MOH permission to be used. Certified, sorry, by
28 the MOH.

1 Q So, have you ever heard of the
2 Bloom Box?

3 A Of?

4 Q Bloom Box.

5 A I heard about it, I never saw it.

6 Q Do you know what it is?

7 A Not exactly, I'm --

8 Q If I put to you that it is supposed
9 to be an engineered solution where you can grow some
10 plants in a confined space in this box, and it takes
11 care of electrical, fire. You know anything about that?

12 A As I said, I have heard about it,
13 and I was never asked to go into the subject and as
14 horticulture is definitely not my main subject.

15 Q But in terms of educating these
16 various growers, would there be efforts made to keep
17 them advised of the different developments? Or were
18 they also knowledgeable themselves that you just didn't
19 have to?

20 A No, we did, but that was part of my
21 work. That is why I erected the inter-ministerial
22 committee, because I need a lot of help from the
23 agricultural ministry. Because I don't know anything
24 about agriculture procedure.

25 Q Right.

26 A I had -- I put the standards and I
27 signed on it, but I can't say I am proficient.

28 Q Right, okay. But essentially, all

1 of these growers came together and has now been limited
2 to these eight organizations that are able to supply
3 what is required for the patients in Israel?

4 A Well, its actually decided now to
5 the -- on court, in Israel, because all eight growers
6 were certified by me. And at one point of time I
7 decided that we have enough growers, and no more
8 certification were issued. And now there is a big --
9 well the government thinks they should go according to
10 law, they should go on a tender, on who grows and who
11 not. So, that is part of the litigation that is going
12 now in court.

13 Q And that -- the whole program in
14 Israel started because of a court order in 1992, didn't
15 it?

16 A Yes.

17 Q And the court matter that you are
18 talking about -- I take it you also read the affidavit
19 of Mr. Bardenstein?

20 A No I didn't -- here?

21 Q Lawyer -- licence attorney in
22 Israel? You didn't read it?

23 A I didn't read it, I didn't read it.

24 Q Okay. Were you asked to address
25 some questions that we were going to put to him if he
26 was here?

27 A Not that I know of.

28 Q Not that you know of. Okay. Well,

1 let me take --

2 MS. WRAY: I'm sorry, just to clarify
3 that, for my learned friend, we did actually send
4 several questions to Dr. Baruch. He is just not aware
5 that those are the questions you were intending to ask
6 Mr. Bardenstein.

7 MR. CONROY: Oh, I see, all right.

8 Q So, you did receive a series of
9 questions that you were told you might be asked today?

10 A Yes.

11 Q And one of them pertained to that
12 court matter and it is described perhaps in the most
13 detail in paragraph 30 of his affidavit, which you don't
14 have. So, let me just put this to you. He talks about
15 the second government decision. So, the first
16 government decision was what, to reduce the personal
17 production and move to the central --

18 A No, actually, as far as I know -- I
19 am not really on that subject. The two decisions are
20 concerning production in Israel at all. And most of the
21 ministries are opposed to production in Israel, and
22 prefer to import cannabis from the outside.

23 Q Yes.

24 A When the Ministry of Health tried
25 to import, we could not get -- we now need about 10 tons
26 of cannabis a year.

27 Q Yes.

28 A And this is from Bedrocan, we could

1 only get about 100 kilos. So that's why put the -- and
2 both decision of the government states that there will
3 be a *status quo* and not any more issue -- not -- there
4 wouldn't be any more permits for growers to be issued
5 until the resolution of the subject.

6 Q You mentioned Bedrocan. Mr.
7 Hazekamp, that you mentioned, is the man behind
8 Bedrocan, isn't he?

9 A I know that he is a researcher in
10 Bedrocan. I don't know that he is the man behind
11 Bedrocan.

12 Q You knew that they are the monopoly
13 in --

14 A In the Netherlands. Yes.

15 Q -- in the Netherlands. They're the
16 only supplier now?

17 A They are now. Before there was
18 another supplier which I also met him.

19 Q Yeah.

20 A And I forgot his name now.

21 Q Cannafarm. Or something like.
22 Marapharm.

23 A Marapharm, yeah.

24 Q Yeah, okay. All right. And you
25 knew that there were court cases that had gone on in
26 relation to the Bedrocan product in the Netherlands?

27 A I know, but I don't follow them.

28 Q Okay. So the court case here is

1 about the second decision. What's that? The second
2 government decision.

3 A As far as I know, the second
4 government decision again said that we should probably
5 try to import. And if not, to import, they would like
6 Sahel to confiscate all growth of cannabis, according to
7 the UN Convention, and to be the one to delegate it to
8 the certain patients. It also talks about tender
9 growers, and not to lead -- not necessarily to lead the
10 recent growers. And there is also a subject of whether
11 or not we should go to blends, according to THC and CBD
12 levels, and not to strains.

13 Q You mentioned --

14 A And something left over for
15 research.

16 Q You mentioned the company, and I
17 know it's been referred to earlier --

18 A Sahel.

19 Q Sahel, was it?

20 A Sahel.

21 Q And so am I right that a government
22 decision was made, a political decision was made at some
23 point then, in Israel, to move away -- to try and comply
24 with the single convention of 1961 requiring one
25 government office, essentially, to be in control of the
26 cannabis supply.

27 A As far as I know, the convention
28 doesn't require one government office, but it requires a

1 government office to confiscate all harvest.

2 Q And Sahel was retained, or hired by
3 that office --

4 A Sahel is a unique company. If you
5 want I will elaborate on it.

6 Q All right. But it's --

7 A It's a private company owned by the
8 governmental hospitals.

9 Q I see. But -- and its role is?

10 A Role is -- now?

11 Q Yeah.

12 A It supplies the main -- the main
13 supplier of medical and medical equipment to the
14 governmental hospitals.

15 Q And it's involved in the cannabis
16 area as well?

17 A Not now, but it's supposed to be.
18 That's exactly part of the court decision.

19 Q I see.

20 A And hopefully we finish by April.

21 Q I see. So, you're aware that the
22 court decision is a group of Israeli cannabis growers
23 and users who have petitioned the Israeli Supreme Court
24 and that it's called *Focus Medicinal Plants Ltd. versus*
25 *the State of Israel*?

26 A Yes.

27 Q And the petition is asking the
28 court to declare that the decision is invalid,

1 essentially, for various reasons.

2 A Yes.

3 Q And one of them is based on a
4 constitutional claim in relation to freedom of vocation.

5 A Yes.

6 Q Is how it's framed in your
7 constitution. Is that right?

8 A Yes.

9 Q As well as a number of other
10 arguments that they're making with respect to this
11 decision and how it impacts the growers and users.

12 A Yes. But as far as I know, the
13 last hearing was in the 1st of October. The court asked
14 for the government to issue the full regulation or the
15 full plan that it is intending to implement.

16 Q Yes?

17 A Although they gave them a time
18 frame to the end of December last year, it hasn't been
19 given up to now. And as far as I know the next hearing
20 is in April.

21 Q April of this year?

22 A As far as I know, yes.

23 Q Okay. See, Mr. Bardenstein says
24 that oral argument was before a three-judge panel on
25 October 1st, 2014. And while the court didn't rule on
26 the merits, it's essentially, as I think you just
27 indicated, they wanted further clarification from the
28 state in relation to content and division of labour in

1 planned public tenders. And they were going to re-
2 evaluate the situation in December of 2015.

3 A As I said, December, but up to now
4 they didn't do it.

5 Q Now, are you talking December 2014?
6 I'm saying December 2015, like this --

7 A I think December -- as far as I
8 know it was supposed to be finished by December -- the
9 government had to give by December 2014 the answer to
10 the court.

11 Q Okay. And have you seen what they
12 said to the court?

13 A As far as I know, I checked that
14 with the Ministry of Health before coming here, that
15 they did not as yet give an answer to the court.

16 Q Make a decision.

17 A No.

18 Q The court hasn't made a decision.

19 A The court hasn't got what he asked
20 for yet.

21 Q The court hasn't got from the
22 government what they asked the government for, and
23 obviously then hasn't made a decision yet.

24 A Of course.

25 Q Okay, fair enough. All right,
26 let's -- back to your report, I was at page 3 and you
27 talked there about the process under 1A, the policy
28 rationale, and you explain again the number of requests

1 and so on and the number of physicians. And this was
2 all during your period of time as the director from 2003
3 forward, correct?

4 A Yes.

5 Q And you mentioned that you talked
6 about an Indications Committee there at the bottom of
7 that paragraph, and that's basically a committee that
8 you've already decided in Israel what types of illnesses
9 and so on will be covered, and this committee can add to
10 that.

11 A Add or subtract.

12 Q Or subtract from the list, yeah.
13 Okay. And you then, under (b) you describe essentially
14 the history in terms of starting out at 200 grams a
15 month and then finding out that some people were having
16 side effects and complaining and you reduced it to 100
17 grams a month?

18 A Yes.

19 Q And, but basically as you I think
20 are telling us, it's a trial and error thing. You try
21 to look at the individual patient and it's up then to
22 the doctor and the patient to try and figure out what's
23 effective for that patient.

24 A That's true, but we could set up
25 some indication of how to go. You start with 20 grams a
26 month and you go, what we call start low and go slow.

27 Q And that's set out at the next page
28 at paragraph (c), how you determine the individual

1 dosages?

2 A Yes.

3 Q Okay. And then as my friend put to
4 you, you've got the different types of forms, smoking,
5 vaporizing. And then cannabis oil and you mentioned --
6 my friend asked you about types of oil or methods of
7 oil, and the question I had was you said "alcohol and
8 other extraction".

9 A No, I think he means either oil or
10 alcohol extracts. I don't know exactly how they do it.

11 Q Okay.

12 A But they have to follow certain
13 rules, go to the monograph that has been done by
14 pharmacists.

15 Q And the cookies you mention there
16 are only for juveniles. What's the reason for limiting
17 it to juveniles?

18 A Doing cookies is very hard. The
19 distribution of cannabis within the cookie doesn't seem
20 to be all over the cookie and usually goes to one point.

21 Q Metered dose. You can't figure out
22 a metered dose.

23 A We couldn't figure out a dose. But
24 children, especially small children did not like using
25 the oil because it has an aftertaste or a specific
26 taste. Of course they can't smoke because they have a
27 problem with inhalation. So we decided to leave it as
28 an option for juveniles, although we prefer to use oils

1 even for juveniles. We allow only dry cookies because
2 at some point there was -- the oil kind of cookies and
3 we didn't know exactly the correlation between sour
4 cream and cannabis and cherry blossom and cannabis and
5 what effect it had on the cannabis contents, so we
6 decided to work on these dry cookies.

7 Q But does that mean adults can't use
8 cookies?

9 A According to the Israeli decision
10 now.

11 Q So an adult has to smoke or
12 vaporize or use oil.

13 A Yes.

14 Q They can't consume an edible as a
15 way to deal with chronic pain, for example.

16 A No.

17 Q Okay. All right, you then go into
18 the various indications under paragraph (c) and you list
19 them there. One of them on the next page is
20 fibromyalgia, I see, is that right?

21 A Yes, it was taken out after I wrote
22 it.

23 Q Just recently then?

24 A Yes, because of the pain society --
25 the anti-pain -- the pain treatment society and
26 Rheumatologist Society decided or put a -- how do you
27 say, a -- they think we do not have enough evidence for
28 fibromyalgia.

1 Q I see, in terms -- and then PTSD
2 was added lately?

3 A PTSD was added lately.

4 Q And that's one that you have a
5 particular interest in investigating?

6 A I am a psychiatrist.

7 Q Right. And as the video portrays,
8 it is a fairly new thing to use cannabis for PTSD, isn't
9 it?

10 A Well, there is a lot of -- a lot of
11 PTSD patients abused cannabis, and we believe they abuse
12 it as sort of a self-medication. Okay, so it is not
13 actually an abuse -- well according to the law it is an
14 abuse, but we thought -- my first study was 2009, was a
15 pilot study, hopefully it is now sent to publication.
16 It was a pilot study it was long term veterans suffering
17 from PTSD.

18 Q Mostly veterans, people who have
19 been in wars and things like that?

20 A All of them have been specifically
21 -- nearly all of them, 1973 war, which is long standing
22 PTSD.

23 Q Yeah, and in the video there are is
24 a number of veterans that are involved in obviously one
25 of the organizations helping trimming and so on. You
26 remember that?

27 A Yes.

28 Q And they are all people who have

1 been injured in one way or another, lost limbs, things
2 like that?

3 A Part of the -- what we tried to do
4 is return people to work, and that is part of the
5 success measures of treatment, whether they come to work
6 voluntary work, or whether they come to get paid work.
7 But they do something, how shall I say substantial with
8 their time.

9 Q All right, moving on, under F in
10 your report, you talk about the production of medical
11 cannabis in residences. Is it only in residences that
12 they used to be able to grow? Or could they grow
13 elsewhere? As you say, as long as it's a proper space.

14 A Since I was the one who gave the
15 permit, it has to be in a certain address, and it had to
16 be in a closed place.

17 Q So it could be an outbuilding on
18 that address, it didn't have to be in the residence?

19 A No, but you have to show some sort
20 of security --

21 Q Sir --

22 A It can't be something that is left
23 by alone all day.

24 Q But it didn't have to be in the
25 place where the people were living?

26 A No.

27 Q Okay. And you say there originally
28 police confiscations and then it was decided patients

1 would get a permit for residential growth, and they
2 would get a licence to grow up to 10 plants up to a
3 height of 150 --

4 A 1.50 -- 150 centimetres.

5 Q Centimetres each, and to hold up
6 to 200 grams of cannabis flowers at any point?

7 A Yes.

8 Q And by that you mean they could
9 possess that on them at any point or --

10 A Mainly at home. They were not
11 allowed to go around the neighbourhood with that.

12 Q Well, that's what I wondered. So,
13 it is like storage at your place of residence?

14 A Yes.

15 Q Is there any rules about how much
16 you can possess when you were going around?

17 A Now there are rules -- if you
18 possess more than a few grams, it's not exactly --
19 usually around five grams.

20 Q Yes.

21 A You have to show that you are
22 either coming from the dispensary, that you got it
23 today, or actually on your way home. You are not
24 supposed to go from on you, more than one day allowance.
25 More than 50 grams you have to already have a security
26 guard with you. You are not allowed to take by
27 yourself. That is why people who get, let's say 100
28 grams a month, have to come bi-weekly to get the

1 allowance, because they are not allowed to get more than
2 50 grams without a security guard.

3 Q And then you go on to say that
4 because of -- many of the permits were issued to
5 patients with malignancy. What do you mean by that?

6 A Cancer patients.

7 Q Cancer patients. So that's your
8 reference then in your evidence that most of them were
9 cancer patients, they needed to get medicine quickly,
10 they maybe didn't know how to grow, and so this was a
11 problem?

12 A Even if they did know, they need it
13 next week, and the grow takes at least three months.

14 Q So what drove part of the program
15 or one of the things that drove the new program was "we
16 need to come up with a supply to be able to give to
17 patients when they need it quickly"?

18 A Yes.

19 Q Okay. And am I right in
20 understanding that a caregiver, somebody could produce
21 for the patient under your system in those days? If the
22 patient couldn't produce for themselves?

23 A Yes, but he had to show that the
24 patient cannot produce for himself.

25 Q Yes, okay, fair enough. And that
26 would be producing for one patient or could they produce
27 for a number of patients?

28 A No, that time you could only

1 produce for one -- for the same patient that's
2 designated.

3 Q Okay.

4 A Later they could. As I said in
5 2006 became.

6 Q And that's -- at the next page you
7 then deal with the history of Sachi Cohen and the Tikun
8 Olam company and, as we've gone over, the prices and so
9 on in that next paragraph, correct?

10 A What's the next paragraph? I lost
11 it.

12 Q It would be page 6 of your report
13 at the top.

14 A Yes.

15 Q So you, in that paragraph, take us
16 through the history in terms of getting to the point
17 where it's \$100 a month, or equivalent to \$100 U.S. a
18 month and the decision to not issue any more grow
19 licences, residential grow licences, correct?

20 A Yes.

21 Q And that you also go on to say
22 residential growers for any reason need to buy cannabis
23 from one of the growers, usually because of crop
24 failure, they'd have to turn in their residential
25 licence and then from then on they'd have to be buying
26 from one of the eight.

27 A Yes.

28 Q Okay. But you say:

1 "The economic burden to the patient is not an
2 issue in Israel because the cost for the
3 patient for his medical grade cannabis is
4 very low in comparison with the western
5 world."

6 Correct?

7 A Yes.

8 Q "Even if the patient receives
9 only 20 grams a month, the average cost per
10 gram is around \$5 a gram and will go down as
11 the patient's prescription goes up."

12 A Yes.

13 Q And it's fixed. Is it in
14 legislation? Is it set out in the law that that's the
15 way it has to be?

16 A No.

17 Q So how do you enforce that \$100 a
18 month situation?

19 A By concession of all people -- the
20 growers agreed it was a fair price.

21 Q Okay, so you're not --

22 A It's the consent of both the
23 Ministry of Health, the growers, and as far as I know,
24 the patients.

25 Q Is there a significant illicit
26 market remaining in Israel?

27 A Sorry?

28 Q Is there is a significant -- I

1 don't know if you use the term "black market" or
2 "illicit market" in Israel?

3 A For recreational purposes.

4 Q There still is?

5 A There still is.

6 Q So there is still quite a concern
7 in terms of diversion to the recreational market?

8 A Yes.

9 Q Okay. All right, and then as you
10 continue on it says -- at the bottom of that paragraph
11 you say there's about 25 residential growing licences
12 left.

13 A Yes.

14 Q That's in addition to the eight
15 organizations we talked about.

16 A Yes.

17 Q All right. Okay. You then go on
18 to deal with the dosages, and as I understand it, you've
19 got a lot of feedback from patients in terms of how much
20 they were using and so on, and that's what influenced
21 the dosage amounts to some extent.

22 A Yes.

23 Q And you say at about the middle,
24 there's line numbers on the right side of the page here,
25 and if you go down to page 233, you say something about,
26 "I decided..." -- or 232:

27 "I decided to be in keeping with the amount
28 allowed of 200 grams to be held at any point

1 in time because in home agriculture you
2 cannot foresee the coming..."

3 and that should be crops, should it?

4 A Yes.

5 Q "...and I wanted to make sure
6 the patients have enough for the continuation
7 of therapy."

8 So are you saying there that quite simply, if you are
9 trying to produce cannabis, you're growing these plants,
10 you have no idea how much you're going to end up with at
11 the end.

12 A True.

13 Q You may end up with way more than
14 you intended or you may end up with way less.

15 A Yes.

16 Q It all depends upon what happens
17 when you're trying to grow the stuff.

18 A Yes.

19 Q And so basically you were saying
20 that there had to be some certainty in the market, so
21 that this -- there would be an availability of product
22 for these patients if they didn't -- weren't able to
23 supply enough for themselves. So they could go to one
24 of these organizations. Is that part of the rationale
25 behind the movement towards these new organizations?

26 A Well, it's part of the rationale,
27 but not all because usually we have a lot of security
28 problems and we could demand what we demanded out of the

1 growers to have a three month's emergency storage if
2 need be. This is more in the last -- I'll call war or
3 skirmish. Because Gaza, one of our growers lost all his
4 field because a missile hit the field and all the growth
5 was burnt, and the patient didn't feel the problem
6 because he had a three months allowance.

7 Q And then you deal with this
8 feedback from the patients at the next page, page 7,
9 throughout the paragraph there, explaining essentially
10 how -- the point that you made about start low, go slow,
11 and then watching the patients and determining what
12 works for them on a frequently regular basis?

13 A We tried to work a lot with the
14 patients and the doctors. There were not that many
15 doctors in the field at the time.

16 Q You expressed the concern, and I
17 know you expressed it elsewhere, about the lack of
18 knowledge of unknown long term effects. And you mention
19 this again around line 261. And the emerging scientific
20 evidence. Would you agree, based on all of the research
21 and so on that is now been done in Israel, and perhaps
22 other parts of the world, that we now do know a
23 reasonable amount about long term effects of cannabis?

24 A We do know reasonable amount, but
25 there is still a debate on the motivational syndrome.

26 Q Yeah. And where is it -- would you
27 agree with me that it is a relatively safe product
28 compared to many other medications?

1 A It is for -- as far as we know, at
2 this point of time, it is relatively safe.

3 Q Safe and apparently effective for
4 many patients, would you agree?

5 A Yes.

6 Q Okay. All right, we dealt with the
7 side effects. You've got a topic here on page 8, fear
8 of future litigation. And so, is it the case that at
9 least when you were the director, and maybe the current
10 director, your concern to maintain the office and to
11 keep it going on a regular basis because there is
12 concerns, not just about litigation, but also politics
13 that might cause problems for the office of medical
14 cannabis?

15 A I'm sure there will always be
16 problems. I decided to stay in office until we reached
17 a point of no return, which according to my belief we
18 have reached.

19 Q So, you are not as concerned now as
20 you used to be that there may be some political
21 interference in the operation?

22 A There will always be, but when we
23 talked about future litigations, mainly future litigate
24 -- we are still fearful of future litigation of doctors,
25 of --

26 Q Of liability.

27 A Of liability if there will be a
28 long term side effect and then the patient will come and

1 I don't know, if he suffer from dementia 20 years from
2 now, and he says its because the doctors prescribed
3 cannabis to him. Or if later a motivational syndrome,
4 and they will say it is because of the cannabis, and the
5 doctor is liable.

6 Q There haven't been any such
7 lawsuits to date, have there?

8 A No, but a patient has to sign when
9 putting on the request, that he knows that we don't have
10 data, enough data considering the long side effects, and
11 how do you say? We not litigate the subject.

12 Q Yeah. So the patient goes in with
13 their eyes open, knowing that certain things aren't
14 known yet, and consents to the treatment?

15 A How does the movie go? Eyes widely
16 shut.

17 Q Thank you. All right. Okay, you
18 then deal with the scientific evidence in the last part
19 and you make specific reference to Mr. Hazenkamp there
20 in terms of the survey that he did in 2013, correct?

21 A Yes, yes.

22 Q And that is the only survey out
23 there, isn't it?

24 A As far as I know, yes.

25 Q Yeah, okay. And then you go on in
26 the rest of the next page to essentially talk about how
27 often a person should use per day, and you make
28 reference to Ware *et al*, you know him to be a Canadian

1 researcher? Paragraph 3, page 9?

2 A You are talking about the wear --
3 where or what?

4 Q You say,
5 "One of the questions on cannabis therapy is
6 how many times a day cannabis should be
7 administrated."

8 A Oh, okay.

9 Q And you rely on Dr. Ware's report
10 in terms of -- obviously in part in terms of that
11 opinion?

12 A Yeah.

13 Q Okay. And then you deal with the
14 tolerance and dependence issue, and the -- below that
15 the inverted U-curve with escalating doses. So if I
16 understand correctly what you're saying there is, a
17 person -- well first of all, if a person uses cannabis
18 intermittently. So, you know, maybe once a week. Do
19 you know, or can you agree based on your research and
20 science that the person is going to feel the THC, the
21 intoxicating effects more if they do it intermittently
22 than if they do it all the time?

23 A Yes.

24 Q And so if they do it all the time,
25 is it true that they sort of get used it and they don't
26 experience the getting high, the THC?

27 A Some of them don't.

28 Q So for example, a patient could

1 drive a vehicle and because they are using it regularly,
2 if you did roadside tests to them they wouldn't -- their
3 ability to drive wouldn't be impaired. Would you agree
4 with that?

5 A Driving is opening a Pandora box.
6 I'm sorry. It was opened in Israel by one of the -- by
7 a known producer, movie producer that actually got an
8 award in America, his comedy that's called "Stop Light"
9 in Israel.

10 Q Yes.

11 A And he did a movie that is being
12 shown, passing by a police station smoking -- he says
13 it's cannabis and waving and not holding the wheel at
14 all.

15 Q Yeah.

16 A But when we opened it, within the
17 driving authorities in Israel or the medical driving
18 authorities, a specific office that is concerned with
19 driving issues, it's a big point under all medications.
20 I mean I'm psychiatrist. If you use anti-psychotics, if
21 you use anti-anxiety like Benzodiazepine's, I don't know
22 what it's called in Canada. Valium or other
23 medications, it's a problem. So we decided not to open
24 the Pandora box, but according to Israeli law you're not
25 allowed to drive with any cannabis or cannabis
26 derivatives in your body fluids, and since it's in the
27 urine for about three weeks, which means under treatment
28 you're not allowed to drive.

1 Q I see, so --

2 A We again, one of the fear of
3 future litigation is when there will be a car crash and
4 one of the -- how you said? Those who reimburse you for
5 the -- give you money when you get car crash, how is it
6 call?

7 JUSTICE: Insurance.

8 A The insurance companies will say
9 that they're not giving any money because he drove under
10 the influence.

11 MR. CONROY:

12 Q Yeah. So the test is not one's
13 ability to drive. There's a set limit, and if you're
14 found to have anything in your body, then you're --

15 A Yes, we hope to change it.
16 According to the America standards of 5 nanograms per
17 milliliter THC.

18 Q All right, but again that has
19 nothing to do with one's ability to drive. It's simply
20 a set amount over which, if you have that much in your
21 body, you're presumed to be impaired?

22 A The same as alcohol.

23 Q Well --

24 A Not the same grade, but the same,
25 the same goes with alcohol.

26 Q Yeah, but we -- okay, well we
27 don't need to get into that debate here. What I want to
28 know, though, is this inverted U-curve. So what you're

1 saying is, is the more people consume, that it may work
2 better for them up to a certain point but there's a
3 certain point where it'll start to be ineffective and
4 come down.

5 A Come down or at least stay the
6 same.

7 Q Stay the same, okay. All right.
8 That's what I was wondering. All right. The only other
9 thing I would like to do is play that video. But
10 subject to -- were you consulted by Health Canada at all
11 in relation to the new program here in Canada?

12 A In to -- in relation?

13 Q The new program here in Canada?

14 A I'm in touch with Health Canada
15 with Abramovichi --

16 Q Oh yes.

17 A But it's a ongoing contact. We
18 change ideas and thoughts.

19 Q Contributing --

20 A Specifically consulted me
21 concerning --

22 Q You know that he's the doctor who
23 put together the information for doctors?

24 A For his -- yes.

25 Q And so you're talking --

26 A That's part of what we worked
27 together on.

28 Q -- the science and so on, yeah.

1 A Okay.

2 Q So, is there any update with
3 respect to the cannabis oil issue? There was some
4 question about exempting it from the Act and regulations
5 and through some ministerial committee. Were you aware
6 of any?

7 A There's no -- as far as I know
8 there was no news.

9 Q Okay. No amendments to the rule
10 to do with oil? Okay. So what I'd like to do, just
11 very quickly -- juicing, is that -- making juice out of
12 raw cannabis. Is that something you've come across?

13 A Well, I come across, but no, I'm
14 not for it.

15 Q Have you done research on it?

16 A No.

17 Q Okay. All right, the only thing
18 I'd like to do is to play the video. So I note the
19 time, it's quarter to 5:00. It takes about 45 minutes
20 and I'd like to play it as accurately depicting
21 essentially what went on during a certain period of time
22 in Israel, subject to what the comments that Dr. Baruch
23 has given us.

24 JUSTICE: Well, you put to him whether
25 he agrees with it. He has his reservations. And I
26 think it would be -- if you're going to run it, it would
27 be fair to the witness after you run it to then go back
28 to his reservations.

1 MR. CONROY: Absolutely.

2 JUSTICE: So we have it in some kind
3 of context.

4 MR. CONROY: Or if he can even signal
5 as we're going through it. We can stop it and have him
6 comment, is another option.

7 JUSTICE: Ms. Wray, what do you have
8 to say.

9 MS. WRAY: Well, I'll try to brief on
10 this objection, but we are objecting to the viewing of
11 this video and of course certainly to any subsequent
12 attempt to mark this video as an exhibit in the
13 proceedings primarily because it appears that by showing
14 this video my learned friend is attempting to introduce
15 an enormous amount of evidence that would not otherwise
16 be before this court, that the defendant cannot possibly
17 cross-examine on, that we have no way of assessing the
18 truthfulness or validity of what third parties are
19 saying in this video, what the narrator is saying in
20 this video, how the editing of this video is framing the
21 issues, how the cinematography is making, you know,
22 these issues look in a particular way.

23 It's simply beyond the capability of the
24 defendant to actually challenge that in any way. So
25 that's the primary reason why we're objecting to this.

26 Of course we have no objection to my
27 learned friend asking Dr. Baruch about specific issues
28 and ideas that come up within the video and whether or

1 not he adopts or agrees with those issues or
2 propositions. In fact he has done that at several
3 points today in his cross-examination and it would seem
4 to me that that's just as an effective way to test that
5 evidence through an expert witness who may or may not be
6 familiar with it and would have the opportunity to deal
7 with it.

8 JUSTICE: I understand your
9 reservations with respect to a video, how it's prepared,
10 where they outtakes are, all of those sort of things.
11 No, I understand that. And as to the truth of its
12 content, only this witness can speak to those things
13 that are true in it. And he can either confirm or deny
14 those things that he knows.

15 But, for me to understand what he knows,
16 and what he agrees and disagrees with, I kind of have to
17 see the whole thing, don't I?

18 MS. WRAY: Well, Dr. Baruch appears
19 twice in the video.

20 JUSTICE: Mm-hmm.

21 MS. WRAY: And that is for a period of
22 I think maybe three or four minutes in total out of a 45
23 minute video. Otherwise, if there are other issues that
24 are spoken to, of course they are all being put forward
25 by people who aren't here.

26 JUSTICE: Yes.

27 MS. WRAY: And, my learned friend has,
28 I'm sure, viewed this video on many occasions, and is

1 very familiar with the issues that come up in that
2 video, and could certainly summarize those and ask about
3 those issues with Dr. Baruch.

4 JUSTICE: Okay. Mr. Conroy?

5 MR. CONROY: I haven't had a chance to
6 watch it as many times as my friend thinks. I have
7 watched it a couple of times and I've made some notes.
8 We were unfortunately trying last night to see if we
9 could get one for you that had -- it was in English,
10 without just the subtitles and that's what shortened my
11 ability to look at it again.

12 So, I have some notes about it, but they
13 are not adequate for me to go through it, in the same
14 way as these articles, where I can point him to a
15 certain part of it and see if he agrees with it or not.
16 I mean, he has recognized the film star, for example,
17 and a few things like that that I've put to him, but I
18 think it will be a lot easier to put it to him in the
19 video.

20 JUSTICE: Well, I am going to let
21 everyone see it. But I can tell you, sir, that I am
22 going to take it with a considerable grain of salt,
23 except for the parts at which this witness speaks to.
24 The rest of it could just be like any other TV show that
25 I watch -- usually I nod off, by the way, but that's
26 another issue. Since you are going to make me read it,
27 I may have to stay awake. But I am telling you that I
28 am taking everything else with a real grain of salt

1 except for the parts that the witness can speak to.

2 MR. CONROY: All right.

3 Q Just before we go to it, I
4 obviously forgot to put some of these other articles to
5 you. You still have that book in front of you Doctor?

6 A Green one?

7 Q Volume 11, yeah. I showed you Tab
8 A, and I think you essentially agreed with it, you had
9 one reservation?

10 JUSTICE: You are going to have to
11 take us to -- whereabouts, have you got a page -- 4 --

12 MR. CONROY: Oh, sorry, 4261, Judge
13 Phelan.

14 JUSTICE: 4261.

15 MR. CONROY: That's the first article.

16 Q You remember I showed this to you,
17 Doctor, and you essentially agreed that Israel sets a
18 new standard for legal medical marijuana research,
19 production and sales, and you've read the article and --

20 A I said I hoped.

21 Q You hoped that it -- but did you
22 have any particular disagreement or problem with any
23 part of the article?

24 A That is mainly doing a -- how shall
25 I say, advertizing for specific Tikun Olam, and he is
26 not talking about any other of the growers, that do also
27 research and working, and doing great work also.

28 Q All right, so without necessarily

1 having to agree to the entire document, you do agree
2 though, that Israel has been setting new standards for
3 legal medical marijuana research production and sales
4 throughout the world?

5 A Yes.

6 Q And at B there is an article on
7 scientists in Israel will study anti-tumor effects of
8 cannabis in cancer patient. Is that accurate?

9 A As far as I know, yes. But it is
10 not only in Israel. The last paper was published was on
11 Glioma, it was done in the States.

12 Q Right, but Israel is doing -- this
13 is an accurate indication of what is actually being done
14 in Israel on this particular aspect, anti-tumor effects?

15 A Yes.

16 Q Is that right?

17 A Yes.

18 Q Okay.

19 A But again, as you see, it's mainly
20 on CBD and not so much on cannabis.

21 Q All right. Next paragraph, or
22 sorry, next tab 61.

23 JUSTICE: What was the purpose of
24 going back to it? You'd already put it to him. Like
25 are you asking him to identify it, or what are you
26 doing?

27 MR. CONROY: I wanted to know if he
28 agrees with them, having read these articles. I've only

1 put one before -- two of them, I think, Judge. Well,
2 the first one and then the one at tab D. So I just
3 wanted to determine his familiarity with the other ones.

4 JUSTICE: Oh, yes. Okay.

5 MR. CONROY:

6 Q So tab C, 61 studies that show
7 cannabis can treat various cancers. Are you familiar
8 with the --

9 A Uh-huh, but if you can see, most
10 of them is glioblastoma not various cancers.

11 Q Can you explain that to us?

12 A As you see, the first one is on
13 TGT 98 G glioma cells.

14 Q Yes.

15 A And then kill cancer cells. The
16 third one is CBD novo therapeutic target against
17 glioblastomic. So a specific malignant tumour.

18 Q Right, but to us lay people, can
19 you explain -- you are saying a glioma as opposed to?

20 A Well, cancer is probably -- is
21 actually a sack of a various diseases, not -- as we know
22 there can be a drug which treats breast carcinoma, and
23 is not efficient for lung carcinoma or gut carcinoma.
24 The same goes here. The main research is on
25 glioblastomic, which is a specific kind of cancer. It's
26 not a total anti-cancer agent.

27 Q Fair enough. With that
28 limitation, you otherwise agree?

1 A That's the state of the art. We
2 believe it works. We don't know exactly how much, and
3 it's not -- of course, it's not an only treatment.

4 Q All right. We already went over
5 the one at tab D, and then the remaining ones, there's
6 at E and F are basically summaries of a story from the
7 presentation by Sanjay Gupta. You know who he is?

8 A I know who he is. I can't say --

9 Q You didn't see those videos?

10 A Not all of them.

11 Q On CNN?

12 A No.

13 Q Did you know he was the chief
14 medical correspondent for CNN?

15 A Yes, I know.

16 Q But you never --

17 A He was supposed to -- to talk to
18 me.

19 Q Oh, you've had communications with
20 him?

21 A Yes.

22 Q But you never saw his videos going
23 into the --

24 A I saw some of them. I saw one.
25 The one about the epilepsy.

26 Q The young woman.

27 A Yes.

28 Q Okay. All right. You've read

1 these two articles?

2 A Yes.

3 Q Any comment on them?

4 A It's his mind. I don't understand
5 the question. What should I comment on?

6 Q Well, was there anything you
7 disagreed with or took issue with, or found incorrect?

8 A At some point on the correction he
9 states that he is pro-cannabis. I am also pro-cannabis
10 of course. That's I went even into research. I don't
11 like the word "weed" though, marijuana. Because it's
12 not an official name. Actually marijuana was a pronoun
13 that was used in 1960 to show it's used only by Hispanic
14 people in the states.

15 Q Okay. All right. Well, let's
16 have a look at the video then so that we can get that
17 hopefully done and make some comments.

18 JUSTICE: You say it's going to take
19 45 minutes?

20 MR. CONROY: Yes, and I'm prepared to
21 try and do some fast forwarding though.

22 JUSTICE: Well, that would be good.
23 Fast-forwarding. But I think maybe a five-minute break.
24 Or ten minutes if you need time.

25 A Can I comment during the movie?

26 JUSTICE: Yes, as a matter of fact,
27 we're going to ask you to. When you get to a part that
28 you either -- that you want to say something about.

1 A Okay, thank you very much.

2 JUSTICE: Then you'll be free to do
3 so.

4 A Good.

5 **(PROCEEDINGS ADJOURNED AT 4:57 P.M.)**

6 **(PROCEEDINGS RESUMED AT 5:09 P.M.)**

7 JUSTICE: Ready?

8 MR. CONROY: Okay.

9 [Video playing]

10 A At the time both -- did you know
11 that -- and photographer had stocks in Tikun Olam?

12 MR. CONROY:

13 Q Okay. So a representative of Tikun
14 Olam?

15 A Yes.

16 [Video playing]

17 MR. CONROY:

18 Q This patient's case in --

19 A No, for this patient I don't know
20 much about.

21 Q Don't know anything -- any comment
22 on anything that you said up to that point?

23 A No.

24 Q Okay. This person that's just
25 appeared on the screen is the famous film star, is it?

26 A Yes. That's what they tell me.

27 Q All right.

28 A The one on the left -- on the

1 right. With the white shirt.

2 [Video playing]

3 A One of our main problems is when
4 to stop prescribing that. Because as you see, he has
5 beaten cancer, but he is still using cannabis.

6 MR. CONROY:

7 Q Is that your first appearance?

8 A Yes.

9 [Video playing]

10 A One of our main problems is when
11 to stop -- as we see, he's beaten cancer, but he's been
12 using cannabis.

13 [Video playing]

14 MR. CONROY:

15 Q Was the comment that you -- I've
16 asked you about earlier in terms of the politics, and
17 you were saying that's true at that time, but things
18 have changed since then. Fair enough?

19 A Yes. As I said, I wanted to reach
20 a point of no return, which I think we have reached. I
21 also want to comment on the problem of a lot of patients
22 want the cannabis because it's a natural product. And
23 to that I answer, a lot of our medications come from
24 natural product, like the drug digitalis.

25 Q Yes.

26 A That's for congestive heart
27 failure. Still use medication, and not the specific
28 natural product.

1 Q Any other comment on anything so
2 far? Thank you.

3 [Video playing]

4 MR. CONROY:

5 Q Do you know this case?

6 A Yes.

7 Q We talked about in your --

8 A Yes, this one.

9 Q Okay.

10 [Video playing]

11 MR. CONROY:

12 Q We can probably go fast-forward a
13 little bit on this.

14 [Video playing]

15 A You know, this goes back to --

16 MR. CONROY:

17 Q This is one of the ones you wanted
18 to comment on?

19 A I'll comment in a few minutes.

20 Q Okay.

21 A If you show the full video of it.

22 Q All right. And this is Ralph --

23 A There is no evidence that it stops
24 ALS...quality of life.

25 [Video playing]

26 MR. CONROY:

27 Q What's that?

28 A We missed --

1 Q We come back to him again, I think.

2 A Okay.

3 [Video playing]

4 A But is -- have a policy of stop --
5 to stop prescribing cannabis, because if your violent
6 behaviour of some patients, because this is the only
7 venue where patients that don't have a specific disease,
8 because cannabis in Israel, if you're using cannabis is
9 unlawful.

10 [Video playing]

11 MR. CONROY:

12 Q You wanted to comment on the ALS
13 patient, and it was about the number of cigarettes he
14 had per day.

15 A Which was about one cigarette per
16 day, if you saw the movie.

17 Q I think you said one to two per
18 day.

19 A One to two per day. One -- each
20 one is about one gram.

21 Q Okay. So that's the comment you
22 wanted to make?

23 A Yes.

24 [Video playing]

25 A That's the Israeli sitcom.

26 MR. CONROY:

27 Q Oh, this is a sitcom.

28 Maybe they came up with a single

1 convention?

2 A Yes.

3 [Video playing]

4 A 1936 was also the dry period in
5 the States, when it would -- the alcohol, you -- was
6 unlawful.

7 [Video playing]

8 MR. CONROY:

9 Q Are you talking about the
10 temperance movement?

11 A Sorry?

12 Q The temperance movement?

13 A Yes.

14 JUSTICE: Prohibition.

15 [Video playing]

16 A Just a second.

17 MR. CONROY:

18 Q Yes?

19 A When I saw this, I really followed
20 the instruction, but that's a reason why you should
21 instruct the patient. As you see, she lights the
22 cigarette near an oxygen line. One week later, it blew
23 up. Luckily, had only minor burns.

24 Q So pointing out that people who
25 don't know what they're doing --

26 A Should get instructed.

27 Q -- need to be educated before they

28 --

1 A Because there is also a problem of
2 interaction with drugs -- other drugs they are taking.
3 It's not so simple as a medical instrument.

4 Q All right.

5 A That was four to five puffs of a
6 one-gram cigarette, even didn't finish the cigarette.

7 [Video playing]

8 MR. CONROY:

9 Q The cannabis would have had to come
10 through those organizations that we talked about.

11 A That's from Tikun Olam.

12 Q It is from Tikun Olam.

13 A Yeah, and you saw -- I think I saw
14 the logo on the cigarettes you had. Those, and -- the
15 photographer, were part of Tikun Olam.

16 [Video playing]

17 A ...probably said, it's high CBD
18 content and not high THC content.

19 [Video playing]

20 MR. CONROY:

21 Q Last patient again.

22 A Yes.

23 [Video playing]

24 A All patients of orphan diseases.

25 MR. CONROY:

26 Q Sorry, what?

27 A Orphan diseases. This is a term,
28 there are not enough patients and there are not enough

1 researchers or a lot of treatments, to get cannabis,
2 even if it's not prudent for them.

3 [Video playing]

4 A See now is, of course, not a state
5 of affairs that it's now going to be -- patients at the
6 time.

7 [Video playing]

8 A She was -- well, it's not exactly
9 here. That was her house.

10 MR. CONROY:

11 Q Oh, I see.

12 A Yeah, she had a few -- she is part
13 of the Cohen family. She is actually Sachi's mother.

14 Q Oh. Looks like that's the
15 beginning. We're around 29.

16 [Video playing]

17 MR. CONROY:

18 Q Fast forward it a bit if you want,
19 you can. The video shows them going into the place
20 where the plants are. It explains the growing part. I
21 don't know if we need to -- but it's just not going to
22 work.

23 This may be -- while you're attempting to
24 straighten it out. My memory, and from my notes, is
25 that after that scene with Dorit, I think her name was,
26 she goes through showing --

27 A The various rooms in the house.

28 Q And how the plants are growing, and

1 how she treats them, and so on. And then they move into
2 a group of ex-military officers, and --

3 A Not officers, soldiers.

4 Q Soldiers, sorry. And deal with the
5 PTSD issue, don't they?

6 A Not only PTSD. They were war
7 veterans of various problems that are all working in
8 Tikun Olam. It was part of the campaign to, as I said,
9 to use the cannabis also to bring them back to
10 productive states.

11 Q Yeah. And one of the points that
12 is made is that with PTSD, people want to forget the
13 nightmares and so on that keep coming back.

14 A Well, cannabis has a side effect of
15 memory problems. Mainly a disconnection between the
16 effect and the memory. Because long-time memory is
17 usually connected to what you felt at the time.

18 Q Yeah.

19 A Usually when I have -- I give a
20 presentation, I ask mainly the women, how many of them
21 are married. And then I ask them what their husband
22 wore during the ceremony. Usually they go into the
23 finest detail.

24 Q Right.

25 A Because it's connection to an
26 emotion. And that -- and cannabis dissolates [*sic*] this
27 connection. And it doesn't really forget, but the
28 connection with the emotion is not as strong, so it

1 feels better.

2 A second side effect that's an effect of
3 one by cannabis is, it improves the sleep quality. And
4 by that, you mean you are less -- you are less angry,
5 and you are less aggressive during the day. When -- and
6 there are times that you suffer from sleep deprivation.

7 Q And my memory is that Dr.
8 Matchoulem is then interviewed again, in terms of this
9 PTSD issue, and do you remember that? It's the next in
10 sequence.

11 A I don't remember specifically that,
12 sorry .

13 Q Okay.

14 A Professor Matchoulem is not a
15 physician, he's a pharmacist.

16 Q Oh, okay. Because then there is a
17 discussion about the affordability in Israel, isn't
18 there?

19 A A small discussion, yes.

20 Q Yeah.

21 A And the last part I say it's
22 Parkinsonian patient.

23 Q Yes.

24 JUSTICE: Sorry, what was that?

25 MR. CONROY: Parkinson's --

26 A Parkinson's.

27 MR. CONROY: Yeah.

28 Q So there is the discussion about

1 affordability, and the role of Big Pharma, in terms of
2 how it's not pushing cannabis, and there is nobody that
3 was pushing cannabis, at least at that time. Do you
4 remember that?

5 A Nobody is pushing cannabis. I'm
6 sure that the pharma, if they think it's an option, they
7 will get into it. G. W. is already getting Sativex to
8 the medical world.

9 Q And there's another one they're
10 working on too. I forget the name of it, that's --

11 A I don't remember. I know -- a few,
12 I think, are -- there are a few pharmaceuticals that
13 they have in the pipeline, certain cannabis extracts.
14 There was in Israel a big debate on pharma -- tried to
15 do -- to treat TBI, traumatic brain injury, with
16 cannabis.

17 Q And so that's developing -- well,
18 Sativex is the whole plant based as opposed to the
19 earlier ones that were synthetic, like Marinol and
20 Cesamet.

21 A Yes. It's not that it's -- it's an
22 extract of the cannabis, but only of CBD and THC, not a
23 full cannabis extract.

24 Q Okay. All right. And I think
25 there is also a clip -- they go to look at what the
26 position is of the police, or the Department of Justice
27 --

28 A Legally neither. And they -- here

1 they -- the picture you have --

2 Q And they make it clear that they
3 fully support medical use.

4 A I must say that all ministries in
5 Israel are pro-medical use. They are concerned with the
6 security issues and recreational use, and the leakage or
7 diversity as you call it.

8 Q Diversion, yes.

9 A Diversion. But -- sorry. But in
10 generally they are for -- they are all pro for medical
11 use. We have quite a lot of senior officers in the
12 police that have family members who have been treated
13 with cannabis, and they know the benefit.

14 Q Okay. Well, I don't know if we're
15 going to have any success.

16 A If you have an internet connection,
17 it's in YouTube, the full movie.

18 Q I don't know if we're going that
19 far. Modern technology. Essentially after the
20 interview with the police, or the Department of Justice,
21 my note is that there is a Dr. Rivan Oror -- some name?
22 I have -- and then Ralph Matchoulem comes on again and
23 talks about some of the history.

24 A Doctor what, you said?

25 Q I can't even read my own writing,
26 but it was -- I think his name was Oror, or Orir.

27 A Ah, yes. He's an oncologist.

28 Q An oncologist.

1 A On the (inaudible) subject.

2 Q Yeah. And then Dr. -- or Ralph

3 Matchoulem, the pharmacist.

4 A It was Matchoulem again.

5 Q And discussion about how only big

6 companies, people with a fair amount of money, can

7 afford to fund the research.

8 A Funding for research is a problem.

9 Q Yeah. And I'm afraid -- I'll take

10 that --

11 JUSTICE: Mr. Conroy, I think we're

12 going to --

13 MR. CONROY: I think we're --

14 JUSTICE: -- say that we have been

15 snookered by technology.

16 MR. CONROY: We tried. We were beaten

17 by technology.

18 JUSTICE: Yes.

19 MR. CONROY:

20 Q Let me then just ask you, Doctor,

21 from what we did see, any particular -- obviously the

22 comment about it being a wonder drug we discussed

23 earlier. You disagree with that. And we -- you

24 explained your response to that.

25 A It's a 5,000-year-old known

26 medicational drug.

27 Q Yes.

28 A Or plant. So it was just -- where

1 tremor.

2 Q Right.

3 A And within seconds --

4 Q They show him signing -- with a
5 tremor and then without.

6 A Within seconds, the tremor
7 completely evaporates.

8 Q Yeah.

9 A The only problem that we have is
10 Parkinsonian patient that they have more psychotic
11 episodes due to being in a regimen of dopaminergic
12 drugs, due to the Parkinson disease. So again it's a
13 point of balance between cannabis use and amount of
14 dopamine they are being treated with.

15 Q So does the video accurately depict
16 how things were in Israel, as in other places, up until,
17 say, around 1936 and then the change in 1962, I think,
18 or '61, with the single convention?

19 A Well, in 1936 Israel didn't exist.

20 Q Yeah.

21 A Apart from that, yes.

22 Q And does it otherwise accurately
23 depict what's going on in Israel in the period of time
24 that it's -- we're seeing on the screen?

25 A At that period of time, exactly.

26 Q Yeah, so --

27 A With various --

28 Q And so the only thing that really

1 you disagree with is that statement about the wonder
2 drug?

3 A No, I showed why I am against --
4 why I think you should consider the side effects of
5 cannabis, and why it should be treated under medical
6 surveillance.

7 Q Yes. Of course, yeah.

8 A Because in Israel, we just -- like
9 we do with any other medication. People should at least
10 consult their physician every three months, if they are
11 using a chronic medication. Usually it's they need to
12 -- they cannot get a prescription for more than three
13 months. So if I suffer from high blood pressure, and
14 each time I need to renew my subscription, I can just
15 call my doctor, he can do it on the phone to you. But
16 at least have to speak to him on the phone. And we want
17 the same as cannabis, and not -- I address this. When
18 do we stop cannabis treatment? For it's part of the
19 patient's -- they got off of -- they survive with
20 cancer. And you are now free of the disease. But he is
21 -- he still continues cannabis.

22 JUSTICE: That's the actor.

23 A That's the actor.

24 JUSTICE: Yes.

25 A And I'm trying actually to lower
26 the amount of cannabis he gets each month. Each month.

27 MR. CONROY:

28 Q Apart from the few things that

1 you've pointed out, like the wonder drug claim and so
2 on, are there any other parts of the video that you
3 disagree with, or that you have a concern about?

4 A No.

5 Q Are you prepared to adopt it as
6 part of the evidence that you've given here, so that we
7 incorporate it into your evidence, subject to the
8 reservations you've expressed?

9 A As I said, apart from what I said,
10 I do not have any reservations.

11 Q Thank you.

12 MR. CONROY: So I would ask that it be
13 marked as an exhibit proper.

14 MS. WRAY: As I said earlier, we do
15 object to having it marked as an exhibit because, of
16 course, Dr. Baruch cannot authenticate this video *per*
17 *se*. He did not make this video. He appears in it for a
18 total of about three minutes.

19 JUSTICE: But he's adopted it as his
20 evidence without any reservations other than ones he's
21 given us. We've seen it. And we'll give it an exhibit
22 number.

23 MR. CONROY: Thank you. It's 38, I
24 think.

25 ("PRESCRIBED GRASS" VIDEO MARKED EXHIBIT 38)

26 JUSTICE: Now all we have to do is get
27 one that works.

28 MR. CONROY: Right. We have

1 additional ones that -- well, we'll try to figure that
2 out later.

3 JUSTICE: We'll work that out.

4 MR. CONROY: Not to keep anyone later.
5 Okay. That's all that I have.

6 JUSTICE: You're finished? Okay. Re-
7 direct?

8 MS. WRAY: Yes, very briefly, one
9 question.

10 **RE-EXAMINATION BY MS. WRAY:**

11 Q In response to a question from my
12 learned friend about juicing, you made the statement you
13 are, quote, "not for juicing". Can you explain what
14 that means?

15 A We don't exactly know what we have
16 in a juice. Usually we use the drug, cannabis, which is
17 much more concentrated in the plant itself. We do not
18 use the leaves or the -- what do you call that? The
19 main stem of the -- we use only the flower buds, which
20 there is the concentrant of the cannabis.

21 If you saw the picture of the cannabis
22 flower, it has brown strains or brown stripes on it,
23 which is actually the concentrance of the cannabis, or
24 the THC and CBD on it. And we use mainly the flowers.
25 We don't know exactly what we get on juices.

26 And specifically mainly I don't have any
27 -- I never did -- I never worked with juices. We don't
28 think it's an option.

1 Q Thank you.

2 JUSTICE: Thank you. Well, thank you
3 very much, Doctor. That was most enlightening. Hope
4 you enjoy the rest of your time over on this side.

5 THE WITNESS: Thank you very much.

6 (WITNESS ASIDE)

7 JUSTICE: I guess we're set then for
8 tomorrow? So we will try and stay on track, on time.

9 MR. CONROY: Yes.

10 JUSTICE: All right. See you
11 tomorrow.

12 **(PROCEEDINGS ADJOURNED AT 5:57 P.M.)**

13

IN THE FEDERAL COURT
(Before the Honourable Justice Phelan)

Vancouver, B.C.
March 12, 2015

T-2030-13

BETWEEN:

NEIL ALLARD, TANYA BEEMISH, DAVID HEBERT
and SHAWN DAVEY,

Plaintiffs;

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,

Defendant.

PROCEEDINGS

Mr. J. Conroy, Q.C.,

Mr. K. Tousaw,

Ms. T. Grace,

Mr. B. Vaze,

Mr. M. Jackson,

Appearing for the Plaintiffs;

Mr. J. Brongers,

Ms. B.J. Wray,

Mr. C. Januszczak,

Mr. P. Alma,

Ms. M. Nicolls,

Appearing for the Defendant.

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46	FOR IDENTIFICATION: USA TODAY, DON CAMPBELL. MARCH 10, 2015 "WHAT? OHIO A TRENDY POT STATE"	1704
47	FOR IDENTIFICATION: OCTOBER 2, 2013, VOL. 11 TAB 22(A) PAGE 4261 SIMONE WILSON, "ISRAEL SETS A NEW STANDARD FOR LEGAL MEDICAL MARIJUANA RESEARCH,	

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51	FOR IDENTIFICATION: JBD VOL. 11, TAB 22(E), PAGE 4293, AUGUST 8, 2013, "WHY I CHANGED MY MIND ON WEED"	1705
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53	AFFIDAVIT OF CATHERINE SANDVOS	1709
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VANCOUVER, B.C.

March 12th, 2015

Volume 12

(PROCEEDINGS COMMENCED AT 9:41 A.M.)

JUSTICE: Good morning.

First order of business is, we've got a list of the exhibits that came in for ID purposes and we didn't give numbers to.

So, the Registrar has done all of that fine work. And we'll let you go.

THE REGISTRAR: So, Exhibit 38 in the joint book of documents, page 1401, tab 22G, volume 11, video ** .com "Prescribed Grass".

Exhibit 39, volume 12, joint book of documents, page 4472, tab 26D, the law of NORML.org, all ** American Academy of Pediatrics calls for rescheduling of cannabis.

(VOLUME 12, JOINT BOOK OF DOCUMENTS, PAGE 4472, TAB 26D, THE LAW OF NORML.ORG, ALL ** AMERICAN ACADEMY OF PEDIATRICS CALLS FOR RESCHEDULING OF CANNABIS, MARKED EXHIBIT 39 FOR IDENTIFICATION)

THE REGISTRAR: Exhibit 40, volume 12 joint book of documents, page 4475, tab 26B, marijuana.com, Keith Sprout, legalization wins in three states.

(VOL. 12, TAB 26(B) JBD, MARIJUANA.COM "LEGISLATION WINS IN 3 STATES", MARKED EXHIBIT 40 FOR IDENTIFICATION)

THE REGISTRAR: Exhibit 41 in the

1 joint book of documents, volume 12, page 4478, tab
2 26(C), *blog.seattlePI.com*, January 21st, 2015, "Who
3 should be arrested for marijuana in Washington."
4 **(JBD VOL. 12 TAB 26(C) LOG.SEATTLEPI.COM, JANUARY 21,**
5 **2015, "WHO SHOULD BE ARRESTED FOR MARIJUANA IN**
6 **WASHINGTON" MARKED EXHIBIT 41 FOR IDENTIFICATION)**

7 THE REGISTRAR: Exhibit 42, Volume 12,
8 joint book of documents, page 4482, tab 26D, *KTTI.com*,
9 "Iowa officials slow to implement medical marijuana oil
10 law".
11 **(JBD VOL. 12, TAB 26(D) "IOWA OFFICIALS SLOW TO**
12 **IMPLEMENT MM OIL LAW" MARKED EXHIBIT 42 FOR**
13 **IDENTIFICATION)**

14 THE REGISTRAR: Exhibit 43, joint book
15 of documents, volume 12, page 4528, tab 26(N), *Vancouver*
16 *Sun* newspaper, January 17th, 2015. "States haven't gone
17 to pot, but ..."
18 **(VOL. 12, PAGE 4528, TAB 26(N) VANCOUVER SUN, JANUARY**
19 **17, 2015 "STATES HAVEN'T GONE TO POT, BUT..." MARKED**
20 **EXHIBIT 43 FOR IDENTIFICATION)**

21 THE REGISTRAR: Exhibit 44, Report and
22 recommendations of the medical marijuana dispensary
23 system task force to the 2015 legislature of the state
24 of Hawaii, January, 2015.
25 **(REPORT AND RECOMMENDATIONS OF THE MEDICAL MARIJUANA**
26 **DISPENSING SYSTEM TASK FORCE TO THE 2015 LEGISLATION OF**
27 **THE STATE OF HAWAII, JANUARY 2015, MARKED EXHIBIT 44 FOR**
28 **IDENTIFICATION)**

1 THE REGISTRAR: Exhibit 45, Associated
2 Press, 03/05, 2015, "Rhode Island again takes up bills
3 to legalize marijuana".

4 **(ASSOCIATED PRESS 03/05/2015 "RHODE ISLAND AGAIN TAKES
5 UP BILLS TO LEGAL MARIJUANA" MARKED EXHIBIT 45 FOR
6 IDENTIFICATION)**

7 THE REGISTRAR: Exhibit 46, *USA Today*,
8 Don Campbell, March 10th, 2015. "What? Ohio a trendy
9 pot state?" column.

10 **(USA TODAY, DON CAMPBELL. MARCH 10, 2015 "WHAT? OHIO A
11 TRENDY POT STATE" MARKED EXHIBIT 46 FOR IDENTIFICATION)**

12 THE REGISTRAR: Exhibit 47, October
13 2nd, 2013, Simone Wilson, "Israel sets a new standard for
14 legal medical marijuana research, production, and sale".
15 Joint book of documents volume 11, tab 22A, page 4261.

16 **(OCTOBER 2, 2013, VOL. 11 TAB 22(A) PAGE 4261 SIMONE
17 WILSON, "ISRAEL SETS A NEW STANDARD FOR LEGAL MEDICAL
18 MARIJUANA RESEARCH, PRODUCTION AND SALE" MARKED EXHIBIT
19 47 FOR IDENTIFICATION)**

20 THE REGISTRAR: Exhibit 48, joint book
21 of documents volume 11, page 4281, tab 22(B),
22 alternate.org, October 10th, 2014, "Scientists in Israel
23 will study anti-tumour effects of cannabis".

24 **(JBD VOL. 11, TAB 22(B) PAGE 4281, OCTOBER 10, 2014,
25 "SCIENTISTS IN ISRAEL WILL STUDY ANTI-TUMOUR EFFECTS OF
26 CANNABIS" MARKED EXHIBIT 48 FOR IDENTIFICATION)**

27 THE REGISTRAR: Exhibit 49, joint book
28 of documents, volume 11, page 4283, tab 22(C),

1 thejointblog.com, "61 studies show that cannabis can
2 treat various cancers".

3 **(JBD VOL. 11 TAB 22(C), PAGE 4283, OCTOBER 10, 2014, "61**
4 **STUDIES THAT SHOW CANNABIS CAN TREAT VARIOUS CANCERS"**
5 **MARKED EXHIBIT 49 FOR IDENTIFICATION)**

6 THE REGISTRAR: Exhibit 50, joint book
7 of documents, volume 11, page 4288, tab 22(D),
8 stjewishjournal.com, "Marijuana in my medicine cabinet".

9 **(JBD VOL. 11, TAB 22(D) PAGE 4288 - MARIJUANA IN MY**
10 **MEDICINE CABINET, MARKED EXHIBIT 50 FOR IDENTIFICATION)**

11 THE REGISTRAR: Exhibit 51, joint book
12 of documents, volume 11, page 4293, tab 22E, CNN.com,
13 August 8th, 2013, "Why I changed my mind on weed".

14 **(JBD VOL. 11, TAB 22(E), PAGE 4293, AUGUST 8, 2013, "WHY**
15 **I CHANGED MY MIND ON WEED" MARKED EXHIBIT 51 FOR**
16 **IDENTIFICATION)**

17 THE REGISTRAR: Exhibit 42 -- Exhibit
18 52, joint book of documents, volume 11, page 4297, tab
19 22(F), CNN.com, 2014/03/05, "Gupta: I am doubling down
20 on medical marijuana".

21 **(JBD VOL. 11 PAGE 4297, TAB 22(F), CNN.COM, 2014/03/05,**
22 **"GUPTA: I AM DOUBLING DOWN ON MEDICAL MARIJUANA" MARKED**
23 **EXHIBIT 52 FOR IDENTIFICATION)**

24 JUSTICE: Okay. You got all that?

25 MR. BRONGERS: Yes, Justice Phelan.
26 If I may, I am concerned about the fact that there now
27 appears to be a marking as actual evidentiary exhibits
28 of these newspaper articles and blog descriptions, et

1 cetera. These were documents that were put to the
2 witness. The witness never accepted that they were
3 authors of them, or that they had a familiarity with
4 them. It was just for the purpose of asking questions.

5 JUSTICE: They're all in for ID
6 purposes only, for purposes of being able to -- that the
7 witness was referred to this document. Not for the
8 truth of the contents; not for anything other than that.
9 And that's the only purpose. If that relieves your
10 concern.

11 MR. BRONGERS: It certainly does.

12 JUSTICE: Yes.

13 MR. BRONGERS: It's just it appeared
14 that the numbering scheme was continuing on with our
15 real authenticated exhibits.

16 JUSTICE: Yes, well, what we've done
17 is, we keep the numbers and then you put an ID bracket
18 beside them.

19 MR. BRONGERS: Understood.

20 JUSTICE: Okay.

21 MR. CONROY: And so the video is in as
22 an exhibit, but from 39 to 52 are for ID.

23 JUSTICE: That -- for ID purposes
24 only, yes. And the video came in under the caveat that
25 I put forward. The witness did identify it and did
26 speak to it.

27 MR. BRONGERS: And presumably they
28 will be removed from the list at the end of the trial?

1 JUSTICE: The ID purposes?

2 MR. BRONGERS: Yeah.

3 JUSTICE: No, no, but they'll be a
4 separate --

5 MR. BRONGERS: Right.

6 JUSTICE: They'll be separate --
7 separated out. They're not for the truth of the
8 contents, they're not the formal proof, they're for
9 reference.

10 MR. BRONGERS: Yes, understood.

11 JUSTICE: Okay. Sorry.

12 MR. CONROY: So my friend indicated to
13 me yesterday if there was an appeal, they wouldn't be in
14 the appeal book. But they will be, but will simply show
15 as part of the record that they're for identification.

16 JUSTICE: Okay. It will be for the
17 Court of Appeal to decide whether they want it, but they
18 will have my views as to what should be done. Okay?

19 MR. BRONGERS: Understood. Thank you,
20 sir.

21 JUSTICE: Courts of appeal tend to do
22 as they wish about the record, so I won't speak for
23 them. I have enough trouble running ours.

24 Tomorrow, speaking of which, as part of
25 excitement of wrap-up, we're going to have to go through
26 all of the -- give numbers, real numbers to the various
27 affidavits just so we close that part off.

28 MR. BRONGERS: Yes, we were prepared

1 for it.

2 JUSTICE: You're all prepared for
3 that. Well then, you're ahead of me. Okay.

4 Now down to business.

5 MS. NICOLLS: So, Mr. Justice, our
6 next witness on behalf of the defendant is Catherine
7 Sandvos. Ms. Sandvos is a factual witness here from the
8 Bureau of Medical Cannabis in The Netherlands. Ms.
9 Sandvos's affidavit is located in Volume 2 of the Joint
10 Book of Documents at tab 16.

11 And before Ms. Sandvos takes the stand
12 there are just two points I wanted to raise with you.
13 The first is, like Dr. Baruch, Ms. Sandvos speaks
14 English as a second language and as a result she may
15 have need to seek clarification or request that
16 questions be repeated.

17 JUSTICE: Yes.

18 MR. CONROY: Just interrupt, I think
19 it's Volume 2. I know it.

20 JUSTICE: Yeah, that's what --

21 MS. NICOLLS: I'm sorry.

22 MR. CONROY: It's not Volume 2, it's
23 Volume 11.

24 MS. NICOLLS: I'm sorry, Volume 11.
25 My apologies.

26 MR. CONROY: Sorry.

27 JUSTICE: Oh yes, okay, Volume 11.

28 MS. NICOLLS: And the second point I

1 wanted to raise is there is an error in Ms. Sandvos's
2 affidavit. It is located at page 4. And at the very
3 top of the page there are two sentences in parentheses.
4 Those two sentences actually belong to paragraph 9 and
5 have been carried over. Those two sentences are
6 incorrect. Ms. Sandvos advises me that they were
7 incorrectly included in her affidavit and should be
8 disregarded.

9 JUSTICE: So just strike that out?

10 MS. NICOLLS: Yes, please.

11 JUSTICE: Fair enough. We've got to
12 give it an exhibit number, Mr. Registrar?

13 MS. NICOLLS: I believe that would be
14 --

15 JUSTICE: Exhibit 54?

16 THE REGISTRAR: 53.

17 JUSTICE: 53.

18 (AFFIDAVIT OF CATHERINE SANDVOS MARKED EXHIBIT 53)

19 MS. NICOLLS: And with that, Ms.
20 Sandvos can take the witness stand please.

21 **CATHERINE SANDVOS, Sworn:**

22 THE REGISTRAR: Please state your
23 name, occupation and address for the record.

24 THE WITNESS: My name is Catherine
25 Sandvos. I'm legal counsel at the Office of Medicinal
26 Cannabis in The Netherlands, Wijnhaven 16, Den Haag.

27 MS. NICOLLS: And Ms. Sandvos, I would
28 ask you to answer any questions my learned friend has

1 for me.

2 THE WITNESS: Yes, I will.

3 **CROSS-EXAMINATION BY MR. CONROY:**

4 Q Ms. Sandvos, you have in front of
5 you your affidavit which we just marked as Exhibit 53?

6 A Yes.

7 Q And over to your left you have
8 another book with some other documents in it, I believe,
9 and it's Volume 12 of the Joint Book. Okay, so you
10 refer to it.

11 A Yes.

12 Q Okay, thank you. So let's deal
13 with your affidavit itself first. You were called, as
14 my friend said, as a fact witness as opposed to an
15 expert witness, but you are Legal Counsel and Deputy
16 Manager of the Office of Medical Cannabis, is that
17 correct?

18 A Yes, that's correct.

19 Q And you're also, as paragraph 1
20 indicates, not only Legal Counsel at the Office of
21 Medical Cannabis, but also Deputy Manager of Cluster
22 Farma at the Bureau of Medical Cannabis. What's that?

23 A Well, actually it's the other way
24 around. The Office of Medicinal Cannabis is part of the
25 Cluster Farma, and in the Cluster Farma there are a lot
26 of pharmaceutical tasks like notification of medical
27 devices, providing opium exemptions for all kinds of
28 opiates, and also the Office of Medicinal Cannabis is

1 part of that cluster.

2 Q So are you the Deputy Manager of
3 Cluster Farma or --

4 A Yes, I am.

5 Q So, and it's, if I'm understanding
6 you correctly, it's the umbrella for -- that includes
7 the Office of Medical Cannabis.

8 A Yes, it is.

9 Q Is that a fair way to put it?

10 A Yeah.

11 Q So you're actually Deputy Manager
12 of a much broader part of the -- I guess it's the -- is
13 it the Ministry of Health?

14 A Yeah. Well, sort of, yeah.

15 Q The Ministry of Health, and
16 underneath that Cluster Farma that's a division that
17 looks after all prescription, pharmaceutical issues, as
18 well as medicinal cannabis, is that --

19 A Yes, that's correct.

20 Q Okay, right. And you're based at
21 The Hague.

22 A Yes.

23 Q Okay. So, and you say you've
24 worked at the -- we'll call it the BMC, everybody will
25 know Bureau of Medicinal Cannabis, since May of 2007, so
26 seven/eight years?

27 A Yes, that's right.

28 Q And in both of those capacities

1 that whole time or only recently in these capacities?

2 A Later on as Deputy Manager indeed,
3 so I started the Office of Medicinal Cannabis.

4 Q So how long have you been Deputy
5 Manager?

6 A Four years.

7 Q Four years, okay. And you set out
8 at paragraph 2 what your responsibilities are in terms
9 of the Bureau of Medicinal Cannabis. And essentially
10 you are involved in the contracts with the -- to say
11 what your affidavit says, contracts for cultivating,
12 packaging of medical cannabis, carrying out the European
13 tender process when necessary, evaluating BMC contracts,
14 ensuring compliance with contract rules and related
15 laws, and you also deal with incoming media requests and
16 you monitor policy developments regarding medical
17 cannabis in the Netherlands and the rest of the world.

18 A That's correct.

19 Q That describes your various
20 functions. Okay. So, the people or organizations that
21 become producers of cannabis would fall under your
22 jurisdiction. You would be the person who would
23 negotiate the contracts with them, or finalize the
24 contracts, is that the idea?

25 A Among others.

26 Q Yes.

27 A Also the head of the medicinal
28 cannabis --

1 Q Other people are involved. Yeah, I
2 see. Who is the head at the moment?

3 A His name is Marco van der Velde.

4 Q van der Velde?

5 A Yeah.

6 Q Okay. And in your role of
7 monitoring policy developments in the Netherlands and
8 the rest of the world, I guess you keep up on what's
9 going on in the United States of America?

10 A Not that much, actually.

11 Q Canada?

12 A Canada more, yeah.

13 Q Spain?

14 A No.

15 Q Not Spain?

16 A No.

17 Q Okay, but a number of -- you keep
18 your eye on what's going on --

19 A Oh, only the countries which have
20 medical cannabis, and not for recreational use, because
21 those policies are strictly divided in the Netherlands.
22 You have -- yeah, I belong to a pharmaceutical
23 department and not the department which goes about
24 recreational use. So --

25 Q When you say the department of
26 recreational use --

27 A Yeah, it's -- that's not the name,
28 but --

1 Q Yes.

2 A It's similar.

3 Q The division between recreational
4 and medical.

5 A Yeah. Yeah.

6 Q So are you saying that in terms of
7 a producer, they have to be like a pharmaceutical
8 company? Is that what you're saying?

9 A Yes.

10 Q Okay. So Bedrocan, which is the
11 sole provider in the Netherlands --

12 A Mm-hmm.

13 Q -- is also a pharmaceutical
14 company, is it?

15 A Yeah, you can say that.

16 Q Okay. All right. So, you then set
17 out at paragraph A -- and this is in answer to various
18 questions that have been posed by my friend. The
19 purpose of the Bureau of Medical Cannabis. And you say
20 that it -- the Netherlands first developed a policy on
21 medical cannabis in 1998, which had the objective of
22 cultivating cannabis to meet pharmaceutical quality
23 standards, and to make cannabis available for research
24 and product development as authorizing medical product.
25 Fair enough?

26 A That's correct.

27 Q And so it's -- what I understand
28 you to be saying there is that the government of the

1 Netherlands in 1998 started to look at medical cannabis,
2 or a different approach to medical cannabis, and
3 commenced -- or the policy actually changed, though, in
4 2001. Is that right?

5 A In 2001 the Office of Medicinal
6 Cannabis was established.

7 Q Was created.

8 A Yeah.

9 Q Okay. There was a change in
10 government in 2001, or was it 2003?

11 A Sorry, I don't know.

12 Q You don't know? Because prior to
13 2003 there was quite a different attitude towards
14 cannabis in the Netherlands, wasn't there?

15 A I don't know.

16 Q You weren't -- you didn't keep up
17 to date on what was going on before 2001?

18 A No, my knowledge goes as far --
19 since the Office of Medicinal Cannabis is established.
20 And -- yeah.

21 Q So you didn't know that there were
22 a number of companies that were able to provide cannabis
23 through the pharmacies prior to it becoming legalized in
24 the Netherlands?

25 A I know that there are companies
26 indeed for medicinal purpose before it was legally
27 arranged. I am aware of that.

28 Q And this was with the tacit

1 approval of the Minister, wasn't it?

2 A I'm sorry, can you repeat that?

3 Q It was with the tacit approval of
4 your Minister, Mr. Borst -- or Ms. Borst, I think it was
5 at the time. Is that right?

6 JUSTICE: You might have to explain
7 "tacit".

8 A Yes.

9 MR. CONROY: Sorry.

10 Q It was with the -- let's just say
11 with the approval, maybe not formally, but with the
12 approval of the Minister at the time.

13 A No, there was no approval before
14 that time.

15 Q Well, it was turning a blind eye to
16 it, then, was it? A part of the Dutch non-enforcement
17 policy?

18 A It's because that situation was
19 going on in the Netherlands, is one of the reasons that
20 the Minister decided to arrange it in a legal way, to
21 produce.

22 Q Well --

23 A And to stop that situation.

24 Q Well, was it Maripharm? Do you
25 know that company?

26 A Yes, I know that company very well?

27 Q And SIMM? S-I-M-M ?

28 A Yeah, that's the variety name,

1 yeah.

2 Q Okay. And there was a foundation
3 that was also helping supply patients.

4 A Still there.

5 Q And that was long before 2001,
6 wasn't it?

7 A Yeah, but I think medicinal
8 cannabis already has been used before Christ as medical
9 purpose, so yeah.

10 Q But in the Netherlands, prior to
11 2001, in fact going back, I'm told, to about 1995,
12 patients were able to go to pharmacies and obtain the
13 Maripharm or SIMM product from the pharmacies. Isn't
14 that correct?

15 A I don't say -- I'm not aware of the
16 SIMM product but I am aware of the Maripharm products,
17 but that was cannabis from an unknown quality. It was
18 not checked, it was not standardized.

19 Q Well, Maripharm was producing
20 cannabis for research purposes and was authorized to do
21 that legally, wasn't it, at that time?

22 A Not at that time. At that time
23 there was no judicial basis for that, so.

24 Q But again, the Dutch non-
25 enforcement policy was in place and was allowing this to
26 happen, isn't that correct?

27 A I suppose, yeah, I guess so.

28 Q I mean there were some 14,000

1 patients that were going to these pharmacies in order to
2 get that product before Bedrocan became the sole
3 provider, isn't that right?

4 A There are no hard figures. I don't
5 where that 14,000 comes from.

6 Q Well, the number of people that the
7 government expected to sign up when you established
8 Bedrocan plummeted down to something like 1200, didn't
9 it?

10 A I'm sorry, can you repeat it?

11 Q The number of patients that the
12 government expected to register when it created the
13 Bedrocan monopoly was somewhere in the area of 10,000,
14 wasn't it? That's what you projected.

15 A We expected tens of -- 15,000
16 patients indeed, and that was based on -- we had
17 conversations with illegal suppliers. We spoke with
18 patient organizations and also an external bureau did
19 research among MS patients. So that was based on --

20 Q You did a survey and determined
21 that there was a market there of about 10 to 15,000
22 patients who you expected to sign up under the new
23 program. Fair enough?

24 A Yes, that was our estimation
25 indeed.

26 Q But they didn't sign up, did they?

27 A No. No.

28 Q There was very few that signed up

1 initially, and now you're at about what, 1200?

2 A Yeah, we estimate about 1200, yeah.

3 Q So the large number of people that
4 you had projected were going to sign up simply went back
5 to the coffee shops or elsewhere, didn't they?

6 A I don't know if they went back
7 because there are no hard figures about where they went
8 first, but yeah, it might be a place, use the coffee
9 shop.

10 Q Okay, well, we'll come back to that
11 in more detail. You express in paragraph 5 that it was
12 a change in policy due to political and societal
13 pressures, correct?

14 A Yeah.

15 Q And so you agree with me, the
16 policy before that was the non-enforcement policy
17 focusing on the whole issue as a health issue as opposed
18 to a criminal justice issue in the Netherlands.
19 Correct?

20 A No, before there was nothing
21 arranged for medical cannabis. It was only the coffee
22 shop policy what we have in the Netherlands, but it was
23 not an arranged, arranged for medical purposes.

24 Q Well, again a moment ago I put to
25 you that it was being allowed to happen, and through the
26 pharmacies, before --

27 A It was not allowed but it happened.
28 And that's the reason why the Minister of Health at that

1 time decided to change it and to make it available in a
2 legal way through pharmacies.

3 Q But before he or she -- was it a
4 man or a woman, the Health Minister?

5 A It was a -- she was a woman, yeah.

6 Q A woman. Before it formally became
7 legal, that Minister was allowing it to happen through
8 the pharmacy, through Mari -- using Maripharm.

9 A She was not, she was not allowing
10 it.

11 Q Well, nobody was enforcing it, were
12 they? Nobody was enforcing the law to prevent it from
13 happening, were they?

14 A No, but I think it's different than
15 that there was a legal basis.

16 Q No, but nobody was charged or taken
17 to court or anything for doing that through the
18 pharmacies, isn't that right?

19 A Not that I'm aware of, yeah.

20 Q Okay, all right. Okay, so you say
21 a change in policy resulted from political and social
22 pressures, and I'm told that it was around 2003 that
23 there was a major election in the Netherlands and that
24 the people who got into power had a totally different
25 attitude to what had been going on in the Netherlands
26 since the mid-70s in terms of cannabis use. Is that
27 fair?

28 A I don't know about that.

1 Q You don't know.

2 A I don't know.

3 Q So when you say a change in policy
4 from political and societal pressures, maybe you can
5 explain what you're talking about there.

6 A Well, there was a call from
7 patients that they had to go to coffee shops, to illegal
8 places, places where people were going to get high, and
9 they wanted a clean product, stable products. So that's
10 the societal pressure.

11 Q And the political?

12 A Yeah, the government at that time
13 also thought it was a good idea that it would be legally
14 allowed in through pharmacies.

15 Q Right, so there was a complete
16 change in the political attitude to what had been going
17 on before that, isn't that right? Because there was a
18 new government, isn't that correct?

19 A I don't know if it was a new
20 government at that time. I really don't know.

21 Q You just don't know, okay.

22 A But yeah.

23 Q Well, you used the term
24 "political".

25 A Mm-hmm.

26 Q That's your opinion then, is it,
27 that it was political and societal pressures?

28 A No, that's not my opinion. It is

1 through --

2 Q Well, where did you get that from?

3 A That's not as an annex, but there
4 has been evaluation of setting up the Office of
5 Medicinal Cannabis. It's report from 2005 and I got
6 this information from there.

7 Q So can you just specify that source
8 again? You got the information from where?

9 A It's called the Evaluation Report
10 of the Bureau of Medicinal Cannabis.

11 Q That was done in 2005.

12 A Yes, correct.

13 Q Okay, I see. All right, and so to
14 continue, you say patients were seeking to use cannabis
15 for medical purposes, were purchasing from the, you say,
16 so-called coffee shops. Well, they were notorious
17 throughout the world, weren't they?

18 A I guess so.

19 Q And they were called coffee shops,
20 weren't they? You have to say yes or --

21 A I'm sorry. Yes, they are called
22 coffee shops.

23 Q And they existed since the mid-70s,
24 about '75-76, isn't that correct?

25 A '76.

26 Q '76?

27 A Yeah.

28 Q And there used to be -- there's

1 about 700 of them now?

2 A I don't know. That's the policy
3 which is divided. I know bits about recreational
4 cannabis but I'm not a specialist on --

5 Q Well, there used to be way more
6 than 700. Back between '76 and 2001 there were many
7 more coffee shops throughout the Netherlands than 700,
8 isn't that right?

9 A I don't know.

10 Q You just don't know?

11 A No.

12 Q Okay. You didn't know that after
13 the change in policy there was a reduction in the number
14 of coffee shops.

15 A I know that the rules became
16 stricter, that the coffee shops couldn't be close to
17 schools. They couldn't, how do you say, merchandize
18 their shops. So I know that it became stricter.

19 Q Yeah. You used to be able to just
20 go into the coffee shop, and in the coffee shop there'd
21 be a range of different cannabis products, and the
22 customer could purchase whatever they wanted and there
23 was no limitation to 5 grams at a time in those days,
24 correct?

25 A I don't know.

26 Q Well, the new change was to limit
27 them to five grams at a time, wasn't it?

28 A Yeah, if you say it. I don't know.

1 Q You don't know?

2 A I don't know about coffee shop
3 policy. I'm not a specialist in it.

4 Q Okay. Well, you've attached a
5 number of exhibits to your affidavit.

6 A Mm-hmm.

7 Q And some of them deal with exactly
8 what was going on in the coffee shops, don't they?

9 A I know one research from Arno
10 Hazekamp, and that he just checks -- checks the contents
11 of the cannabis in the coffee shop, and which was
12 available in the pharmacy.

13 Q And that's the --

14 A I think you mean that?

15 Q Sorry?

16 A I think you mean that?

17 Q That's the article at tab A of your
18 affidavit? No, no, not in that book, in the book in
19 front of you. The article by Arno Hazekamp in 2006?

20 A Yes, that's correct.

21 Q So, some ten or so years ago?

22 A Yeah.

23 Q And Arno Hazekamp is -- well, he's
24 at the Leyden University as indicated there. He's the
25 chief researcher for Bedrocan, isn't he?

26 A So recently he became that, yeah.

27 Q Yeah.

28 A He doesn't work at that long, at

1 Bedrocan.

2 Q Okay, but he is their main
3 researcher, isn't he?

4 A Well, they only met since I think
5 two or three years in R&D department, and he became head
6 of that, yeah.

7 Q Okay.

8 A Yeah.

9 Q All right, let's move along. Your
10 paragraph 5, you talk about the coffee shops, you talk
11 about the colouration in the Netherlands. You say
12 selling very limited amounts of cannabis for
13 recreational use. So, if you don't know what actually
14 goes on in the coffee shops, where did you get that
15 from?

16 A I know that the maximum is five
17 grams. I don't know how it was before 2003, what you
18 mentioned. But I know now it's five grams.

19 Q See, because in your affidavit you
20 seem to be saying they were tolerated, and you say very
21 limited amounts. But the fact is, is that that
22 limitation didn't come in until 2001 or something.
23 Isn't that right? 2003, in fact. You're nodding your
24 head.

25 A I'm sorry, I don't know at what
26 time it changed, yeah. But I know that it's five grams.

27 Q So, you don't know when it became
28 five grams.

1 A No, I don't know when, that it
2 became.

3 Q And you say there they're
4 prohibited from selling cannabis as medicine but you
5 know, and the Dutch government knew, that all sorts of
6 people would go there in order to get it as medicine.
7 Isn't that right?

8 A Yes, that's correct.

9 Q And you say it's not subject to
10 quality control, but there were many more than 700
11 coffee shops operating in the Netherlands prior to 2003,
12 weren't there?

13 A I don't know the exact number.

14 Q There were a lot of them, let's put
15 it that way.

16 A Yes, that's correct.

17 Q And a lot of people went to them?

18 A Yes.

19 Q In order to survive they had to
20 make money and sell their product, correct?

21 A I don't understand what you mean.

22 Q If you had a store and you're
23 selling something --

24 A Yeah.

25 Q People come there -- you want them
26 to come there and buy what you're selling, don't you?

27 A Yes.

28 Q And you know that if you don't sell

1 a good product, they won't come back, isn't that right?

2 A Yeah.

3 Q So, the market determined the
4 quality of what people were buying, and people didn't
5 come back if they didn't like the quality. Isn't that
6 right?

7 A Yes, but quality has many aspects.
8 I don't think if you are buying something that you are
9 aware of the mould in to, or the pesticides, I --

10 Q Well, you think that medical
11 patients were going to the coffee shops and trying to
12 buy, and not being worried about whether they had mould
13 or other contaminations in the product?

14 A But you can see it with your bare
15 eye.

16 Q Well, you don't know whether they
17 took steps to check it, do you?

18 A Well, no laboratory can check
19 illegal grown cannabis.

20 Q Right.

21 A So there are no ways for them to
22 check it.

23 Q Holland, or the Netherlands, is
24 well known for growing food, isn't it?

25 A For growing food?

26 Q Food. Food that we eat.

27 A Yes. Yes, we have a lot of farms,
28 yeah.

1 Q And people are allowed to grow food
2 for themselves, aren't they?

3 A Yeah. In your garden? Yeah.

4 Q Yeah. And they don't have to go
5 and have them checked with laboratory tests before they
6 eat the food, do they?

7 A Not if you're growing it yourself
8 and you're eating it yourself. But if you're selling it
9 to a shop, I think there will be a quality control.

10 Q Major difference between selling it
11 to the public and otherwise producing it for yourself,
12 correct?

13 A For food, yeah.

14 Q Yeah. And so people going to the
15 coffee shops, they're buying the product from the coffee
16 shops. Do you have any statistics on how many people
17 were getting sick or having problems from going to the
18 coffee shops? You don't, do you?

19 A No, no, I don't know. I just heard
20 some source from doctors who are -- had patients using
21 it from the coffee shop, and they had infections in
22 their stomach.

23 Q A few stories from some doctors is
24 what you have, is that correct?

25 A Yes, that's correct.

26 Q But there were thousands and
27 thousands of people going into those coffee shops from
28 '76 to 2003, weren't there?

1 A I suppose so. All kinds of people
2 using recreational, and --

3 Q It was a big economic benefit to
4 the city of Amsterdam, for example. That all the
5 tourists would come and go into the coffee shops, and
6 they'd make lots of money, isn't that right?

7 A I'm sorry, just like I mentioned
8 before, I'm not an expert on recreational use or coffee
9 shop policies. I have no idea where the money goes, so
10 I don't know.

11 Q And you have no idea if there were
12 any people going to the emergency departments, or health
13 departments, in terms of numbers, saying that they were
14 having problems because they had consumed some cannabis
15 from a coffee shop. Do you?

16 A There are no -- there are no facts,
17 or there are no figures about that indeed.

18 Q Okay. You go on to say that
19 patients who purchase from the coffee shops have likely
20 not received any medical counseling. But you don't know
21 that, do you? You don't know if they went to a doctor
22 before and had some medical counseling, and then decided
23 to go and buy from a coffee shop? You don't know that
24 at all, do you?

25 A No. No, actually, yeah. You're
26 right, what you're saying. Yeah.

27 Q So really what it was, it was a
28 change in government policy where a decision was made to

1 try and treat cannabis like a pharmaceutical product.

2 Isn't that correct?

3 A Sorry, can you ask it one more
4 time?

5 Q A change in policy, the government,
6 was made, in 2001 --

7 A Mm-hmm.

8 Q -- to 2003, to treat cannabis as a
9 pharmaceutical product. Isn't that correct?

10 A That was a reason, indeed, for the
11 policy change. But the reason behind was that patients
12 were asking for it and also that scientific research had
13 to be done. That's cannabis, and there wasn't a
14 standardized product, not in the world at that time. So
15 the only way to have good scientific research available,
16 which is important for the patients, is when you have a
17 standardized product. So I think the way you say it,
18 I'm not -- I don't agree with that, but I agree it's one
19 of the --

20 Q But you're telling us --

21 A -- the things we wanted to reach
22 with the Office of Medicinal Cannabis and making
23 cannabis from a good quality available through a
24 pharmacy.

25 Q It became treated like a
26 pharmaceutical product, and that's why it falls under
27 your part of your occupation in pharmaceutical, or what
28 you called it, the Cluster Farma part of the Health

1 Ministry, correct?

2 A Yes.

3 Q Okay. But prior to this change in
4 policy again, there were since '76 all the coffee shops
5 where people could go and get cannabis whenever they
6 wanted, fair enough?

7 A Yes.

8 Q People could also grow five plants
9 if they wanted. There was a non-enforcement policy in
10 relation to the growing of five plants, isn't that
11 right?

12 A No, that's not exactly true.

13 Q It was more than five?

14 A No. No. It's what our Ministry of
15 Justice says, well, if someone gets caught with five
16 plants then they won't get prosecuted.

17 Q Yeah.

18 A But it doesn't say that nothing
19 happens with those plants. Those plants get destroyed
20 and their lights and everything gets taken away. So the
21 fact is that growing is illegal but they don't get
22 prosecuted. So I think that's a big difference.

23 Q But there's a huge amount of
24 cannabis obviously being grown throughout the
25 Netherlands to supply the coffee shops, isn't that
26 right?

27 A Yes, there are illegal growers.

28 Q A lot of them.

1 A They're becoming less and less but

2 --

3 Q Yeah, less and less. The
4 government's effort is to have less and less since 2003,
5 isn't that right?

6 A There are -- I think that the
7 policy is pretty strict against illegal growing, so they
8 are getting less illegal growers. More and more growers
9 get caught. That's also why the prices are going up
10 from the recreational cannabis in the coffee shops.

11 Q Let me put it to you. I understand
12 that from 1976 until perhaps the early '90s, that
13 everybody -- there was no medical cannabis officially
14 being distributed. People would simply go to coffee
15 shops if they wanted it for recreational, medical or
16 whatever purpose. Fair enough?

17 A Yes.

18 Q And then the Minister allowed
19 Maripharm --

20 A No, she never allowed Maripharm. I
21 told you before.

22 Q Okay. The government didn't
23 enforce the law in relation to Maripharm marketing its
24 product through pharmacies. Isn't that right?

25 A Yes, that's right, and yeah, but
26 you say pharmacies? I think it was only in this region
27 where his company is. It's in the area of Rotterdam. I
28 think it was only a few pharmacies there. It wasn't in

1 the whole of Netherlands.

2 Q But the number of people who then
3 moved away from the coffee shops into getting this
4 medical grade cannabis through Maripharm went up to 14-
5 15,000 patients, isn't that right?

6 A Yeah, I don't know where that
7 figures come from. I don't believe so many patients
8 were going to --

9 Q But you still, from your research
10 and so on, told us that when you created this Bureau of
11 Medical Cannabis, it was estimated there would be 10 to
12 15,000 patients signing up, isn't that right?

13 A That's the Office of Medicinal,
14 that's right, but the Office of Medicinal Cannabis takes
15 care that every pharmacy in the Netherlands -- I know we
16 are a tiny country, but still if you have to go from
17 Hollinger to Rotterdam that's 300 kilometres, or sorry,
18 I don't speak in miles, and Maripharm was just situated
19 in a tiny part of the Netherlands. So yeah, you can't
20 compare that. We were calculating every patient in the
21 Netherlands.

22 Q I understand Maripharm was
23 supplying 1,000 pharmacies. Did you know that?

24 A I can't hardly believe it, but if
25 you have hard figures, but I can't believe it.

26 Q But anyway, you predicted or your
27 office predicted that there'd be some 10 or 15,000
28 patients and that was based on, as you said, the

1 research and to try and determine what the market was
2 going to be, correct?

3 A Mm-hmm.

4 Q Sorry, you have to say yes or no.

5 A Correct, yes.

6 Q And it simply didn't materialize
7 once you -- once the office started having Bedrocan as
8 the sole supplier, isn't that right?

9 A I want to correct you. We started
10 with two growers.

11 Q Yeah.

12 A We never started with one grower.

13 Q The first one, the other one was
14 Mr. Burton, was it?

15 A Yeah, and his variety was SIMM 18,
16 much earlier, mentioned earlier.

17 Q Yeah. So SIMM 18 and Maripharm
18 were the two major suppliers initially, and then
19 Bedrocan came along, isn't that correct?

20 A No, it is not correct. No. When
21 we started with the OMC, Bedrocan and James Burton from
22 SIM18 were contracted.

23 Q Yeah. And then when SIM18 was
24 taken out of the equation it became a monopoly by
25 Bedrocan, isn't that right?

26 A Yeah, James Burton couldn't deliver
27 the quality we asked for, so we had to stop the
28 contract.

1 Q But the number of patients then
2 plummeted, didn't it, down to your 1200 or less, isn't
3 that right?

4 A No, I don't think so. We started
5 indeed really low, but from then on, yes, started
6 growing. I don't think when we started -- or we stopped
7 with that grower, that the figures went down.

8 Q Okay, well, let's go through your
9 affidavit.

10 A Yeah.

11 Q Because I think you deal with it
12 later on. You say that the -- again still dealing with
13 paragraph 5, that the Netherlands believed that making
14 it pharmaceutical quality would at least to some degree
15 it was assumed fewer risks to health. But as you've
16 told us, you have no statistics with respect to any
17 health problems that were occurring in the Netherlands
18 from 1976 up to 2003, do you? From cannabis use.

19 A No, we don't, but there are no
20 figures at all about recreational use and this.

21 Q Okay, so it was just a prediction
22 that there might be some risks because they weren't
23 being subjected to the quality requirements.

24 A Well, if you look at the annex from
25 Arno Hazekamp and if you look at the pesticides and the
26 moulds which have been found in the coffee shop cannabis
27 --

28 Q Yes, we'll come to his report in

1 some detail, time permitting.

2 A Yeah.

3 Q Yeah.

4 A Okay, but --

5 Q That was in 2006 that he did the
6 big survey, correct?

7 A Yeah, I guess so, yeah.

8 Q Yeah. Okay, we'll come to that.
9 You simply don't have any statistics, though, with
10 respect to any problems that were arising in the
11 previous 30 years to the creation --

12 A No, they are not available.

13 Q Yeah.

14 A They are not there.

15 Q Okay. You then refer to the Single
16 Convention of 1961 and amended in '72. That's the UN
17 Single Convention, correct?

18 A Yes, that's correct.

19 Q And so part of the reason as I
20 understand for the change in policy was to try and
21 comply with this Convention, is that right? To create a
22 national bureau that you didn't have before?

23 A Yeah, it's obligated, yeah, by
24 this.

25 Q To create and establish that bureau
26 as a wholesaler. And so the process is you hire
27 supposedly third parties, but it's really just Bedrocan,
28 to produce, and Bedrocan gives it all to your office,

1 and your office distributes it, correct?

2 A Yeah, or maybe even stricter, he
3 doesn't give it or he can only grow what we order. And
4 we physically go there, or we go there and physically
5 take it away. So yeah.

6 Q So it's not like the Canadian model
7 where they simply regulate and have a bunch of private
8 Licensed Producers delivering to the market. You
9 actually -- the grower has to actually give it to your
10 bureau, or your bureau goes and gets it.

11 A Yes.

12 Q And then delivers it to the
13 patients.

14 A No. There is another company in
15 between. It's a packager and a logistic service
16 provider.

17 Q Yes.

18 A And it's all there at that company
19 and no pharmacy has it on stock. So if the patient
20 comes to a pharmacy with a receipt, the pharmacist has
21 to go to Fakom, that's the name of the company.

22 Q Sorry, what was it?

23 A Fakom, that's the name of the
24 company, and they order it there. And then the company
25 delivers it through the pharmacy.

26 Q Because if the patient goes to the
27 pharmacy, I understand there's a system where you can
28 push a button and out comes a Bedrocan prescription.

1 Did you know that? That if you go to the pharmacy and
2 you're asking for medical cannabis, you have to -- if
3 you don't want the Bedrocan product, you have to specify
4 that, don't you?

5 A I don't understand your question.
6 Sorry.

7 Q Well, you know that there's a
8 number of patients for whom the Bedrocan product didn't
9 work, don't you? Wasn't effective.

10 A Yes, I heard those stories.

11 Q Well, they went to court, didn't
12 they?

13 A No, I'm only aware of one case.

14 Q *Jackie Woerlee?*

15 A No, that case is only about the
16 funding of her cannabis.

17 Q And she gets paid by the government
18 to produce her own cannabis. 500 Euros a month, isn't
19 that correct?

20 A No, that's not correct. It's the
21 City of Amsterdam which is paying for that.

22 Q Oh, I see.

23 A But still the fact that she's
24 growing herself is illegal.

25 Q But she was growing for herself
26 because the Bedrocan product didn't work for her, isn't
27 that right?

28 A Those are her words.

1 Q No, they're not just her words.
2 She went to a tribunal, and the tribunal is the group
3 that said that the city, or whoever, had to pay her to
4 enable her to grow her own. Isn't that right?

5 A No, that's not totally correct. I
6 think the City of Amsterdam decided to finance that
7 she's growing herself. They can't have a verdict about
8 it, if it's working for her or not.

9 Q I put to you that she said that the
10 Bedrocan product wasn't working for her, and so she was
11 growing her own. But she's on social assistance, so she
12 went through the special benefits program and they
13 approved paying her 500 Euros a month that contributes
14 towards her growing her own cannabis. Isn't that, in
15 fact, what's going on with Ms. Woerlee?

16 A That's what I read in the case.
17 But yeah, it doesn't say anything about if the -- her
18 growing herself is legal or not, because it's not legal.

19 Q No, it's not. It's not legal.
20 She's still subject to criminal prosecution, isn't she?

21 A Yes. Well, yeah. I don't know at
22 this moment, but it could be.

23 Q But it's not enforced, is it?

24 A Not that I am aware of.

25 Q Yeah. Okay. And there is also Mr.
26 Hillebrand. You know his situation, don't you? Rudolf
27 Hillebrand?

28 A I read it in the law case, yes.

1 Q And he was in the same situation as
2 Ms. Woerlee, wasn't he? Except that he was getting a
3 larger disability pension so he didn't qualify to have
4 money paid towards his production of cannabis. Isn't
5 that right?

6 A I don't know if he got paid or not.

7 Q You're not familiar with those
8 cases as the lawyer for the Bureau of Medical Cannabis?
9 You weren't familiar with the details of those cases
10 before you read them the other day?

11 A Only from checking who are they,
12 yeah.

13 Q You never heard of Mr. Hillebrand?

14 A Recently I heard about him, yeah,
15 because he was -- he had a big article in the newspaper,
16 yeah.

17 Q What about Mr. Moorlag? You've
18 heard about him?

19 A Yes, I heard about him.

20 Q And he was charged with growing,
21 wasn't he?

22 A I'm sorry, charged?

23 Q Charged with an offence. He was
24 criminally prosecuted, wasn't he?

25 A Yes, he was.

26 Q And ultimately he became entitled
27 to produce his own.

28 A No. No, that's not correct. No,

1 at the time that the law courts someplace, he -- his
2 plants were already gone, were destroyed by the police.
3 He just didn't got punished for growing himself. But
4 this, the -- yeah, I don't know how you call it here in
5 Canada, but in Netherlands you have two verdicts. One
6 is that you didn't did something criminal, and the other
7 was you did something criminal but you don't get
8 punished for it. And that's what happened with Mr.
9 Moorlag.

10 Q And so he was -- he's continued to
11 do it, hasn't he?

12 A No, no. No, no, not at all. Here,
13 you can see it if you read the case. No, he's not
14 growing himself any more.

15 Q Okay. Let me --

16 A But he just didn't get punished for
17 the facts. But he's -- he has not growing -- he's not
18 allowed to grow.

19 Q The court found that he was put in
20 a position where he had to choose between his medicine
21 or the criminal law. Isn't that right? And that's why
22 they didn't punish him. Isn't that right?

23 A Um -- yeah. That's correct, yeah.

24 Q All right. Continue with your
25 affidavit. So the plan, at least starting in 2003, was
26 to try and comply with the Single Convention, and the
27 Netherlands' understanding of that was that you had to
28 have a national bureau that was a wholesaler, and you

1 have third parties do the actual production, do the
2 quality control and packaging, and other things. But
3 then as I understand it, it comes back to you, to the
4 Bureau. Have all the -- the gamma irradiation happens
5 to all of the product, isn't that right?

6 A Yes, that's correct.

7 Q And is that done before they bring
8 it to you? Or is that done by -- under the auspices of
9 the Bureau?

10 A That is our responsibility.

11 Q So the grower does all what they
12 do, and it may have some contaminants in it, but it
13 comes to you, and then under your office, the gamma
14 irradiation process -- it is all subjected to gamma
15 irradiation to eliminate any potential bacteria, fungus
16 or whatever?

17 A No, the product is checked before
18 gamma irradiation, and after gamma irradiation. So it
19 already has to be clean within the monography standards
20 we have before it is gamma irradiated. But, since it is
21 living plant material, it is, yeah, it's normal in the
22 Netherlands. It also happens with apples and potatoes,
23 it has to be gamma irradiated.

24 Q Yeah, so what you are telling us is
25 it is check to make sure that it doesn't have any
26 problems, but you still gamma irradiate to be sure?

27 A Yeah. Yeah.

28 Q Fair enough? Okay. Are you

1 telling us that really, the gamma irradiation is just an
2 extra precaution, is that correct?

3 A Yes, it is.

4 Q Okay. So, in paragraph 7, the BMC
5 is created in 2000, the acts -- and acts as the national
6 bureau since 2001, but it wasn't until September of 2003
7 that it started delivering medical grade through the
8 pharmacies, fair enough?

9 A Yes, that's correct.

10 Q And you set out then the
11 responsibilities of the BMC and as you say there in A),
12 make sure it is a consistent quality, meeting
13 pharmaceutical standards and part of that is the gamma
14 irradiation process, correct?

15 A Yes, that's correct.

16 Q And you know, I take it, that some
17 people have a problem with gamma irradiation?

18 A We heard some patients, but it's
19 not that we hear patients every day complaining about
20 it. Not at all.

21 Q But there are some.

22 A There are some, yeah.

23 Q And the only supply is through the
24 Bureau of Medical Cannabis?

25 A Yes.

26 Q And so you have some patients who
27 don't want to buy the Bedrocan product because of the
28 gamma radiation? Some.

1 A Yes, I suppose so, yeah. Yeah.

2 Q And their only option, if they
3 don't want to buy the medical product through the BMC,
4 is to go to the coffee shops or the illicit market,
5 correct?

6 A Yes. That is correct.

7 Q There is no other supply. Medical
8 supply.

9 A No, it is only through the
10 pharmacy, through us. Yeah.

11 Q Right, okay. Next you say,
12 "To establish an effective procedure for
13 distribution."

14 And as you've told us, it's your office
15 that does that. Do you mail it and courier it? Or is
16 it delivered? How is that -- oh, no, you said the
17 patient has to come to a place to get it?

18 A No, not a place, a pharmacy. A
19 regular pharmacy, yeah.

20 Q Pharmacy. Okay.

21 "C) to prevent diversion to the criminal
22 circuit..."

23 Is that really a problem in the
24 Netherlands? If you've got all these coffee shops and
25 all of the supply in the coffee shops, isn't there like
26 a glut on the market? I mean, there is no shortage of
27 supply, is there?

28 A I don't know about how much is

1 going on in the coffee shops, but it never happens
2 indeed that our grower leaks something to the criminal
3 circuit, but we have to check that these are task and we
4 need to provide our health inspector with information
5 about it, every three months.

6 Q But people who are interested in
7 doing it recreationally, they don't have to come and try
8 to get this product, because there is just tons of this
9 stuff available in the coffee shops, isn't that right?

10 A That is right, but it is -- grower
11 -- it could be a nice second job for him, for example,
12 so that's the reason. It is worth money, so yeah.

13 Q Yeah, okay. And then D) to ensure
14 availability, so you have to have sufficient supply to
15 make sure all the medical patients have enough, correct?

16 A Yes.

17 Q And you've even exported some to
18 Canada, haven't you?

19 A Yes, we did. Or I think at this
20 moment even, yeah.

21 Q And there was some discussion about
22 exporting possibly to Israel at one point, I understand.
23 Or did you know that?

24 A Yes, yes, there was, yeah.

25 Q But that didn't happen, did it?

26 A No, but Israel, also for such a
27 high amount we couldn't deliver that.

28 Q Yeah.

1 A Yeah because -- yeah.

2 Q Do you know what the productions
3 amounts are currently for Bedrocan?

4 A I think it's around 400-500 kilos a
5 year.

6 Q And that's for the roughly 1200
7 patients or for exports?

8 A It's also for exports. Yeah, I
9 think export is maybe 25 percent of that.

10 Q Okay. All right, then you go on in
11 the next section, B, there's a number of points there,
12 the first one dealing with restrictions on the form.
13 Let's just go, move along into the actual affidavit.
14 You say at paragraph 9, 2001 BMC became the national
15 agency and this Guidance Committee was created with both
16 internal, meaning people from the BMC, and then others
17 who weren't from the BMC on this committee. Correct?

18 A Yeah, and internals also within the
19 Ministry of Health.

20 Q Ministry of Health.

21 A Yeah.

22 Q Fair enough. And the purpose is
23 set out there to assist and advise the BMC on various
24 issues and propose amendments to the *Opium Act*, correct?

25 A Yes, that's correct.

26 Q And to contact pharmaceutical and
27 other companies and patient organizations, correct?

28 A Yes.

1 Q And those patient organizations, do
2 you know what their names are?

3 A No, I don't know.

4 Q Do you know the Dutch Patients'
5 Foundation for Effective Medical Cannabis? Do you know
6 that one?

7 A Oh yes, I think that's for the same
8 person what you're just talking about.

9 Q Mr. Hillebrand?

10 A Yeah.

11 Q And Jackie Woerlee?

12 A Yeah.

13 Q They're behind that organization.

14 A Yes.

15 Q Okay. So you know about them.

16 A Yes, I read an article.

17 Q I see. You've not met them at any
18 point?

19 A I met Mrs. Woerlee one time, yeah.

20 Q Okay. And they represent the group
21 of cannabis medical patients who don't like the current
22 policy, fair enough?

23 A I suppose so, yeah.

24 Q All right. And they say that they
25 were part of the group that used to get from Maripharm
26 or SIMM 18 before it became a Bedrocan monopoly, aren't
27 they?

28 A I read that in an article, yeah. I

1 don't know for sure.

2 Q And there were more than just that
3 group, I take it, in the Netherlands, of patient
4 organizations. You say plural in your paragraph 9, so
5 I'm assuming there's more than one.

6 A Well, we are talking about
7 patients' organizations like patients just for multiple
8 sclerosis or patients --

9 Q I see.

10 A -- with special indications.

11 Q Not just those that are --

12 A Against.

13 Q -- don't like your policy. Okay.

14 A Yeah.

15 Q Now, you told us that the next
16 paragraph on the top of 4 shouldn't have been there, and
17 just to clarify, so was there a rescheduling from
18 Category 1 to Category 2 in the Netherlands or not?

19 A In '76, 1976.

20 Q Way back in '76, okay.

21 A Yeah. Yeah.

22 Q And so if I understand correctly,
23 just like the U.S., if it was Schedule 1 you can't
24 prescribe it. If it's Schedule 2 you can?

25 A No. No. We have the *Opium Act*
26 degree, so it's just underneath the *Opium Act*.

27 Q Yes.

28 A And there is a range which opiates

1 can be prescribed. They are the annex.

2 Q Yes.

3 A So it has to be in that annex.

4 Q Listed in the schedule.

5 A Yes.

6 Q Right. The Schedule 1.

7 A No, it's not this schedule from
8 *Opium Act* but it's an *Opium Act* degree, so it's -- yeah.

9 Q Okay, what I'm trying to
10 understand, though, I know that the paragraph -- I'm
11 told it's incorrect. So I'm just trying to understand.
12 You have, though, in your *Opium Act*, Schedule 1,
13 Schedule 2. You have Schedule 3?

14 A No. We just have 1 and 2.

15 Q Just 1 and 2.

16 A That's -- but when it's scheduled
17 on 1 or 2, it doesn't mean that you can prescribe it.
18 There is a difference -- there is -- how do you say it?
19 Lower regulation.

20 Q Yes.

21 A That's -- I think, that *Opium Act*
22 decree. I will mention it. And there is an annex, and
23 it has been put on that annex, because also list 1
24 schedules products can be prescribed in the Netherlands.

25 Q Schedule 1 products.

26 A Yes.

27 Q Okay. So it's not that Schedule 1
28 there is no prescription --

1 A No.

2 Q -- and Schedule 2 there is some
3 annexes that allow it.

4 A No.

5 Q In both 1 or 2, there may be
6 annexes that allow prescribing?

7 A Yes.

8 Q Okay. All right. I assume,
9 though, that category 1 is the more restrictive, and the
10 category 2 is less restrictive? Or --

11 A Yeah. Yeah, we make the difference
12 in the hard drugs and soft drugs.

13 Q Okay. All right. You then go on
14 and you say, at paragraph 10, that the BMC started
15 making cannabis available to the pharmacies in 2003.
16 And patients and growers in the illegal circuit raised
17 complaints about it, and lobbied against the BMC
18 product. Correct?

19 A Yes, that's correct.

20 Q And these were -- when you say the
21 "illegal circuit", that included people who were
22 producing for the coffee shops, or running the coffee
23 shops, correct?

24 A Yes, correct.

25 Q People who were using it for
26 medical purposes who hadn't been able to get it through
27 any government supply prior to that?

28 A Yes, also. Yeah.

1 Q Yeah. And they were saying, you
2 know, we don't like this new policy that you're putting
3 in, basically. Those were the complaints.

4 A Among others, yeah.

5 Q Among others, of course. And so
6 you say that in the first few years the BMC and its
7 products was very negative. There were barely 600
8 patients enrolled in the program, despite research
9 showing the number of potential patients to be about
10 10,000. Isn't that right?

11 A Yes.

12 Q So, again, your research showed
13 there was about 10,000, but when you put the program in
14 place it was only 600 that signed up. Is that right?

15 A Yes, that's right.

16 Q Okay. And that was in 2003.

17 A Yes.

18 Q But Maripharm and SIMM 18 had been
19 supplying people prior to that, isn't that right?

20 A Yes, when there was nothing
21 arranged in the law, yeah.

22 Q Okay.

23 A But SIMM 18 was one of the
24 contracted growers.

25 Q Now, you then go on to say that the
26 negative image changed over time as doctors gained more
27 knowledge, and patients tried the product. Now, what's
28 the source of your information there?

1 A It's all just phone calls and
2 contacts with patients and patient organizations.

3 Q Okay. So we don't have any
4 statistics here to show this either.

5 A No. No, we don't.

6 Q All right. Because you say
7 patients tried the product and more were willing to go.
8 And I think later on you tell us it went up to about
9 1200. Correct?

10 A Yes, I think that's about the
11 number.

12 Q So it never got near the 10,000,
13 did it?

14 A No. You are correct.

15 Q Okay.

16 A It's growing, though, but slowly.

17 Q But, I mean, since 2003 we're
18 talking, what, 11, 12 years that you've been in
19 operation, and it's gone from 600 to 1200?

20 A Yes, that's correct.

21 Q And so then you go on at paragraph
22 12 to deal with the coffee shops. And you say the
23 quality is different, and incomparable to that of
24 medical cannabis. And again, you rely on Mr. Hazekamp's
25 2006 article. Is that right?

26 A Yes, also -- with the mould and the
27 pesticides in it. And that's --

28 Q That's with -- sorry.

1 A -- but also what's important is to
2 standardize, the standardization. No illegal grower is
3 able to grow standardized.

4 Q They're simply not subject to the
5 same testing and regulation that your product is, fair
6 enough?

7 A Yes, but it's not tested on that.
8 That's also if it needs a lot of expertise to grow
9 standardized.

10 Q All right, but --

11 A And time. You need time and if
12 you're at fear of getting prosecuted or getting caught,
13 you put on things to make it grow faster and you grow it
14 different every time.

15 Q Okay. But again, you don't have
16 any statistics or other information other than perhaps
17 Mr. Hazekamp's article from 2006 to tell us the
18 differences in the quality of the products, do you?

19 A Well, there is an institution in
20 the Netherlands, it is called Trimbos, and they do
21 research with coffee shop cannabis every two years.

22 Q And you haven't attached anything
23 from them in your affidavit, have you?

24 A No, it is not attached.

25 Q And are the people who run the
26 coffee shops are otherwise able to have their cannabis
27 tested somewhere or is it illegal?

28 A No, it is not allowed.

1 Q It is not allowed. So, one way to
2 ensure that the quality in the coffee shops would be
3 better, would be to allow them to be tested, wouldn't
4 it?

5 A No, because yeah, you just have the
6 results. But the growing stays illegal, so how can an
7 illegal grower make a mass product?

8 Q Well, as far as --

9 A Especially --

10 Q Well, if they have them tested,
11 and it shows that it doesn't have any pesticide or
12 whatever fungus in it, that would be good information
13 for the patient who has gone to the coffee shop to buy
14 it, wouldn't it?

15 A Yeah, I guess so, but again, this
16 is not my subject, the coffee shop cannabis.

17 Q If your concern is health of the
18 patients, and eliminating risk to the patients, that
19 would be one way of making sure that all those people
20 that didn't come to your program are getting a quality
21 product, isn't it?

22 A Well, it's available in the
23 pharmacy, so. Yeah.

24 Q In fact, your situation in Holland
25 is if you go to the pharmacy, and you -- most of them
26 have to subscribe to the Bedrocan product. We've got
27 these few exceptions of Ms. Woerlee and others, who get
28 a different product, did you know that?

1 A Yeah, but again, that's not legal
2 how they obtain their product. But yes, at this moment
3 we only have Bedrocan as our grower, and we have five
4 varieties at this time. So we listen to patients and
5 their needs and we make other varieties available, but
6 we still have only one grower.

7 Q And if you buy the Bedrocan or you
8 have to have the Bedrocan product, it's the only one
9 available, then that is covered under a government
10 medical insurance program, is it?

11 A We don't have government medical
12 insurance. We have health insurances, but they are all
13 commercial companies.

14 Q So, the Bedrocan product, though,
15 because it is prescribed in the pharmacies is covered
16 by the private insurers?

17 A No, not necessary, no. Because --

18 Q In part?

19 A -- medicinal cannabis is not a
20 registered medicine, so it is up to the health insurance
21 if they cover for it or not, or if they reimburse, and I
22 think at this point about three-quarter of the insurance
23 companies do cover it.

24 Q If it's the Bedrocan product?

25 A Yeah, of course. Not illegal
26 product, no.

27 Q Not any other product.

28 A No.

1 Q Yeah. Okay. All right, and so
2 you simply say at paragraph 12, that it is a lot easier
3 for the patients to simply go to the coffee shops
4 instead of the pharmacy, they don't need to speak to a
5 doctor, it's not covered by the health care plan, the
6 cost is comparable, and so a lot of people go to eh
7 coffee shops. That's your understanding?

8 A That's my understanding, yeah.

9 Q Okay. And you point out that the
10 cost of medical cannabis has decreased and the cost of
11 the coffee shop cannabis has increased since 2006?
12 Correct?

13 A Yeah.

14 Q And then you refer to Mr.
15 Hazekamp's article, fair enough?

16 A Yeah, but it is more that he named
17 prices or there are prices in his article, so yeah, so
18 it changed indeed since 2006, not because of this
19 article, but since this article has been written.

20 Q When he went and did his survey one
21 of the things he looked at was the prices --

22 A Yeah.

23 Q -- and he found that the prices
24 were going up in the coffee shops?

25 A No, I think he just found the
26 prices at that time, but what I am trying to explain
27 here is that since 2006 it has changed, because we are
28 government non-profit, so if we make profit, it goes

1 back in the price, and we lower our prices. So, since
2 2006 our prices went down.

3 Q All right. And it is all about
4 supply and demand, isn't it?

5 A Yes, of course, if we are able to
6 deliver more, our prices can go down, yeah.

7 Q You reduce your prices hoping that
8 more people will come and buy your product, isn't that
9 it?

10 A No. We have to be cost-effective.
11 So we can't do that.

12 Q People won't -- people won't buy
13 your product if it's not effective, will they?

14 A Oh, yeah. But I was talking about
15 cost-effective. Our office has to -- our costs --

16 Q Well, I think we'll come to that in
17 a moment.

18 A Okay.

19 Q You've set that out in your
20 affidavit, how 15 percent of the cost is the BMC part,
21 and what the other parts are.

22 A Mm-hmm. Mm-hmm.

23 Q But my point is that you create
24 this office.

25 A Mm-hmm.

26 Q You only have 1200 patients --

27 A Mm-hmm.

28 Q -- having predicted there was

1 likely to be 10,000.

2 A Mm-hmm.

3 Q And you know that -- and you
4 suspect that they've all gone back to the coffee shops,
5 correct?

6 A Yeah, I'm not sure if I suspect it.
7 There are many reasons, of course, because doctors, they
8 don't always prescribe it. It's only maybe a third-line
9 product, because doctors normally first look at
10 registered products, only then at cannabis. So --

11 Q So some doctors --

12 A There are multiple reasons.

13 Q Yeah, but the price has gone up in
14 the coffee shops, hasn't it?

15 A It has, there, yeah.

16 Q And that's because there is a
17 bigger demand, isn't there?

18 A No, because there are less growers,
19 because there are police departments have special hemp
20 teams, and there are -- who are looking for --

21 Q So you think it has nothing to do
22 with the demand?

23 A No.

24 Q So you get these 10,000 that you
25 estimate --

26 A Yeah, I can't make it hard, I don't
27 have figures, but I think it's because we are getting --
28 we are having less growers and that's why the price is

1 going up. Not because the demand is rising.

2 Q Well, would you agree with me that
3 there is not much demand for the Bedrocan product? At
4 1200 patients?

5 A Yeah. Well, it's growing, it's
6 rising every year. That's -- yeah.

7 Q Did you know -- did you know that
8 some doctors don't want to prescribe the Bedrocan
9 product because patients say it's ineffective? Did you
10 know that?

11 A I am not aware of that. I don't
12 know that.

13 Q All right. Well, let's take a look
14 at Mr. Hazekamp's article at Exhibit A, then, for a
15 moment. Basically his article is entitled "An
16 evaluation of the quality of medicinal grade cannabis in
17 the Netherlands". It was done in 2006 and, as he points
18 out in the abstract, it's since 2003 that medicinal
19 grade cannabis is being provided on prescription through
20 pharmacies. Correct?

21 A Yes, correct.

22 Q That's what he says there. But he
23 also goes on a little further down to talk about the
24 tolerated illicit cannabis market from the coffee shops,
25 which offer a wide variety of cannabis to the general
26 public as well as the medicinal users. Fair enough?

27 A Yes, that's correct.

28 Q And if you drop down to the end of

1 that paragraph, he talks about the general opinion of
2 the consumers being that the government cannabis is more
3 expensive, and difference in quality -- without any
4 difference in quality, correct?

5 A Yes.

6 Q And then he summarizes at the
7 bottom how some of the coffee shop samples that they
8 took contained less weight than expected and were
9 contaminated with bacteria and fungi?

10 A Yes, right.

11 Q But no obvious differences were
12 found in either cannabinoid or water content of the
13 samples.

14 A Yes, correct.

15 Q And so he says that the product
16 from the pharmacies was more reliable and safer for the
17 health of the medical users, because of those findings.

18 A Yes, I think you're skipping down
19 the part of the --

20 Q Oh, there's lots more in the main.
21 I'm just talking now about the abstract.

22 A Okay.

23 Q That's what he says in the
24 abstract, correct?

25 A Yes.

26 Q There is more in the body of the
27 document about the prices and all that sort of thing,
28 isn't there?

1 A So again, repeat that?

2 Q There is more in the rest of the
3 article than what appears in this abstract, about prices
4 and things like that.

5 A Yes. Yes. Yeah.

6 Q Okay. So, we don't have time to go
7 through it in great detail, but he starts off with an
8 introduction. He talks about the Single Convention.
9 And he talks about other efforts in other countries,
10 including Switzerland, Spain, and Canada. You see that?

11 A Which page is it?

12 Q The first page. The second column.
13 You see the -- it starts the heading "Introduction" and
14 then you go over to the right.

15 A Okay, yes, I see it, yes.

16 Q Okay. And then he describes the
17 process in the Netherlands commencing in 2003.

18 A Yes, I see that.

19 Q And he essentially describes the
20 situation, and then the next page he talks about the
21 "unique, liberal situation in the Netherlands with
22 respect to drug laws," and the "illicit cannabis market
23 essentially openly competes with the pharmacies, and
24 experienced users of medicinal cannabis naturally
25 compare both sources in terms of quality, medicinal
26 effect, and price."

27 A Yes, I see that.

28 Q Okay. And so he explains the

1 process and including the Dutch drug policy there at the
2 bottom of that page, fair enough?

3 A Yes, I see it.

4 Q And over on the right side at the
5 top he explains that the drug policy, or the basic
6 principles of the Dutch drug policy were formulated in
7 the mid-70s. Do you see that?

8 A Yes, I see that.

9 Q And he then goes on to explain the
10 *Opium Act* and he sets out the sort of penalties there at
11 the bottom of the -- I guess it would be the third
12 paragraph he talks about possession of 30 grams being a
13 minor offence?

14 A Yes.

15 Q Over 30 grams is a criminal offence
16 but drug use itself is not an offence. Do you see that?

17 A Yes, I see that.

18 Q And so he talks then about this
19 approach offering scope to pursue a balanced policy
20 through the selective application of the criminal law.
21 Fair enough?

22 A Yes.

23 Q Okay. He then says that dealing
24 with the coffee shops and how they're tolerated or
25 condoned, that there are about 700 coffee shops in the
26 Netherlands at that time. So this is 2006, correct?

27 A Yes.

28 Q Right. And he goes on to explain

1 how tolerance is a typically Dutch policy instrument.
2 Would it be fair to say that that was more so prior to
3 2003 than after 2003?

4 A Well, that didn't change, I think.

5 Q Well, you've got way more
6 restrictive and so on since 2003, haven't you, in
7 Holland?

8 A Yeah, but I'm not aware of
9 everything -- I think as he's talking about 30 grams
10 then.

11 Q No no, but before 2003 the non-
12 enforcement policy was you didn't go after the growers
13 for the coffee shops, or go after the coffee shops in
14 terms of restrictions, did you? It started in 2003,
15 isn't that right?

16 A I don't know about that.

17 Q Well, you said there's fewer
18 growers now than before. That's because of an
19 enforcement policy that wasn't enforced before 2003.

20 A I don't know if it started in 2003
21 but I believe you and your words, but I don't know if it
22 was in 2003 or not.

23 Q Okay. He goes on to explain it
24 there, he talks about the expediency principle. You see
25 that?

26 A Yes.

27 Q And how they allowed small-scale
28 dealing in the coffee shops and not being prosecuted.

1 each day, I don't know. I don't know if they went back
2 the other day.

3 Q Okay.

4 JUSTICE: Would this be a convenient
5 time for a break?

6 MR. CONROY: Well --

7 JUSTICE: Or do you want to finish
8 something off?

9 MR. CONROY: Let's do five more
10 minutes just to try and finish this little part up, if
11 you wouldn't mind, Judge?

12 JUSTICE: No, not at all.

13 MR. CONROY: Because we are going to
14 -- I am going to be pressed for time I think.

15 JUSTICE: Yeah.

16 MR. CONROY:

17 Q So, basically, on page 17 at the
18 top right, page 3 at the bottom, he then goes on to
19 explain the medicinal cannabis in the Netherlands, the
20 history that we've pretty well gone through?

21 A Yes, I see it.

22 Q And then deals with materials and
23 methods and shows us a picture of the Bedrominal?

24 A My picture is Bedrocan, yeah.

25 Q Bedrocan, but down at the bottom it
26 calls it Bedrobinal variety? Oh, I see --

27 A It is not shown.

28 Q Oh, it is not shown in your --

1 sorry, I misunderstood.

2 He talks then about the sampling at the
3 next page, and this is the business of going to the
4 coffee shops and the places that they went to and so on?
5 In that first paragraph?

6 A Yes, I see it.

7 Q He then talks about the research
8 that was done in the next paragraph and then over on the
9 right finally we get to the results of, and discussion
10 of the results, fair enough?

11 A Yes.

12 Q And he has some technical
13 discussion, but you go over to 19, and the last two
14 paragraphs, if I am understanding them correctly, at 19,
15 just before the graphs at the bottom, he says -- first
16 of all he talks about the narrow range of the percentage
17 of THC and the Bedrocan fell within the same range? You
18 see that?

19 A Yes.

20 Q And then underneath that he talks
21 about there being no major differences were observed
22 among the coffee shop samples when comparing the
23 obtained GC or HPLC chromatograms? Do you see that? He
24 talks about it being the result of decades of cross-
25 breeding and selection for high THC producing strains?

26 A Sorry, I don't see on which page
27 you are on.

28 Q Still on -- it is 19 at the top, it

1 is 5 at the bottom, and it's the paragraph, the last
2 paragraph on the right.

3 A Okay, yes, I see it.

4 Q Okay. All right, well let's -- in
5 the interests of time, if you go to again, this time
6 page 20 at the top, 6 at the bottom, and the right
7 column, he talks there about purchasing from
8 uncontrolled sources and how they can be considered a
9 potential health risk? Especially those who consume
10 large amounts? Do you see that?

11 A It is at what page?

12 Q Top -- 20 at the top right. Down
13 at the bottom of the column, just at the very bottom on
14 the right.

15 A Oh yes, I see it.

16 Q That's what he is talking about
17 there, the potential risks?

18 A Yes, I see it.

19 Q But again, we don't have any actual
20 statistics or anything to show any problems that came in
21 the prior 30 years?

22 A No, there are no -- not available,
23 no.

24 Q Okay, and so then if we carry on
25 over on to the last page, he says over in his
26 conclusions, starting on the left,

27 "The simple rules of supply and demand,
28 usually result in the consumer buying the

1 product with the best quality-to-price ratio.
2 Because of such forces, the unique situation
3 in the Netherlands has led to a confusing
4 situation for medicinal users of cannabis."

5 He goes on to talk about price
6 comparisons, at the top, people thinking that it is
7 cheaper in the coffee shops, and so on. You see that?

8 A Yes, I see that.

9 Q And if we move down towards the end
10 of the paragraph, he says,

11 "If the number of patients would increase,
12 this could influence the price because the
13 fixed cost per sold unit would drop."

14 And he is talking there about if the
15 number of patients increased at the Bureau of Medical
16 Cannabis, isn't he ?

17 A He is, yes.

18 Q And then he says:

19 "Because the number of coffee shop samples
20 that were used for this study was limited,
21 conclusions must be drawn with some
22 precaution, and results presented here should
23 be reported as incidental findings."

24 Isn't that correct?

25 A Yes, correct.

26 Q And he then goes on at the bottom,
27 and he says -- and I'm now just reading from the second-
28 to-last paragraph, in the middle, he says:

1 "Certainly, the possibility remains that
2 cannabis varieties with a similar cannabinoid
3 profile can have different strengths or
4 effectiveness, based on the presence of other
5 components such as terpenoids and
6 flavonoids."

7 A Yes.

8 Q And then he says, there is room for
9 discussion on the point, at the end of that paragraph.
10 And then finally says:

11 "When patients choose to obtain cannabis from
12 an uncontrolled source, they must realize
13 that they do so with a certain risk to their
14 health. In this test, we did not check for
15 the presence of pesticides, fungicides, or
16 heavy metals, but there are plenty of
17 indications that these are frequently present
18 in cannabis samples from uncontrolled
19 sources. The same lack of quality control
20 makes it impossible to determine whether
21 products that are claimed to be grown
22 organically, like in some coffee shops, are
23 really that much more trustworthy."

24 Do you see that?

25 A Yes, I do.

26 Q And then he concludes:

27 "Ultimately, it is the consumer that makes
28 the choice."

1 Doesn't he?

2 A Mm-hmm.

3 Q And the consumer in the Netherlands
4 has made the choice since 2003 to not come to the Bureau
5 of Medical Cannabis, and to go back to the coffee shops,
6 or grow their own. Isn't that correct?

7 A I don't know why you say go back to
8 the coffee shop. But -- yeah, in detail, it's a choice
9 for patients to go to the pharmacy or go to illegal
10 circles.

11 Q Okay. But again, I'm saying to you
12 that prior to 2003, there were all these people who had
13 started to use medical cannabis, and through pharmacies,
14 even though it wasn't legal.

15 A Mm-hmm.

16 Q And that when the Bureau was
17 established, you anticipated you'd have all of these
18 people signing up. They didn't sign up. It plummeted
19 to 600. It's come back to 1200 and that's where it
20 still remains today.

21 A Yeah. But saying that there are no
22 hard figures for -- for other things -- those figures
23 are also -- yeah. Not hard figures.

24 Q Well, your research that determined
25 there may be 10,000 that you expected.

26 A Yeah, but it's -- it's something
27 else.

28 Q And that hasn't materialized.

1 A Than what you are talking about,
2 14,000 patients, I don't know where that number comes
3 from. And it's not --

4 Q All right, well, let's use 10,000.
5 Your research indicated possibly 10,000.

6 A But that's in the whole of
7 Netherlands.

8 Q Yeah. Well, in the whole of the
9 Netherlands, some 8,800 didn't come from your estimated
10 10,000.

11 A Mm-hmm.

12 Q So where do you think they went?
13 They went to the coffee shops, didn't they? Or grow
14 their own.

15 A Probably they did, yeah.

16 Q Isn't that right? Okay. So the
17 consumer has made the choice, hasn't he -- he or she.
18 And isn't coming to the Bureau. Isn't that right?

19 A Yeah, not all the patients are
20 coming to the pharmacy.

21 Q Not all patients.

22 A No.

23 MR. CONROY: Thank you. This would be
24 a good time to --

25 JUSTICE: Okay. We'll take 15
26 minutes.

27 **(PROCEEDINGS ADJOURNED AT 11:05 A.M.)**

28 **(PROCEEDINGS RESUMED AT 11:24 A.M.)**

1 MR. CONROY:

2 Q Ms. Sandvos, paragraph 13 of your
3 affidavit, the heading above it is the restrictions on
4 forms, and as I understand it in the Netherlands as you
5 say there, dried inflorescence is what's permitted,
6 nothing else at this point but you're working on
7 developing a cannabis oil.

8 A Yes.

9 Q Okay.

10 A Correct. We are at orientation
11 phase.

12 Q Yeah. Bedrocan is making the oil
13 or attempting to make the oil.

14 A No.

15 Q No? Do you know if they have made
16 oil for export or anything like that? Is that allowed
17 or --

18 A They're not allowed to do that.

19 Q Okay, so at this point it's simply
20 in the developing stage trying to create a good method
21 to safely produce oil, as your affidavit says.

22 A Yes, and then also mainly for the
23 CBD. That's for the children.

24 Q So who's working on this method?
25 Is it Bedrocan or somebody else?

26 A Someone else.

27 Q Who is it?

28 A There is -- or actually there are

1 two companies, or one is a pharmacy.

2 Q Yes.

3 A And the other is a commercial
4 company which also makes standards and is also busy with
5 the registration of products made of medicine or
6 cannabis.

7 Q What's the name of the company?

8 A It's called Eco Pharmaceuticals.

9 Q And the other pharmacy you mention?

10 A Yeah, it's called Tonsfal Apotek.
11 It's a pharmacy in The Hague.

12 Q Because you do have other companies
13 that are doing research for you, don't you?

14 A No, we don't.

15 Q No?

16 A No.

17 Q Okay, all right. So Maripharm
18 doesn't continue to do research?

19 A I think they are still -- they
20 still have an exemption to do research indeed, but they
21 are busy with THCA, so that's --

22 Q Okay, so they're still authorized
23 to produce and do research based on what you just spoke
24 about that issue.

25 A Yes, they are. They are, yeah.

26 Q All right. Okay, continuing on,
27 and then you say people, patients are free to use any
28 method to ingest the cannabis so long as they don't sell

1 it to somebody else, which would not be lawful, correct?

2 A That's correct, but we advise
3 vaporizing or making tea.

4 Q Right, and so they're not permitted
5 to themselves make oil out of it, for example, are they?
6 Or is there a restriction on that?

7 A There's no restriction. If they
8 want they can.

9 Q A patient could make extracts from
10 the product if they want to ingest it in that way.

11 A Yes.

12 Q Okay.

13 A Yeah. If they do it for
14 themselves.

15 Q Yeah. There's no law limiting them
16 from doing that or restriction limiting them from doing
17 that.

18 A No, there is not.

19 Q All right, thank you. And then you
20 deal with restrictions on medical condition. You point
21 out there's no restriction on medical condition, that
22 BMC is not involved in prescribing, don't have any
23 records of the different conditions. You've put a
24 leaflet out to advise health care professionals on
25 various aspects of things and that's attached, I
26 believe, as one of the exhibits. I think it's Exhibit--

27 A No, it's not a leaflet. That is --
28 yeah.

1 Q In fact Exhibit B is the
2 Information for Health Care Professionals, fair enough?

3 A Yes.

4 Q You don't need to turn it up. You
5 refer to it there at paragraph 17 and you list then,
6 taking from that leaflet, the basic disorders at
7 paragraph 17 over onto page 6, and then you point out
8 Exhibit B, which is what we just referred to. Fair
9 enough? Fair enough?

10 A Yes, yes.

11 Q Okay, sorry, I have to -- just for
12 the transcript. And you say the BMC leaflet recommends
13 that prescribing medical cannabis, this is paragraph 18,
14 should only be considered in those cases where medical
15 treatment with registered pharmaceutical products is
16 inadequate, or if regular use of those products causes
17 too many side effects, correct?

18 A Yes, correct.

19 Q I think the actual document also,
20 if you go to Exhibit B at the bottom, talks about if
21 medical treatment with registered medicines is
22 disappointing or there are too many side effects. Do
23 you see that at the bottom of page 24?

24 A Yes, I see that.

25 Q Okay. So when you say too many
26 side effects, is there a number of how many that are --
27 allow you to --

28 A No, but it's all up to the

1 physician.

2 Q Doctor.

3 A Yeah.

4 Q One side effect may be too many.

5 Fair enough?

6 A Yes. Could be.

7 Q Okay. And then you go on and you
8 point out that -- and this is now paragraph 19, the
9 discussion about whether you can do it in residences.
10 People aren't allowed to grow for themselves, other than
11 the five-plant not-in-force issue. There is no official
12 authority for people to grow plants in their residences
13 or anywhere, for that matter.

14 A Growing cannabis, it's illegal.

15 Q Illegal. Yeah.

16 A Illegal, even the five plants.

17 Q Yeah. But there is the tolerance
18 -- the no-enforcement policy that if they come across
19 five plants, then they'll destroy them but not
20 prosecute.

21 A They will destroy all the plants.

22 Q Yeah.

23 A Also -- yeah, it depends on the
24 police, which was going to take all the plants --
25 cannabis or all the plants, even five plants.

26 Q Yeah. I understand that the
27 enforcement of that rule varies throughout the
28 Netherlands. As you say, it's up to the police,

1 individual discretion.

2 A Yes.

3 Q So some places they may enforce it
4 more strongly than in other places, depending on the
5 attitude of the police. Is that right?

6 A Yes, that's correct.

7 Q And that in some places if you use
8 a tent, or if you use a box, or lights, or special
9 equipment, they then say it's professional and they
10 might charge you as well as take away the plants. Is
11 that right?

12 A But that's not up to the police.
13 That's up to the court, yeah.

14 Q But the police -- the police go
15 there and find the evidence, correct?

16 A Yes, I guess so, yes.

17 Q And the police say, "Well, I think
18 this is professional," as opposed to just somebody
19 growing for themselves. They could have them
20 prosecuted, can't they?

21 A Yes. But --

22 Q That's not just a --

23 A I don't know the policy guidelines
24 which they made -- by heart, because again, this is for
25 recreational purposes. This is not my specialty. This
26 had --

27 Q So you don't --

28 A This is for recreational, but I

1 think in that policy guideline, there are described
2 things about lands and how professional, how much
3 harvest there is coming from one plant there. There are
4 guidelines for that. But I don't know them by heart,
5 because it's not my --

6 Q Well, I just was given a special
7 *Newsweek* edition yesterday that talks about, "Is America
8 ready for legalized future?" And there's a chapter at
9 page 75 on old Amsterdam. And in it, it says that now
10 in Holland they even target the smallest growers. In
11 the past, people could grow up to five plants without
12 fear of retribution. But in 2011, the government issued
13 new police guidelines and declared anyone who grew with
14 electric lights, prepared soil, selected seeds, or
15 ventilation, would be considered professional and then
16 are at risk of being charged. Did you know that?

17 A No, I didn't.

18 Q Okay. While I've got the article
19 open, it also says that the government has also forced
20 coffee shops where marijuana is sold to choose between
21 alcohol and pot, prompting many to choose the former.
22 Did you know that?

23 A No.

24 Q And that Amsterdam once played host
25 to nearly 300 coffee shops of more than 1,000 scattered
26 across the country, but there are now fewer than 200 in
27 the city, and only 617 nation-wide. Did you know that?

28 A I didn't know that.

1 Q Are you familiar with the
2 Netherlands Union for the Abolition of Cannabis
3 Prohibition?

4 A No, I don't know them.

5 Q Did you know that in Amsterdam at
6 least various social clubs have developed in addition to
7 the coffee shops?

8 A I can't believe it, but this --
9 yeah. I don't think so.

10 Q All right. Okay. Back to your
11 affidavit. You talk about -- we were at 19 in terms of
12 residences, and simply point out there that there is no
13 -- it's illegal. It's not permitted. There is no plan
14 to allow it in the future. And at paragraph 21, the
15 prioritizing of the prosecution of professional growers.
16 Fair enough?

17 A Yes, that's correct.

18 Q And as we discussed a minute ago,
19 whether it is professional or not, is first going to be
20 determined by the police, and then presumably by the
21 prosecutor?

22 A I don't know exactly, I just told
23 you about the policy line. I don't know exactly by
24 heart what's in it, and I don't think that in that
25 magazine, it's not a copy of the policy line there is.
26 So, I can say yes on that.

27 Q You practice as a lawyer? Did you
28 practice as a lawyer before you --

1 A No, I didn't.

2 Q You never did. So you don't know
3 how the criminal law works in the Netherlands?

4 A I know it a bit, of course, but I
5 don't work --

6 Q But you know that a policeman
7 usually goes and finds evidence, that's how it starts,
8 isn't it? Doesn't it?

9 A Yes, I --

10 Q And the policeman is the person who
11 gathers the evidence and sees what is there and then
12 takes it to a prosecutor?

13 A Yeah, but what I meant is that you
14 said that depends on the policeman who finds it, and I
15 don't know how clear the policy lines are --

16 Q I see, the guidelines.

17 A Yeah, I don't know.

18 Q All right, fair enough. Okay, so
19 it talks about the five or fewer plants there in
20 paragraph 21, and points out that this test is this
21 issue of whether it's professional or not, correct?

22 A Yes.

23 Q So somebody has to determine that
24 initially and -- but whether, if it is professional they
25 might get prosecuted, if it's not professional they just
26 destroy the plants and don't enforce the law? Is that a
27 fair way to summarize it?

28 A Yes.

1 Q Are you familiar with something
2 called the bloom box?

3 A No.

4 Q Are you familiar with any equipment
5 that has come in to the market over the last --

6 A Not for illegal growing, I know --
7 no, not --

8 Q Well, it could be legal growing.

9 A Yeah, of course, we have legal
10 growers in the Netherlands, and I come to their plants
11 or to their growing facilities, so I know how they look
12 like, but --

13 Q So, you are aware of these devices
14 that they've made? These boxes that you can put plants
15 in and it takes care of everything?

16 A I only know really big one, it is
17 called Horta-hotel --

18 Q What's it called, sorry?

19 A Horta Hotel.

20 Q Horta?

21 A Horta Hotel, yeah, it is a plant
22 hotel, and that's -- there is one, the university which
23 has an exemption, and it grows all matter with computers
24 and yeah.

25 Q Horta. Is that Horta Farms?

26 A No.

27 Q Horta is the word plant, is it?

28 A Yeah.

1 Q Okay.

2 A Yeah.

3 Q All right, so then, again,
4 reaffirms that it is supplied through the pharmacies.
5 You then go on to amounts and you simply point out in
6 those paragraphs that the practice and policy is the
7 same as any other opiates?

8 A Yes, it is.

9 Q You get a prescription, you get a
10 two week supply, you have to go back every three months,
11 that sort of thing?

12 A Correct, yeah.

13 Q Okay, and it is all determined --
14 the dosage is all determined between the patient and the
15 doctor?

16 A Yes, correct.

17 Q There is no maximum amount, or
18 minimum amount or anything like that?

19 A No.

20 Q It all depends on the individual
21 circumstances?

22 A Yes.

23 Q And you, the BMC anyway, doesn't --
24 isn't involved in any of that, and you don't have any
25 figures about what is actually been going on between the
26 doctors and the patients and what the actual dosages
27 are?

28 A No.

1 Q You know that some patients have
2 fairly high dosages? Like 20 grams?

3 A Not in the Netherlands.

4 Q You say that hasn't happened at
5 all? Did you know that Ms. Woerlee has a prescription
6 for 30 grams?

7 A I am aware of that, yeah.

8 Q Okay. So, there are a few who have
9 large prescriptions, aren't there?

10 A Yeah, just as mentioned here, we
11 don't know for which patients. We only know some cases
12 that we are getting a phone call from a doctor and which
13 is -- who is asking about a dosage, and if it is -- that
14 is not too much, and they are not thinking the patient
15 is selling it to other patients, so.

16 Q Okay, so at 25, you say the BMC,
17 having told us that you have no exact figures in the
18 earlier paragraph, 25, you say the BMC estimates that on
19 average there are these 1200 patients, you say.

20 A No.

21 Q You don't know for sure?

22 A No, it is an estimation. We have
23 to figures from our logistic service provider, they
24 receive recipe [sic] from a pharmacy, and they deliver
25 to pharmacies, so we have figures about how many
26 pharmacies and the recipes, so it is an estimation. And
27 later, this -- yeah, is confirmed by research done by
28 Arno Haze Kemp, and Mr. Heerdink.

1 Q The same Hazekamp who is the author
2 of the article at tab A, who's the --

3 A Yeah, he's one of the biggest
4 scientists on this subject, so I think in the
5 Netherlands but also in the world.

6 Q Researcher for Bedrocan.

7 A Yes.

8 Q Okay. And so the same with the
9 average daily use then, the .68 grams per patient,
10 that's again based on estimates, is it, from --

11 A Yes.

12 Q So we don't have any hard figures.

13 A No, we don't.

14 Q Okay. So that's based in part, I
15 suppose, on Mr. Hazekamp's article that you have at tab
16 C.

17 A Yes. As far as known it's one of
18 the only research is done in the world about dozapine,
19 so.

20 Q Okay. And you then go on to deal
21 with the only five varieties from Bedrocan, correct?
22 And there's a table setting out the situation there at
23 paragraph 26?

24 A Yes, that's correct.

25 Q Do you know, drabinol, do you
26 know anything about that?

27 A It's another name for THC.

28 Q That's all it is? It's not a

1 synthetic?

2 A It can also be made synthetic, THC,
3 but I'm only talking about the plants.

4 Q Do you know if Bedrocan includes
5 sometimes then in their product, using this name?

6 A No, but they can't. They only have
7 permission to grow.

8 Q Okay.

9 A And they don't have a lab. They
10 don't -- they can't make extracts. They can't do that.

11 Q Well, does the BMC check up on them
12 to make sure that --

13 A Of course.

14 Q I see. So use of this word
15 drabinol --

16 A No, it's the professional name for
17 THC, yeah.

18 Q Okay. All right. And then you go
19 on at paragraph 27 and I guess -- this is all the
20 official position of the BMC that you're just telling
21 us, isn't it?

22 A Mm-hmm.

23 Q And so there it talks about why you
24 only have a small number of varieties available, and the
25 first one is it assumes that patient preference for a
26 particular variety is a matter of taste as opposed to
27 efficacy?

28 A Yes, correct.

1 Q Do you know anything about how
2 patients consume and how they develop tolerance to a
3 particular strain and then try another one? Do you know
4 anything about that?

5 A No, I'm not a scientist.

6 Q Do you know anything about an
7 inverted U curve, how it seems to work for people for a
8 period of time and then it stops working for them? Do
9 you know anything about that?

10 A I heard about it, but I don't know.

11 Q So this opinion that it's a matter
12 of taste as opposed to efficacy, that's based on some
13 information from some patients, is it?

14 A Yes, it's right and there is also
15 no scientific research done that it's the other way
16 around. So we see it as medicine, and so the contents
17 which are working are most important, and that is at
18 this time still THC and CBD and not flavour.

19 Q Because you see you say the
20 assumption is not based on scientific research, but did
21 I just hear you a minute ago to say that there is
22 research that says the opposite?

23 A No, I said there is no scientific
24 research also which shows the opposite of this, so, and
25 we are looking to it as a medicine, so we are only
26 looking to the contents, THC and CBD, and there are no
27 researches which show that these are -- makes it
28 different.

1 Q You know that there's research
2 going on in relation to different strains and so on to
3 determine --

4 A I think on the little scale it's
5 going on but there are no results yet.

6 Q Okay. So as you say, this is just
7 the opinion of the BMC.

8 A Yes, it is.

9 Q It's not based on any science.

10 A Yes.

11 Q Okay. Practicality. Now, you say
12 the BMC works with only one grower. It is not possible
13 to grow numerous varieties as each variety needs its own
14 growing cell --

15 A Yes.

16 Q -- and treatment in terms of
17 lighting, watering, et cetera. Now, if I'm
18 understanding that correctly, you're saying that if
19 you're going to grow a particular strain, you have to
20 grow it in its own cell and it has to be treated
21 separately from all the others? Is that --

22 A Yes, every strain has its own
23 periods of growing and difference -- it needs a
24 different treatment.

25 Q So you can't have a great big room
26 filled with many different strains? You need a separate
27 room for each one?

28 A Yes, as you can't get a

1 standardized product.

2 Q I see. So if you have 21 or 22
3 licensed producers and multiple strains being produced,
4 you're saying that they have to have a separate room for
5 each strain that they are producing, otherwise you won't
6 get a standardized product.

7 A Yes, that's correct.

8 Q That's the experience of the
9 Netherlands.

10 A Yes.

11 Q Okay. So to grow many strains
12 would be quite costly then, wouldn't it?

13 A Yes.

14 Q And that's one of the reasons why
15 you're limited to five strains.

16 A That's one of the reasons indeed,
17 yeah.

18 Q Okay. Because the next paragraph
19 you say the cost of growing large batches of a few
20 varieties is more cost-efficient than growing smaller
21 batches of numerous varieties, and that explains the
22 table up above.

23 A Yeah.

24 Q Okay. But you know that if a
25 person grows for themselves, that they can grow a lot
26 cheaper than any producer, any government producer or
27 licensed producer?

28 A I suppose so, but then you can't

1 call it a -- it won't have a pharmaceutical grade.

2 Q That's -- I understand that's your
3 position. But you agree that a person can produce for
4 themselves, because they -- and a lot cheaper, because
5 they don't have all of these costs that are involved in
6 producing --

7 A Yeah, well, I think that everything
8 you make yourself is cheaper, if you're knitting your
9 own scarf, or -- yeah.

10 Q All right. All right, because you
11 then go on to deal with the cost at page 9, paragraph
12 28. And you say the cost for patients to purchase five
13 grams of medicinal cannabis is 38 Euro. Correct?

14 A Yes, that's correct.

15 Q And that's not including taxes. So
16 the taxes and pharmacy costs are on top of that.

17 A Yes, six percent, yeah.

18 Q So add on -- both taxes and
19 pharmacy costs, a total of six percent? Or the VAT is
20 six --

21 A No, pharmacies costs are separate.

22 Q Do you know how much they are,
23 roughly?

24 A I think they are six Euros, and it
25 goes -- it doesn't matter then how much you order. If
26 you take for three months, those six Euros are on the
27 month to three months.

28 Q Okay. So if I'm -- if my math is

1 correct, one gram costs 7.5 Euros, roughly. Is that
2 right? Five into 38?

3 A Oh, I'm not so good in calculating,
4 but -- yeah.

5 Q That sound about right?

6 A It sounds about right, yeah.

7 Q Okay. And you'd add on top of that
8 the six percent tax, and some pharmacy costs. You're
9 nodding.

10 A I think in general you talk about
11 42 Euros for five grams.

12 Q 42 Euros.

13 A That's including -- including
14 everything, yeah.

15 Q 42 Euros for five grams, so
16 basically we're talking --

17 A About eight.

18 Q -- almost eight. 7 point something
19 -- over seven and a half Euros, anyway, per gram.

20 A More of eight, then, I think.
21 Yeah.

22 JUSTICE: Over eight.

23 MR. CONROY: Sorry.

24 Q Over eight Euros per gram.

25 A Right, yeah.

26 Q Okay.

27 JUSTICE: 8.4.

28 MR. CONROY:

1 Q And so if you were to convert that
2 to Canadian dollars, are you able to do that?

3 A No, I'm not. I think --

4 Q When you came in, didn't you get --
5 have to change some money? So give us --

6 A I did. I did. I brought 200
7 Euros, and it was 240 Canadian dollars, so --

8 Q I'm sorry?

9 A For 200 Euros I got 240 Canadian
10 dollars, so --

11 Q All right. So you got an extra
12 \$40.

13 A Yeah.

14 Q So, it would be more in dollars
15 than it is in Euros, correct?

16 A Yes. Correct.

17 Q It would be probably at least \$10 a
18 gram, wouldn't it? Would that be fair? Adding on a
19 couple of Euros? Maybe more.

20 A Yes.

21 Q So, the basic cost for a patient
22 through the existing program is somewhere around 10,
23 maybe a little bit more, dollars per gram. Is that
24 fair? Using the 8-plus Euros that we came up with.

25 A Yeah.

26 JUSTICE: You're getting a currency
27 conversion phoned in.

28 MR. CONROY: Ah.

1 A Yes.

2 JUSTICE: But I don't think this case
3 turns on \$10 a gram in Amsterdam.

4 MR. CONROY: I was just shown 11.46.

5 A Okay.

6 MR. CONROY: So almost \$12. Somewhere
7 between \$11 and \$12.

8 JUSTICE: I'm going to take --

9 MR. CONROY:

10 Q So, but whether that's covered or
11 not depends upon your individual health insurer.

12 A Correct.

13 Q And the amount depends upon the
14 individual health insurer.

15 A Yes, correct.

16 Q But if you're on social assistance
17 in the Netherlands --

18 A Mm-hmm?

19 Q -- and if you qualify for the
20 special benefits program, then it's all paid for.
21 Correct?

22 A I don't know what special benefits
23 program --

24 Q You don't know what it is?

25 A No.

26 Q Did you -- were you provided with a
27 copy of the decision in Ms. Woerlee's case?

28 A Oh, yes. But yeah, that's from the

1 city, yeah. I know what you mean, yeah.

2 Q And so she couldn't afford it,
3 because she was on social assistance.

4 A Yes.

5 Q And so she had to apply under the
6 special benefits program to get paid, because she
7 couldn't afford it.

8 A Yes, I think there are more ways
9 also that you can get money back from your taxes. From
10 tax.

11 Q A rebate on your taxes.

12 A Yes.

13 Q Each year, or something. I see.

14 A Yes, correct.

15 Q Okay. All right. At paragraph 29
16 you explain exactly how the cost is determined based on
17 the cost to purchase -- sorry. Include the costs of the
18 Bureau of Medical Cannabis; the cost of purchase; the
19 cost to analyze, package and distribute; and the cost of
20 invoicing. And you say BMC's cost is about is about 15
21 percent and so the rest takes up about 85 percent.

22 A Yes, that's correct.

23 Q So there's no profit built into
24 there.

25 A No, we are a government.

26 Q It's just based on cost.

27 A Yes.

28 Q So this roughly eleven -- or eight

1 Euros per gram is determined to be the cost of
2 production taking these factors into account?

3 A Yes.

4 Q Okay. And then dosages, as we've
5 discussed, I think, the paragraph 30, no maximum dosage,
6 correct?

7 A Correct.

8 Q It's all up to the doctor.

9 A Yes.

10 Q No guidelines on dosage, no
11 standard guidelines on dosage, correct? Paragraph 31.

12 A Correct, yes.

13 Q Depends on each patient. While
14 you have estimates of the averages, you mentioned
15 earlier and is mentioned again here, you don't have any
16 statistics that will tell us exactly what's going on
17 with individual patients and doctors throughout the
18 Netherlands.

19 A No, those figures are not
20 available.

21 Q Okay. And similarly no records of
22 the modes of administration, paragraph 32.

23 A That's correct.

24 Q And then we deal with the safety
25 and quality controls, page 10, paragraph 33, and you
26 deal with the production and distribution chain that's
27 been set up. Fair enough?

28 A Yes.

1 Q You describe then how BMC has
2 contracted a grower to grower cannabis.

3 A Sorry, what did you mean?

4 Q Paragraph 34, the BMC has
5 contracted with a grower.

6 A Yes. We have one grower, yes.

7 Q But you were involved in
8 negotiating that contract, were you?

9 A Well, we set out -- we put out
10 European tender, and I did it twice since I'm working
11 here and every time we only had one application. So
12 it's hard to find another grower.

13 Q Was that because Mr. -- I thought
14 you said Mr. Burton was in there for a while. But then
15 the --

16 A Yeah, but the first period, that
17 was different. Then there were growers that were
18 approached and they were asked to write down for a
19 contract. And now I have to set out -- to put out
20 European tenders. So it's all public. Everyone in
21 Europe can respond, and become a grower. But not many
22 respond.

23 Q And I think you've set out for us
24 at Exhibits D, the guidelines for cultivating cannabis
25 for medicinal purposes obviously in the Netherlands.

26 A Yes.

27 Q And so the potential growers have
28 to -- in the early days they'd have to meet these

1 requirements.

2 A Yes, they do.

3 Q And similarly paragraph (e) the
4 good manufacturing practices, and that's for all
5 pharmaceuticals not just cannabis, correct?

6 A Yes, that's correct. And that's
7 for the packaging.

8 Q Yeah, and then you've got a
9 further doc -- well, we'll come to the other one in a
10 moment.

11 So if we go back to where we were,
12 paragraph 34 and 35, you talked about European tender
13 process and you said -- basically you set out what the
14 test there is. You've got to be financially healthy, no
15 criminal background, educated staff, be able to cannabis
16 according to European directives for herbal medicines,
17 and then you can grow varieties within a certain fixed
18 THC/CBD amount, and you deliver this product -- it has
19 to meet the BMC pharmaceutical requirements.

20 A That's correct.

21 Q So the European directives for
22 herbal medicines, you haven't attached those to your
23 affidavit, have you?

24 A No, I think it's just the
25 guideline which is based on GAP practices.

26 Q Sorry, GAP?

27 A Yes, good agricultural practices.

28 Q Good agricultural practices.

1 A Yes.

2 Q But there's obviously a specific
3 one to do with herbal medicines and as you say in the
4 next paragraph, the decisions were made to create
5 guidelines by revising the good agricultural practice of
6 the working group on herbal medicinal products of the
7 European medicines evaluation agency, so that they be
8 applied to cannabis for medical purposes.

9 A Yes, that's correct

10 Q So this herbal medicine, we're
11 talking about plants, herbs, foxglove, digitalis, this
12 sort of a thing that people can grow for themselves or
13 buy from companies that provide herbal medicine?

14 A I think what I'm understood, the
15 herbal medicines which are available through the
16 pharmacy. There are more herbal medicines than --

17 Q Can you give me an example?

18 A No, I'm sorry, I don't.

19 Q Because a herbal medicine is
20 distinct from the pharmaceutical, the usual
21 pharmaceutical product, isn't it? We're talking about a
22 plant, aren't we?

23 A Yes. Yes.

24 Q Okay, as opposed to a company
25 manufacturing a pill, we're talking about something
26 that's in plant form or extracted from the plant, is
27 that right?

28 A Yes.

1 Q Okay. And so you do make a
2 distinction between herbal medicines and other
3 medicines, don't you?

4 A Yes, yes, because it's living plant
5 materials, so it was on our monography which comes
6 later, maybe I'm talking too early, but --

7 Q Does the monograph, does it deal
8 with herbal as well?

9 A Yes.

10 Q Okay, let's go to that then. Is
11 that tab E?

12 A I think it's G.

13 Q G, okay.

14 A And H. So with herbs -- normally
15 with a pill then you can say exactly that the content
16 always has to be like 18 percent. And when you're
17 talking about herbs we specify at a certain range within
18 the contents have to be, and that's because it's living
19 plant material so you can never make it exactly the
20 same.

21 Q Yeah.

22 A But there are certain ranges within
23 it has to be.

24 Q Okay, so, that's different though
25 for other medicines compared to herbal medicines.

26 A Yes, yeah.

27 Q And so what we have at G is an
28 analytical monograph, so it's a testing of a herbal --

1 of cannabis as a herbal medicine, fair enough?

2 A Yes.

3 Q And the same with H as a release
4 certificate once it's been tested, so saying it's okay
5 to then sell to the public.

6 A Yeah, this comes with every
7 harvest.

8 Q Yeah. All right, so at least in
9 the Netherlands you recognize the distinction between a
10 herbal medicine, from plants, as opposed to the pill or
11 manufactured medicine that's not.

12 A Yes, of course, yeah.

13 Q And am I right that a person can
14 buy seeds or cuttings or whatever and produce their own
15 herbal medicines for themselves, as long as it's not
16 sold to the public?

17 A I don't know actually.

18 Q You don't know that?

19 A No.

20 Q Okay. All right, you then talk
21 about, and we're still at paragraph 36, how the grower,
22 which is Bedrocan, is the sole grower, correct? I think
23 we've covered that. Has to comply with these
24 guidelines?

25 A Yes. Yes, that's correct.

26 Q And Exhibit D we looked at them
27 briefly, as well as Exhibit E which are the ones for
28 other pharmaceutical products?

1 A Yes, correct.

2 Q And you then refer in the next
3 paragraph to being annexed to the regulations and you
4 talk about the policy guidelines and exemptions.

5 A Mm-hmm.

6 Q And that particular regulation
7 isn't available in English at the moment, but you've
8 given us an earlier version from January of 2003 which I
9 understand is very comparable, very similar.

10 A Yes.

11 Q Do you know, is there any
12 significant difference?

13 A No, I checked it and I think, I
14 think it's the same.

15 Q Okay.

16 A Exactly the same.

17 Q And so if we look at that quickly,
18 it's the regulation of the Minister of Health and it
19 basically deals with exemptions in number 1 and how to
20 apply for exemptions, correct?

21 A Yes, correct.

22 Q It goes on, on the next page, about
23 the Single Convention again, and the basic requirements.
24 And in -- as a result of that, and as a result of the
25 laws in the Netherlands?

26 A Yes, correct.

27 Q And it deals with growing cannabis
28 over at number 5.

1 A Yes, correct.

2 Q And basically what your agency must
3 do?

4 A Yes.

5 Q And then I noticed over on the next
6 page, if you go to the bottom of the fourth paragraph,
7 just above that, it talks about extensive screening.

8 A Yes.

9 Q Because the growers apply for an
10 exemption, extensive screening of the applicant will be
11 part of the procedure.

12 A Sorry, you are under --

13 Q Page 96 in the top right. And if
14 you go down to the middle of the page, it's the -- well,
15 it's probably a third of the way down. It starts, "If
16 growers apply ...". You see that?

17 A Okay. Yes, I see.

18 Q If you go to the end of that
19 paragraph, it says

20 "The purpose of the screening is to limit the
21 Minister's political risk as much as
22 possible."

23 Is that right?

24 A Yes, correct.

25 Q So part of the object is to try and
26 make sure the Minister doesn't have political problems.
27 Is that the idea?

28 A Yes, yes, if you contact a grower

1 which has also big illegal activities, yeah. That's
2 impossible for the Minister to contract such a grower.

3 Q The people behind Maripharma, were
4 they --

5 A They didn't pass the screening.

6 Q Because of -- do you know why?

7 A I can't tell this here. That's a
8 secret report, that it has been done external. We have
9 a special organization within the Ministry of Justice,
10 and they do criminal screening, and further details,
11 family -- affidavits, everything. It's a report like
12 this big, and I can't tell the information about. But
13 they didn't pass it, and that's the reason why we
14 couldn't work with them.

15 Q And Mr. Burton, the same -- he was
16 originally approved --

17 A No, no. He was contracted, but he
18 didn't deliver the quality we wanted.

19 Q Okay.

20 A And he didn't improve. He got time
21 for us to improve. His growing was -- that's -- we are
22 delivering a medicine, so if at one point -- one week
23 the percentage -- or one harvest percentage is 12
24 percent and the other harvest the percentage is 20
25 percent, you can't say it's a medicine.

26 Q Okay. so the only one that's
27 passed the screening and has continued to do so now for
28 some time is Bedrocan.

1 A They did pass at that time, and
2 until this moment they are the only one applying for --
3 yeah, responding on the European tender.

4 Q Right.

5 A We have other growers, but only for
6 scientific purposes.

7 Q Okay. Research and so on, like --

8 A Yes.

9 Q -- and Marifarm still is included
10 in that group.

11 A They can -- still use them on very
12 little skill for their scientific research, because it's
13 important that there is --

14 Q So paragraph 39, you talk about the
15 inspector, then the regular inspection of the growers of
16 security. You talk about the grower having to have
17 licenses, and the various steps. Again, this is not --
18 this is just part of the information that the BMC has,
19 and that you provide to potential growers and so on as
20 to what the rules are, what the procedures are. Is that
21 right?

22 A I don't understand your question,
23 sorry.

24 Q Well, all of what you're discussing
25 here is you're explaining what the rules are for the
26 producers?

27 A Yes.

28 Q Yeah. And the various steps in the

1 production? It's not something that you're intimately
2 involved with, but you know this from your role as the
3 deputy?

4 A Oh, yes.

5 Q That this is the steps that people
6 take. Paragraph 41.

7 A Yes.

8 Q And at the bottom of that, you say
9 it's put into 250-gram bags. So is there a reason for
10 that, the 250 as opposed to 150 or 500?

11 A The bags we chose are only
12 available in that size. And they are not available
13 bigger, and also there is -- open the big bags, or those
14 250-gram bags go to the packager.

15 Q Yes.

16 A They have to be opened, and we only
17 want them to open one bag, because there can be weight
18 lost -- yeah. When it's opened it dries, the product is
19 drying.

20 Q The moisture goes out.

21 A Yeah.

22 Q And the weight's going to go down.

23 A Yeah.

24 Q Okay. All right. And you continue
25 on in terms of the process and then at the end of
26 paragraph 42 you say if the harvest is not approved by
27 the BMC it would be destroyed.

28 A Yes.

1 Q So in other words, you get the
2 supply from Bedrocan, it goes through all of these
3 processes and if it's not approved --

4 A Yeah, we destroy it.

5 Q -- you destroy it. You then go on
6 about the lab testing and irradiation, the good
7 laboratory practices, paragraph 43, and then
8 international standards and G you attached what we
9 looked at a moment ago, was the testing of one of the
10 Bedrocan products, correct?

11 A Yeah, but I think the monography
12 is available for every strain.

13 Q Yeah.

14 A And every laboratory, every
15 cannabis strain. It's not specific for Bedrocan
16 varieties. The monography is for every kind of
17 cannabis.

18 Q Well, what other kinds of cannabis
19 besides Bedrocan go through this process?

20 A Not in the Netherlands, but I
21 think in Israel they are using our monography.

22 Q Oh, I see.

23 A Yeah.

24 Q You're not talking about the
25 Netherlands?

26 A No.

27 Q Bedrocan is the only one going
28 through the process in the Netherlands, correct?

1 A Yeah, for the products which come
2 into the pharmacy, yes.

3 Q Yeah, okay. So you explain there
4 in the next few paragraphs the process and the release
5 certificate, which we looked at, exhibit A, and then at
6 47 you say:

7 "To date, almost all batches of medical
8 cannabis produced have contained the range of
9 THC/CBD required by the BMC."

10 So when you say "almost", how many didn't?

11 A I think in the period that I'm
12 working here we had to destroy three batches.

13 Q And are there statistics in terms
14 of before you were working there?

15 A No, I think maybe one batch, I
16 don't know. But I don't think many. It doesn't happen
17 many times.

18 Q All right, but not withstanding
19 all of the processes you've describe in your affidavit
20 and here in court, the gamma irradiation, all the rest
21 of it.

22 A Mm-hmm.

23 Q There are batches that have come
24 in that have been destroyed.

25 A Yes, because the THC and CBD level
26 was not okay.

27 Q So they tried to do what -- it's
28 Bedrocan we're talking about, is it?

1 A Yes.

2 Q Yeah, so Bedrocan has tried to
3 produce what you require but didn't meet the
4 requirements in terms of the ratios. Otherwise it was
5 fine?

6 A Yes.

7 Q And it was still destroyed?

8 A Yeah, yeah.

9 Q So in other words, if we go back
10 to the graph we have back at paragraph 26, am I
11 understanding you correctly to say then that they have
12 to produce these varieties and they have to have a
13 specific amount of THC and a specific amount of CBD as
14 they've got there and if they aren't -- if they don't
15 fit within that, you destroy it?

16 A Yes, if we don't find another
17 purpose to use it for.

18 Q Okay.

19 A It might be used for scientific
20 purposes or for extraction, but if we can't find someone
21 who can use it, then we will destroy it because that's
22 our main concern. People have to use it as a medicine
23 and a medicine, yeah, always has the same contents. So
24 that's important.

25 Q Okay. And then you indicate at 48
26 the irradiation process and if I'm understanding it
27 correctly, it's not Bedrocan that gamma irradiates.

28 A No.

1 Q It's the government when it's
2 brought to BMC, that's what BMC require?

3 A Yeah, it's our position.

4 Q So it's the government that
5 requires it?

6 A Yeah.

7 Q Okay. And again if you're growing
8 food for yourself you don't have to go through that
9 process in Holland, do you?

10 A No.

11 Q Okay. You then deal with
12 pharmaceutical packaging and distribution and again you
13 refer to the good manufacturing practices and you point
14 out that they're packed in 5 gram amounts.

15 A Yes that's correct.

16 Q So people can buy in 5 gram
17 amounts at the 38 Euros that we looked at a minute ago?

18 A That's correct, yeah.

19 Q Okay. All right, finally at G you
20 talk about the differences between cannabis available in
21 the Netherlands and the cannabis in the coffee shops.
22 And again we come back to the major differences as far
23 as you know, because there's no lawful way that cannabis
24 in the coffee shops isn't subjected to these standards
25 and testing and so on. That's the major difference,
26 correct?

27 A Well, I attached one annex, of
28 course, which shows what is in the coffee shop cannabis

1 or what is found, the mould and things --

2 Q Are you talking about a monograph?

3 A No, I'm talking about the research
4 from 2006 from I think it's A.

5 Q From Mr. Hazekamp.

6 A Yeah. So there are, yeah, there
7 are figures about it. Yeah, that's the main difference
8 indeed.

9 Q And subject to the various
10 limitations we went over when I took you through that
11 article.

12 A Yes.

13 Q Okay. And so the basic major
14 difference, generally speaking, is that the Bedrocan
15 product is subjected to all of these tests and so on.
16 The coffee shop material isn't. Fair enough?

17 A No, I don't agree. I think the
18 main difference is that a grower which has an exemption
19 or -- can take the time to grow and can make a good,
20 high quality product. And if there are illegal growers
21 which don't have the time, they will put things on it to
22 make it grow faster. You can buy everything, maybe some
23 day to think, "Oh, we have to harvest now because it's
24 smelling too much." They will have a different quality.
25 So I'm convinced --

26 Q Yeah, but they could also --

27 A -- if you look at -- if you could
28 see how it looks as our grower, it's so, so different

1 than from an illegal grower.

2 Q But you don't have any statistics
3 to show that.

4 A I know, but do you -- yeah. Are
5 there, are there any statistics, yeah.

6 Q You have this one report from back
7 in 2006. That's it, correct?

8 A Yes.

9 Q With the limitations that we
10 reviewed, correct?

11 A Yes.

12 Q So you don't know whether the
13 quality in the coffee shop is always going to have what
14 Mr. Hazekamp found in 2006, do you?

15 A No, I don't know.

16 Q And you'd agree with me that if
17 somebody is trying to produce for themselves, they're
18 going to be worried about their health, particularly if
19 they're a medical patient. Isn't that fair?

20 A Yeah, of course they worry about
21 themselves.

22 Q They're not going to want to put
23 something in their body that may be harmful to them,
24 would they?

25 A I don't think so.

26 Q The whole purpose is to try and get
27 better by taking medicine, isn't it? Not get sick.
28 Isn't that fair?

1 A Yeah, correct.

2 Q Okay. So you don't know what the
3 quality is from somebody who has the time and who's
4 taken the time and effort to try and do it properly, do
5 you?

6 A No, you're correct. I only know
7 how much effort it takes our grower to receive this
8 quality.

9 Q But at the end of the day, as Mr.
10 Hazekamp says, it's the consumers that determine what
11 product they want. Isn't that right?

12 A That's right, yes.

13 Q And the consumers that existed
14 prior to 2003 have voted with their feet and walked away
15 from the government product. Isn't that correct?

16 A I don't agree with that.

17 Q Because you say you don't know how
18 many growers or patients there were before 2003, isn't
19 that right?

20 A Well, we have cannabis in the
21 Netherlands recreational, for recreational use and in
22 coffee shops since the '70s. So I don't know if people
23 put their back against the medicinal cannabis from the
24 pharmacy. I don't know. They still have to pick and
25 choose. So I think the patients have a nice position in
26 the Netherlands, that there are coffee shops and there
27 is pharmaceutical grade cannabis available in the
28 pharmacy, but this is a decision from the government.

1 We've really gone to that the medicinal cannabis is
2 grown on the suspicion of the Bureau of Medicinal
3 Cannabis that it's tested and that the patient knows
4 what he gets and knows the contents.

5 Q But the 10,000 that you projected
6 would register under the new program as we went over it
7 before just didn't materialize, and hasn't materialized,
8 since 2003. Isn't that --

9 A That's correct.

10 JUSTICE: Plowing the same field about
11 four times.

12 MR. CONROY: Yes, I am.

13 JUSTICE: The crop isn't getting
14 better.

15 MR. CONROY: All right, thank you.

16 Q Because at the end of your
17 affidavit, that's what you talk about, the contrast with
18 coffee shops again. Isn't that right?

19 A Yes, that's correct.

20 Q Okay. And you refer back again to
21 Mr. Hazekamp's article.

22 A Yes.

23 Q And you say that the cannabis is
24 much better than the coffee shops but you don't know
25 that other than Mr. Hazekamp's article from back in
26 2006.

27 JUSTICE: In the States they have a
28 phrase "asked and answered". I would have thought that

1 applied here too.

2 MR. CONROY: Right. I just don't want
3 to have something in the affidavit that is an opinion
4 that isn't based on the evidence that's before us.

5 Q All right. Were you given a copy
6 of an article entitled "Ten Years of Legal Cannabis a
7 Disaster for the Dutch Patients"?

8 A Yes, I read it.

9 Q "Sales of Bedrucan at the Pharmacy
10 Further Collapse". You read that? Would you agree with
11 me that that appears to accurately describe the position
12 of these people who are opposed to the existing
13 government program?

14 A Sorry, can you say that again?

15 Q Would you agree with me that this
16 article accurately reports the position of those people
17 that are opposed to the existing program?

18 A No, I don't agree.

19 Q Well, what do -- well, you read
20 the article, can you comment on it?

21 A Yeah, I don't know -- is it
22 somewhere here? Because I don't know --

23 Q Let me give you --

24 A I have many many comments about
25 it, so maybe I don't know if you want to walk me through
26 it. But there are many --

27 Q I don't think we've got the time.

28 A -- many incorrect facts sort of.

1 Yeah, I don't know where they -- it comes from.

2 Q Well, you know -- so you see that
3 there's all sorts of criticisms in this article about
4 the existing program?

5 A Yes, and these are the same two
6 patients you mentioned before.

7 Q Yeah. You're aware of their
8 position in relation -- their criticism. I mean, I'm
9 not saying you have to agree with them, but you are
10 aware of what they are?

11 A Yes, I am aware since I read this,
12 yes.

13 Q Wouldn't you say that this sets
14 out what their position is? Ms. Woerlee and Mr.
15 Hillebrand as of November 2013 and February 2014 as it
16 indicates at page 7.

17 A Well, it's clear that they are not
18 happy with Dutch policy.

19 Q Yeah. You would agree with me
20 that this fairly shows their unhappiness. Not that
21 it's necessarily true, but it is a document that
22 reflects --

23 MS. NICOLLS: Mr. Justice, it seems
24 we're veering into the realm of speculation where Ms.
25 Sandvos is being asked to agree as to what other's views
26 may be. She certainly agreed to certain premises set
27 out in there, in this article, including that it was
28 written by certain individuals and it presumably

1 indicates their position in respect to the program. But
2 I think that is the extent of what she can speak to.

3 MR. CONROY: But that's what I'm
4 trying to establish is that -- does she agree that it
5 reflects the position, the criticisms of these people.

6 JUSTICE: She's given you an answer to
7 it. She's not buying the whole of what they say.

8 MR. CONROY: All right.

9 Q But I'm not asking you to buy what
10 they say, but do you agree that it sets out the
11 position, their position?

12 MR. NICOLLS: Mr. Justice, Ms. Sandvos
13 can't know whether or not this article sets out the
14 position of the authors. She can say -- perhaps she can
15 say that it --

16 JUSTICE: Well, she can answer the
17 question and --

18 MR. CONROY: All right. Well, I guess
19 we'll just be a bit longer then, that's all. We'll have
20 to go through --

21 JUSTICE: Well, you're going to have
22 to justify going longer on the basis of some relevancy.

23 MR. CONROY: All right.

24 JUSTICE: And I can tell you right now
25 the fact that there are two people or four people or 500
26 people in the Netherlands who don't like the system is
27 immaterial to this case. I can't see the relevance of
28 it.

1 MR. CONROY: All right.

2 JUSTICE: We're dealing with a
3 Canadian Charter issue, accessibility to a medicine.

4 MR. CONROY: Well, my friends have
5 introduced this evidence in order to try and show what
6 has been done in other countries. And in order to argue
7 before you later on that they're not acting arbitrarily
8 because look, other countries are doing this. And so
9 I'm simply just trying to establish how these other
10 countries actually do work in fact, and that it's not as
11 rosy a picture as is being portrayed, that's all. So
12 that you know it's not all just as simple as they
13 portray it.

14 JUSTICE: Well, I appreciate that in
15 every system there is going to be criticisms of whatever
16 system you have. And there may well be people who don't
17 like the system in the Netherlands, or like the system
18 in Hawaii, or any place like that.

19 But we're not here to weigh off whether
20 the one system is better than the other.

21 MR. CONROY: No, but it seemed to me
22 that you should have in front of you, if there are these
23 criticisms, you should know about them so you see that
24 it's --

25 JUSTICE: Well, I think that you've
26 established that there are the criticisms. You've
27 established that there's litigation going, and you've
28 established that there is a lady who gets a special

1 compensation from the City of Amsterdam for her
2 benefits.

3 MR. CONROY: All right. Well --

4 JUSTICE: I don't know what more you
5 want to do with it.

6 MR. CONROY: Okay. Let's do it this
7 way, then.

8 Q You were given copies of the
9 judgments in the cases in Dutch of Ms. Woerlee, Mr.
10 Hillebrand and Mr. Moorlag?

11 A Yes.

12 Q And can you -- we don't have
13 English translations of them. Can you confirm that my
14 presentation to you, first of all in terms of Ms.
15 Woerlee, actively describes the situation for her? The
16 business about her getting the special benefits to pay
17 for her to be able to produce her own?

18 A But that's -- it was civil court,
19 it was not criminal court where she went.

20 Q Yeah. Oh, yeah.

21 A So, indeed, it's, to be honest, a
22 weird situation that the City of Amsterdam finances her
23 illegal activities. So at any moment -- yeah, it can be
24 stopped, because she is doing something against the law.

25 Q And you read that decision, or
26 refreshed your memory from that decision when it was --
27 you were given it?

28 A Sorry?

1 Q My friends gave you a copy of that
2 decision?

3 A Yes. Yes.

4 Q And you refreshed your memory from
5 it?

6 A Yes, yes. It's very unique. It's
7 -- yeah.

8 Q And the same with Mr. Hillebrand?
9 You read his --

10 A Um -- I didn't read that as well,
11 but I think that he didn't get any funding for his
12 problems of --

13 Q Because of the -- because of his
14 income? Because he didn't qualify, because of his
15 income?

16 A It could be.

17 Q Or he first qualified, and then
18 they took it away because his income went up? Is that
19 fair?

20 A That could be. But, yeah, it's
21 just about the funding of special activities, so --

22 Q Okay.

23 A Yeah. If something goes to
24 criminal court, then it also will come on my desk, but
25 not when it's civil court, yeah.

26 Q And the only one that went to
27 criminal court as far as I know, maybe you know of
28 others, was Mr. Moorlag, right?

1 A Moorlag, yeah.

2 Q And as we discussed in his
3 situation, the court ultimately concluded that he was
4 producing for himself illegally, but he would not be
5 punished.

6 A Yes.

7 Q Okay. All right. All right. I'll
8 leave it at that.

9 JUSTICE: Okay. Re-Exam?

10 **RE-EXAMINATION BY MS. NICOLLS:**

11 Q Ms. Sandvos, when you were asked
12 about paragraph 25 of your affidavit, and the BMC
13 estimates that the average daily use is about .68 grams
14 per patient, and you said that the estimate was based in
15 part on the fact the BMC has access to the "recipes" for
16 medical cannabis given to the pharmacies. Is that
17 correct? And just to be clear, in Canada we use the
18 word "prescription" to describe the paper on which a
19 doctor authorizes a patient to access medicine from a
20 pharmacy.

21 When you say "recipe" is that what you
22 mean?

23 A Yeah, I mean prescriptions. It's
24 the same, yeah.

25 MS. NICHOLLS: That's all, thank you.

26 JUSTICE: I have one question for you,
27 ma'am.

28 A Yes.

1 JUSTICE: You described a form of
2 enforcement by the police that varies from -- can vary
3 from one area of the country to the other.

4 A Yes.

5 JUSTICE: Some are more strict than
6 others. Is there any -- is it based on geography? Is
7 it -- is the difference because it's rural versus urban
8 or north versus south? Like in the country? Is there
9 an rationale for that enforcement difference?

10 A Yes, I think it's about region and
11 about also how do people live. If you live in Amsterdam
12 or you live on top, next to each other it's more
13 dangerous than you live in a farm and no neighbours
14 around. So I think those are --

15 JUSTICE: So if you're up in Apeldoorn
16 it's more relaxed --

17 A Yeah, then in Amsterdam.

18 JUSTICE: Than in Rotterdam or
19 Amsterdam?

20 A Yes, correct.

21 JUSTICE: Okay, I think I understand.
22 All right, we are done. Thank you. *Danke jewel.*

23 THE WITNESS: Thank you.

24 JUSTICE: Have a good trip.

25 (WITNESS ASIDE)

26 JUSTICE: We'll be back at 1:30.

27 **(PROCEEDINGS ADJOURNED AT 12:23 P.M.)**

28 **(PROCEEDINGS RESUMED AT 1:55 P.M.)**

1 MR. JANUSZCZAK: Good afternoon,
2 Justice. Things are moving so smoothly.

3 JUSTICE: Yes.

4 MR. JANUSZCZAK: Thank you for the
5 indulgence, and we'll waste no time, and my apologies.
6 As you're undoubtedly aware, we discovered that
7 Professor Paul Grootendorst, who's the next -- the last
8 witness to appear for the defendant --

9 JUSTICE: Yes.

10 MR. JANUSZCZAK: His affidavit is
11 found in the consolidated book of expert reports, volume
12 4, at tab 11. The affidavit, the report is there in its
13 entirety, but the pages are all mixed up. So, what you
14 should and what everybody has now is separate, yes.

15 JUSTICE: I've got the good version.

16 MR. JANUSZCZAK: Yes. And that should
17 assist greatly, I think.

18 As I indicated the next witness, and the
19 final witness up for the defendant, is Professor Paul
20 Grootendorst. He is being put forward here as an expert
21 in the area of health economics and in particular
22 assessing marketplace trends under the *MMPR* and the
23 factors that comprise the cost of cultivating marijuana
24 for medical purposes.

25 I would ask that Professor Grootendorst
26 take the stand.

27 **PAUL GROOTENDORST, Sworn:**

28 THE REGISTRAR: Would you please state

1 your name, occupation, and address for the record?

2 THE WITNESS: Paul Grootendorst.

3 Professor of economics. 144 College Street, Toronto,
4 Ontario.

5 **EXAMINATION IN CHIEF BY MR. JANUSZCZAK:**

6 Q You can sit down, Professor
7 Grootendorst.

8 A Thank you.

9 Q You will have in front of you this
10 small Cerlox-bound volume. It indicates that it's your
11 affidavit on the cover. You have that?

12 A Yes, I do.

13 MR. JANUSZCZAK: All right, and I'd
14 ask that that be marked as the next exhibit. I believe
15 it's 54.

16 **(AFFIDAVIT OF PAUL GROOTENDORST MARKED EXHIBIT 54)**

17 MR. JANUSZCZAK:

18 Q Professor Grootendorst, you were
19 asked by the Attorney General of Canada to prepare this
20 report in these proceedings?

21 A That's correct.

22 Q Now, I'm going to briefly just
23 summarize your qualifications and go through that with
24 you, and then I'm going to ask you some questions about
25 the opinions that you have expressed.

26 A Okay.

27 Q In terms of your qualifications,
28 these are summarized in your report, and you've also

1 included your CV. But you are an associate professor at
2 the Faculty of Pharmacy and School of Public Policy and
3 Governance at the University of Toronto?

4 A Correct.

5 Q And you've been in that position
6 since 2002.

7 A Yes.

8 Q You're also currently the director,
9 division of social and administrative pharmacy, at the
10 University of Toronto?

11 A That's correct, yes.

12 Q As well as a member of the Canadian
13 Centre for Health Economics?

14 A Yes, that's correct.

15 Q As well, you're an adjunct
16 professor, Department of Economics, at McMaster
17 University in Hamilton, Ontario.

18 A Yes.

19 Q And McMaster University is where
20 you obtained your Ph.D. in economics, is it not?

21 A It is.

22 Q That was obtained in -- you
23 obtained that in 1995?

24 A Correct.

25 Q And again, details of the extent of
26 your ongoing research and experience are set out in your
27 CV, correct?

28 A That's correct, yes.

1 Q All right.

2 Q Now, if you turn to the first page
3 of your report, this'll be at Exhibit A of what you have
4 in front of you, at paragraph 5. Do you have that in
5 front?

6 A One second please. Yes.

7 Q Okay. In paragraph 5 you describe
8 the focus of your research in teaching as being in the
9 area of health economics.

10 A Mm-hmm.

11 Q Can you very briefly describe what
12 health economics is, and explain how the principles you
13 use in that area of study relate to what you were asked
14 to opine on in this case?

15 A Certainly. Health Economics uses
16 the tools of basically microeconomics to analyze
17 resource allocation in the health and health care
18 fields, and it subsumes, amongst other things, how
19 markets allocate different types of health care
20 including pharmaceuticals and, as an example, medical
21 marijuana.

22 Q Now, turning to your opinion and
23 what you were asked to address, it's on the same page,
24 the first page right at the top. Under the heading
25 you've included "Mandate". You were asked to address
26 three issues in your report. The first relates to the
27 marketplace trends with respect to the price of medical
28 marijuana that you'd expect to see under the *Marijuana*

1 *for Medical Purposes Regulations.*

2 A Yes.

3 Q The second issue relates to the
4 impact or impacts on Licensed Producers if current and
5 prospective medical marijuana users were exempt from the
6 requirement to purchase their medical marijuana from
7 Licensed Producers and could instead cultivate their own
8 medical marijuana?

9 A Yes.

10 Q And finally, again as you've set
11 out here, the third issue are the fact -- is the factor
12 or the factors that should be considered in calculating
13 an individual user's per gram cost of medical marijuana
14 when cultivated in a personal growing operation.

15 A Mm-hmm.

16 Q And whether those factors would be
17 different when you compare current users who've already
18 established such an operation with those who are new to
19 it.

20 A Mm-hmm.

21 Q In addressing these issues you
22 considered and assumed certain facts, as well as relied
23 upon information that was provided by others, correct?

24 A Yeah.

25 Q And those things are all set out in
26 your report?

27 A Mm-hmm.

28 Q So just very briefly, with respect

1 to the first issue relating to market trends with
2 respect to the price of medical marijuana under the
3 *MMPR*, what was your conclusion in that regard?

4 A Well, my opinion was that I
5 expected the price of medical marijuana sold by Licensed
6 Producers, hereafter LPs for short, to decline over
7 time. And the basic reasoning is that to my mind, that
8 market has all the features of a competitive market. In
9 competitive markets, firms are unable to realize excess
10 profits. If they do, other firms enter. I noticed that
11 little entry barriers, at least from Health Canada,
12 they're going to accept all comers. As well if there's
13 excess profits, other firms might underprice them to
14 increase their market share.

15 So that condition, that no excess profit
16 condition translates into a condition that the price
17 received for the medical marijuana equaled approximately
18 the average cost of producing and distributing medical
19 marijuana. And for the reasons I outlined in my report
20 I expected the average cost of production and
21 distribution to decline over time. I can briefly
22 illustrate why I expect that to happen. Given that --

23 Q Just very briefly.

24 A Given that -- just let me go there
25 in one second, but given that I expect the average
26 price, average cost to decline, I expect the price to
27 decline given that excess profit condition I just
28 brought to you a second ago. So while I would expect

1 the average cost to decline, I would expect that because
2 of things like learning by doing this. The market is
3 still in its infancy. We're were early days in the
4 industry. People are probably learning by doing,
5 learning how to become more proficient at growing
6 medical marijuana. As they get more proficient, that
7 will increase productivity and yields, and reduce
8 average cost.

9 The literature suggests there is some
10 modest declines of scale to be had from indoor
11 cultivation of medical marijuana. What else would there
12 be? There is also the prospect that firms will
13 undertake research and development activities which will
14 both increase the quality of the products and also
15 decrease the cost of production. Those are basically
16 the reasons.

17 Q All right.

18 A The other reason I think that the
19 price will decline is not theoretical, like it's
20 outlined to you, but it's empirical. I've noticed that
21 the other nascent industries like agriculture back in
22 the 30s, or automobiles even earlier, we see across a
23 lot of different countries, actually, reductions in the
24 selling price of those commodities over time. Again, in
25 roughly, you know, similar competitive markets.

26 Q All right. Now let me ask you
27 about your -- the second issue you were asked to opine
28 on. With respect to that issue -- so the impact of

1 medical marijuana users, or the impact if medical
2 marijuana users were exempt from the *MMPR* requirement
3 and purchased from Licensed Producers, the effect that
4 you would expect to see on the market, with the market,
5 what did you conclude in that regard?

6 A Well, it all depends. I was
7 opining on the impact of that, the ability of home
8 producers to grow their own, legally. On the
9 marketplace -- marketplace trends in the LP industry.
10 And I opined that the effect will depend on the share of
11 the total unit volume of medical marijuana consumed;
12 that is, accruing to the LP industry. The bigger the
13 share -- if the share is very large, you will see price
14 reductions, as I described earlier, albeit perhaps not
15 as fast as if they can have the entire market.

16 On the other polar extreme, if the LP
17 industry accrues a very, very small share of the total
18 medical marijuana unit volume, then it's possible there
19 would be no LP industry at all.

20 Q And then finally with respect to
21 the third issue that you were asked to consider, the
22 factors that should be considered or take into account
23 when calculating an individual's per-gram cost of
24 growing their own medical marijuana, what factors did
25 you identify in that regard?

26 A Well, I broadly distinguished the
27 costs of personal cultivation into two types, depending
28 on who bears the cost. There are the private costs;

1 that is, the costs that the grower him- or herself
2 personally incurs. And I just -- and the other cost is
3 external costs. That is, the costs that the grower
4 imposes on others, not necessarily faced by the grower
5 him- or herself.

6 Within the private cost, that is, the
7 cost assumed by the grower, there is both money outlays,
8 and I go through in my report the different types of
9 money outlays. There is things like fertilizers,
10 presumably there is irrigation systems, there is seed.
11 There is electricity, presumably. What it costs for
12 those kinds of things.

13 And plus there is also opportunity costs.
14 These are -- this is the value of time and other limited
15 resources that the grower, him- or herself, puts into
16 the growing and cultivation, and learning how to grow,
17 of medical marijuana. And opportunity cost basically is
18 the -- what you're giving up to put those resources,
19 your time, et cetera, into growing medical marijuana.
20 It's what -- it's the value of your time or other
21 resource and its next best alternative. So that
22 describes the private costs.

23 Externals costs describe things like --
24 things like increased fire hazards that are imposed on
25 neighbouring houses, houses that neighbour a medical
26 marijuana operation for home-based operations. I
27 identified things like the cost of administering the
28 program whereby houses are inspected. Health Canada

1 runs a program, I understand, under which the
2 individuals who are licensed to grow on their own
3 premises are inspected, and that costs money. Other
4 sundry items on that list as well.

5 The sum total of the external cost and
6 the private cost collectively constitute the social cost
7 of the home-based medical marijuana. It's the -- all of
8 the scarce solid resources, irrespective who pays for
9 them, that are consumed in the cultivation of medical
10 marijuana at home, or for home use or home-based
11 production.

12 Q Thank you, Professor Grootendorst.
13 If you'd be kind enough to answer the questions that my
14 friend has for you.

15 A I'd be happy to.

16 **CROSS-EXAMINATION BY MS. GRACE:**

17 Q So, Professor Grootendorst, my name
18 is Tonia Grace. I'm going to ask you questions on
19 behalf of the plaintiffs.

20 As an economist, obviously you are
21 familiar with the poverty level. There's an economic
22 assessment done as to what the poverty level is in
23 Canada, is that right?

24 A Yes, I'm aware that various
25 organizations will release poverty figures, or as
26 estimates of poverty levels, yes.

27 Q I have some questions with respect
28 to what the poverty level is in Canada as far as income

1 is concerned. We provided to -- I don't know if you
2 were provided yet with a document from the Fraser Valley
3 produced by an economist called Christopher Sarlo, have
4 you heard of it, called "Poverty: Where Do We Draw the
5 Line?"

6 A I'm not familiar with the Fraser
7 Valley Institute. Are you talking about the Fraser
8 Institute?

9 Q Yeah, the Fraser Institute. It's a
10 report that was done on the --

11 A Yes, your friend gave me a copy of
12 that over lunch. I only had a chance, between bites of
13 sandwiches, to scan it, so --

14 Q I just have a few areas to point
15 to. I'm not going to give you an examination on the
16 content, don't worry. So if I can hand this in, I do
17 have a copy here as well.

18 MR. JANUSZCZAK: Just to be clear,
19 Justice Phelan, I did give a copy of the excerpts that
20 were identified to us in advance yesterday to Professor
21 Grootendorst, so he could take a look at those, which I
22 understand he did over lunch, but he didn't have the
23 whole thing.

24 JUSTICE: Okay.

25 MS. GRACE: So if I can -- the witness
26 can be given the whole thing. I also have a copy for
27 the court.

28 Q So I'm just going to ask you a few

1 questions and take you to a few sections in this
2 document, just to establish what the poverty level is
3 and how it's assessed from an economist's point of view.

4 So if I can take you please to page 9.

5 A Mm-hmm.

6 Q It's a section that says, "The
7 basic needs poverty measure," and if I can ask you about
8 the second from bottom paragraph it says -- it talks
9 about a fixed basket of necessities and it goes on to
10 say:

11 "The cost of the basket of necessities is the
12 poverty line. If your income is less than
13 this costs, that means you cannot afford all
14 of the basic necessities and would,
15 therefore, be poor."

16 Is that a comment that you would agree
17 with as far as the poverty line and the assessment of
18 the poverty line?

19 A Well, if I could just briefly --

20 Q Sure.

21 A -- preface my words by saying this
22 was not part of my mandate.

23 Q Okay.

24 A It's not in the -- I'm not sure I
25 know kind of as a -- I'm familiar with the concept, but
26 I won't be able to provide a reasoned answer that would
27 be -- it would take me a little bit of time just to come
28 up with --

1 Q Okay, we're looking for the kind of
2 level --

3 A We're at a high level, yeah.

4 Q We're talking about what is a
5 poverty line, how is this basket included.

6 A Yeah, I think that's right. I
7 think it's based on what it would cost to buy a grocery
8 basket, so to speak, of items.

9 Q Okay. So the basic of necessities.
10 If you turn over to the page at page -- the next page,
11 page 10.

12 A Yes.

13 Q The document. There's a list
14 there that lists what's considered to be basic needs in
15 Canada.

16 A Mm-hmm.

17 Q So this is for the purpose of
18 finding out what the poverty level is or what the
19 poverty limit is.

20 A Mm-hmm.

21 Q If we look down that chart would
22 you agree that basic needs to be looked at when deciding
23 what the poverty level is would include the list there.
24 So not the amounts, because this is based on a family of
25 four, but as a premise, the items that you look at when
26 deciding what the basic needs are life are would be:
27 Food, shelter, clothing, telephone service, cleaning
28 supplies, household insurance, furniture and equipment,

1 laundry, public transportation, personal care, health
2 care, miscellaneous and taxes. So that's the list, is
3 that right? That that's the list of items that are
4 looked at?

5 A I'm just not that clear about the
6 taxes, actually.

7 Q Okay, if we take off --

8 A Why would the tax be -- is this
9 net of subsidies.

10 Q Yes. The taxes are on there but
11 then they are taken off as well, you'll see at the
12 bottom. So total after taxes. So go for the after-tax
13 amounts. See there? It's taxes are added in and then
14 it says "Total" and then it says "Total after taxes".

15 A Okay, right, right. So actually
16 if you look at the LICO, after tax 2009, this household
17 would be receiving what appears to be \$15 in a net
18 subsidy, right?

19 Q So if we look at the chart,
20 there's an average amount for what the basic needs are,
21 which came out to forty-two and a half thousand, just
22 over, and then there's a range, isn't there, next to it?
23 Bottom quintile of 29,000, just over 29,000. And then
24 a bottom decile of 27,550, and then we get the Sarlo
25 update of 24,323.

26 What I'd like you to consider and to
27 accept is 24,323 is the amount that is considered to be
28 the poverty level for a family of four in Canada

1 according to this research. Would you agree with that?

2 A No, I wouldn't, actually.

3 Q Okay, so what is the figure then?

4 A There is no one figure.

5 Q There is no one figure. Then how
6 do you calculate a figure of poverty line?

7 A Well, it depends on what you
8 consider to be essentials.

9 Q What would those be?

10 A Depends where you live.

11 Q Well, for Canada.

12 A Okay, let's suppose you live in
13 New Brunswick. As example, suppose you lived in
14 Millville, New Brunswick. Again, the costs of living
15 there, I can attest because my wife happens to come from
16 that area, they can get by with actually just -- it's
17 amazing what they can do in self-sufficient wise. They
18 can hunt for meat. They have a lot of communal sharing.

19 Q Well, sorry. I don't want to
20 interrupt you. I'm not talking about whether it's
21 possible to live off less than that if you go out and
22 get your own food, and sew your own cloths and grow your
23 own tomatoes. We're talking about from a statistical
24 point of view, from an economic point of view, there is
25 a poverty level in Canada which is recognized as a
26 medium. It doesn't mean it applies to everybody.

27 A I would disagree with that,
28 actually. There's lots of different measures out there.

1 There's not just one measure. I think Stats Canada has
2 a few that they promulgate. I think, obviously, Fraser
3 Institute has a different definition, according to -- I
4 assume Sarlo is with Fraser Institute?

5 Q Yes. This is the economist.

6 A My point is simply this: The
7 poverty threshold depends a lot on who you ask. It's my
8 understanding, and again, I'm prefacing my remarks by
9 saying I'm not an expert in the area, but it's all over
10 the map. You have some that are higher than others.
11 Some are lower.

12 Q So the government publishes
13 statistics, doesn't it, with respect to poverty, because
14 that's how it defines the welfare state.

15 A That's -- sorry, the goodman?

16 Q The government.

17 A The government.

18 Q The government has to address its
19 mind to what are the basic needs of Canadians in order
20 to formalize what a welfare state should provide.

21 A Yes, but the government -- which
22 government are we talking about? Municipal, federal, or
23 provincial? If it's provincial, at least it's going to
24 be 13 different -- or ten different definitions,
25 depending on the region, no?

26 Q The federal government. This is a
27 federal government case.

28 A The federal government in the

1 business of issuing welfare cheques, or establishing
2 social assistance?

3 Q I'm asking you as an economist. Do
4 you agree that the government of Canada have an agreed,
5 or an accepted poverty line as a concept in economics?

6 A Well, they may have -- people
7 within Stats Canada certainly may have ideas about it,
8 but I don't know if the government as a matter of fact
9 has a government-endorsed, Stats Canada endorsed
10 official poverty line. In fact, if you go to the -- if
11 I could --

12 Q Sure.

13 A To support my point. I think it
14 says somewhere in this document, at least the pages I
15 received, that Stats Canada tries to disassociate itself
16 with saying, "This is the poverty line." I think that's
17 explicit in the document which I scanned over lunch.

18 Q Well, can I take you to a Stats
19 Canada source?

20 A Okay.

21 Q At page 20.

22 A By the way, it's footnote number 9
23 on page 11 says "Stats Canada blunt disclaimer...these are
24 not poverty lines." So, I mean, that's -- the
25 government just doesn't want to pin itself down to a
26 poverty line, that's my belief.

27 Q Well, I'm -- we're trying to
28 establish there's a concept of a poverty line in Canada

1 --

2 A With the -- well, certainly, the
3 idea of a poverty line --

4 Q Okay.

5 A -- is there. The question is, what
6 is that number?

7 Q Right.

8 A Is my point, I'm trying to explain,
9 is simply it's sort of arbitrary. People have different
10 definitions. Depends a bit on the region.

11 Q And I was going to go on to the
12 fact that this is -- the median figure would be affected
13 by where you lived, for example. Housing costs in B.C.,
14 Vancouver, for example, would be much greater than if
15 you lived in Saskatchewan or in Quebec, for example.

16 A Oh, certainly.

17 Q Okay.

18 A Absolutely. If you lived in
19 Vancouver, you'd be paying much more than if you lived
20 in Melfort, Saskatchewan. That's --

21 Q Okay. So if you look at page 20,
22 you will see a table there. Poverty line by household
23 size, Canada, 2009.

24 A Okay.

25 Q And there is a household size there
26 from 1 to 6.

27 A Mm-hmm.

28 Q And household size of 1, the table

1 says basic poverty needs -- basic needs, poverty line,
2 and gives a figure of \$12,162.

3 A Yes.

4 Q Now, this isn't a mathematical --
5 I'm not seeking to pin you down to a figure, just to be
6 clear about that.

7 A Okay. Okay.

8 Q We're talking a ballpark here.

9 A Okay.

10 Q All right? We're talking about how
11 much money do you basically likely need to have in order
12 just to get by in life.

13 A Okay.

14 Q There is a concept of that, isn't
15 there? And there's some things --

16 A There is a -- there is a --

17 Q -- in economics --

18 A -- concept. I agree. There's a
19 concept.

20 Q Okay. All right. But the figure
21 itself may not be hugely material. It's the concept
22 that some people -- everybody needs a certain level of
23 money to be able to get by with the basic necessities.

24 A Oh, yeah. No, there's no question
25 about that.

26 Q Okay. Right.

27 A And I'm sorry if I misled -- if I
28 told you otherwise. I wasn't trying to be difficult.

1 Q I think we're at cross-purposes.
2 So from Table 2, you'll see the source as Stats Canada,
3 survey of household spending. So, that's the table I've
4 just shown you.

5 A The table number 2.

6 Q Yes.

7 A Yes.

8 Q Okay. So, the figures that have
9 been obtained from Stats Canada, and they've been put
10 into a table which has tried to quantify -- you don't
11 have to say that those figures are exact, or wholly
12 accurate.

13 A Okay.

14 Q But that they're a concept of a
15 figure.

16 MR. JANUSZCZAK: Justice Phelan, I'm
17 sorry. I thought I heard my friend say that these
18 figures were arrived at by Statistics Canada, and I
19 don't believe that's what it says at the bottom of the
20 table. I'm not an economist, but it appears that these
21 numbers were generated based on source information from
22 Statistics Canada. I just want to make sure that what's
23 being put to the witness is accurate. And this is new
24 to me as well.

25 MS. GRACE: That's what I thought I
26 said to the witness, that the source was statistics from
27 something called Survey of Household Spending.

28 MR. JANUSZCZAK: Right.

1 MS. GRACE: And somebody has made a
2 table based on those statistics. So

3 A Yes, you're absolutely correct.
4 These are the survey household spending data.

5 MS. GRACE:

6 Q Okay.

7 A The levels, I guess, depend on the
8 choices of the person being -- setting the levels. It
9 depends on a lot of, you know, variables. But the data
10 set they used to establish those numbers was the Stats
11 Canada survey of household spending, yes.

12 Q Okay, because there are certain
13 things that every human needs. It's not based on
14 choice, like food. Maybe what type of food you eat but
15 the fact that you have food. Shelter, for example.
16 There is a --

17 A Oh, no question, yeah.

18 Q Okay.

19 A It's very --

20 Q We're not talking about what
21 restaurant you choose to eat in. We're talking about --

22 A No, I can imagine we're not talking
23 about, you know, which Five Star you want to go to.

24 Q Okay. So if we turn over then to
25 page 21, there's a third table there which says,
26 "Historic basic needs, poverty line for a one person
27 household."

28 A Mm-hmm.

1 Q And the source here for this table
2 is statistics, so the statistics have come from
3 Statistics Canada, Can, and then there's a C-A-N-S-I-M
4 and the reference there with a table and the catalogue
5 numbers and it says there, "Calculations by the author."
6 So the author has taken statistics from Canada and
7 produced a table and which he says shows what the
8 financial amounts are with respect to the poverty line.

9 A Yes. That appears to be the case,
10 yes.

11 Q Do you have any idea as to ballpark
12 figure whether there's a kind of accepted, amongst
13 economics, as to what the poverty line figures are or is
14 it something you're not aware of?

15 A I'm sorry, I couldn't --

16 Q Okay.

17 A I really couldn't off the top of my
18 head quote those numbers to you, and again it depends on
19 who you ask.

20 Q Okay.

21 A Again, if you'd give me some more
22 time I can maybe do some research and get back to you.

23 Q Okay. So as far as the numbers
24 that are shown on this table by the economist
25 Christopher Sarlo, are those numbers of reasonable
26 numbers or have you got any comment with respect to
27 those?

28 A Sorry, are we talking about Table 2

1 now?

2 Q No, Table 3 that I was just showing
3 you.

4 A Oh, that's a Sarlo table, is it?

5 Q Yeah, if you look at 2012 it's
6 saying almost 13,000 is the dollars is the poverty line.

7 A Yeah, I mean, it looked plausible.
8 I guess. I mean, who might argue? I don't really do
9 this for a living, so I'm not really capable of saying
10 this is reasonable, but it looks like it's reasonable.

11 Q Now, are you aware of what the
12 average income is for a working Canadian? The average.
13 That's the average across Canada.

14 A A single, a single working, like a
15 --

16 Q Yes.

17 A Across both sexes?

18 Q So yes, the average worker.

19 A The average worker.

20 Q Yeah. The median.

21 A So this is a person working full
22 time?

23 Q Yes. The average working -- you
24 often hear about statistics on the news. The average
25 Canadian earns this, the average Canadian -- so do you
26 have --

27 A Just give me a second. I'll see if
28 I can recall. I'm only, I'm just giving you a guess now

1 but let me, let me think about it. I'm just guessing
2 2,000 hours in a year.

3 Q If I would suggest a figure to you,
4 would that be helpful? If it was in the region of
5 \$42,000 a year, would you consider that was reasonable
6 for the average --

7 A Just give me one second. So
8 there's 2,000 hours in a year to work, say, and the
9 person let's say the average wage might be \$20 an hour?
10 Multiply those together. Forty grand, am I close?

11 Q Well, I was going to suggest to you
12 about 42,000, so we're in the right -- we're in the same
13 kind of ball figure.

14 A Yes.

15 Q Okay. Ball park.

16 A That's pre-tax presumably.

17 Q Yes, that's before taxes. So after
18 tax then, you'd expect -- again I know it will depend on
19 their personal circumstances but if they're a single
20 person they're not claiming for family, et cetera. What
21 kind of tax would you -- the ballpark, the take-home pay
22 of somebody on that kind of income?

23 A So they're not disabled or they
24 can't claim medical --

25 Q The average Canadian.

26 A They can't claim -- they're --
27 okay, so forty grand. Let's assume an average tax rate
28 for that income, twenty-five percent? Twenty-four

1 percent? So I'm going to go down to --

2 MR. JANUSZCZAK: Justice Phelan, I am
3 going to interrupt because this is -- I realize he's an
4 expert, he has experience in economics, but what is very
5 clear here is that he's just guessing at these numbers.

6 JUSTICE: I appreciate that. But
7 this case is -- if this was a real economics competition
8 law, patent damages case, none of this would go in,
9 right? But we're -- at this point you've got an
10 economist, a well-qualified economist who can give you
11 some ball-park figure. I think as long as we recognize
12 that these are ball-park figures with all kinds of
13 squishiness around the edges, I think we can live with
14 it for a while.

15 MS. GRACE: Thank you.

16 Q We are just looking for a kind of
17 economics for dummies. We're not looking for anything
18 more complex than that. Just so nobody has to be
19 concerned. We're looking for a high level, just so we
20 can work through --

21 A Okay, let's 25 percent off the top
22 for tax. And presumably UI and CPP. Well, actually I
23 don't know what the UI would be. Because isn't there
24 \$2,000 of UI premium you pay every year, maximum.

25 Q So if there was employment
26 insurance, I suppose, it depends on the -- there's a
27 maximum amount of insurance.

28 A Isn't it 2,000?

1 Q Well, I think -- can we agree
2 this, before we kind of try and get lost in all the
3 detail that we work out between ourselves, that if it's
4 a \$40,000 round about gross salary, you are looking at
5 round about the early 30s maybe for your take-home pay.
6 Would you say that's fair?

7 A I think that's probably
8 reasonable, yeah. That strikes me as being in the ball
9 park.

10 Q Okay. I'll just find my paper
11 I've lost. If I can take you then to Table 4, which is
12 at page 25.

13 A Mm-hmm.

14 Q This is a table which has been
15 prepared with the calculations by the author as it
16 states at the bottom, from the source. This is
17 Statistics Canada, "Survey of Household Spending".

18 A Yes.

19 Q So if we look at the regional
20 profile of the poor -- I think this was something that
21 you were alluding to as well.

22 A Yeah.

23 Q We can see that there is,
24 according to this table, more poor people in Quebec,
25 disproportionately, 32.18 percent. It says Ontario is
26 28.39 percent. B.C., 17.66 percent. Prairie is 13.45
27 percent. And the Atlantic is 8.32 percent. So the
28 table is saying that as far as percentage of the

1 population, those that are in that poor range, one in
2 three people almost in Quebec for example, just over one
3 in four for Ontario, and then we have 17.66 for B.C.
4 So that reflects the fact that the different provinces
5 are in different positions. Not everybody is the same
6 across Canada. Is that --

7 A Yes, the circumstances depend on
8 where you live, certainly.

9 Q Yes. But this table would also
10 show that B.C. does not have the highest percentage of
11 what's considered to be the poor. That would be Quebec
12 followed by Ontario. Is that something that you would
13 agree with?

14 A Well, do I agree that I see those
15 numbers in front of me? Yes, I do. I'm not -- again
16 I --

17 Q Do you have any knowledge with
18 respect to how in Canada the poor are set out --

19 A You know what? Actually I do know
20 that Quebec has particularly low labour force
21 participation rate amongst males. So you know, it being
22 the highest makes sense to me, now that you mention it.
23 I'm surprised by the Atlantic, 8 percent, because
24 -- I mean maybe this author did some original
25 adjustments for the costs of buying goods and services,
26 factoring in more self-reliance perhaps in more rural
27 parts of Canada. But, yeah. You know.

28 Q So there's nothing from this table

1 that jumps out to you as "This can't possibly be right,"
2 for example?

3 A It seems a little high to me. The
4 absolute numbers seem a bit high. I'm surprised that it
5 would be -- I expect that likely is the highest, but
6 one-third of households? It does seem a little bit high
7 to me, but again, I'm not providing an informed opinion
8 here.

9 Q Oh. Just allow me -- I've lost a
10 page. Found it. Okay.

11 So when you prepared your report, did you
12 know what percentage of the market was covered by people
13 who had production licenses already to grow their own
14 marijuana?

15 A Okay. Let me see if I can parse
16 that question. When I prepared my report, was I aware
17 of the percentage of the market --

18 Q Yeah.

19 A So the potential cannabis market,
20 people who might purchase from LPS?

21 Q Yeah.

22 A That kind of market?

23 Q Yeah. So, the people -- these
24 potential consumers that you've talked about in your
25 report, the marketplace, the people who are buying from
26 Licensed Producers, how many people out of the estimated
27 -- I think you put in your report 300,000 -- would be
28 licensed growers?

1 A Licensed -- what fraction of those
2 -- of that -- what? Sorry. I think I quoted a study
3 which put the numbers at half a million. And actually I
4 referred to the CADUMS, the Stats Canada survey, did
5 some back of the envelope calculations. I didn't
6 actually do any -- the answer is no. I did not actually
7 tabulate the totals that I provided in that --

8 Q Okay.

9 A As an aside, as one example of how
10 the market will be large. I had four pieces of evidence
11 which would suggest the market will be large. That was
12 one of them. In that one piece where I talk about the
13 potential size of the market, I did not distinguish
14 people who would be already growing their own versus,
15 you know, per the same from other sources.

16 Q Well, if I can take you to your
17 report, it might be easier for you to see it.

18 A Okay.

19 Q Paragraph 17, which is page 4 of
20 your report. And it's headed "The potential size of the
21 new market is large."

22 A Yes.

23 Q See that?

24 A Yeah, I do see that, yeah.

25 Q Okay. So, you've put in there the
26 number of Canadians 25 and older who report using
27 marijuana for medical purposes is approximately half a
28 million.

1 A Right.

2 Q And you obtained this estimate from
3 the Canadian Alcohol and Drug Use Monitoring Survey.

4 A Mm-hmm.

5 Q And that's a national
6 representative survey of Canadians, commissioned by
7 Health Canada.

8 A Mm-hmm.

9 Q In particular, according to the
10 2012 survey, 10 point -- so, ten and a quarter percent
11 of Canadians 25 or older use cannabis. And you note
12 that the 2012 survey didn't ask if they used it for
13 medical purposes or otherwise, but you note that the
14 2011 survey did.

15 A Mm-hmm.

16 Q And the figure from that survey was
17 that 17.7 percent of marijuana users reported doing so
18 for medical purposes.

19 A Mm-hmm.

20 Q Okay? And you've assumed the same
21 fraction for the following year.

22 A Mm-hmm.

23 Q And therefore you've calculated it
24 follows that about -- so there's a half a million there.
25 The 500,000. And 17 -- it's 17.7 percent of that 2
26 million, eight hundred and twenty --

27 A Yeah.

28 Q Okay. Fine.

1 A Yeah, yeah.

2 Q So your source market is 500,000?

3 A Mm-hmm.

4 Q That's your figure, isn't it? And
5 if we go a bit further down --

6 A Well, at least one of them. It's
7 one of the constellation of pieces of evidence I used to
8 suggest that the market potentially is large.

9 Q Right. So that was the figure
10 that related to those who reported using marijuana for
11 medical purposes within that survey. That was the
12 source. The survey was, from your calculations, about
13 half a million medical purposes.

14 A Mm-hmm.

15 Q And then at paragraph 18 you use
16 another source. You say that the number of medical
17 marijuana users licenced has grown markedly.

18 A Mm-hmm.

19 Q And this is clear from the Figure
20 1 below which reports the number of licenced medical
21 marijuana users that hold an authorization to possess by
22 year from 2003 to 2012, okay? The latest figures
23 reported in the Health Canada website, so this is from
24 December 2012, was that there were just over 28,000
25 licenced users and that was more than double the number
26 reported from January of 2012. So you've pointed out
27 there's been a significant increase there.

28 A Mm-hmm.

1 Q You're saying that the counsel for
2 the Attorney General advises you that as 2013, 36,796.

3 A Sure.

4 Q Is that the whole of 2013, or is
5 that January 2013?

6 A I'm sorry. I actually can't
7 answer that question. I have no idea.

8 Q Okay.

9 A I believe it's for the full year
10 but I could be mistaken. Sorry.

11 Q Well, I think we've talked about
12 maybe this 38,000 licenced users within this case.

13 A Definitely.

14 Q So that would seem around about
15 that. So paragraph 19:

16 "Health Canada predicts, based on the
17 historical growth rates, the number of
18 medical marijuana users in Canada will
19 increase to 300 to 400,000 years by 2022."

20 A Yeah.

21 Q Okay?

22 A Yeah.

23 Q So Health Canada is saying --
24 well, saying it's going to increase -- we've got seven
25 years to go before it's going to get to 300 to 400
26 thousand. That would seem to be a lot lower than what
27 the survey, the CADIUM survey suggested, round about
28 500,000. Okay?

1 A Mm-hmm.

2 Q So I'm going to take you to
3 another piece of -- bearing those figures in mind, if I
4 can take you to the -- it's an attachment to the expert
5 report of Zachary Walsh. Have you see the expert report
6 of Zachary Walsh which provides lots of figures?

7 A Have I seen it?

8 Q It's found at Volume 1 at tab 4,
9 and it's not the affidavit itself, it's one of the
10 addendums I just want to ask you about. It has some
11 figures in it.

12 MR. JANUSZCZAK: Justice Phelan, in
13 fairness to the witness, in terms of the notification of
14 what affidavits would be put to this witness, Professor
15 Walsh's affidavit wasn't included in that list. So I
16 just want to be -- I'm not taking issue with any of this
17 being put to the witness, of course, but just so you
18 know, in fairness to the witness, that there shouldn't
19 be any surprise if he doesn't remember or recall any of
20 those.

21 JUSTICE: Okay.

22 MS. GRACE: I'm, in fact, not going to
23 take him to the affidavit, just to one section of one
24 report, which is just a bar chart.

25 Q So it shouldn't take much analysis
26 from you.

27 A Okay.

28 Q So if I can take you to page 34,

1 please.

2 A Certainly.

3 Q Of tab 4. So it's not the
4 affidavit itself, it's one of the attachments.

5 A Sorry, was that page 34?

6 Q Page 34 of tab 4.

7 A Okay.

8 Q Page 34 of tab 4 is part of a
9 research paper that you'll see entitled at page 31,
10 "Barriers to Access to Canadian who use Cannabis for
11 Therapeutic Purposes."

12 A Okay.

13 Q If you go to the -- I'm just going
14 to ask you a very short question about the table on page
15 34 at the top that says, "Therapeutic Purposes". Do you
16 see that there?

17 A Is that table -- is that Figure 2?

18 Q Figure 2, yes.

19 A Yes.

20 Q So there is a bar chart on this
21 page which, under the heading "Therapeutic Purposes"
22 purports to report the sources of Cannabis for
23 therapeutic purposes. So 67 percent of people will get
24 therapeutic cannabis from somebody they know, or a
25 friend. And people can obviously fall into more than
26 one category because there's a lot more than 100 percent
27 if we add it all up.

28 Then there's a cannabis dispensary. That

1 says 48 percent.

2 A Okay.

3 Q You agree? Dealer on the street,
4 it says 28 percent.

5 A I agree it says 28 percent.

6 Q Unauthorized self-production, 16
7 percent.

8 A Certainly.

9 Q And then licenced self production
10 is 16 percent. Then there's a licenced designated
11 producer at 12 percent.

12 A Yes.

13 Q And un-authorized designated
14 producer at 6 percent.

15 A Mm-hmm.

16 Q And then we have Health Canada at
17 3 percent.

18 A Now, is this a Stats Canada survey
19 or --

20 Q This is a research paper that's
21 been introduced as an exhibit in this trial by an expert
22 called Zackary Walsh.

23 A Sorry, I'm just trying to clarify
24 the provenance of these figures. Does this come from a
25 Stats Canada national survey or some other source?

26 Q Well, I'm sure my --

27 A I referred to the CADUMS earlier.

28 CADUMS is --

1 Q It's a research paper, so it's a
2 study. So it's based on their study of patients.

3 A Okay, so it's data they collected
4 -- so they're -- they did some data collection.

5 Q Well, there's lots of different
6 sources, like most research papers. So if you look at--

7 A Well, most papers are based on --
8 like the ones I'm familiar with are based on a survey.
9 Like I will, for instance, take the CCHS, the Canadian
10 Community Health Survey, which is a Stats Canada survey,
11 and I'll analyze it to address a question. I'm just
12 trying to get a sense of what their data source was or
13 -- you mentioned it had multiple sources.

14 Q Yeah, I understand that as far as
15 they interviewed and researched and interviewed, I think
16 it was maybe 1700 patients.

17 A They interviewed 1700 patients.
18 Okay. Fair enough.

19 Q My friend Mr. Jackson will find out
20 those answers. I wasn't here when we had Mr. Walsh.

21 A So out of the, just to be clear,
22 out of the roughly 300 to 400-500,000 people whose
23 report using cannabis for medical purposes, they
24 interviewed what number? Sorry, 1,000 you say?

25 Q Well, can we -- if we'd just move
26 past the number and we'll get you the actual number.
27 I'm not asking you about it.

28 A Okay, sorry, just trying to get a

1 sense of --

2 Q I'm not asking you to agree with
3 all their research figures.

4 A Okay.

5 Q So I'm not in a position to present
6 you with all the statistics. So I understand you --

7 A Fair enough.

8 Q -- as an economist want to know
9 where it all is before you're asked to agree with it.
10 I'm not asking you to agree with it *per se*.

11 A Fair enough.

12 Q But as a concept, it would seem
13 from this figure that licensed self-production,
14 including licensed designated producer, is a very small
15 amount compared to the overall sources that individuals
16 with therapeutic needs get them from. Would you agree
17 that as a concept?

18 A I certainly agree with that.

19 Q Okay.

20 A 57 percent is bigger than -- what
21 is it, 12 percent?

22 Q Yeah.

23 JUSTICE: 16 or 12.

24 MS. GRACE:

25 Q So we have 16 now and we have 12
26 because the system is that you can produce yourself,
27 that would be the 16, or you can get a caregiver to
28 produce for you.

1 A Sure.

2 Q And that's 12 --

3 A I agree that this was what the
4 author purports to be true.

5 Q So, looking at the actual market
6 itself, would you agree, therefore, that the Licensed
7 Producer and the Licensed Designated Producer, that
8 those as customers for the licence for the overall
9 market do not make of even majority of the target
10 market? Would you agree with that?

11 A I can't because you've already told
12 me I can't dispute the source of the data.

13 Q No.

14 A You've already made it clear to me
15 that's no -- not going to be discussion about the
16 provenance of the data and hence the reliability upon
17 with to make generalizations to a target population.

18 Q I don't think the federal crown has
19 objected to the data, so -- or questioned the data.

20 JUSTICE: Well, I think you're going
21 to have one, and it's perfectly fair that this witness
22 can't -- doesn't know the provenance of it, doesn't know
23 whether it's true. You can't ask the expert whether or
24 not he accepts the figures when he says, "I don't know
25 where they came from."

26 MS. GRACE: No, sorry, I didn't mean
27 the figures. I was saying -- I didn't ask if he
28 accepted the figures. I apologize if that was

1 misunderstood. I'm talking about in a general premise
2 of not the exact number but whether Licensed Producers
3 form a smaller proportion -- not the exact figure, but
4 the concept of whereabouts in the marketplace. This
5 expert was asked to analyze how the lack of these
6 Licensed Produc -- sorry, self-growers being in the
7 marketplace was going to affect the marketplace. And
8 I'm interested to know how much of that target market
9 are these self-growers. That would seem to be a
10 fundamental question in coming to the conclusion that
11 they're going to affect the market if they're --

12 JUSTICE: It's fair to ask him what he
13 thought was the market and who were the respective
14 players and did he have any information about it, given
15 his comment. But I don't think you can go much further
16 with that document.

17 MS. GRACE:

18 Q Yes, I think I did that initially,
19 sorry, ask if you knew how much of a percentage or how
20 much of a share the growers had in the new marketplace,
21 and you said you didn't know. So I was hoping by taking
22 you to this table prepared by Mr. Walsh, who's an expert
23 in these proceedings, that this may help you in any
24 information that you had before or not.

25 A No, I'd love to be able to help you
26 out here, but without understanding the data upon which
27 -- you mentioned your sub -- they were interviews with
28 people? I'd like to know a bit about the sampling frame

1 of the survey.

2 Q No, sorry. I'm not asking you --
3 sorry. I'm asking you with respect to your own
4 knowledge. I think you've said you didn't know how much
5 the Licensed Producers made up of the market.

6 A Yes, I said that already.

7 Q Okay. And I've asked you whether
8 this table, without trying to work out whether that
9 exact number in itself --

10 A Well, the Licensed Producers are --
11 you're talking about the home growers.

12 Q Yes.

13 A Sorry, not the licensed -- sorry,
14 just wanted you correct.

15 Q Sorry. No, the licensed self-
16 producers.

17 A Self-producers.

18 Q As they're called in this -- and
19 helpful in this table.

20 A Okay.

21 Q Okay. So I'm not asking you to
22 give me an opinion on the exact figure, okay?

23 A Okay.

24 Q I'm asking you, because you don't
25 know what the percentages are, and you didn't address
26 your mind to what the percentages are of this target
27 market for these licensed producers, how many of those
28 would be affected by this case, and by the preservation

1 of the right to grow? You said you didn't know that.
2 So I am seeking now to establish whether or you have any
3 idea as far as what makes up the majority of that target
4 market?

5 A The answer is, I don't know. Or I
6 wouldn't be able to comment on the quality of the
7 estimates that the gentleman -- gentleman? Mr. --

8 JUSTICE: Professor Walsh?

9 A Professor Walsh. Apologies.

10 MS. GRACE:

11 Q So --

12 A If I -- I'm sorry, I need to know a
13 bit more. Perhaps we can do that, if you have the time
14 to review this. But I don't know -- before I start
15 accepting differences in proportion, that he shows you
16 in table -- or in Figure 2. I'd like to be able to say
17 that these results even make sense.

18 Q I think that they -- the questions
19 stems around the fact that -- oh, don't you need to know
20 what percentage of the target market for Licensed
21 Producers may be covered by the issue here in this
22 courtroom, in order to decide whether their lack of
23 participation in that market is going to make an effect
24 or not? Don't you need to know that? If it's five
25 percent, it's not going to have the same impact if it's
26 99 percent, is it?

27 A Well, so, this is -- so if we put
28 aside, then, the Walsh affidavit?

1 Q Yeah. I'm just trying to help you
2 come up with some figure, because I was surprised you
3 didn't have any. So I thought sort of -- come up with
4 some rather than asking you to agree with my figures.
5 I'm trying to get the figure from you, so --

6 A Yeah. I -- just to go back, I --
7 my estimates were based on a constellation of -- my
8 projection of that -- of the market being large, the
9 market for the Licensed Producers, LPs, being large, was
10 again based on, you know, the information obtained from
11 different sources. One of them was the -- you know, the
12 data from the CADUMS. There's Health Canada estimates.
13 Changes in the regulatory regime which make it easier to
14 procure marijuana from Licensed Producers. What else do
15 I say?

16 On page 6, I talked about the quality
17 differentials between the -- I think this was something
18 you mentioned this morning with the previous witness,
19 quality differentials between the medical marijuana
20 produced under the auspices of the Licensed Producer
21 program, which are -- whose quality is vetted by Health
22 Canada versus -- I mean, all these things taken together
23 -- so no, I didn't -- I didn't consider the current
24 distribution of sources of supply, of the current users.
25 I didn't -- I didn't incorporate the number of people
26 who had come out of the woodwork who did not start using
27 medical marijuana on the basis of the fact it's now
28 available through a licensed source.

1 Q So you can't come out of the
2 woodwork and get medical marijuana unless you have a
3 prescription from your doctor.

4 A That's my point. You would have --
5 right now, the options -- or under the old regime, the
6 options were limited, weren't they? Now you have a much
7 more -- I mean, you have a number of vendors who are
8 available on line. It's -- you have a better sense of
9 what they're offering.

10 Under the old regime, I understand that
11 Health Canada was supplying users with one strain at \$5
12 a gram. Now, you can procure your medical marijuana
13 from a variety of different vendors. So my sense is
14 that again, this may -- people who are otherwise
15 occasional users, or not reporting the self-use, because
16 for whatever reason, access, will now become a member --
17 will now start spreading in the LP program.

18 Q But participation in the program
19 doesn't mean that you're one of those people that was
20 going to grow if you're allowed to. There's only 28,000
21 licences to grow.

22 A Okay.

23 Q And we're talking about a market
24 here of half a million, potentially more than that. So
25 isn't the number, the very limited number of people to
26 which this court case would apply currently, isn't that
27 very relevant as to how much they make up of the total
28 potential customer base?

1 A I don't see why. I mean, I wasn't
2 asked to opine on the occasions for -- let's say the
3 current growers in this context. I was asked to look at
4 the total size. And if people are getting their -- you
5 know, taking it at face value, the estimates provided by
6 Professor Walsh on Figure 2, which you took me to, I
7 mean two-thirds of the people obtain their medical
8 marijuana from a friend. Someone they know. On the
9 street perhaps. So presumably they would be potential
10 clients of an LP program. You know?

11 Q Of course. But we're not talking
12 about who is a potential client, we're talking about --

13 A Aren't we? I mean my point was
14 simply to show the size, the potential size of the
15 market is big.

16 Q But you haven't done that. You've
17 gone further than that, with due respect. What you've
18 done is you've said, that because there are people who
19 are currently, by injunction, allowed to grow their own,
20 that that is going to potentially, significantly impact
21 the market as far as a lack of customers, or not driving
22 down prices fast, or --

23 A No. I wasn't speculating on the
24 size -- let's be clear here on what I said. I don't
25 want to give a false impression. All I was saying in
26 that second point I made in respect of the trends under
27 the -- in the prices of marijuana procured by -- or sold
28 by Licenced Producers, the trends in those prices will

1 depend on the fraction of the market which are served by
2 the LPs.

3 Q Okay.

4 A I didn't --

5 Q Thank you.

6 A I didn't have any estimates of the
7 size of that market, you understand. I said, "I don't
8 know what's going to happen. This is all early days.
9 The dust hasn't settled yet. Let's...."

10 Q Okay. And if they -- if those who
11 self-grow are only a small percentage of that total
12 market, their lack of participation has a lesser impact.
13 That must be logically correct, do you agree?

14 A Assuming they don't participate?
15 I mean, are you saying to me they won't participate in
16 the --

17 Q Well, the worst case scenario
18 would be that they didn't participate. I'm not
19 suggesting they won't participate.

20 A Okay.

21 Q We've had evidence that some will,
22 some may not.

23 A Right.

24 Q But from the government's point of
25 view, and the question that was put to you about if they
26 didn't participate in the scheme --

27 A Mm-hmm.

28 Q So if a small amount of a small

1 group didn't participate in buying from a Licenced
2 Producer, it's not going to collapse the market, is it?
3 Because it's a small percentage.

4 A Well, let's be clear. Again, I'll
5 take you back to my mandate. My mandate was to
6 contemplate, under the new regs, a exemption for
7 individuals who are allowed to grow on their own. So
8 how big will that market be?

9 Q Well, I'm asking you a question.
10 I'm not asking you about what your mandate was or what
11 the Crown asked you. I'm asking as a principle --

12 A Okay.

13 Q -- if the market share is small,
14 that's affected by growing your own, being able to grow
15 your own, continue to grow your own, if that's only a
16 small share of the overall marijuana medical market out
17 there, for Licenced Producers to sell to, if those
18 people are allowed to continue growing their own, and
19 some of them stay doing that and some may still,
20 nonetheless, despite being allowed to continue to grow,
21 may find it more convenient to go to a Licenced
22 Producer. That if that's a small share, then that means
23 that the overall impact from that small share not
24 participating in the overall market is going to be
25 minimal, isn't it? It's not going to be large.

26 A I don't follow your -- I don't
27 actually agree with that.

28 Q Well, if, for example 99 percent

1 of people who would grow -- who would buy from Licenced
2 Producers currently can grow their own, and therefore if
3 they are allowed to continue to grow their own, we've
4 only got really a guaranteed one percent left of that
5 market share.

6 A But keep in mind, I was talking
7 about unit volumes not individuals.

8 Q I'm talking about a question that
9 I've put to you, not about what you've been talking
10 about in your report. Okay?

11 A Okay, so if you're assuming that
12 everyone has the same unit demand, like the same -- that
13 each person buys a gram a day, say. Yeah. I mean, then
14 it's going to be a 20,000 -- and assuming no other
15 people would become -- given the right to produce at
16 home, yes, 20,000 would be a small part -- sorry.

17 Q So when you talk in your report,
18 then, about -- let me take you to your summary of
19 opinion, which is page 2 of your report. And it's
20 paragraph 8 onwards.

21 A Okay.

22 Q You say, "On the first issue, I
23 expect the price of commercially grown medical marijuana
24 to decline over time. This expectation is conditional
25 on the size of the market for medical marijuana
26 supplied."

27 A Mm-hmm.

28 Q So, from that, you mean the size of

1 the market would be -- well, potentially being you think
2 maybe 500,000, just as a ballpark figure, that's the
3 size of the market of people that use therapeutic
4 marijuana and potentially could get a prescription.

5 A Yeah. Sure.

6 Q And register with a licensed
7 producer. Okay. That size of a market does not relate
8 just to people who are growing their own at present.
9 That isn't what you meant, in that overall market.
10 Anybody that's --

11 A Oh, yes. Yes. You're correct.

12 Q Okay. Now, when you go on at page
13 -- paragraph 10, and you talk about the value and the
14 opportunity cost --

15 A Mm-hmm.

16 Q You say opportunity cost,
17 "The time that an individual engages in these
18 tasks could have been spent in other
19 pursuits. The opportunity cost of the time
20 spent in these tasks is the value of the
21 grower of the activity that was displaced by
22 growing medical marijuana. This is a value
23 of time in the next highest valued alternate
24 activity. The activity that the individual
25 would be engaged in had he not been
26 cultivating medical marijuana."

27 What if the person -- that's the one
28 thing they like to do the best in the world? What does

1 that do to the opportunity costs?

2 A Well, if the person's alternative
3 activities to growing medical marijuana is staring at
4 the wall --

5 Q Yes?

6 A -- and that has zero value, then
7 the opportunity cost is zero.

8 Q And if there isn't anything they
9 want to do more than that -- because you say it's valued
10 -- for example, if you could be at work instead of
11 growing your marijuana, the value would be obviously
12 you've lost work, you've not been able to earn money.

13 A Yeah, yeah. Of course.

14 Q If the value is, you would rather
15 be playing tennis, then it's not a monetary value, but
16 it's a value in the sense of, you are giving up
17 something.

18 A Utility value. Yeah, it's a
19 utility value. Well, you know, the enjoyment value
20 place -- you could probably monetize it, I guess.

21 Q But if you're self-growing because
22 it's your hobby, and you're a gardener and you like to
23 grow, there would be no opportunity cost lost then. And
24 you weren't working, you were disabled, for example.
25 There would be no opportunity actual value cost. Is
26 that right?

27 A I disagree.

28 Q Well, what would the answer be?

1 A Well, it depends on the individual,
2 of course. I mean, again, if you are -- I mean, if your
3 best use of your time is to grow -- cultivate medical
4 marijuana, then God bless you, that's your choice. But
5 you're still presumably giving up some other activity in
6 that pursuit of cultivating medical marijuana. It could
7 be growing other vegetables, or plants, or it could be
8 working at a food bank. I have no idea what people
9 would be doing alternatively. But presumably it would
10 not be completely zero value time that you're foregoing.
11 You could be -- you wouldn't be staring at a ceiling
12 doing nothing, right?

13 Q What about a hobby, though? So, if
14 you're doing something which is your hobby, and a hobby,
15 by definition, you would agree, is something you choose
16 to do because it's fun --

17 A Okay.

18 Q Where exactly is the opportunity
19 cost for somebody whose hobby is to grow marijuana.
20 They don't work, they're not giving -- isn't that a
21 portion of time that they could be making money at
22 overtime, or --

23 A Okay.

24 Q But that's just their hobby. So --

25 A Well, many people have more than
26 one hobby, right? I play soccer and I play squash. So,
27 I can only go out certain times a week. I have a five-
28 year-old at home. I can't, you know -- if I play

1 soccer, I can't play squash, for instance. So I have
2 two hobbies.

3 Now if you're -- the person you're
4 thinking of is simply has only one thing that they can
5 do with their time, then I agree, they're not giving up
6 anything. But people -- most people have -- their time
7 is valuable. They have alternative uses for it. And
8 what they give up is their thing they would be doing
9 instead. And my point simply is it's probably valuable
10 to them.

11 Q But if the thing you're doing and
12 there is nothing you'd rather be doing instead of more
13 value to you as far as your favourite thing in the world
14 to do.

15 A I know, you're doing, you're doing
16 you're favourite thing, I agree.

17 Q Okay.

18 A But you're giving up something in
19 doing that.

20 Q Okay. If I can take you to page 7
21 of your report please, there is a heading there, "Drug
22 Plan Subsidies for Medical Marijuana".

23 A Mm-hmm.

24 Q And within that you mentioned that
25 the Department of Veteran Affairs covers the cost of
26 prescription medications for Canadian veterans.

27 A Mm-hmm.

28 Q And that includes medical

1 marijuana, does it?

2 A I understand that to be the case,
3 yeah.

4 Q Okay. And then you say:
5 "Given this precedent, it seems plausible
6 that other drug plans will extend coverage
7 for medical marijuana."

8 A Mm-hmm.

9 Q The Department of Veteran Affairs
10 is not a private insurance company, is it? It's the
11 government itself covering former employees?

12 A Yeah, DOV would be the veterans
13 presumably, and yeah, it's a publicly funded drug plan.

14 Q So this isn't comparable to say
15 because the government covers it for veterans, that
16 means that private businesses who have shareholders and
17 profits are going to now decide just to pay for people's
18 marijuana because the government pays it for veterans?
19 Is that what you're saying?

20 A Well, let's be clear about the --
21 it turns out that pharmaceutical economics is my forte,
22 is my specialty, so I happen to know from teaching the
23 stuff that the biggest share of drug costs are picked up
24 by public plans. Roughly, if memory serves, the most
25 recent data from the Cihi report, it's 46 percent.
26 Private plans are roughly 37 percent. But private plans
27 aren't for profit companies. What happens is they
28 typically provide benefits to their clients, which are

1 employers.

2 So as an example, you may receive
3 benefits from your law firm. The law firm that you are
4 employed by will buy -- will pay for the cost directly
5 out of the -- out of your income. And so the insurer
6 doesn't really care about what is covered. It's more
7 the -- according to the dictates of the plan sponsored,
8 which typically is a union or it could be an employer,
9 could be the -- you know, Ford Canada might -- has a big
10 drug plan.

11 Yeah, so it could be the case that other
12 plans would follow suit.

13 Q But you know that there's no public
14 plan for the Government of Canada to pick up the cost of
15 medical marijuana for patients.

16 A Oh, sure there is.

17 Q Okay.

18 A Sure there is. There is the NAHB.
19 That's the First Nations plan. The Government of Canada
20 has a very big plan for public servants.

21 Q That covers medical marijuana?

22 A No. But my point -- they don't
23 currently, but I'm saying, you know, we do see at least
24 one big plan covering it. It's plausible that other
25 plans will consider it as well.

26 Q No, I think my question was:
27 you're aware, are you, that there are no plans for the
28 Government of Canada to cover medical marijuana --

1 A I just told you NAHB exists. I
2 just told you another plan.

3 Q Not paying for its employees.

4 A Oh, for its employees.

5 Q Yes.

6 A Oh. Well, I just told you about
7 the plan they offer for civil servants.

8 Q The Government of Canada has no
9 plans to extend the -- cover offers to its civil
10 servants to cover its medical marijuana.

11 A Maybe not currently, but I'm just
12 positing that this may be something they consider if
13 other plans start covering this as a benefit, if --

14 Q Okay.

15 A That's all I'm trying to say here.
16 I'm not -- again I'm not saying they will. I'm saying
17 it's precedent and, you know, precedents often breed
18 behaviour by other plans in the same, in the same genre,
19 in this case public plans.

20 Q And if the government of Canada,
21 for example, to its employees, did offer and did extend
22 its coverage to include medical marijuana, that would be
23 a boost to the market from an economic point of view?

24 A Well, the volume would be much
25 bigger. It would certainly contribute to the volume
26 growth that I anticipate will happen.

27 Q So there will be more demand.

28 A Yes.

1 Q And that's just general as far as
2 the drug companies in general adopt medical marijuana as
3 one of those drugs that they are willing to cover.
4 That would generally increase the demand because now
5 people would have insurance access to it, that perhaps
6 couldn't afford it before.

7 A Well, drug companies aren't in the
8 business of offering insurance. Do you mean drug plans?

9 Q The drug companies -- sorry, the
10 drug insurance companies.

11 A I apologize, yes. Drug insurance
12 companies. Sorry, can you repeat the question, please.
13 Drug insurance companies --

14 Q If they decided to cover people --

15 A Yes.

16 Q -- with respect to medical
17 marijuana, that would increase the demand in the market.

18 A Yes. It's typically, though, the
19 employer sponsored aspect which would determine, not the
20 drug insurers. They provide basically administered
21 services.

22 Q Okay. So if an employer went to
23 their drug insurance company, so their health provider
24 that did the drug part, put it like that, and said, "I
25 want you now to cover all my employees for cannabis, for
26 medical prescribed cannabis," the insurance companies in
27 the business of making money would give them a premium
28 and it would for the employer to chose to pay or not.

1 Is that how it would work?

2 A Well, again, like I said, it's not
3 really premium-based covered. It's like insurers here
4 don't really offer traditional insurance as you buy for
5 life insurance. Like I said, it's what the -- the Manu-
6 lifes and the ESIs do, is they offer typically
7 administrative services only plan. So that they will
8 cover -- they will facilitate the bill payment, you see.
9 It's the sponsor to the plans, like the employers, like
10 the Fords, the University of Torontos, that make
11 decisions about coverage.

12 Q So it is -- can a big company say
13 today, "I now want you to include medical marijuana as a
14 drug that you'll give coverage to my employees through"?
15 That's quite easy to do, is it?

16 A I'm not sure about that. But
17 let's suppose we looked at the -- like I said before,
18 the biggest spenders on prescription drugs are not the
19 private plans. They account for roughly -- they are
20 roughly one-third of the total. Most of the action is
21 with the public plans and I'm talking about -- well, you
22 live in British Columbia. British Columbia Pharmacare
23 has a thing called Plan C which covers the drug costs
24 for welfare recipients or people with low income. You
25 know, they cover a lot of medications. I could see
26 them, conceivably, covering medical marijuana as a
27 benefit.

28 Q That would be a decision of the

1 provincial government here, whether to include that?

2 A Yes, it would be. The Pharmacare
3 branch of the -- the drug programs branch of the
4 Ministry of Health in Victoria would, presumably,
5 determine that, yeah.

6 Q Then those kind of provincial
7 health plans, that would differ. According to the
8 province obviously there's a different person that would
9 have to decide whether to include it or not for each of
10 the provinces in Canada.

11 A Yeah, there's thirteen different
12 provincial/territorial plans. So the coverage wouldn't
13 be uniform.

14 Q Okay. So what happens if
15 companies decide not to include medical marijuana?
16 What's going to happen as far as the market is
17 concerned? And when I say that, include the government.

18 A Okay.

19 Q Employers, whatever.

20 A Depends then on the -- if it's not
21 an insured benefit, if they won't pursue that
22 assumption, then you know, like drug plan would be
23 Veteran Affairs, then it would be dependent on the, I
24 guess, willingness to pay as individuals.

25 Q Okay. So then it comes down to
26 ability to pay. If it's not covered by a drug plan,
27 it's the individual's ability to pay.

28 A Well, not entirely.

1 Q Okay.

2 A I mean it depends also on the
3 medical expense tax credit status of the medical
4 marijuana, which I'm not sure about. You get these tax
5 subsidies.

6 Q I'm aware of the concept, but as
7 an expert witness, are you -- obviously I know it wasn't
8 within your mandate probably to research this, but are
9 you aware whether there's any tax relief, if I can put
10 it like that, for medical marijuana patients currently?

11 A You know what? I actually don't
12 know the answer to that question.

13 Q And we have a provincial,
14 obviously, and a federal tax system. Would there need
15 to be -- the province would have to consent to it being
16 a deductible amount provincially and the feds would have
17 to agree federally, or would --

18 A Well, they operate independently,
19 right? The feds in Quebec for instance, they no longer
20 provide -- oh sorry, sorry, sorry, sorry. I got -- no,
21 it's a federal program. I don't know if there's a
22 provincial analogue to that, actually. I know there's a
23 federal program, the Medical Defence Tax Credit.

24 Q Okay.

25 A I don't know about the provinces.
26 I actually think that Ontario offers some tax relief.

27 Q Okay.

28 A Don't quote me on that.

1 Q We'll put a question mark. So if I
2 can take you back now to some other aspects of you
3 report, so if I can ask you to look at paragraph 11 on
4 page 3.

5 A Mm-hmm.

6 Q So I'm going to ask you about the
7 paragraph that begins, "These aforementioned costs, i.e.
8 the costs that accrue to the marijuana grower himself,
9 are called private costs." I'm going to ask you about
10 these external costs you mention.

11 A Mm-hmm.

12 Q The costs that the marijuana grower
13 imposes on others are called external costs.

14 A Mm-hmm.

15 Q And they include the expected cost
16 to neighbouring households due to -- and then you start
17 with a few examples, higher fire risk.

18 A Mm-hmm.

19 Q Now, where do you get the idea of
20 higher fire risks? Is this what somebody has told you
21 that if you grow marijuana there's a higher fire risk?

22 A Where did I come up with that
23 specific example? I seem to have, in passing, come
24 across some articles in the media in respect of the
25 damage caused to houses that neighbour homes in which
26 medical marijuana is cultivated.

27 Q And this is a licensed medical
28 marijuana grower that has been inspected and is to code,

1 or --

2 A I don't, I couldn't comment.

3 Q Okay.

4 A I mean, I mean it could be the case
5 that there is no -- I mean, I did not obviously provide
6 any supporting evidence to say what the risk is. If
7 there's no risk at all it's zero. Zero expected
8 external cost. If it never happens, it's never an
9 external cost.

10 Q Okay. You also put that the cost
11 of administering the regime for the medical marijuana
12 scheme would be an external cost.

13 A Mm-hmm. I mean yes. Sorry.

14 Q And the cost of lower enforcement
15 effort to reduce or control marijuana that's illegally
16 diverted from home production. So that's people who are
17 criminals. They have external costs. Or are you saying
18 that as --

19 A I guess it's a criminal, it's a
20 *Criminal Code* offence, I guess, yes.

21 Q Yeah.

22 A They'll be classified as criminals,
23 yes.

24 Q So people who grow for their own
25 medicine and use their own medicines lawfully --

26 A Yes.

27 Q -- are not causing those illegal
28 diversions. These are people who are pretending to grow

1 medical marijuana for themselves and selling it
2 illegally, diverting it.

3 A Well, it's possible they're a bit
4 of both, right? I mean you could --

5 Q Or doing both.

6 A You could do a little of both. You
7 could grow your own, consume some, and then conceivably
8 -- I'm not purporting to say this actually happens at
9 all, but you could imagine it could happen. People
10 would consume a bit and then sell a bit.

11 Q So if you -- but that would
12 obviously be a criminal offence if you were to sell
13 marijuana. So those that aren't willing to drug traffic
14 and just want to grow their own, --

15 A Yes.

16 Q -- there would be no external cost,
17 you agree, do you?

18 A No, that's a -- you're absolutely
19 right.

20 Q Thank you. So you said at
21 paragraph 12,

22 "A grower who wishes to establish his own
23 growing operation would face the same costs
24 as a current established home grower."

25 A Sorry, can you take me to the
26 paragraph?

27 Q It's this next one, paragraph 12.

28 A Okay, sorry.

1 Q "A prospective grower
2 who wishes to establish his own growing
3 operation would face the same costs as a
4 current established home grower."

5 A Mm-hmm. Yes.

6 Q On what basis did you come to that
7 conclusion? Why do you think it's the same price now to
8 grow as it would have been when these people first
9 established their --

10 A I didn't intend to suggest that --
11 I'm referring, then -- I was trying to use that sentence
12 as a foil to set up my next sentence.

13 Q Okay.

14 A Which is that if you're already --
15 have established your operation, you've learned how to
16 grow medical marijuana, you've got the infrastructure
17 set up, the renovations, perhaps, then the cost to you
18 is different, because you don't incur any of the sub-
19 costs. Those are sub-costs.

20 Q Sorry, I'm banging the microphone,
21 and I'm just conscious I'm going to get into trouble.

22 Yes, I was going to ask you about that.
23 So, what you're meaning to say is, say, common-sense
24 obvious, that if you've already got your equipment,
25 you're all ready to go, then you doing a crop is going
26 to be cheaper than if you've got to maybe build some
27 things and buy the equipment.

28 A Yes, absolutely, yeah. Yeah.

1 Q Okay.

2 A Yeah, that's right.

3 Q Have you heard of something called
4 a "bloom box"? A bloom box?

5 JUSTICE: Bloom.

6 MS. GRACE:

7 Q Bloom.

8 A Something you use for cultivating
9 marijuana?

10 Q That's right.

11 A No, I haven't.

12 Q Okay. I won't ask any more
13 questions about it.

14 JUSTICE: Would this be a convenient
15 time for a short break?

16 MS. GRACE: Yes. Thank you.

17 JUSTICE: Ten minutes.

18 **(PROCEEDINGS ADJOURNED AT 3:16 P.M.)**

19 **(PROCEEDINGS RESUMED AT 3:31 P.M.)**

20 MS. GRACE:

21 Q If I can ask you about page 6 of
22 your report, paragraph 23, please.

23 A Mm-hmm.

24 Q Under the heading "Patients May
25 Prefer to Obtain Marijuana From Licenced Producers
26 Instead of Marijuana Supplied by Unauthorized
27 Producers".

28 A Mm-hmm.

1 Q So it says here that "only
2 Licenced Producers will be legally permitted to supply
3 medical marijuana." This is after the *MMPR* comes into
4 full force, presuming it does. "And the price of
5 medical marijuana from Licenced Producers may well be
6 lower than that from illegal producers." So I'm going
7 to ask you about that statement that you made there.

8 A Sure.

9 Q So only Licenced Producers will be
10 legally permitted to supply medical marijuana.

11 A Mm-hmm.

12 Q Have you considered in your
13 analysis the role of dispensary store fronts that
14 operate outside the law, but supply medical marijuana to
15 patients currently?

16 A Not specifically in this
17 paragraph, no.

18 Q Do you know anything about
19 dispensaries? Do you know that they exist?

20 A I've seen a couple. Actually just
21 walking the streets here, I've seen a few.

22 Q What role, from an economic
23 standpoint, do dispensaries play as far as how the
24 Licenced Producers market or develop if they are selling
25 medical marijuana to patients directly?

26 A Well, if they are operating -- if
27 we're going to assume that the *MMPR* rules come into full
28 force, then they'll clearly be operating outside the

1 law.

2 Q Well, they are operating outside
3 the law now, and they would still be operating outside
4 the law if the *MMPR* came into full force. So there
5 would be no change.

6 A That's not necessarily the case.
7 I mean the enforcement -- you're suggesting the
8 enforcement is not -- the rules aren't being enforced
9 currently.

10 Q Well, there's no suggestion the
11 rules would be enforced by Vancouver Police if the *MMPR*
12 came into full force.

13 A Okay.

14 Q Okay, because we have a provincial
15 policing issue and we have a federal. So it's quite the
16 minefield. But working on the basis that the dispensers
17 are here to stay, as they currently are -- maybe they
18 will get more, maybe they won't across the country -- but
19 if the dispensaries that are currently selling to
20 medical marijuana patients, they carry on selling, how
21 does that fit into the analysis of the market expanding
22 for Licenced Producers.

23 A Well, I'd have to know a little
24 bit about the current and projected sales volumes of the
25 dispensaries. I'm not privy to that information. Also
26 -- now, you're suggesting to me that -- you're allowing
27 me to proceed on the assumption that they would ever be
28 -- the rules would still be not enforced if the *MMPR*

1 came into effect?

2 Q Because the *MMPR* is a matter of a
3 federal statute.

4 A Yes.

5 Q And for example, the dispensaries
6 are operated in Vancouver, are allowed to exist by a
7 policing decision, by something that's a provincial
8 matter. So there is no --

9 A Aren't the RCMP -- aren't there
10 any RCMP in the City?

11 Q Vancouver is not RCMP, no. It's a
12 city police.

13 A Oh, really?

14 Q Yes.

15 A Okay. I used to live in Burnaby.
16 I saw them in Burnaby.

17 Q Yes, in some of the outlying areas
18 we have RCMP.

19 A Okay.

20 Q I feel like I'm kind of giving
21 evidence a bit here, but the dispensaries are usually
22 located in police friendly areas, for obvious reasons.

23 A I see.

24 Q So that said as a background,
25 looking at the dispensaries themselves, the advantage
26 that the dispensary has is that it's a store front
27 situation.

28 A Sure.

1 Q The *MMPR*, as you are aware, is –
2 no doubt from your involvement in this case – is going
3 to be a mail order situation. So people won't go to a
4 dispensary and chose the product, they will order on-
5 line and get it sent.

6 A Yes. That's correct, yes.

7 Q What would happen if people
8 decided if they weren't allowed to grow their own,
9 because the law says it wasn't possible any more, if
10 people went to dispensaries instead of going through
11 mail order, how would that affect the market? If it was
12 -- would it depend on how much percentage did that, or
13 would it have an affect whether it was a small or large
14 percent?

15 A Well, it depends, I guess, on the
16 unit volumes sold, that would be sold under the scenario
17 you are painting here. What is the unit volume sold by
18 dispensaries, and again, you're assuming no enforcement
19 of the rules, of laws, so there's no criminal
20 prosecution so there would be no -- the price would not
21 have to incorporate any expected penalties from
22 contraverting the *Criminal Code*. Yeah, it would reduce
23 the size of the market occurrence of Licenced Producers,
24 wouldn't it?

25 Q What would it do to the price, as
26 far as the price of a product is concerned? Would that
27 make any effect on the price? Would it drive the price
28 down? Drive the price up?

1 A Price charged by whom?

2 Q By a licenced producer?

3 A By a licenced producer?

4 Q Yes.

5 A I would suggest it would -- again,

6 it depends on the fractions of the market accruing to

7 the licensed producers, the unit volume market accruing

8 to licensed producers. And I paint several scenarios in

9 my report. And one option is that the price -- it

10 declines, but not at the same rate as otherwise would be

11 the case. Another example would be if dispensaries

12 dominate the market, if they're the preferred source of

13 supply, then there would be no LP market, would there?

14 Q Okay.

15 A Hence, you know, the market would

16 not exist.

17 Q At the last sentence of paragraph

18 23, you say,

19 "Licensed producers are not so encumbered and

20 can therefore face lower unit production

21 costs."

22 A Mm-hmm.

23 Q And that was with reference as far

24 as there are licensed producers will not face two costs

25 that illegal producers face. And you say first of all

26 the risk of criminal prosecution.

27 A Yeah.

28 Q And as I've explained, the

1 dispensary situation, it would depend on circumstances
2 as to who the person was that was doing the illegal
3 thing as to what their risk of being --

4 A Yeah. I -- that's information that
5 you're providing, so that's useful.

6 Q And the second, illegal producers
7 need to produce their marijuana in a way that avoids
8 detection. But again, if that's a dispensary situation,
9 it's out in the open. Illegality, in other words, you
10 would agree, is not necessary the benchmark it depends
11 on.

12 A It's moot, yeah, because if it's --
13 again, if they're allowed to exist, conduct business
14 openly, freely, alongside the LPs, then yeah. The LP
15 market would be smaller, and that would then depend on
16 the share of the total market accruing to the LPs. But
17 it would be -- I don't know. The consequences depends
18 on the share that the dispensaries would obtain.

19 Q Okay. If we go to page 7, please.

20 A Sure.

21 Q And I've already asked you about
22 the paragraph 26. But paragraph 27 is about a
23 willingness to pay.

24 A Mm-hmm.

25 Q And you -- within paragraph 27, you
26 make -- you give an example of the fact that businesses
27 routinely charge consumers different prices based on the
28 customer's willingness and ability to pay.

1 A Certainly.

2 Q For example, some movie theatres
3 offer seniors discount prices on tickets and this price
4 discrimination is possible if the business can
5 distinguish the willingness to pay of its potential
6 customers.

7 A Mm-hmm.

8 Q And then you say there is two
9 identified types of consumers. Those that have a high
10 willingness to pay, and those that have a low
11 willingness to pay.

12 A Mm-hmm.

13 Q How does that fit in, though, when
14 it's a medication? Doesn't it depend what the product
15 is, and how -- whether it's a necessity, for example, or
16 something you can live without? I mean, a movie is
17 something you could stay at home and do the cheaper
18 option and watch something on television, for example.
19 But with a medicine --

20 A Mm-hmm.

21 Q -- this isn't a willingness to pay
22 in the same fashion as a movie ticket.

23 A Well, willing to pay is backed by
24 ability to pay, right? It's the ability to actually
25 shell out money for what you're -- maximum willing to
26 pay to obtain units of a good or service. And that's a
27 function of your ability to pay. So if you have less
28 money, even if it's a necessity, you know, if you have

1 zero income, and you -- I don't care if it's a necessity
2 or not, if it's -- you're not going to be able to buy
3 it, are you?

4 Q Okay. So price discrimination, you
5 say at paragraph 28, "has the effect of increasing the
6 size of the market. It permits sales to low WTP
7 consumers who would otherwise be excluded from the
8 market."

9 A Yes.

10 Q So what you're saying is that if
11 the price is low enough there are some people out there
12 that can afford to pay or that are willing to buy from
13 the Licensed Producers?

14 A Willing to buy at that price, yes,
15 at the lower price offered to them.

16 Q What would happen if 50 percent,
17 for example, of the target market could not afford to
18 pay? Not willingness in the sense of I've rather than
19 that than that, I'd rather go to the movies tonight than
20 go for a pizza. But what about if a sizeable proportion
21 of the market, let's say 50 percent, couldn't afford to
22 pay. How does willingness to pay to the WTP fit into
23 that?

24 A Yeah, this is one of those terms
25 that I have a little bit of difficulty understanding the
26 concepts of the micro theory that I've been working
27 with. When you say affordability, yes, if you have zero
28 income you can't afford anything. I'll grant you that.

1 But if you have money and you have options as to how you
2 spend your money, right, affordability is not so much
3 can you afford it or not afford it. It's how you choose
4 to spend your limited resources. So that's the first
5 point I make. Are you willing to sacrifice other goods
6 and services to acquire what you want? That's the first
7 point.

8 The second point is that if it's the case
9 that people have very little income, that presumably as
10 long as they can pay enough to cover the cost of
11 production and distribution, it would be in the interest
12 of a for profit producer to sell to them, right? At
13 least they're making some money covering their costs.

14 Q How would it affect the market
15 though if, for example, 50 percent of people did not
16 have the ability to pay because they were just getting
17 by on the basic needs and they weren't able to pay very
18 high prices with large prescription dosages for
19 marijuana? How would that affect the market? There's a
20 presumption, isn't there, sorry, that everybody is
21 potentially in the marketplace.

22 A Yeah, yeah, no, you're -- that's a
23 fair point. Yes.

24 Q So --

25 A If the market is dominated by
26 people with very low income, sure, the market demand
27 would be less than otherwise. There's no question.

28 Q Are you aware of how many or how

1 much of a percentage of people who have these production
2 licences that they issue in the focus of your report are
3 on disability benefits, for example? Did you have any
4 of those figures as far as when considering ability and
5 willingness to pay, were you aware of any of the
6 financial means or the likely financial means of a
7 significant portion of the --

8 A But you've already spoken they're
9 not a big number. In previous questions, did you not
10 say there's only 28,000? Then the size of the market is
11 400?

12 Q But I don't think that -- I'm not
13 talking about the over -- I'm talking about the
14 proportion of licensed self-growers, okay?

15 A Yes, which you suggest was in the
16 order of -- how many people were being -- lots of self-
17 growers?

18 Q Well, at the moment it's around
19 about 28,000.

20 A 28,000. Okay. And we already
21 established the potential size from various sources is
22 in the order of 400,000 to half a million.

23 Q Okay.

24 A Okay?

25 Q So if those 28,000 as a proportion
26 of the 500,000, though of course we don't know what
27 proportion of people would go and get a licence and
28 therefore potentially be able to get a growing licence

1 as well of those.

2 A Correct.

3 Q But the new people within these
4 500,000.

5 A Yes.

6 Q But within your report you were
7 asked to consider the individuals that grow now and that
8 may be able to continue growing and how that impacts the
9 actual market.

10 A I did but I didn't pin myself to
11 being -- I was quite nebulous or vague in respect of the
12 share of the market that would accrue to people other
13 than Licensed Producers, right? I mean I -- we're very
14 early days. I didn't have information available to me
15 to make those quantitative projections.

16 Q Okay. Did you do any financial
17 analysis as far as how much if a medicine strain was to
18 be marketed at \$10 a gram, the various levels of
19 different prescription for people, you know, from a few
20 grams to, we've heard, 30 grams. Did you do any
21 financial analysis as to how much income somebody would
22 need in order to be able to pay for a prescription to a
23 licenced producer to see whether they are actually in
24 the marketplace or whether they --

25 A Not specifically, no. I didn't
26 actually do any spreadsheet calculations. The basis of
27 my opinion of market size being potentially large comes
28 from the information already discussed in my report. I

1 didn't -- that being said, I did opine about the market
2 expansion effects of licenced producers who will attempt
3 to accrue sales to people with low income. As long as
4 they can cover their cost, it makes sense to do so,
5 right?

6 Q But as far as even though --
7 moving on to your paragraph 30, you mentioned that one
8 licenced producer, Tweed, indicates on its website it
9 offers a price reduction of 20 percent to those who can
10 demonstrate low income status.

11 A Mm-hmm.

12 Q Of course, 20 percent of we don't
13 know what. But say it was \$10 a gram to make things
14 easy.

15 A Okay.

16 Q That person even at 20 percent
17 would still need to be able to afford \$8 a gram.

18 A Yes, in this particular instance
19 you are right. Although they are now -- at last count I
20 think I saw 17 licenced producers and most of them have
21 their own compassionate pricing, or basically price
22 discrimination, and the prices -- I've seen very low
23 prices offered.

24 Q And are these low prices that are
25 guaranteed or are these low prices that are here today,
26 gone tomorrow potentially from a legal point of view?

27 A Actually, again, I didn't put this
28 in my report, but I have been sort of informally

1 tracking the activity on the Health Canada website which
2 gives the licenced producers, and I noticed that the
3 programs have been, if nothing else, have been
4 increasing. More producers are now actually offering
5 such low income pricing.

6 So I don't suspect it's going to be here
7 today, gone tomorrow. Again, if it's profitable to --
8 as long as you can cover your production and
9 distribution costs, it makes sense to sell to people who
10 are willing to pay only -- pay a bit above that and make
11 a profit on that.

12 Q But what I'm going to suggest to
13 you, and I've got a chart here, that will give you some
14 figures I'd like you to look at and see if you disagree
15 with.

16 A Okay.

17 Q As far as the calculation. Even
18 if you are only paying, for example, \$4 a gram, if
19 you're on a 20-gram a day dosage, you're looking at \$160
20 a day even at \$4 a gram.

21 A Yes.

22 Q So that would be \$2,400 a month in
23 prescription costs.

24 A Yes.

25 Q So if you are qualifying for their
26 reduced prices because you're on a reduced income --

27 A Yes.

28 Q -- you are actually going to be

1 paying \$28,800 a year just on your medication.

2 A Under this program. But as I
3 already said, there's other programs already appearing
4 on the Health Canada website for the 17 different
5 licenced producers and the prices for some are actually
6 quite a bit lower, I've noticed.

7 Q Well, what's the lowest amount
8 that you've seen?

9 A Free.

10 Q Oh, people are giving it out for
11 free?

12 A Yes.

13 Q And that's not a here today, gone
14 tomorrow.

15 A I can't vouch for how long that
16 program will be in effect for. But as an illustration,
17 all I'm trying to say is that it may be inappropriate to
18 base -- project future low income pricing based on this
19 ad I pulled from the Tweed website back in October. I
20 mean, all I'm trying to say is that the general
21 principle, as long as the producer can charge more than
22 it would cost them to produce and distribute, they'll do
23 it.

24 Q And what about the people that
25 can't afford to buy from a licensed producer because
26 they can afford to grow at home? They're not certified
27 by the licensed producer because they're automatically,
28 by virtue of cost, excluded from the market. You're not

1 aware of how many people would fall into that category,
2 that would be people covered by the current injunction,
3 from the --

4 A I'm trying to -- I'm sorry, I'm
5 just trying to reconstruct your question. You're asking
6 -- people who can't afford to buy from the LP because
7 they can afford to grow at home? I think those were
8 your words?

9 Q Sorry. No. Probably my bad use of
10 language.

11 A Okay.

12 Q So, with the low price of a
13 licensed producer. But some people who have been
14 growing at home have done so because that is the way
15 that they can afford to produce their medicine.

16 A Yes.

17 Q So their production costs are a
18 dollar -- we've heard fifty cents, we've heard up to a
19 dollar fifty.

20 A Okay.

21 Q Those people are always going to be
22 able to produce cheaper than they're going to be able to
23 get from a licensed producer.

24 A Yeah. I actually don't have the
25 figures in front of me. They're, what, the lowest price
26 they can get from a licensed producer is, under low
27 income program vis-à-vis their personal marginal
28 production cost. But, you know, it sounds plausible.

1 Q So at page 9 of your report, for
2 example, you have an example here of CanniMed.

3 A Mm-hmm.

4 Q Who don't tell you what strain of
5 medicine it is, but apparently there's three different
6 types of cannabis, according to CanniMed. And they're
7 of different potencies.

8 A Mm-hmm.

9 Q And they're 35 percent off online
10 orders. Are you with me here? There.

11 A Yes, I see it, on page 9, yeah.

12 Q These are time-specific. These
13 were 35 discount --

14 A Mm-hmm.

15 Q -- as of April 15, 2014. So we're
16 way past it.

17 A Yes.

18 Q If anybody wants to buy it today.

19 A Yeah.

20 Q There is going to be a certain
21 percentage of the population that will -- that may only
22 be able to afford to buy on sale, when there's those
23 kind of sales. Is that what you recognized in your
24 report?

25 A Oh --

26 Q Or is it people who will just tend
27 to shop when there's a sale?

28 A Well, I mean, some people -- the

1 people you're identifying, people who could only afford
2 to buy on sale, might be able to take advantage of one
3 of the low-income programs we just discussed a second
4 ago.

5 Q But you've said at paragraph 31 --

6 A Mm-hmm.

7 Q -- that the idea is that sale
8 trends tend to attract customers who are willing to time
9 purchases to coincide with sale dates, but who are
10 otherwise unwilling to pay the full price.

11 A Yes.

12 Q That's not very applicable to
13 medicine, though, is it? We're not talking about
14 whether you get your -- you need a pair of shoes, you
15 wait for your -- that doesn't apply to necessities.
16 It's like saying we'll just wait a few weeks before we
17 buy some food, till it's on sale, and we'll just have
18 nothing before that.

19 A Actually, it's a funny thing. When
20 you look at the prescription drug programs, which I
21 happen to study as part of my day job, it's amazing how
22 some seniors will stockpile their medicines. You do see
23 these stockpiling behaviours occur. You can imagine the
24 people who would then time their purchases to buy the
25 sale dates, so they'll buy a bunch.

26 Q But are those medicines that would
27 not denigrate [sic] with time? Doesn't it depend on the
28 kind of medicine as to whether you can buy a capsule,

1 for example, and in six months a capsule would just be
2 exactly the same.

3 A Mm-hmm. Yeah. I'm not familiar --
4 to be honest, I'm not familiar with the -- how stable
5 drug marijuana is, like, how long it keeps for. If you
6 put it in the fridge, for instance, does it keep longer?
7 I don't know that stuff.

8 Q Can I ask you about paragraph 34
9 now, on page 11. So, the last sentence of paragraph 34,
10 you say that this suggests that many firms believe the
11 market will be large. And this is in response to the
12 information you've put in here that there's Canada --
13 Health Canada has received 418 LP applications, as of
14 the 3rd of February of last year. And Health Canada has
15 receiving -- or was receiving 25 applications from firms
16 wishing to be LPs each week, on average.

17 A Mm-hmm.

18 Q Is that -- do you have more up-to-
19 date figures or is the 25 applications, is that a more
20 recent figure than the February 3rd, 2014 date?

21 A This would have been current as
22 the date I swore my affidavit at. Or roughly in
23 thereabouts.

24 Q So based on those figures you then
25 make the comment, you suggest that many firms believe
26 that the market will be large.

27 A Mm-hmm. Yes.

28 Q That's not just the medical

1 marijuana market though, is it? Would you agree that
2 there would be a significant, or at least some of those
3 licenced producers who see that this is a business
4 opportunity when legalization arrives, as is supposed to
5 ideally happen according to some people and according to
6 what's going on the United States for example, where we
7 now have five states.

8 A I don't know the intentions of the
9 licenced producer applicants, but that seems possible.

10 Q Okay. If we move onto paragraph
11 36, in paragraph 36 you talk about commercial medical
12 marijuana industry is still in its infancy.

13 A Mm-hmm.

14 Q As of October 3rd, 2014, only 13
15 firms selling medical marijuana to patients. Do you
16 know what the current figure is?

17 A I want to say 17.

18 Q Is 17 the figure that you know, or
19 is that figure that you think is likely right?

20 A I'm pretty sure it's 17. It might
21 be 16.

22 Q Okay.

23 A But I'm going to --

24 Q But you'll agree -- oh, sorry.

25 A I want to say 16 or 17.

26 Q But you agree it's not a huge jump
27 up from the 13. It's slightly higher than that but
28 around that figure.

1 A That's right. That's right.

2 Q Do you know about any of the LP
3 process, the difficulties that have been suggested some
4 LPs are having in being licenced? Do you have any
5 information about that, or --

6 A Not really, no. I know there was
7 some backlogs in the approval process, but I don't have
8 any current information on the status of the -- I
9 actually don't know the answer to that question.

10 Q Okay. Now, when you've said that
11 the commercial medical marijuana industry is in its
12 infancy, you're aware though that people have been
13 growing medical marijuana, patients have been growing --
14 and their caregivers, have been growing marijuana for a
15 number of years in Canada legally.

16 A You mean in home production? Yes.

17 Q Yeah.

18 A Yes.

19 Q Or not just in a home but also
20 would be in a barn, for example. Caregivers would grow
21 for more than one patient in a barn, for example.

22 A Sure. I'm sure that non-
23 commercial growers have been around for -- well, I'm
24 sure they've been in Canada for many years.

25 Q Are you aware that some growers
26 grow over a thousand plants, for example, currently?

27 A I did not know that.

28 Q So is your -- is this paragraph

1 where you talk about commercial and the difficulties
2 about commercial growing being in it's infancy, people
3 have to learn how to -- what strains work and how to
4 deal with mould and how -- what fertilizers to use.

5 A Mm-hmm.

6 Q Is that information affected by
7 the information that some people have already been
8 growing large -- caregivers have been growing for more
9 than one patient at a time and large licences?

10 A Well, if you could provide me with
11 a bit more detail about these large, thousand-plant-
12 scale operations and if they've been certified to Health
13 Canada standards and if they've gone through all the
14 learning required to adhere to those requirements, and
15 the numbers of those. Sure, I mean, a lot of -- if
16 there's large scale production happening outside the LP
17 market, then maybe you're right, maybe we already have
18 lots of experts.

19 Q Well, the way the current system
20 works is that a designated grower, say a caregiver, can,
21 in residential premises or in commercial premises, grow
22 for a number of patients at the same time.

23 A Okay.

24 Q Hence a large grow.

25 A Mm-hmm.

26 Q So these aren't numbers that are
27 tracked by Health Canada, as I understand. We've not
28 been provided with any. They have figures --

1 A Well, don't they have numbers on
2 the number of plants authorized per --

3 Q Oh, they have that, but as far as
4 who is growing collectively for four patients, for
5 example --

6 A Oh, they don't have information.

7 Q -- each licence is separate. Each
8 licence is separate.

9 A Okay. All right.

10 Q So knowing that there is or there
11 maybe large grows already in effect in Canada, does that
12 affect then your comments as far as few people having
13 skills to grow that part of the industry being in its
14 infancy?

15 A Well, yeah, I don't really know
16 much about how thousand plant grow-ops or production
17 facilities would have already in existence and the
18 extent to which the skills that individuals in those
19 facilities, the growers in those facilities have, that
20 can they just transfer those skills to the 17-plus
21 Licensed Producers in already existence and the many
22 more that hope to become Licensed Producers? I don't
23 really know the answer to that question. I don't have
24 information on it unfortunately.

25 Q Are you aware that some current
26 licensed caregivers have formed, for example, companies
27 where they now want to grow as a Licensed Producer
28 instead? Is that information that you know about that?

1 A I didn't know that, no.

2 Q As far as the economies of scale
3 are concerned, and this is now your page 12 starting at
4 paragraph 39, is the economies of scale affected by the
5 large amount of investment and funding that goes into
6 meeting the requirements to become a Licensed Producer?
7 And I say that in terms of -- and I know you've looked
8 into some of that. Establishing the security
9 requirements, for example, and monitoring?

10 A Yes.

11 Q Those kinds of costs.

12 A Mm-hmm.

13 Q Have you, or are you able to break
14 down any of those costs as to how much investment it
15 takes to become a Licensed Producer?

16 A I don't have the actual financials
17 in front of -- I never -- I was never produced the
18 financials. I never relied upon them. I just used the
19 -- let me see here. I just -- what I concluded was from
20 a report that I referred to on page 13 by Hawken *et al.*,
21 *Economies of Scale in the Production of Cannabis*. It
22 was a Washington State analysis. So they suggested
23 there were some economies of scale, but for indoor
24 growing that they were actually rather modest. They
25 weren't huge. There was not a massive cost advantage
26 for have a large scale --

27 Q This is in Washington.

28 A Yeah.

1 Q -- in Washington.

2 A This was an analysis done for the
3 Washington State Liquor Control Board. It was a
4 literature review.

5 Q Okay. I'm talking about the costs
6 and the requirements under the federal *MMPR* program.

7 A Okay.

8 Q Which has nothing to do with
9 Washington in the sense of --

10 A Well, let's be clear about the
11 Washington aspect of this paper. The State of
12 Washington commissioned the study which is -- it wasn't
13 just operations that are located within the State of
14 Washington. It was Washington State conducted --
15 commissioned the study in its literature review, and the
16 people who wrote the review harvested -- sorry, gathered
17 information from American presumably and other
18 countries' cost experience in different scale
19 operations.

20 Q I'm not talking about the cost of
21 growing marijuana. I'm talking about the cost of
22 setting up to the satisfaction of the federal government
23 as a Licensed Producer, which means going through all
24 their security requirements --

25 A But isn't that a cost of growing
26 marijuana?

27 Q Yes, that is -- that is a cost, but
28 it isn't a comparable cost to the Washington because

1 those people in Washington aren't required to install --

2 A But aren't they indoor facilities?

3 This is all indoor facilities that we're talking about.

4 Q I'm talking about the setup cost to
5 become a Licensed Producer.

6 A Okay, well, let's talk about those
7 then. What does Health Canada require?

8 Q So I'm asking you if you're aware
9 of what the costs are potentially to Licensed Producers
10 to become an accepted -- not an applicant.

11 A Okay.

12 Q Not a numbered applicant.

13 A Okay.

14 Q One of those 16 or 17 on the list.

15 A Okay.

16 Q There's a difference between being
17 an applicant and actually being an Licensed Producer.

18 A I understand, not everyone gets
19 accepted, I appreciate that.

20 Q So, what I'm asking you is, do you
21 know what the costs are, or have you factored in, as far
22 as how this market can grow, how much it costs, on
23 average, for a licenced producer to meet the *MMPR*
24 requirements?

25 A Not explicitly. But that being
26 said, it has occurred to me, that the bigger are the --
27 to the extent that Health Canada has extraordinary large
28 fixed costs of setting up production, that would cause

1 there to be larger economies of scale, would there not
2 be, as a fixed cost of meeting Health Canada
3 requirements are amortized over a larger production
4 volume, the average unit cost will go down. So, that
5 will sort of, again, support my argument I think, of the
6 reason why the average -- I mean, that part was one of
7 four examples why I think the average cost of production
8 will decline over time.

9 Q But doesn't it affect the number of
10 licenced producers that can come into the market? It's
11 not as simple as applying for a registration
12 certificate, and now you can join the market, affect the
13 market, drive through competition the price down. You
14 have to jump over very high, expensive hurdles to get
15 yourself into that market place. And therefore, doesn't
16 that -- wouldn't it have been helpful for you to have
17 known how easy or not it is to suggest that well, if the
18 price is too high, then new people are going to get into
19 the market place and drive the price down lower?

20 A I mean, look at the empirical
21 examples I provided of declining average cost and price.
22 I mean, if you look at the farming examples, the soy
23 beans, the maize, I mean, those involve substantial
24 fixed cost, don't they?

25 Q Well --

26 A And we also see productivity gains,
27 that translate into lower production cost and lower
28 prices across time. I think I had two figures

1 illustrating that.

2 Q You haven't compared a farmer's
3 costs of getting into the soya bean game, with a
4 licenced producers costs of getting into the marijuana
5 game.

6 A Not explicitly, but you think about
7 it, think about what it costs to -- the sub-costs for a
8 farm nowadays. You have to invest in silos, large -- I
9 mean, I am not a farming expert, but I know a little bit
10 about it, and it's expensive, in capital acquisition
11 costs, to get into farming.

12 Q But you are not having to pay for
13 24 hour security that is permanently monitored at every
14 exit in your building, for example.

15 A True, but there might be costs that
16 are incurred in the agricultural sector that the medical
17 marijuana operations don't face.

18 Q But you haven't compared them, was
19 my point I think. You don't know how easy it is to
20 become a licenced producer, do you?

21 A Well I know a little bit about the
22 requirements.

23 Q You don't know how easy it is,
24 though, do you?

25 A How easy it is? No, I mean, I
26 haven't actually submitted my own dossier for submission
27 to Health Canada, so I don't know how much scrutiny they
28 give it, oversight, no.

1 Q And you don't know how long it
2 takes for a licenced producer to get into the market
3 place, either, do you?

4 A How long it takes, how long it
5 takes. Well, we probably can infer that, can't we?
6 Because we know when the *MMPR* program started, yes, and
7 we have information on a number of current licenced
8 producers. So, presumably the applicants applications
9 for licenced producer status started with the *MMPR*, no?

10 Q But we have --

11 A And so we can probably back it out
12 of those data.

13 Q So, we are able to establish that
14 in the two years or so, or the two years almost of the
15 *MMPR* that there has taken 16 or 17 people that amount of
16 time or less to become a licenced producer, but we have
17 400 and something applications?

18 A Mm-hmm.

19 Q As of over a year ago, February, of
20 2014, and you don't know the status of how long those
21 people --

22 A Well, that would suggest, and you
23 are just doing a simple math, it would be at least a
24 year, yes?

25 Q So, you'd agree that from what
26 you've read, that it would be at least a year before a
27 licenced producer, from deciding that they wanted to
28 submit an application --

1 A Yes, I mean, it makes sense. If
2 you told me there is 400 as of February 4th, 2014, and
3 they haven't registered on the Health Canada website,
4 you're absolutely right, it's going to be at least a
5 year.

6 Q And do you know how long it takes
7 for a licenced producer to be in a position to submit an
8 application to Health Canada?

9 A No, I do not.

10 Q Okay.

11 A I actually don't know the
12 application requirements.

13 Q I'm just making sure I don't ask
14 you the same questions again.

15 A Okay.

16 Q With respect to paragraph 55, which
17 is at page 18 of your report.

18 A Mm-hmm.

19 Q In this particular paragraph, you
20 talk about the additional costs as far as housing costs,
21 maybe, by someone who is producing their own marijuana
22 and the fact that therefore that housing cost would have
23 to be figured into the overall scheme of things. What
24 about -- is that a speculation that somebody would need
25 to expand their home, or move home, or get a detached
26 home, or -- I'm trying to understand where that --

27 A I believe it was -- that was -- the
28 basis on which I wrote that was the need to have

1 sufficient square footage to have a growing facility. I
2 suspect that apartments would not -- I think I refer to
3 people, you know, who otherwise would be living in an
4 apartment, have to live elsewhere just to have
5 sufficient square footage to accommodate the personal
6 production of medical marijuana.

7 Q So those who live in a home,
8 though, and already have, for example, a basement or a
9 garage or an outbuilding, for example.

10 A Yes.

11 Q They wouldn't figure in within that
12 particular demographic that you're talking about. They
13 wouldn't have additional housing costs in terms of
14 having --

15 A No. Oh, absolutely not.

16 Q So it's just a small portion, are
17 you thinking?

18 A No, no. I can't tell if it's small
19 or large.

20 Q Okay.

21 A I'm saying that not everyone's
22 going to face that opportunity cost, though. Some will,
23 some won't.

24 Q And as far as paragraph 56 --

25 A Mm-hmm.

26 Q You say that growing medical
27 marijuana in one's bedroom may affect resale value.

28 A Mm-hmm.

1 Q On what basis do you come up with
2 this conclusion, and the basis for it? Where did you
3 get the information for it?

4 A I say it may. It seems plausible
5 to me, given the stigma that some people -- I've just
6 read in the media reports have with occupying a house
7 that was formerly used for cultivation of medical
8 marijuana. May -- again, I'm not purporting to be -- to
9 give you a specific percentage of individuals for whom
10 that would be -- I'm just saying again, in the realm of
11 what opportunity costs could look like, I'm offering
12 this as an example.

13 Q So if a stigma based on the kind of
14 things we hear or that we have heard in the course of
15 this trial such as, well, you're more likely to get
16 mould, your house might burn down if you've got a grow-
17 op, those kind of things are in the media.

18 A Oh, yeah. No, I think to be honest
19 I think I got this from news reports, not necessarily --
20 I wasn't here for the earlier part of the trial.

21 Q Okay. Is it also true that if you
22 have a properly set up medical marijuana grow-op, and
23 it's properly inspected, and the code, for example, is
24 up to date --

25 A Yes.

26 Q And then in fact that can also be
27 an advantage to your house, a selling point, because
28 your electric is up to date, everything's to code, your

1 humidifiers are there, you've got smoke alarms --

2 A It's possible that in fact you're
3 right. That you have, amongst the people who are
4 considering buying your house, that may be a very good
5 match for someone who wants to him- or herself grow
6 marijuana, for sure.

7 Q Right. You say at paragraph 57 at
8 page 19, it could be the case that homes used to grow
9 medical marijuana are more expensive to insure or not
10 insurable.

11 A Mm-hmm.

12 Q Are you aware that we had an expert
13 witness here from the -- on behalf of the plaintiff, he
14 was an insurance agent, who specifically sells medical
15 marijuana home insurance?

16 A No, I was not aware that you had a
17 witness.

18 Q So at this stage when you wrote
19 the report, you weren't aware that there was actually an
20 insurance company that provided home insurance. Because
21 you put "are not insurable". Did you presume maybe you
22 couldn't get insurance?

23 A Well, I'm saying -- I'm suggesting
24 that even if it's insurable, it might be more costly to
25 ensure a home that is used for the production of medical
26 marijuana.

27 Q Well, you say here, "either more
28 expensive or are not insurable". So now knowing that

1 it's available --

2 A Sure. Please strike -- I agree,
3 that's a good point. Strike off "not insurable" if you
4 -- I'll take it -- I take it then there is insurance
5 available, so that means it's more expensive than to --
6 I'm presuming it's more expensive to --

7 Q I think the evidence was, yes,
8 there was a premium that came in with the luxury.

9 So with respect to if houses are
10 inspected and certified up to fire code, would there
11 still be external costs for them being used for
12 marijuana grow operations? Medical licenced legal grow
13 operations, not one involved in the black market, et
14 cetera. If there are such.

15 A Yeah, no. If the house is up to
16 code and you can imagine that a house that is fully
17 certified to grow medical marijuana is well run, it's
18 not causing a nuisance to others, there's no chance of a
19 fire spreading to neighbouring houses. Maybe it's
20 detached living, it's a house that's in the middle of
21 the country-side, sure.

22 Q Okay.

23 A I expect the cost would
24 necessarily apply to each individual case.

25 Q You say at paragraph 62 of your
26 page 20 that:

27 "The personal external costs enumerated so
28 far ignore the costs associated with illegal

1 activity for others who violate the terms of
2 the regulations, *MMAR* Regulations, and other
3 Canadian laws can generate additional
4 external costs."

5 As an example, the reports have divergent of licenced
6 grown personal medical marijuana onto the black market.
7 This, of course, you're talking about people who break
8 the law.

9 A Yes.

10 Q Not people who follow the law.

11 A Of course. Each case will be
12 different. Some will be obviously law abiding and the
13 same way some houses will pose an external cost, as we
14 discussed in the last segment.

15 Q So there are people that will grow
16 illegally, you agree, irrespective of what the law says,
17 that you can -- if you fall into a particular category,
18 you can get a licence but we know that people -- some
19 people grow marijuana without a licence. Hence --

20 A Sure. Some people with *MMRA*, with
21 the ATP will grow legally. Some with the authorization
22 will grow illegally. Some people without the
23 authorization will grow illegally, sure. There's many
24 categories.

25 Q Okay. I'm reminded that when I
26 asked you a question about -- earlier about the
27 insurance and the tax credit, when I asked you the
28 question before about what will happen to the market or

1 to the demand if no insurance companies are willing to
2 cover medical marijuana, I'm told by my colleague we got
3 distracted into talking about whether there was or
4 wasn't a tax credit. So I want to ask you the question
5 again.

6 A Sure.

7 Q If no insurance companies cover
8 medical marijuana as they currently don't, save for the
9 government in that one veterans example, what effect
10 would that have on demand as far as the market is
11 concerned.

12 A Well, if there is no third party
13 payment, the demand would be lower than otherwise.

14 Q Okay. Because when people can
15 claim on insurance, and I think I've covered this, but
16 there's more likely to be an increase in demand for that
17 product.

18 A Sure. If somebody else pays for
19 your drugs you may be more likely to fill prescriptions.

20 Q Okay.

21 A Yeah.

22 Q Thank you.

23 I'm told by my colleagues that there's no
24 additional things for them to add, so those are my
25 questions. Thank you very much for your time.

26 A Thank you.

27 MR. JANUSZCZAK: No re-direct, Justice
28 Phelan.

1 JUSTICE: No re-direct? Well,
2 Professor, you are free to go. Nice to see you again.

3 THE WITNESS: Yes, and you, My Lord.

4 (WITNESS ASIDE)

5 JUSTICE: Okay, are you all done?

6 MS. GRACE: I'm in the hot seat for
7 the plaintiff. I think that we have one rebuttal.

8 JUSTICE: Tomorrow?

9 MS. GRACE: Yes, tomorrow, Mr. Nash,
10 and I understand he's not going to be very long from
11 what -- Mr. Conroy was dealing with the witness.

12 JUSTICE: And we've got all kinds of
13 exciting cleanup and things like that?

14 MR. BRONGERS: Yes, it appears to be
15 fairly brief. I think we're just dealing with the
16 documents that have yet to be marked.

17 JUSTICE: Yes. Just getting ourselves
18 in shape for April 30th.

19 MS. GRACE: I think Mr. Conroy can add
20 to this. There was discussions between counsel as far
21 as page limits for submissions, dates and things,
22 replies. That's going to be discussed.

23 JUSTICE: Okay. I was going to raise
24 with you page limits, but okay.

25 MR. CONROY: My understanding tomorrow
26 is that the defendants are only wanting to cross-examine
27 Mr. Nash as to his expert affidavit, not his fact
28 affidavit.

1 JUSTICE: Okay.

2 MR. CONROY: That's what's going to
3 make it probably shorter --

4 JUSTICE: Shorter.

5 MR. CONROY: -- than it otherwise
6 would be.

7 We also discussed the schedule. I know
8 you've adjusted it once already, but as it is now, I'll
9 be going next week to assist Mr. Tousaw in the Supreme
10 Court of Canada in *Smith*, and the following week I'm
11 counsel for a witness in a significant large murder
12 conspiracy case here in Vancouver.

13 So we're asking if we could move our
14 written argument. What I discussed with my friend was
15 April 2nd. The reason -- that's the Thursday. The
16 Friday is Good Friday, so it's the Easter weekend. If
17 we could have till the Monday the 7th, we'd appreciate
18 it. And then my friends would go to the 17th and then we
19 would file a reply on the 24th and we have the oral
20 argument on the 30th and May 1st. So with us it's either
21 April 2nd or 7th. I've said 7th only because it's the
22 long weekend in there.

23 And then there was also some discussion
24 about whether there's page limits and things like that,
25 and we suggested 40 and 40 and 10, I think, or something
26 like that.

27 MR. BRONGERS: Actually, upon further
28 discussion, we have some concerns with such a limited

1 page limit, given the volume of evidence we hope to
2 summarize. The legal argument will certainly be a
3 reasonable length. The concern is summarizing the
4 evidence, and so we were hoping to begin without a page
5 limit. Obviously we are cognizant that a Justice of the
6 federal court doesn't appreciate 1,000 page factum.

7 JUSTICE: We're funny about that.

8 MR. BRONGERS: So, we will certainly
9 attempt to be brief, but the main concern in terms of
10 the length is this is a first instance proceeding, and
11 there has been three weeks worth of evidence and much of
12 the evidence of course is --

13 JUSTICE: Well, there is three weeks
14 of cross-examination. If this was a real trial, this
15 would have a been a couple of months, really.

16 MR. BRONGERS: Exactly.

17 JUSTICE: Since I have to read it all,
18 I have a fairly good idea of what's there. So, I am
19 going to put you under some page limits, only to protect
20 myself and my sanity. If you can work out something
21 reasonable, I am happy to agree to that. Because there
22 is a lot of material, and it is more helpful to the
23 court if you've actually pointed it out to us, God only
24 knows we might miss something.

25 MR. CONROY: I think the facts, I
26 agree with my friend, that is what is going to take us
27 the time.

28 JUSTICE: Yeah.

1 MR. CONROY: You have the pre-trial
2 conference memos which cover most of the law. There has
3 been a few developments since then, *Carter* in the
4 Supreme Court of Canada.

5 JUSTICE: Yeah, it is really, though,
6 tying in the facts to the law, where we know what the
7 legal principles are, but the application of those
8 principles. A, first a finding the facts, and then the
9 application of those facts to the legal principles is
10 really where the core of this case is.

11 So, well let's say -- I'll go back to one
12 step, Mr. Brongers. What do you say to the deadlines?

13 MR. BRONGERS: Oh, the dates we are in
14 complete agreement with my friend.

15 JUSTICE: Okay. The only thing is
16 you're going to have to get him to the court fast. I
17 have to -- believe or not, I will read these things
18 before you show up on the 30th. So you can imagine, if I
19 don't put some limits on you, I won't sleep for a week
20 while I read, the excitement. Even when I'm not
21 watching the video.

22 So I'm going to give you 60. Okay?
23 Sixty pages.

24 MR. BRONGERS: Sixty-page limit. I
25 think that's going to be insufficient.

26 JUSTICE: Do you really?

27 MR. BRONGERS: Yes. I would have, just
28 as a ballpark figure come up with a hundred pages at

1 this point. I did last -- or a couple of years ago, the
2 *Federation of Law Societies* matter. It was a seven-day
3 petition and application, all the evidence in affidavits
4 larger than this, and in order to summarize it all,
5 we needed 180 pages. And I think the court did
6 appreciate that, because it was a lot shorter than
7 having to read all of the affidavits. So I think 100 is
8 a reasonable --

9 JUSTICE: Mr. Conroy, are you going to
10 bid up or bid down.

11 MR. CONROY: I'm going to shoot for a
12 lot less, if I can. If you leave it at a hundred.

13 JUSTICE: Well, you're a competent
14 counsel, you know what this case is about. In fact, you
15 know it better than I do right now. I'll go with 100.

16 MR. BRONGERS: Thank you, My Lord.

17 MR. CONROY: So the dates are okay,
18 April 7th for --

19 JUSTICE: The dates are fine. So the
20 7th, 14th --

21 MR. BRONGERS: The 17th.

22 JUSTICE: The 17th, yes. 17th and 24th.
23 A hundred pages. One caveat: Make it good. If I'm
24 going to read that much, make it exciting. Keep me in
25 suspense.

26 MR. BRONGERS: Understood.

27 JUSTICE: I'll see who did it.

28 Now, the reply. How much --

1 MR. CONROY: If my friend is 100
2 pages --

3 JUSTICE: Twenty.

4 MR. CONROY: Okay.

5 JUSTICE: Any more bidding we can do?

6 MR. BRONGERS: No, that's perfectly
7 acceptable. And I would add, My Lord, fortunately you
8 will have both the plaintiffs' factum and our factum two
9 weeks before the hearing. So you will be able to begin
10 reading then, and then all that's left is the reply.

11 JUSTICE: Yes. It may surprise you,
12 but there might be the odd case that the judge is
13 hearing in between.

14 MR. CONROY: Fair enough. So I think
15 the only thing we have to do is to tie up the exhibits.

16 JUSTICE: Yes. Which we will do
17 tomorrow morning.

18 MR. CONROY: Yes.

19 JUSTICE: All right. Well, then we
20 will see you all tomorrow at 9:30.

21 MR. BRONGERS: Thank you, Justice.

22 (PROCEEDINGS ADJOURNED AT 4:26 P.M.)

23