

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 30<sup>th</sup>, 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 30<sup>th</sup> 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 21<sup>st</sup> 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 8<sup>th</sup>, 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 16<sup>th</sup>, 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 16<sup>th</sup>, 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 16<sup>th</sup>, 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 19<sup>th</sup>,  
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 19<sup>th</sup>, 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 16<sup>th</sup>, 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 4<sup>th</sup>, 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 19<sup>th</sup>, 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 19<sup>th</sup>, 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 1<sup>st</sup>, 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 18<sup>th</sup>, 2013.

19 A Yeah.

20 Q So would you agree that on  
21 February 18<sup>th</sup>, 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 16<sup>th</sup>, 2010 when you first were authorized to  
19 possess marijuana by Health Canada --

20 A Mm-hmm.

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

23 A Yes. Yes.

24 Q And then from July 19<sup>th</sup>, 2011 to  
25 February 18<sup>th</sup>, 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 18<sup>th</sup>, 2013 to  
3 September 26<sup>th</sup>, 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 26<sup>th</sup>, 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 16<sup>th</sup>, 2010 to July 19<sup>th</sup>, 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 19<sup>th</sup>, 2011 to February 18<sup>th</sup>, 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 19<sup>th</sup>, 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 18<sup>th</sup>, 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, CO<sub>2</sub> 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 8<sup>th</sup>, 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 16<sup>th</sup>.

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 16<sup>th</sup>, 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 19<sup>th</sup>, 2011, to July 19<sup>th</sup>,  
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 19<sup>th</sup>, 2012, and a personal  
25 production licence July 19<sup>th</sup>, 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 1<sup>st</sup>, 2012, to July  
3 19<sup>th</sup> 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 19<sup>th</sup>, 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 7<sup>th</sup> 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 19<sup>th</sup>,  
7 2013 from February 18<sup>th</sup>, 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 31<sup>st</sup>, 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 26<sup>th</sup>, 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, CO<sub>2</sub> 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 18<sup>th</sup>, 2012 to December  
3 18<sup>th</sup>, 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 18<sup>th</sup>, 2012 to December 18<sup>th</sup>, 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.

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**PROCEEDINGS**

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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 24<sup>th</sup>, 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 26<sup>th</sup>, 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 14<sup>th</sup> 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, CO<sub>2</sub>  
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 1<sup>st</sup> 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 5<sup>th</sup> or 6<sup>th</sup>, 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 4<sup>th</sup> 2013, and expiry January 4<sup>th</sup>, 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 4<sup>th</sup>, 2013, date of issue; January 4<sup>th</sup>, 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 4<sup>th</sup>, 2013,  
16 expiring January 4<sup>th</sup>, 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 21<sup>st</sup>, 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 14<sup>th</sup>, 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 1<sup>st</sup>. 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 18<sup>th</sup>  
14 she had nausea and tried this one. On February 19<sup>th</sup> she  
15 had nausea and tried this one. February 18<sup>th</sup> 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 25<sup>th</sup>, 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 25<sup>th</sup>, 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 CO<sub>2</sub>  
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**

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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 26<sup>th</sup>, 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 21<sup>st</sup>, 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 CO<sub>2</sub> 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. CO<sub>2</sub> 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 CO<sub>2</sub>, so we use tanks.  
19 I've found tanks to be a -- good compressed CO<sub>2</sub> 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 CO<sub>2</sub>. There is also boost bags that you can

1 get, which have some sort of fungus which produces I  
2 think -- mushrooms which produce CO<sub>2</sub>, which takes no  
3 power. And there is a few of these products available,  
4 a few different ways to get CO<sub>2</sub>.

5 Q Page 22, Exhibit D, that is a CO<sub>2</sub>  
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 CO<sub>2</sub>. It has a pump on the  
13 top, which helps gets the CO<sub>2</sub> 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, CO<sub>2</sub> 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 19<sup>th</sup>, 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 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 pyrolytic 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 6<sup>th</sup>, 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 6<sup>th</sup> 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.

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**PROCEEDINGS**

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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 2<sup>nd</sup>, 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 and large, that's not an issue that's going to arise  
2 because of how the evidence has been presented. And the  
3 point that we make in our written materials and that  
4 I'll make very briefly here is because the concern of  
5 the plaintiffs seems to deal with rebuttal expert  
6 evidence, since the rebutting and opinion that's already  
7 been presented, there's no evidence that's being  
8 presented after the fact that's going to cause concern.

9           The third point I'll make is this. To  
10 the extent that the principle in *Browne v. Dunne* were to  
11 apply, and if there is no cross-examination, it's  
12 important to talk about what specifically the evidence  
13 is that we're concerned about. And I think the case law  
14 is very clear. The way the law has developed in Canada  
15 is that it's not a question, with the exception -- and  
16 you'd go to the *Canada Evidence Act* -- with the  
17 exception of prior inconsistent statements. It's not a  
18 question of admissibility, it's a question of, well,  
19 what weight is afforded the evidence? But the evidence  
20 we're talking about, of course, is the evidence that's  
21 presented after the fact, right? That's specifically  
22 what the principle would address if *Browne v. Dunne* were  
23 to apply.

24           So the principles have been, I think, in  
25 some cases advanced improperly. They've been  
26 misunderstood. And in my submission, those are the  
27 three key factors --

28                   JUSTICE:       Sorry, the first is the

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 2<sup>nd</sup> 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 22<sup>nd</sup>, 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.

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**PROCEEDINGS**

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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 3<sup>rd</sup>, 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 Remifentanil, 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 surveynance. 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 27<sup>th</sup>, 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                   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.

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**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 4<sup>th</sup>, 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 30<sup>th</sup>, 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 21<sup>st</sup>, 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 31<sup>st</sup>, 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 30<sup>th</sup>, 21,000  
15 roughly on March 21<sup>st</sup>, 2014, and 20,000 on March 31<sup>st</sup>,  
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 30<sup>th</sup>, 2013, and then  
3 declining, March 21<sup>st</sup>, 2014, 3,273; March 31<sup>st</sup>, 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 31<sup>st</sup>, 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 31<sup>st</sup> 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 17<sup>th</sup>, 2013 and March  
11 31<sup>st</sup>, 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 31<sup>st</sup>, 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 31<sup>st</sup>, 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 31<sup>st</sup>, 2014, stopped  
10 accepting orders after March 12<sup>th</sup>, 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 Q Okay. You used the term "large  
2 operations". What do you mean by that?

3 A In my answer do you mean that I  
4 used that, or --

5 Q No, a moment ago --

6 A Oh, okay.

7 Q -- you said your concerns with  
8 respect to large operations out in -- the example I gave  
9 was the agricultural area.

10 A Well, some of the agricultural  
11 areas, they were large in that they occupied a large  
12 industrial building, and communities were concerned  
13 about having such a large amount of plants on an  
14 industrial scale near their community.

15 Q Right, so, but nothing in relation  
16 to smaller operations then, of an individual out in an  
17 agricultural area that wasn't causing any problems for  
18 their neighbours and so on.

19 A No, I wouldn't say that.

20 Q Okay.

21 A I wouldn't say that at all.

22 Q The next tab N, question 36, you  
23 were asked about reasons asserted and the details and  
24 the basis, and you refer in your answer to the  
25 Regulatory Impact Analysis Statement, RIAS, correct?  
26 And that's what you refer to?

27 A Yes.

28 Q And that document is attached to

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 31<sup>st</sup>, 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 13<sup>th</sup>, 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 31<sup>st</sup>, 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 29<sup>th</sup>  
10 letter and then there's -- in the next paragraph a  
11 September 26<sup>th</sup> 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 30<sup>th</sup> date and the March 31<sup>st</sup>  
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 31<sup>st</sup> 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 31<sup>st</sup>.

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 21<sup>st</sup>,  
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 30<sup>th</sup>, 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 20<sup>th</sup>, the day  
13 before Justice Manson's order, but their personal  
14 production licence was still valid back in September  
15 30<sup>th</sup>, 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 30<sup>th</sup>, 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 31<sup>st</sup>, or January  
4 30<sup>th</sup>, 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 15<sup>th</sup>, 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 15<sup>th</sup>, 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 31<sup>st</sup> 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 7<sup>th</sup>, 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 31<sup>st</sup>. 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 forefetur 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)

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.

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**PROCEEDINGS**

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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 5<sup>th</sup>, 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 14<sup>th</sup>  
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 7<sup>th</sup>, '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 24<sup>th</sup>, 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 CO<sub>2</sub>

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 17<sup>th</sup>, 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 31<sup>st</sup>, 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 31<sup>st</sup>, 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 31<sup>st</sup>, 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 27<sup>th</sup>, 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 CO<sub>2</sub>, right?

15 A That's correct.

16 Q You talk about a list of things, a  
17 device burning unattended, high levels of CO<sub>2</sub> 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 CO<sub>2</sub> 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 CO<sub>2</sub> can cause unconsciousness and death,  
28 correct?

1                   A       I know that high levels of CO<sub>2</sub> 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 CO<sub>2</sub> 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.

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**PROCEEDINGS**

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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 9<sup>th</sup>, 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 - 132<sup>nd</sup> 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 10<sup>th</sup>, 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 19<sup>th</sup>, 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 19<sup>th</sup>, 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 convocated in  
13 -- I checked online. It was June 19<sup>th</sup> 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 ..."  
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 11<sup>th</sup>, 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 15<sup>th</sup> 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 - 21<sup>st</sup> 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 5<sup>th</sup> 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 17<sup>th</sup>, 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 5<sup>th</sup> 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 10<sup>th</sup>  
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 9<sup>th</sup>, 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 2<sup>nd</sup> 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 1<sup>st</sup>,  
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 1<sup>st</sup> 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 1<sup>st</sup> of July,  
21 2013, may also continue to do so until March  
22 31<sup>st</sup>, 2016."

23                  So, it would seem to suggest that  
24 grandfathering as a general concept is available until  
25 March 31<sup>st</sup>, 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 22<sup>nd</sup> 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 16<sup>th</sup> 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 terpanoids, 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 1<sup>st</sup> 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 1<sup>st</sup>, 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.

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**PROCEEDINGS**

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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 12<sup>th</sup>, 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 21<sup>st</sup>, 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 17<sup>th</sup>, 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 10<sup>th</sup>, 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 2<sup>nd</sup>, 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 10<sup>th</sup>, 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 8<sup>th</sup>, 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 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 A Yes, I see that.

2 Q Make sure you don't cause a  
3 nuisance to your neighbour and these sorts of things.  
4 No sales to minors, that sort of thing. Pretty basic  
5 stuff.

6 A Yes.

7 Q All right. He then says no sales  
8 exceeding 5 grams per transaction. As I understand it,  
9 you can go in the coffee shop and buy 5 grams and you're  
10 not supposed to be able to buy any more at a time,  
11 correct?

12 A Yes.

13 Q But you can go outside and just  
14 come back in and buy another 5 grams, can't you?

15 A I don't know how it works.

16 Q Well, he talks about that and how  
17 he did his survey. He sent people out to all these  
18 randomly selected coffee shops and they would sometimes  
19 be able to buy 10 grams, notwithstanding the 5 gram  
20 limit, or they'd have to go out and just go back in and  
21 get another 5 grams. Isn't that what he talks about in  
22 the article?

23 A I read that they had to go back  
24 later, but I don't know if it was going out and going  
25 back in again.

26 Q Does it really matter how long it  
27 is between time?

28 A Yeah, maybe that you can have it

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 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 3<sup>rd</sup> 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 3<sup>rd</sup>, 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 3<sup>rd</sup>, 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 4<sup>th</sup>, 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 30<sup>th</sup>.

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 2<sup>nd</sup>. 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 7<sup>th</sup>, we'd appreciate  
18 it. And then my friends would go to the 17<sup>th</sup> and then we  
19 would file a reply on the 24<sup>th</sup> and we have the oral  
20 argument on the 30<sup>th</sup> and May 1<sup>st</sup>. So with us it's either  
21 April 2<sup>nd</sup> or 7<sup>th</sup>. I've said 7<sup>th</sup> 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 30<sup>th</sup>. 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 7<sup>th</sup> for --

19 JUSTICE: The dates are fine. So the  
20 7<sup>th</sup>, 14<sup>th</sup> --

21 MR. BRONGERS: The 17<sup>th</sup>.

22 JUSTICE: The 17<sup>th</sup>, yes. 17<sup>th</sup> and 24<sup>th</sup>.  
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