Examination No. 14-0231.2 Court File No. T-2030-13

FEDERAL COURT OF JUSTICE

B E T W E E N:

NEIL ALLARD, TANYA BEEMISH, DAVID HERBERT, SHAWN DAVEY

PLAINTIFFS

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

****

CROSS-EXAMINATION OF JEANNINE RITCHOT her Affidavit Sworn on February 7, 2014 pursuant to appointment made on consent of the parties to be reported by Catana Reporting Services, on February 20, 2014, commencing at the hour of 1:55 in the afternoon.

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APPEARANCES:

John Conroy (via videoconference) for the Plaintiff

Jan Brongers)
Kate Murton) for the Defendant

ALSO PRESENT:

B.J. Wray
Maria Molloy

This Examination was taken down by sound recording by Catana Reporting Services Ltd.

INDEX

NAME OF WITNESS: **JEANNINE RITCHOT**

EXAMINATION BY: MR. CONROY

NUMBER OF PAGES: 85

ADVISEMENTS, OBJECTIONS & UNDERTAKINGS

O ... 7, 9, 11, 12, 18, 25, 27, 37, 40, 46, 52, 53, 67, 74, 75

NO EXHIBITS

DATE TRANSCRIPT ORDERED: February 28, 2014

DATE TRANSCRIPT COMPLETED: March 3, 2014

JEANNINE RITCHOT, SWORN:

EXAMINATION BY: MR. CONROY

1. Q. Ms. Ritchot, I have your Affidavit sworn February 7th, 2014, you have it in front of you, do you?

A. Yes, I do.

2. Q. Starting at paragraph 4, you deal with the legislative and regulatory framework in relation to drugs in Canada, correct?

A. Yes.

3. Q. You said at that the -- basically the purposes -- of the Food and Drugs Act and the Controlled Drugs and Substance Act and regulations?

A. Yes.

4. Q. In paragraph, both 4 and 5, you refer to authorization of drugs for sale in Canada and drug manufactures and approving for sale in Canada or drugs being made available for therapeutic use, correct?

A. Yes, this paragraph refers to the authorization of drugs for sale in Canada.

5. Q. All right. So there's a clear distinction, isn't there, between people who are producing something to use for themselves that's not for sale and people producing something that they intend to sell to the public in Canada. Fair enough?

A. I don't understand the nature of your

question.

6. Q. Well there's a distinction between people producing something for themselves that's not going to be sold to other as opposed to something that's going to be sold to others, isn't there?

A. The framework in Canada is such that any narcotics or controlled substances which would be made available for sale in Canada or for use in Canada for that matter would still have to go through the food and drugs regulations. They would indeed have to comply with those regulations.

7. Q. Well people who are producing cannabis for themselves aren't going through the food and drug regulation, are they?

A. They do not, but that is only because of the marijuana for -- pardon me, the Marijuana Medical Access Regulations which were established following the Parker case.

8. Q. People who grow food for themselves, for example, they don't have to go through any of these types of processes in terms of testing, do they?

A. I am not aware of the regulations for food in Canada. I am not aware of how that would be regulated for sale or for personal production.

MR. BRONGERS: Mr. Conroy, I'm just wondering

where this is going? Are we asking the witness questions about her knowledge of the law? I mean, I want to give you a chance to get to the point you're making, but there's not much point in having a debate about what the law says.

MR. CONROY: Well I don't think we're having a debate about what the law says. I am trying to just get an understanding of this witness's understanding of the framework and what fits into it and what doesn't. So ---

MR. BRONGERS: Okay, just ---

MR. CONROY: --- do you want me to carry on?

MR. BRONGERS: Yes, absolutely. But just to be clear, obviously the purpose of this Affidavit is to set out Health Canada's position and understanding with respect to the rationale of the legislation. I'm just concerned. I don't want to turn this into a Cross-Examination about what the law is. So, with that caveat, please go ahead.

BY MR. CONROY:

9. Q. I don't expect it to turn into that. For example, let me use another illustration. One of the things that is regulated by Health Canada or the Food and Drug Act is natural healthcare products. Isn't that right?

A. Yes, that's my understanding.

10. Q. There's a set of regulations for natural health care, isn't there?

A. That's my understanding, yes.

11. Q. Natural healthcare products include such things as what, foxglove or other types of herbs and things of that kind, correct?

A. I'm not intimately aware of the natural health products regulations, but I am aware that they do not include marijuana. Those are included under Schedule II of the Controlled Drug and Substances Act and as such would not be subject to the natural health products.

12. Q. Okay. But, we have in Canada then, regulations that govern the growing and producing of natural healthcare products for people that are -- if they're going to sell them to the public, correct?

A. I'm not intimately aware of that framework, but I do know that it exists. I'm not aware of the details of how it works.

13. Q. You didn't know that people could grow those products for themselves without having to comply with those regulations?

A. That is not my understanding of the natural health product regulation. But as I said, it is not an area that I have ever worked in and I am not an expert in those regulations.

14. Q. So, with respect to cannabis as you indicated, it's in Schedule II to the Controlled Drugs and Substances Act, correct?

A. Yes.

15. Q. It was previously prohibited under the Narcotic Control Act. You knew that, did you?

A. Previous to what, may I ask? Could you clarify?

16. Q. Prior to the Controlled Drugs and Substances Act it was under the Narcotic Control Act?

A. My knowledge doesn't stretch that far back, I'm afraid.

17. Q. Okay. Because we still have Narcotic Control Regulations that fit into this framework, don't we?

MR. BRONGERS: Mr. Conroy again, all of these questions have been questions about what the law is. I understand if you want to build up to a specific question that this witness might be able to help the court with, that's fine, but so far these are all points that could simply be made by referencing legal texts. You don't have to ask this witness these questions. *O*

MR. CONROY: All right.

BY MR. CONROY:

18. Q. All right. Can you -- One of the -- If you have the Affidavit of Danielle Lukiv, Mr. Brongers,

Volume 2, Tab 7, I believe. I'm looking to the letter that sent out by Health Canada to all patients in November. It's the third Exhibit from the bottom if you don't have Tabs.

MR. BRONGERS: Exhibit G?

MR. CONROY: It's actually F.

MR. BRONGERS: Yes, we have it. Thank you.

BY MR. CONROY:

19. Q. In the second paragraph of that letter, you say that the reason for the change -- or

"The Government's decision to change is because the current practice of allowing individuals to grow marijuana for medical purposes poses risks to the safety and security of Canadians."

A. That was one of the considerations, yes.

20. Q. And that,

"The high value of marijuana on the illegal market increases the risk of violent home invasion and diversion to the black market."

A. That's in the letter and that echoes what I heard during consultations with various stakeholder groups.

21. Q. In addition,

"These production operations present fire and toxic mold hazards."

A. That is also in the letter and also echoes what I've heard.

22. Q. Okay. So, are you able to point me to specific statistics with respect to for example, fires in medically approved production facilities?

MR. BRONGERS: Mr. Conroy, I mean, we have a full Affidavit here with supporting Exhibits and of course there are other witnesses you'll be Cross-Examining with respect to these issues. Are you trying to get the entirety of the witness's knowledge of all these statistics? I think that's a completely unfair question to ask. *O*

BY MR. CONROY:

23. Q. Well, I'm assuming in your capacity, Ms. Ritchot that when there was a fire in a medical -- an approved medical grow, your office would be notified, wouldn't they?

A. In my former capacity, I was the Director of Regulatory Reform. So my job was related to revising and drafting the new regulations.

24. Q. So you have no knowledge of these statistics, the details -- your information was simply what you heard, anecdotes from people at consultations?

A. During consultations we met extensively with a number of stakeholders. Some of whom did provide us

with information. In some cases the Canadian Association of Fire Chiefs and the Canadian Chiefs of Police also provided us with information. I do not have it with me here today. I do not recollect the specifics of what I was given at that time.

25. Q. So the office though that you were heading up would not keep the statistics themselves somewhere to keep a tally of what sorts of problems were going on with specific applications, specific production facilities?

A. During the writing of the regulation, I was responsible for all elements that were related to drafting a regulation, but not to managing and operating the specific program, no. So my office did not keep that.

26. Q. I'm not talking about just when you're doing the new regulations, I'm simply talking about from the beginning of the program, say in 2001 when the MMAR came in or 1999 when Section 56 was being used. Do we have somewhere documented the details of the number of fires in each specific province or place arising from a medical grow?

MR. BRONGERS: Mr. Conroy, I think that's a perfectly appropriate question to ask on Discovery, but in terms of this witness who's sworn an Affidavit, if we

could confine the questions to what she has testified to in the Affidavit. You have the documents that are attached and we told you that we are not going to be producing anymore documents. So, I'm not sure how useful it is to ask this witness what her knowledge is of what other documents might be out there. Especially given we have obligations under the Federal Court rules when it's time to do an Affidavit of Documents, to disclose all the relevant material. *O*

BY MR. CONROY:

27. Q. So you cannot give me the details then as to the number of fires that have occurred in medical grows during the operation of the Medical Marijuana Access Regulations, can you?

A. I don't have that with me, no.

28. Q. But when you say, "I don't have it with me" you suggest that you have those figures somewhere. Is that right?

A. I'm not aware of those figures.

29. Q. Okay. So the answer to my questions is, you cannot provide me with those statistics, can you?

MR. BRONGERS: Mr. Conroy again, we've told you we are not providing you with anymore documents and the witness clearly has told you ---

MR. CONROY: Mr. Brongers ---

MR. BRONGERS: --- the witness has told you that she does not have a memory of what these documents might say. *O*

BY MR. CONROY:

30. Q. Well she didn't say that with respect. She first said she didn't have it with her and then she said there weren't any, as I understand it. That's what I'm getting at. I think your objection is improper to the circumstances. This witness has been put forward as the person who was in charge of this program and I say she should be able to answer the questions about what went on -- the problems that went on that have led to this whole change. One of them is fires. Are you not able to give me any details as to fires that occurred in medical grows throughout the entirety of this program, Ms. Ritchot?

A. As I have said, I am not aware of those details.

31. Q. Okay. You've been told that fires occurred but you don't know the details. Is that correct?

A. It would be correct to say that I have consulted extensively, including with fire chiefs across the country and fire fighters across the country who have provided me during those consultations with information relating to fires and grow operations.

32. Q. Not medical grow operations specifically. Isn't that right?

A. To the best of my knowledge, the information I was given was not limited to only illegal grow operations.

33. Q. How many were involving medical grow operations, then?

A. I do not recall the specifics of the information that I was given during consultations.

34. Q. You were simply relying on anecdotal evidence from these fire chiefs and others indicating that there were fires, but you cannot give us any detail. Is that correct?

A. Could you repeat the question, please?

35. Q. You're relying simply on the anecdotal stories from these fire chiefs and others about fires, but you can't give us any specific details or any breakdown, for that matter, as between illegal or legal operations, can you?

A. The evidence that I was given was not solely anecdotal, but I do not have the specifics of that evidence with me here today.

36. Q. Can you describe -- is there a particular publication or document that has those figures in it? I know that in your Affidavit, you've attached the

November, 2010 analysis by the RCMP. Is there anything other than that? That's Exhibit C to your Affidavit.

A. I'm sorry, could you repeat the Question?

37. Q. Are you aware of any other documentation that would provide the details with respect to fires and some of the other problems other than this Exhibit C?

A. During the consultations with various stakeholders in the lead up to the development of the MMPR, we received submissions from a number of organizations including, as I've mentioned, the Canadian -- pardon me, I'm remembering the acronym. The Canadian Association of Fire Chiefs.

38. Q. Is there a publication by that group like this that you have?

A. I do not have it here with me, no.

39. Q. But it exists somewhere?

A. It was received by me in my capacity when I was still with Health Canada, yes.

40. Q. Does it set out specific details with respect to fires that arose in medical licensed facilities?

A. As I've said, I don't recall the specifics of what was included in that document, but I do recall receiving submissions from that association as well as from a number of municipalities across the country

indicating these concerns.

41. Q. But my question is more specific than that. I understand you met with lots of people and you heard from lots of politicians and all sorts of people expressing their concerns. But did you get specific factual examples of fires having happened in specific medical grows as opposed to illegal grows.

A. As I've noted, I received information from a variety of stakeholders. But I'm afraid that I do not, at this point in time, recall the specifics of those documents that I received.

42. Q. So you can't tell me of a single fire from a medical grow in Canada between 1999 and 2013, can you?

A. I can tell you that I've been advised of such fires but I cannot personally give you the details.

43. Q. You say somebody told you there have been such fires, but you can't tell us how many or any other details. Is that right?

A. I don't recall the details, that's right.

44. Q. You have it recorded somewhere, do you?

MR. BRONGERS: Mr. Conroy again, you're asking effectively for us to produce more documents and we're not going to do that.

BY MR. CONROY:

45. Q. No, Mr. Brongers I'm not. I'm asking the

witness to answer the questions whether the figures exist, that's all.

A. As I've said, there are submissions from a variety of stakeholders that exist. I do not recall the specifics and I cannot give you any more details about what is in those submissions.

46. Q. All right. Up to now I've been trying to get some specifics from you with respect to fires that is put forward as one of the main reasons for the change. The other one is toxic mold hazards. Can you provide us with any details of problems that any patients have had between 1999 and 2013 involving toxic mold and there health?

A. During the consultations we did receive submissions again from a number of stakeholder groups including municipalities, fire chiefs, and law enforcement that did discuss that issue. The report that is annexed as Exhibit C does speak of some of the cases that the Canadian Association of Chiefs of Police where they noticed exposure to such health risks, such as toxic mold.

47. Q. Again, do you have any breakdown in terms of the number of patients say admitted to emergency or consulting doctors because they were having a toxic mold problem?

A. I do not have that, no.

48. Q. So the source of your information is simply again, people like the Canadian Association of Chiefs of Police or the fire chiefs simply saying, we've been in various grow operations and we've seen toxic mold. Is that right?

A. That is a part of the information that we had, yes.

49. Q. What's the other part?

A. We also often heard from individuals who lived in close proximity to grow operations that were licensed by Health Canada and that submitted complaints to us of odor or the impacts that that had on their health.

50. Q. Well do you, yourself know anything about mold and how mold arises and how it's dealt with or any of these sorts of things?

A. That's not my area of expertise, no.

51. Q. So you don't know -- You ever been up here in the west coast rainforest?

MR. BRONGERS: Mr. Conroy, how could that possibly be relevant to this -- the injunction?

MR. CONROY: Well we have mold on a regular basis out here that we have to deal with and it has nothing to do with marijuana grow ops. Have you ever had

to deal with mold in your own -- or in any situation you've been in?

MR. BRONGERS: Mr. Conroy ---

MR. CONROY: Or knowledge.

MR. BRONGERS: --- the witness has already said that she is not an expert in mold and the purpose of her Affidavit is to explain the policy rationale behind Health Canada's new medical marijuana regulations. She is not here as an expert on mold or fire or theft. There are other witnesses whom you can pose these questions to. *O*

MR. CONROY: Okay.

BY MR. CONROY:

52. Q. So being involved in the policy, you simply received this information from others from consultations and relied upon it in order to say that there has to be a change in the policy because of those specific factors as identified in paragraph 2 of that letter. Is that right?

A. That's not entirely right. There were a number of other factors that the government considered before it made the proposed changes and eventual changes to the framework that governs access to marijuana for medical purposes in Canada.

53. Q. One of the factors referred to there is the

high value of marijuana on the illegal market increasing violent home invasions. Has the changes in relation to marijuana both -- or internationally in terms of how it's impacted on the market? Is that something that's been taken into account at all in this policy change?

A. I'm sorry, I'm not sure I understand the question.

54. Q. All right. We know that Uruguay for example recently legalized marijuana. You knew that, didn't you?

A. I've heard that in the news, yes.

55. Q. We know that Washington State and Colorado in the USA have legalized marijuana. You knew that, didn't you?

A. I've heard that, yes.

56. Q. We know that some 22 US sates have lawful medical marijuana regulations. You knew that, didn't you?

A. It was not that high at the time that I was responsible for this project but I did in fact know that there were states that had medical marijuana frameworks in place, yes.

57. Q. Did you know that these developments have had a significant impact upon the black market in terms of pricing?

A. I'm not aware of the impact that these have

had on the black market, no.

58. Q. Did you know that Canada used to supply approximately 5 percent of the US market?

A. No.

59. Q. Illegal marijuana?

A. No, I did not.

60. Q. Did you know that was about 80 percent of our market?

MR. BRONGERS: Mr. Conroy, where are you going with this? I think the initial question was a good one. Was the policy, did it take into account international medical marijuana regimes. The witness might have had some trouble understanding the question, but wasn't that fundamentally what you're trying to get at?

MR. CONROY: I'm trying to determine the extent of the witness's knowledge with respect to the market at this point and the changes in the market and what impact that has given that part of the reason for the change apparently is that it was considered that marijuana had a high value in the illegal market. Did you know that that's changed?

MR. BRONGERS: Mr. Conroy, how does the witness's personal knowledge matter here? She is a ---

BY MR. CONROY:

61. Q. All right. Have you been provided with any

information from any of the sources that you have available to you in relation to the policy change that tells you that the price of marijuana has plummeted as a result of these developments?

A. When I was with Health Canada responsible for this project, my analysis was only done -- I conducted an environmental scan of cities that had medical marijuana projects -- or programs, pardon me. I think you've referenced a few countries where there's a legal scheme. I did not look at such countries. I did not look at the impact that there might be on such countries because the Government of Canada was quite clear that it was not going to entertain the idea of legalization at the time so I restricted my analysis to medical programs.

62. Q. Were you not provided -- I mean, the letter indicates that the high value of marijuana. So were you provided with information by people working on this change? That that value has changed and has gone down and isn't as high as it used to be.

A. During consultations with law enforcement, I was advised that the black market average price has held steady for the last decade at approximately $10.00 a gram. Since I have left the employ of Health Canada in September of 2013, I've not been privy to any updates or

any changes in that number.

63. Q. Okay. So the answer is, you don't know what the impact has been of the legalization internationally and elsewhere upon the value of marijuana in the black market. Fair enough?

A. As I've said, my analysis was restricted to medical programs and not to the legalization of cannabis.

64. Q. I take it you'd agree with me that if the value of the marijuana in the black market has gone down substantially, that that in turn would impact upon the risk of violent home invasions?

MR. BRONGERS: Mr. Conroy, perhaps -- again, you know why this witness is here. She is a representative of Health Canada and perhaps instead of asking the witness of her personal opinion, the questions could be confined to, what was the rationale behind Health Canada's decisions here. I'm just very concerned that this witness's personal opinions are being attacked here and that's not relevant.

BY MR. CONROY:

65. Q. I'm not asking for her personal opinions. She's here in a position where presumably she received information from her staff and others to arrive at these finals positions and I'm trying to determine the basis

for them. The underlying factual basis and whether these factors were considered or not? The value in the black market and the fact that's it's been changed. Has that been taken into account?

A. As I've said, we were advised by the RCMP during the course of our consultations what the price one the black market was on average across the country. I've never been advised of any changes to that price.

66. Q. So the policy has proceeded on the assumption of that price that you gave us a moment, I think of -- was it $10.00 to $15.00 a gram?

A. I believe I stated $10.00 a gram.

67. Q. Ten dollars a gram, okay. Would it be fair to say that -- I think your Affidavit says this and I'm trying to encapsulate it, that the Bureau of Medical Cannabis grew to several times its original intended size because of the increase in the number of MMAR participants to start off with?

A. I would say that the growth in program participation was certainly unanticipated and it did grow beyond what the original thoughts were of the size of the program.

68. Q. The result of that was that there was this increasing level of public funding that would be require to accommodate the influx of applications while also

trying to comply with your standards in terms of processing?

A. There was -- program administration costs did of course, rise as we in the program did have to expand so that we could keep up with applications, yes.

69. Q. Health Canada didn't have any additional resources given to it in order to meet that demand?

A. Additional resources were put into the program in order to be able to deal with the surge in applications.

70. Q. One of the provisions in the MMAR was the power to have these operations inspected. Isn't that right?

A. There were inspection provisions in the MMAR, that's right.

71. Q. Are the details available as to the number of inspections that took place across the country throughout the program?

A. I don't have them with me.

72. Q. But are they available?

MR. BRONGERS: Well again, Mr. Conroy, a perfect question on Examination for Discovery. The witness has said that she doesn't have them with her.

BY MR. CONROY:

73. Q. Do you know what they are?

A. No.

74. Q. Were there many?

MR. BRONGERS: The witness has said she doesn't know.

BY MR. CONROY:

75. Q. You're not even able to give us an indication of the number?

A. The number of inspections conducted from -- I'm sorry, could you clarify?

76. Q. The number of inspections conducted under Section 57 of the Marijuana Medical Access Regulations.

A. I know that during my time with Health Canada, there were inspections that were conducted. I do not know the specific number and I do not know the specific results of those inspections. As I've said, I don't have that information with me today.

77. Q. But that information is contained in a report somewhere, is it?

MR. BRONGERS: Again, Mr. Conroy, you can ask the question on Discovery. We're refusing to answer further questions about this now. *O*

BY MR. CONROY:

78. Q. All right. Well your Affidavit doesn't provide us with any details of the number of inspections that took place throughout the MMAR program, does it?

A. No, it does not.

79. Q. The purpose of the inspections according to Section 57 of the Regulations was to try and ensure that people were carrying out their licenses in accordance with their provisions. Isn't that correct?

A. I don't have Section 57 of the MMAR in front of me, but my recollection is such that yes, they were compliance inspections.

80. Q. As I understand it, it's part of one of the Exhibits to your Affidavit, so maybe you'd like to turn that up? It's paragraph -- Section 57 is the inspection section.

A. Yes, I do have it now. Thank you for reminding me.

81. Q. Okay. The purpose of that section obviously as it says at outset is,

"To verify that the production of marijuana is in conformity with the regulations and the license to produce."

Correct?

A. Correct.

82. Q. It gives some fairly extensive powers set out under Section 57 in regards to their inspection. Doesn't it?

MR. BRONGERS: Mr. Conroy, you're asking the

witness's opinion about what Section 57 means?

MR. CONROY: I'm just asking her -- pointing out that it gives the inspectors fairly broad powers. Do you agree?

MR. BRONGERS: I think that's effectively a legal question or a question of argument. It's not fair to ask the witness. So no, we're not answering that question. *O*

MR. CONROY: All right.

BY MR. CONROY:

83. Q. Paragraph -- Subsection 2 indicates that "An inspector may not enter a dwelling place without the consent of the occupant of the dwelling place."

Doesn't it?

A. Yes, it does.

84. Q. That, according to, I think, your Affidavit and certainly others was a bit of a problem for you in administering this program, wasn't it?

A. The requirement to have a warrant prior to being able to conduct an inspection, yes, did make having an inspection regime more challenging.

85. Q. You only needed a warrant if there was no consent, correct?

A. That's my understanding of Subsection 2.

86. Q. When you say a warrant was required, are you able -- do you know what type of a warrant?

A. I believe that it is an administrative warrant. Beyond that, I don't have any other knowledge.

87. Q. Okay. Were amendments to this section considered in the policy change as another way to try and enforce compliance from the various abusers that have been identified under the program?

A. Yes, we did consider whether or not amendments to the inspection regime could be -- could form part of the proposal to reform the regulations.

88. Q. Would you agree with me that that part of the problem with respect to these various misuse, seems to be the term that's used, or abusers of their licenses that it was the inability to inspect that was part of the problem?

MR. BRONGERS: Again, you asked the witness her personal opinion. Are you asking what Health Canada's position was?

BY MR. CONROY:

89. Q. I'm asking essentially -- was that identified as part of the problem because you couldn't inspect properly? You had all of the abuse you identified and you weren't able to do something about it because of the inability to inspect. Is that Health

Canada's position?

A. Health Canada heard concerns from stakeholder that part of the problem was indeed, its inability to inspect. Health Canada did consider that and nonetheless considered that because most of the growth is being done in personal homes. Any amendments to the inspection regime would likely not be able to get us around the need for a warrant in circumstances where consent was not given.

90. Q. Did you have -- when you were running the program, did you have sufficient resources or means -- or did the program have sufficient resources or means to carry out its mandate to inspect these facilities?

A. Health Canada conducts inspections of all regulatory regimes underneath the Controlled Drugs and Substances Act and it must do on a risk basis. It does have resource constraints. The growth of the program at such high rates coupled with the fact that warrants were required to go into these homes did indeed, make it challenging for Health Canada inspectors to go in and inspect these personal and designated grow sites.

91. Q. You agree with me that in the result there were very few inspections?

A. As I've said, I'm aware that there were inspections. I am not aware of the specifics surrounding

how many or the results of those inspections.

92. Q. But that data is somewhere within Health Canada's documentation somewhere, is it?

MR. BRONGERS: You can ask the witness whether she knows personally. Again, I'm not sure how helpful that is because you'll be able to ask that on Discovery. I'm happy to have the witness answer whether she personally knows whether those documents exist knowing that that isn't an answer on behalf of Health Canada, that would be her personal understanding.

BY MR. CONROY:

93. Q. Is it your personal understanding that those documents exist?

A. Yes.

94. Q. So each time they would do an inspection there would be some sort of document completed. Is that right?

A. That, I don't know.

95. Q. So the document you're talking about is more like a summary of the different inspections or is it individual inspections?

A. The document of which I have knowledge is a summary of inspections.

96. Q. Do you recall what period it covers?

A. No, I don't recall at this point in time.

97. Q. Do you recall if it's a short period or a long period?

A. I know it happened while I was at Health Canada. That puts it somewhere between 2010 and 2013.

98. Q. In your materials you refer at one point to all of the -- or a number of complaints from various people, correct?

A. Yes.

99. Q. For example, in Volume 2 of your materials at Tab D you set out a number of letters of complaint from various people.

A. That is correct.

100. Q. So a number of them -- you set some of them out in your Affidavit. Let's go to -- at paragraph, say 61. Again, you set out a number of complaints from municipalities, first responders and then this section is homeowners, correct?

A. Yes, that is correct.

101. Q. Starting at 61 and continuing on over the next page, 64 for example, 66 and 68. A number of them are complaints about smell aren't they?

A. Yes.

102. Q. So in Section 68 of the regulations there is provision in relation to complaints. 68 through 69, correct?

A. Of which regulations, the MMAR or the MMPR?

103. Q. MMAR. I'm talking about the course of the MMAR program.

A. Could you remind me of which section you referenced?

104. Q. Sixty eight.

A. Yes.

105. Q. Would these items that you detailed in your Affidavit at those particular paragraphs, are they -- did they arise under that complaint section?

A. They were not received by inspectors so they would not arise under that complaint section.

106. Q. So these would -- would they just be general complaints that happened to arrive at your department then, I guess?

A. Yes, many of them were correspondence that was received by our department. It's just a small sampling of the correspondence that was received by Health Canada in this regard.

107. Q. Did you also receive incidentally positive letters?

MR. BRONGERS: Could you be a little bit clearer? What do you mean by positive letters in terms of mold and ---

BY MR. CONROY:

108. Q. All of these that you referred to are complaints about smell or problems, correct?

A. Yes.

109. Q. Did you also get a group of letters from people speaking well of the program?

A. My recollection is that the vast majority of the letters that I received during my tenure with Health Canada were negative.

110. Q. When you received a complaint like this, when I say, like this we'll use as an example, 61, would you do some follow up in relation to that complaint?

A. Would Health Canada do some follow up in response to something such as in paragraph 61? Is that the question?

111. Q. Yes.

A. Not to my knowledge. Not direct follow up with the site in question.

112. Q. So you get a complaint about smell, would you not then instruct an inspector to go out and inspect this facility or ask to inspect the facility or to give some instruction to the participant about having to do something about the smell because it's impacting their neighbors?

MR. BRONGERS: Just to be clear, Mr. Conroy, you're constantly saying, "Would you" it would be

clearer if you would ask, would Health Canada send out an inspector. I assume that's the question.

MR. CONROY: Whenever I use the term "you", I'm asking Ms. Ritchot in her capacity on behalf of Health Canada, not in her personal capacity. So as long as that's clear.

BY MR. CONROY:

113. Q. I'm asking you, in your capacity as the director at the time, if you got a complaint like this -- or a series of complaints that you've identified in your Affidavit, what would you do about them?

A. Health Canada would at times, depending on the nature of the complaint, advise the complainant that may have to speak with law enforcement. Again, depending on the nature. Health Canada as I've said, had an inspection program but had to weigh the validity of doing these types of inspections against the other CDSA type inspections that are being done.

114. Q. I'm sorry, I don't -- what does that mean? Other inspections being done.

A. It means that Health Canada's inspection regime was not solely focused on the MMAR, it was focused on all of the regulatory regimes and all of the regulated parties under the CDSA framework. So its inspection regime did not focus solely on MMAR.

115. Q. All right. But I assume it did focus on MMAR to some extent, correct?

A. We had the capacity -- we had the regulatory ability, yes, to inspect the MMAR regulated parties.

116. Q. Well you're telling me you had the ability. Are you telling me that it didn't happen very often?

A. It did not happen very often, no.

117. Q. So, if -- you got a whole series of complaints like this about smell, Health Canada didn't do anything to instruct or educate or try to educate these patients to do things in a way that wouldn't impact upon their neighbors?

A. I would not say that, no. I would not agree to that. Health Canada has extensive information that is available to licensed -- pardon me, to personal and designated producers that it provided to them when a license was issued including information about what constitutes a plant and including information about what they were compliant to do under the regulation. I should point out that to the best of my memory odor and containing odor was not a requirement under the MMAR. As a result, there would be little that Health Canada could have done to require the regulated parties to contain that odor. These were some of the things that led us to review the regulation where we knew that perhaps we

needed to make some changes.

118. Q. Did you know that the odor of cannabis is controllable and that they could do things to prevent it impacting upon their neighbors?

A. I don't really know very much about that, no.

MR. BRONGERS: Again, Mr. Conroy ---

MR. CONROY: You don't have any of the expertise in that regard to what's available for example to suppress smell from marijuana. You're not familiar with that. That fair?

MR. BRONGERS: Mr. Conroy, I must insist that you preface the question either with, is Health Canada aware of something or is the witness aware of something. It's very confusing for us when you constantly use the word "you". So please be clear as to whether you're asking the witness for her personal knowledge or whether Health Canada took these factors into account when designing the regime.

MR. CONROY: I'm only interested in the witness's knowledge arising from her position which presumably is still her personal knowledge but based on her position.

BY MR. CONROY:

119. Q. So again, you indicated that there was

information available to the patients, but is it your evidence that when you got complaints of this kind, nothing specific was done in the specific case to try and get the patient to remedy the problem. Is that -- the patient or the designated grower to correct the problem. Is that right?

A. As I've said, there was no requirement in the regulation for us to enforce or for us to have the regulated party comply with ---

120. Q. So the answer to my question ---

A. --- with respect to odor.

121. Q. --- is no? So the answer to my question is no. Is that right?

MR. BRONGERS: No, the witness isn't going to do that, Mr. Conroy. Ask a clear question and she can give you an answer. *O*

BY MR. CONROY:

122. Q. Health Canada didn't do anything to try and deal with these specific complaints that you've identified in your Affidavit to try and rectify the problem or assist the grower or patient in rectifying the problem, did they?

A. Health Canada didn't have the regulatory authority to rectify the specific problem of odor.

123. Q. So you would receive all these complaints

about odor and Health Canada did nothing about it. Is that what you're telling me?

A. Health Canada did not have the regulatory authority to rectify that problem.

124. Q. So they didn't do anything about it. Is that correct?

A. That is correct.

125. Q. You didn't have -- it's Health Canada's view that you have to have regulatory authority before you can call up a patient and say, hey you've got a license through us that's causing some problems for your neighbors, but we can't tell you what to do or talk to you about it. Is that your evidence?

A. Our role at Health Canada was to ensure compliance with the regulation.

126. Q. So you say, simply because the regulations didn't say anything about smell, there was nothing Health Canada could do about it. Is that right?

A. In this instance, what I'm saying is that Health Canada did not have the regulatory authority to be able to do anything about that.

127. Q. You say you needed regulatory authority to communicate with the patients about it. Is that correct?

A. In order to have a producer comply with a rule, the rule would have had to exist. In this case the

rule did not exist.

128. Q. All right. So when you got all of these complaints, was some consideration given to passing a regulation about smell and its oppression?

A. In the MMAR?

129. Q. Yes.

A. Consideration was given to a number of options to address all of the issues that we heard. The result that we ended up with, the MMPR is what the Government of Canada felt was the best way to deal with the concerns that were raised such as the nuisance issues, such as odor, such as other public health and public safety risks that arose from the MMAR framework.

130. Q. So, if I'm understanding the answer to that question correctly, you're saying that nothing specific was done in each case in relation to the specific problems, whether it was smell or fear on the part of neighbors, these sorts of things that you've identified. The Government of Canada, instead of trying to see if there was a way to correct these problems under the existing model simply decided to eliminate all personal production and designated growers as the solution to those alleged problems. Is that it?

MR. BRONGERS: Mr. Conroy, that's not a question. You're putting argument to the witness. We all

know what the new regulation says and we know what the old regulation says. We can present our respective positions to the court on the basis of that. But no, we're not going to engage in a debate with you about the wisdom of the regulation. *O*

BY MR. CONROY:

131. Q. Are you able to tell us based on the number of patients and designated growers that existed, were you able to -- was Health Canada able to break down how many of them were apparently doing everything responsibly and in compliance with -- you know, responsible production and consumption and compliance with their licenses versus those that were not?

A. Could you clarify the question, please?

132. Q. Well, we've got 38,000 now but you maybe you could -- the figure when you left was what, 25,000 or do you know?

A. I don't remember what the figure was when I left but I do know that now it's approximately 38,000.

133. Q. All right. So of the 38,000 if we take that figure, are you able to -- or is Health Canada able to ascertain how many of them are abusing the program and how many are not?

A. No.

134. Q. Would you agree with me that what is

contained in your Affidavit and in the materials is from -- is problems from abusers of the program as opposed to those who were -- are in full compliance?

MR. BRONGERS: Mr. Conroy, can you define abuse? Do you mean violating the regulations?

MR. CONROY: Yeah.

MR. BRONGERS: Abuse is a difficult term to deal with.

BY MR. CONROY:

135. Q. I mean, you've got people for example, neighbors complaining saying that people are trafficking and vehicles are coming back and forth all the time and things of that nature. I think that sort of information indicated to Health Canada that these people were probably abusing their licenses?

A. I would not agree to that. Even if a home was in full compliance with -- even if a producer was in full compliance with the parameters of their license, there could still be odors for instance, or there could still be proximity of a grow site to a school or to an area where there are children. So, I would not say that the only reason that the Government of Canada chose to take a hard look at the MMAR was because of what you call abusers. I would say that there were other factors including the fact that the way that it was being done

under the MMAR had a series of unintended consequences. Abuse was one, yes, but there were others.

136. Q. What were the others?

A. As I've mentioned, proximity to areas that are frequented by children, odor, so even though -- as I've said, even though you are complying with the license, there might still be -- it might still be a nuisance to those who do not want to be that close to where marijuana is being grown. Another factor was the high program administration costs for a program that services such a small minority of Canadians. A final consideration was that the Government of Canada -- pardon me, I shouldn't say final, but another strong consideration was that the Government of Canada wanted to treat the production and distribution of marijuana, which is a controlled substance, in the same way as it treats the production and distribution of other controlled substances.

137. Q. You mention proximity to schools and things of that nature.

A. Yes, I did.

138. Q. The regulations -- the MMAR required the applicant to -- certainly if the production involved indoor and partly outdoor, they were not permitted to be adjacent to a school, public playground, daycare

facility, or other public space, correct?

A. I don't recall that being correct. I recall it being correct that if it was outdoor that it could not be adjacent.

139. Q. Regulation 28, 1G. If it's outdoor or partly indoor and outdoor?

A. If the proposed production area involves outdoor production entirely or partly indoor and partly outdoor, the production site cannot be adjacent to a school. But in the case of a fully indoor production site there was no such requirement.

140. Q. Right. So the defect -- or the regulation did not cover indoor -- completely indoor production in so far as proximity to schools, public playgrounds etcetera, correct?

A. That's correct.

141. Q. Also in regulation -- the same regulation applied to designated growers, didn't it? It applied if you are outdoor or partly indoor, partly outdoor that rule applied, but if you're completely indoor there was no such rule. Fair enough?

A. That's right.

142. Q. Okay. Was consideration given in the policy change to simply amending the regulations so that they -- even if they were completely indoor, they couldn't be

adjacent to these types of facilities?

A. Consideration was given to a number of options. In the scope of the full review of the MMAR that Health Canada did not deem that piecemeal amendments to these sections would fix the larger problems that it was trying to fix.

143. Q. All right. So, Health Canada determined that there was not some interim measure that would enable the personal producers and their designated grower for them to continue by fixing the regulations to fix the various problems that have been identified? Instead it was determined that that would not be satisfactory and the elimination of them completely was chosen as a policy position. Is that right?

A. Health Canada considered options that would allow for the continuation of personal and designated production. But in its analysis and final determination, Health Canada felt that allowing the continuation of personal and designated production as per the MMAR would not address the significant public health and public safety concerns that had been raised.

144. Q. In one of the documents that I gave to my friend that I was going to refer you to was an article from March of 2007 from the Canadian Centre for Substance Abuse. Do you have that?

A. I believe he's retrieving it now.

145. Q. Okay. Article March, 2007, comparing the perceived seriousness and actual costs for substance abuse in Canada and analysis drawn from the 2004 Canadian Addictions Survey done by the groups that are mentioned specifically underneath it. Do you have that?

MR. BRONGERS: We have the document, Mr. Conroy. Are you going to put it to the witness and try -- and have it entered as an Exhibit. If so, we will be objecting to that. You can ask the question.

MR. CONROY: I see at the bottom, it's produced under the authority of Health Canada?

MR. BRONGERS: We see a Health Canada flag under the bottom.

BY MR. CONROY:

146. Q. What does that mean?

A. I'm not sure.

147. Q. Was this -- do you know if this was funded by Health Canada?

A. I don't know.

148. Q. The Canadian Centre for Substance Abuse, is that a Health Canada funded organization, do you know?

A. I don't know.

149. Q. Are you familiar with the document? Have you seen it before?

A. Until I was show this document yesterday, no I've never seen it before.

150. Q. So you know that it speaks to the difference in perception about substance abuse as opposed to what the actual reality or direct costs are?

MR. BRONGERS: Mr. Conroy, we're not going to answer questions about this document since this witness has said that she's not familiar with it. We did not tender it as part of our evidence and you did not tender it as part of yours with your Affidavits either. So, we will -- you can put your questions on the Record if you wish, but we won't be answering any of them. *O*

BY MR. CONROY:

151. Q. All right. Also, I produced to your counsel, a number of statements by way of email from various patients in addition to what is in the Statement of Claim and the Affidavits from the individual Plaintiffs. Have you had an opportunity to review the Affidavits of the Plaintiffs?

A. No, I have not.

152. Q. Have you had an opportunity to look at any of these emails?

A. I've seen the pile of emails but I have not reviewed them thoroughly.

153. Q. Okay. Well, if I can summarize them,

consistent with the Plaintiff's, they're all of people who say that they're not going to be able to afford the estimated licensed producers prices and they're very concerned about what's going to happen. Did Health Canada take into consideration in the policy change that there would be a certain number of patients that fall into this category that are simply unable to afford the new estimated prices?

A. During consultations that concern was raised. During consultations with prospective licensed producers, Health Canada sought information from them as to whether or not they felt that they would be able to produce marijuana that would be at a lower price. So, yes that was considered during the development of the regulations.

154. Q. Well, we've heard that the lowest price is about $3.00 a gram. Is that consistent with the information you received?

A. As I've said, I left the employ of Health Canada in September, 2013 and have not been privy to any information about the establishment of the licensed producer market.

155. Q. Well, when you were with Health Canada, under this program there were essentially three ways that a person could obtain a supply of cannabis for

their medicine. Isn't that correct?

A. Yes.

156. Q. One of them was to produce for yourself, correct?

A. Yes.

157. Q. One of them was to have somebody designated to produce for you?

A. Yes.

158. Q. Eventually, the other was to obtain it directly from Health Canada through the Prairie Plant Systems product, correct?

A. Yes.

159. Q. Did you -- did Health Canada understand that a number of these individuals learned how to grow for themselves because they determined that that was the most cost effective way to do so?

A. I'm not sure why people chose to grow for themselves. It was one of three options and they could choose either of the three options. As to why they did, it was not Health Canada's concern.

160. Q. The Prairie Plant System product was being sold at $5.00 a gram, wasn't it?

A. That's what I recall, yes.

161. Q. So there was no product available at less than that was there?

A. From Health Canada?

162. Q. Yes, sorry.

A. Not that I recall, no.

163. Q. Okay. Did you in your capacity get into any details as to the problems that patients were having in terms of production and productions costs and these sorts of things or did you leave that to someone else?

A. I'm sorry, I'm not sure -- could you clarify what you mean by patients?

164. Q. All right. Well, a number of people who have authorizations to possess and personal production licenses indicate that the biggest cost was electrical cost. Were you aware of that?

A. Not directly from patients ---

165. Q. Health Canada.

A. Not directly from patients but in some of our own analysis -- policy analysis, we made assumptions that electricity costs were a substantial part of the cost of production.

166. Q. Was Health Canada aware that some of them would put their crop outdoor from time to time in order to reduce electricity costs?

A. Specifically why individual program participants chose to produce for themselves, designate someone, or produce indoor or outdoor was not something

that Health Canada sought to understand. We did not need that to conduct our regulatory role.

167. Q. So is it fair to say that there wasn't any specific consultations with patients in relation to the specific problems they were having in order to try and see if there was a solution short of taking away their right to produce?

A. It is not fair to say that program participants were not consulted. The consultations were extensive and there were numerous opportunities for program participants to give Health Canada their points of view. When the Minister announced the changes in June of 2011, there was a 45 day consultation period during which point we received over 2000 submissions. If memory serves me correctly, over 90 percent of those were from program participants. During our consultations, there were at times program participants who sat in on sessions that I held for example, with prospective licensed producers and again at CG1 consultation which if memory serves me, was 75 days a number of patients did provide their input. So I don't think that it is fair to say that Health Canada did not hear from program participants.

168. Q. No, no. As you've said, you heard from the program participants, did they identify these particular

problems such as the electrical costs and the cost of production, these sorts of things, in their consultations with you?

A. I do not recall specifically mentioning costs of designated or personal production being raised during consultations by program participants.

169. Q. So just to be clear, you don't recall any program participants saying, look, we're not going to be able to afford these prices -- these estimated prices. Is that right?

A. There were concerns raised about the price that licensed producers would charge, but I had understood your previous question to be whether or not there were concerns raised about how much it cost individuals under the MMAR to produce their marijuana. Those ---

170. Q. But what I'm -- sorry.

A. No, I'm sorry. Go ahead.

171. Q. What I'm getting at though, is in the consultations, didn't some of them tell you, look, I'm able to produce for $1.00 to $3.00 a gram or under $1.00 a gram and I'm not going to be able to afford the estimated licensed producers prices, so what should I do? Did that come up?

A. During consultations, I don't remember

specifics of what people told Health Canada with respect to how much they could produce for. But, yes, it is fair to say that many of the concerns that program participants raised were related to cost. Given that at the time it was not known what licensed producers would be charging.

172. Q. Did Health Canada come up with a consideration of affordability by these patients when it came up with this new program? Did it take that into account?

A. As I believe I mentioned earlier, Health Canada's objective with the Marijuana for Medical Purposes Regulations was to devise a system whereby marijuana would be treated in a way similar to all other prescription narcotics. We looked to the other frameworks that govern prescription, oxy for instance or prescription morphine and that was the model. There are no cost considerations built directly into those regulations.

173. Q. None of those other narcotics are medicines that people can grow and produce for themselves, are they?

MR. BRONGERS: Mr. Conroy, you're not arguing with the witness. So no, we won't answer that question. *O*

BY MR. CONROY:

174. Q. No, I'm not arguing with the witness. I'm asking a question of fact. None of those other narcotics, oxycodone for example is a medicine that you can grow for yourself, is it?

A. Individuals cannot grow oxycodone for themselves.

175. Q. Or any other narcotics. Isn't that correct?

A. That is correct.

176. Q. So to the extent that we're dealing with cannabis marijuana, even though it's under the Controlled Drug and Substances Act, the analogy is much closer to a natural healthcare product, isn't it?

MR. BRONGERS: Now that's argument, Mr. Conroy. The witness will not answer that question. *O*

BY MR. CONROY:

177. Q. It's a product that you can grow like a natural health product, marijuana, isn't it?

MR. BRONGERS: Mr. Conroy again, we're not answering these questions. You can bring a Motion if it troubles you, but we're not going to debate this on the Cross-Examination today. *O*

BY MR. CONROY:

178. Q. All right. What did Health Canada do -- I take it you accept that it was the courts that said that Health Canada had to provide a viable exemption for

people under the Controlled Drugs and Substances Act. Do you agree with that?

A. I agree that the courts advised Health Canada that it had to put in place a means by which individuals could have access to marijuana for medical purposes.

179. Q. The term viable exemption was used, wasn't it?

A. I don't know what terms the court used.

180. Q. Do you accept that that is what Health Canada was trying to do to create a viable exemption?

A. I don't know what you mean by viable exemption and therefore I'm not sure I can accept what you're saying.

181. Q. If the word viable means an exemption that works, does that help you?

A. No.

182. Q. So when Health Canada devised the new policy, did it take into account the fact that there would be some patients who would not be able to afford to buy from the new licensed producers?

A. Health Canada took into account the concerns that it heard from stakeholders including program participants and even went as far as to discuss those issues with licensed -- with prospective licensed

producers during the consultations process.

183. Q. But there is nothing put in place by Health Canada to ensure that those who cannot afford the licensed producer prices will be covered under the new program. Isn't that correct?

A. There is nothing in the regulations that speaks -- in the new regulations that speaks to that.

184. Q. So what you're saying, correct me if I'm wrong, is that the policy was to try and treat marijuana in the same way as any other narcotic that's offered for sale in Canada to the public. Is that right?

A. That was ---

185. Q. Sorry, through prescription.

A. --- that was one of the policy objectives, yes.

186. Q. Do you know that those other narcotics all have had -- have some sort of coverage to some extent under provincial plans or other types of healthcare plans, like the Veterans Affair Plan, for example?

A. I don't have specific knowledge of drug plan coverage across the country.

187. Q. Did Health Canada look into that to determine to what extent people, patients, program participants might be covered by such plans?

A. To my knowledge, the decision as to whether

or not to list a drug for coverage is one that belongs to provinces and territories and not to the Federal Government. So while we did consult with provinces and territories, they did not disclose to us what their plan may or may not be with respect to covering any drug.

188. Q. So the answer is, we simply don't know what the province's position is in this regard?

A. I do not know and I don't believe -- Health Canada is not aware of what the provinces and territories will decide to do.

189. Q. All right. How are we doing for time?

MS. WRAY: You're at 12:13.

MR. CONROY: Okay.

BY MR. CONROY:

190. Q. So we'll just go back and go through your Affidavit then in the remaining time. I'll need to know if you can provide me with any -- well, let's just do it this way, under paragraph 20 you set out the attempted goals of the MMAR, don't you?

A. Yes.

191. Q. You in 21, say that the goals were compromised by the rapid expansion of the program essentially. Fair enough?

A. Yes.

192. Q. And that,

"There were unintended consequences with respect to the administration as well as to the public health, safety, and security of Canadians."

A. Yes.

193. Q. But you don't provide us with the details of those consequences or the public health, safety, and security aspect at that paragraph do you?

A. Not at that paragraph, no.

194. Q. Okay. Well, I'll be taking you through. The next paragraph you deal with the expansion numbers to get us up to, at least in that paragraph, 37,884?

A. Yes.

MR. BRONGERS: Just for the Court Reporter, sorry, it's actually 37,884.

BY MR. CONROY:

195. Q. Yes. Then taking that number in paragraph 23, you're advised by Angela Rea, the Senior Policy Analyst at Health Canada that approximately 22 percent will access Health Canada's supply?

A. That they indicate that they will access Health Canada's supply, yes.

196. Q. I think as it says later on, many people indicated they would and then did not. Is that right?

A. That's what I've been advised.

197. Q. Were you advised of the reasons why not?
A. No.
198. Q. You weren't told that it was because they didn't like the product or anything like that?
A. No.
199. Q. Going back up to the top it says, "66 percent produce their own marijuana and 12 percent have the designated growers." Correct?
A. Correct.
200. Q. So the great majority of people under the program were producing for themselves, weren't they?
A. Correct -- or yes, correct.
201. Q. The escalation continued that trend didn't it? Most people applying to personal produce?
A. Certainly in my time in the three years that I was with Health Canada, those percentages are consistent. What it was prior to 2010, it would appear that with the information that I've been given by Angela Rae that that 66 percent is roughly consistent throughout the years.
202. Q. Okay. In the next few paragraphs you basically give us the escalation, paragraph 24, over the various years, correct?
A. Correct.

203. Q. So what you're telling us is that when you left the program, it was 7,858 authorizations to possess and after you left the program it jumped from that to 12,829 the following year and then up to the 36,797 in September of ---

A. No, I actually joined the program in 2010. I left the program in 2013. So from the time that I joined, that would have been more close to the 7 -- probably closer to the 4,000 because of the time that I joined in 2010.

204. Q. So it was when you joined that this escalation took place over the 4 or 5 years that you were there?

A. It would appear so.

205. Q. The same with the production licenses?

A. Yes.

206. Q. So then at paragraph 25 there's chart three. The amount of -- the total number of plants authorized for production in 2012 is set out there in the right column. The amount of grams, I take it that's the amount of daily grams that would have been authorized under the existing authorizations to possess. Is that right, in that year?

A. Yes, that's right.

207. Q. So it's fair to say that these figures, the

291,571 daily grams, that's what people -- patients, program participants and patients were authorized to consume or use as medicine during that year. That's the total number authorized, correct?

A. That's the total number in grams authorized.

208. Q. Authorized by a Healthcare Practitioner, correct?

A. No, authorized by Health Canada. One of the conditions for an authorization is that a Healthcare Practitioner sign a form indicating that they are aware that the individual is using marijuana.

209. Q. The Healthcare Practitioner signs the forms but does the calculation based -- that's in the regulations to determine the grams per day, don't they?

A. The grams that a person is authorized to possess under the MMAR is based on the number of grams indicated on the medical form signed by the Medical Doctor.

210. Q. So the Medical Doctor sets out the grams per day. Isn't that right?

A. The patient and the doctor set out the grams on that form.

211. Q. Then what, Health Canada would take that -- those and use the formula in the regulations to calculate what they could produce in terms of plants,

correct?

A. Yes, the MMAR has a formula to translate the number of grams per day into the number of either indoor or outdoor or partly indoor and partly outdoor plants that an individual could then be licensed to produce.

212. Q. Do you have any idea who came up with that formula?

A. No.

213. Q. Do you have any idea whether that formula is used anywhere else in the world?

A. I have no knowledge of whether it's used anywhere else.

214. Q. Was any consideration given in the policy changes to simply changing that formula?

A. Not specifically that I can recall, no.

215. Q. Would you agree with me that one of the problems was, or is the formula because of the number of plants -- when you took the information from the doctor and the patient and you did the formula, it would come up with a -- sometimes a large number of plants that the person could produce depending on the grams per day authorized?

A. I'm sorry, I -- your question was rather long. I'm not sure that I remember the first part.

216. Q. Okay, all right. Let me go back. The patient

and the doctor would send the form into Health Canada saying how many grams per day the patient could use, correct?

A. Correct.

217. Q. Health Canada would then apply the formula in the regulations to determine how many plants the person could produce, correct?

A. Correct.

218. Q. There was no limitation in the formula as to the size of the plants, was there?

A. No.

219. Q. Yet we knew that -- or we know that people can grow small plants or big plants, don't we?

A. I -- yes.

220. Q. Depending upon what they do, that would affect how much product they have at the end of the day. In other words, if they grew large plants, if they're authorized to produce 100 plants and they produced 100 large plants, that's going to result in a much larger amount of marijuana, obviously, then if they grew 100 small plants. Isn't that right?

A. It seems right. I'm not really aware of the growth patterns of cannabis plants, but that seems logical.

221. Q. But then the patient under the regulation

would also have a document that would set the total amount that they could possess on their person and the total amount that they could store. Isn't that right?

A. As well as the total amount in grams that they could produce and anything above that was to be destroyed.

222. Q. Right. That's what I was getting at. So if they grow 100 large plants and had way more than they were entitled to store and have on their person, they would have to destroy all of that excess, wouldn't they?

A. As per the regulation, yes.

223. Q. Yeah, okay. So, if we come back to paragraph 25, the 2013 figure of 675,855 daily grams. Again that, like the previous figure then is the total amount that Health Canada authorized based on the information they got from the patients and the doctor. That's the total amount that was authorized to be produced in 2013. Is that right?

A. That's what I've been advised, yes.

224. Q. Based on all of the previous information that we talked about, so it was based on what the doctor and the patient were saying the requirements were for that particular patient. Fair enough? In each case? But this is the total of all them. Isn't that right?

A. I'm sorry, could you repeat the questions?

225. Q. The figure in 2013 is the total grams authorized by Health Canada ---

A. Yes.

226. Q. --- for all of the patients in the program based on the information from the patient and the doctor?

A. Yes.

227. Q. So between 2012 and 2013 we have more than doubling of the amount authorized, don't we?

A. Yes.

228. Q. Maybe you don't have the -- correct me if you don't know the answer to this questions, but are you able to tell us whether or not the licensed producers will be in a position to produce that amount by April 1st, 2013?

A. I'm not privy to that information.

229. Q. In paragraph 27 and continuing into 28 you give evidence of various -- the increase of the level to 17.7 grams per day. You then mentioned paragraph 28, I understand this comes from the Information for Healthcare Professionals which is Exhibit A, that notwithstanding what has been authorized and based on what the doctors and the patients have been saying, the 1 to 3 grams per day is what Health Canada was recommending to patients. Is that right?

A. It's not so much what Health Canada was recommending as the information that Health Canada had available that it was sharing with Healthcare Practitioners which was that based on peer review literature, the suggestion was that 1 to 3 grams of cannabis per day was what individuals were using successfully for medical purposes.

230. Q. That information actually appears in the application form, doesn't it?

A. Which information?

231. Q. The information about the 1 to 3 grams. The advice that you were giving to the patients. When the patient applies and fills out the form, the form indicates that,

> "Current available information to Health Canada suggests that most individuals use an average daily amount of 1 to 3 grams of dried marijuana for medical purposes whether taken orally or inhaled or a combination of both."

Correct?

A. I don't remember the forms that were used, I'm sorry.

232. Q. But if that information was provided -- but notwithstanding that information, you were getting back completed applications for much greater amounts per day,

weren't you?

A. Yes.

233. Q. Did Health Canada look into the reasons for that? Such as for example, were people starting to use it in different ways instead of smoking it or eating it in edibles? That they were juicing for example? Juicing the cold plant?

A. I don't recall Health Canada specifically looking into why amounts -- why the average dosages were climbing.

234. Q. So as far as you know, nobody looked into trying to figure out why those dosages were going up and whether it was attributable to them using other than dried marijuana or things of that nature?

A. Well the MMAR were specific to dried marijuana. I don't recall us -- Health Canada looking into that with any degree of specificity.

235. Q. Okay. You knew, I take it, that that limit to dried marijuana was challenged in the courts of British Columbia and found to be too restrictive?

A. I'm aware of the case, yes.

236. Q. Yet the MMPR proposes to limit to dried marijuana again, notwithstanding that decision?

A. Yes, it does.

237. Q. You agree that that obviously will impact

upon patients in British Columbia who have been using other than dried marijuana, they will fall outside the law again come April 1st, 2014. Is that right?

MR. BRONGERS: Mr. Conroy, there's a number of reasons the question's objectionable, but most significantly, because you have clearly indicated to the court that as far as the injunction is concerned, you are not going to seek relief which would permit immediate access to non-dried marijuana. That will be an issue that we will deal with at trial. You will be free to ask these kinds of questions on Discovery, but I'm not going to let the witness engage in this discussion about ---

O

MR. CONROY: Well, I'm asking only for this point, that one of the issues on the injunction is there's a serious question to be tried. I just want to make it clear that that group, I agree with you, we're not arguing the whole dried marijuana thing at that stage, but that group will be affected by the change given the current status of the law based on that case. That's all I'm trying to determine.

MR. BRONGERS: You can make that point, Mr. Conroy, without getting this witness to provide an answer to the question you posed.

MR. CONROY: All right.

BY MR. CONROY:

238. Q. Making the policy -- decision on the policy change, was any consideration given to licensing compassion clubs or dispensaries as a method of providing medicine to the patients?

A. Consideration was given to providing a license to anyone who could meet the future requirements of the MMPR.

239. Q. So the answer is, no to the existing compassion club dispensaries unless they could meet the new MMPR standards. Is that it?

A. The answer is that if a compassion club could meet the MMPR standard then it could receive a license.

240. Q. Because there was a time during this program, maybe you weren't there then, where Health Canada used to refer people to these clubs. Did you know that?

A. I'm definitely not aware of that. Health Canada's position has always been that compassion clubs are not provided any licenses by Health Canada and they -- the decision as to how to deal -- they operate outside of the legislative framework and the decision as to how to deal with them falls to law enforcement.

241. Q. All right. If we go to paragraph 33 of your

Affidavit. Was consideration given to changing or seeking to change the number of people to grow in one location? An amendment that came about as a result of some court decisions. In other words, to try and remodel the program by changing that so that they could only have one person in one location or to modify the locations where they could be or whether they could have collective gardens at different locations. Was any consideration given to those types of models or not? I'm talking like some of the US models.

A. I'm not -- I'm sorry, I'm not sure I understand the question. You began by speaking about the ratio of producers to sites, but I'm afraid I lost track of what you asked.

242. Q. It used to be originally that a person could only produce for one person, correct?

A. That's my understanding, yes.

243. Q. You could only have two licenses in one place as I recall. Is that correct?

A. My recollection is three licenses in one place.

244. Q. Was that not as a result of a court case or did the court -- no sorry, I think you're right. It was three in one place and then the court said that was too restrictive and the government said okay, you can have

four, correct?

A. Yes, correct.

245. Q. So in some of your material for example, you've got complaints from people who live in townhouses and who are the neighbors next door and these sorts of things. Was any consideration given to saying, look, while the MMAR says you can do it in your dwelling house or your residence, we're going to amend it so that if you're not in a detached home or if you're in an apartment or something like that, you can't do it there but you could do it somewhere else as a collective garden or a group of people like the -- I think Washington State provides?

A. I'm not intimately familiar with Washington State, but I can say that, as I believe I stated earlier, we considered many options but we did not look at a piecemeal remedy for each of the specific complaints. We looked at the challenges faced with the MMAR and the global picture. We considered many options in relation to the concerns that were raised. We did not go through each and every -- in a piecemeal way and just try to make a rapid fix of the actual MMAR. We wanted to take a more global approach.

246. Q. You mention in the next sentence in this paragraph 33 about most of it taking place in private

dwellings. So are you telling me that in the policy considerations, no consideration was given to simply try to modify that as opposed to take it away completely?

A. There was no consideration given to just modifying that one aspect and leaving everything else alone, but there was consideration given to the issue of dwelling places in a global context.

247. Q. Yeah, but that resulted in the decision to not have them in any dwellings at all, correct? Or to eliminate private dwellings as a source of production, correct?

A. It was a factor that led to that decision, yes.

248. Q. All right. So in the rest of this paragraph you talk about the difficulties and risks and then say,

"More importantly, health, safety, security of individuals licensed to produce and the public in general."

But you don't provide any details there, do you?

MR. BRONGERS: Mr. Conroy, the paragraph speaks for itself. I'm not sure what the question is.

MR. CONROY: I thought the answer would be rather easy. There's no details provided with respect to the risks there, is there?

MR. BRONGERS: As I said, Mr. Conroy, the

paragraph speaks for itself, the Affidavit speaks for itself. You're free to make argument about the adequacy of the Affidavit at the Hearing.

BY MR. CONROY:

249. Q. I'm Cross-Examining the Ms. Ritchot on the Affidavit and the Affidavit doesn't provide the specifics at that location in that paragraph, does it?

A. There are no specifics in this paragraph but in the reas(ph) which is in one of the Exhibits, the details about the risks are outlined.

250. Q. All right. Can you take me to that in the reas(ph).

A. So I'm still looking but I know it will be under Tab G, Exhibit G.

251. Q. Yes.

A. It will be in the reas(ph) that is marked at the bottom left corner, 1720. In the following pages, we outline the results of the consultations which is where we outlined what we heard about the risks to public health and to public safety.

252. Q. One seven two six?

A. Yes. Yes, that is correct.

253. Q. So as we discussed earlier, this information came from the various people identified in that last paragraph, municipalities, first responders, fire and

police officers -- or police officials, in part?

A. In part, yes.

254. Q. So was any consideration given to requiring people who have licenses to produce in their dwellings to come up with a program where their privacy could be maintained while at the same time being registered with local authorities so that police and first responders and others would be aware of the license in that place but could maintain confidentiality and privacy when they do inspections or things of that kind in order to try and address these issues?

A. I do recall that there were discussions about options that would have included providing, I believe you used the term, registry and that was a term that did come up during consultations, some kind of registry of program participants. Ultimately, however, it was deemed that due to the rapid expansion of program participants with no seeming indication that that was going to slow down, that even with the knowledge of where these locations were, there were still other challenges that would not be addressed if that was the option that we went with. So it was considered, but ultimately the decision was to go another way.

255. Q. Can you identify what those other challenges were?

A. We've talked about them. There's the challenges or program administration. There's the government's desire to treat marijuana as much as possible like it does other narcotics that are prescribed for medical purposes. There was the fact that Health Canada was playing the role of producer of a drug which it does not normally do. To name a few of the challenges.

256. Q. Of course that latter one is essentially being eliminated, isn't it?

A. Yes, it is.

257. Q. Tapped out.

A. Yes.

258. Q. That's a substantial cost saving. Isn't that right?

A. Yes.

259. Q. All right. So is it fair to say that the information anyway, is contained here in the RIS at 1726 in general statements. But again, the specific details as to numbers and different actual facilities and so on is not in the materials other than to some extent in that report from the police, Tab -- your Exhibit C. Is that fair?

MR. BRONGERS: Mr. Conroy, the Affidavit speaks for itself. *O*

MR. CONROY: Well I'm trying to ascertain, is there any other place in the Affidavit or the Exhibit that contains any of those details similar to what's in Exhibit C?

MR. BRONGERS: Mr. Conroy, we can read the Affidavit and we can present our argument before the court with respect to where it is. I don't think it's fair to have this witness give you a list right now of pin point sites where we are going to base our argument on. You'll see our factum, it'll be set out there. So no, we're not going to answer that question, Mr. Conroy. *O*

BY MR. CONROY:

260. Q. All right. If you go to Exhibit C, this document goes to November of 2010 so it's about three and a half years old, isn't it?

A. Yes.

261. Q. If you go to page -- well, I assume looking at the bottom of the page from the table of contents that it says it's protected A and not to be copied or reproduced or not for legal use. I assume some exemption was obtained in relation to that document, was it?

A. To my knowledge, yes.

262. Q. So is it fair to say that this was not information available to the public prior to that arrangement?

A. I'm actually not sure.

263. Q. You don't know what -- What does protected A mean? Or do you know?

A. I know -- I have a general knowledge of the classification levels but whether or not this made its way into the public's hands or not, I couldn't say.

264. Q. You don't know if somebody could have applied to get this information before?

A. I don't ---

265. Q. They could apply, but you don't know if they get it?

A. I don't know.

266. Q. Okay. Well, let's go a couple of pages further where there's the executive summary. So this document is dealing essentially with cases between August of 2003 and April of 2010. Is that fair? Second paragraph.

A. That's what it says, yes.

267. Q. So a seven year period?

A. Give or take, yes.

268. Q. Yeah. As it says in the next paragraph, it doesn't claim to give a comprehensive review, just some examples of abuses. Fair enough -- That have come to the attention of the police?

A. Yes.

269. Q. Then it indicates that Health Canada has limited capacity to conduct inspections and during the time period covered by this report, have not conducted any inspections to the knowledge of the author of this report. Is that fair -- or is that right?

A. I'm not sure if it's right.

270. Q. Well that's what they say anyway. The Canadian Association of Chiefs of Police. Fair enough?

A. That's what they say. I'm not sure what -- I'm not sure how true that statement is.

271. Q. But I think you agreed earlier or indicated earlier that the -- there were not that many inspections conducted throughout the program because of other priorities, correct?

A. I said there weren't many inspections. It's just that I also said I don't know the timing of said inspections. So, I can't confirm or deny whether or not they fell within or outside of that period.

272. Q. All right, fair enough. So at the bottom of the page there's key findings. They say,

"67 of the 190 cases involve trafficking and or production of marijuana exceeding the terms of the MMAR license."

So between 2003 and April of 2010 they determined that there were 67 cases that were abusing the program? That

were doing trafficking and so on, exceeding their licenses?

A. Sixty seven of the 190, yes that's what it says.

273. Q. Then 123 which were licensed violations -- violence against license holders and health and safety hazards.

A. That's what it says.

274. Q. Okay. Incidentally the inspectors -- their authority was not only to inspect with respect to violations of the Controlled Drugs and Substances Act, but specifically violations of the Marijuana Medical Access Regulations, correct?

A. Their authority is to inspect for compliance with the CDSA and its regulations including the MMAR.

275. Q. And regulation, yeah.

A. Yes.

276. Q. Okay. All right. So here we have a number of license violations. I guess, do you know whether or not they arose from inspections or are they just from the police information by the looks of things.

A. They're from the police. These are instances where the police had active cases and provided us with information from those cases.

277. Q. Is that detailed information still available

somewhere?

A. I don't know. This information comes from the Canadian Association of Chiefs of Police and not Health Canada.

278. Q. Defence says 37 of the 134 licenses at a minimum of one traffic and or production conviction and 67 had a criminal record. Now, my understanding, and correct me if I'm wrong, is that there certainly was no limitation on patients who may have a criminal record and so on. There was no disqualification from the program because you have a criminal record as a patient, correct?

A. There was no regulatory requirement for an authorized person to disclose any type of conviction, that's ---

279. Q. Well even if they had a conviction, that would have been irrelevant as far as the authorization to possess patient is concerned. It was only relevant in terms of a designated grower. Isn't that right?

A. That's my recollection of the MMAR, yes.

280. Q. Then at the next page it says,

"The current ratio of Health Canada MMAR inspectors to licensees in Canada is one for every 338."

A. Yes.

281. Q. Is that still the case or has that been reduced?

A. I don't know.

MR. BRONGERS: Mr. Conroy, just in terms of time. It's now 10 to 1:00, so. My flight leaves ---

MR. CONROY: Okay, I'll try to wrap things up so that you can get on a plane.

MR. BRONGERS: Thank you, Mr. Conroy.

BY MR. CONROY:

282. Q. In paragraph 34 you deal with issues of private dwellings and not constructed -- and so on, but as I understand it, you're just repeating information that's been provided to you by others. You don't have any particular knowledge yourself about construction and how to properly and how other arrangements could be made to address the problems identified?

A. I don't have that knowledge.

283. Q. No. I mean, did you know for example that they have grow boxes that are CSA approved that you could just plug into the wall in your private residence and grow an number of plants that address all of the concerns about mold and fire and so on? Did you know that?

A. I've seen indications that such products exist, but I don't know how true the statements or the

claims that are made about them might be.

284. Q. So Health Canada didn't look into that as a potential other option for personal producers? That as long as they had something that addressed those issues, that then they would be able to continue to produce for themselves?

A. Health Canada did not specifically look into whether or not there were certain tools that growers could put in their homes, no.

285. Q. Specifically didn't consider grow boxes as an alternative to eliminating personal production.

A. Specifically, no. We did not consider grow boxes.

286. Q. At paragraph 40 you set out the categories of -- that came out of the feedback. Again, I take it that this is as you've indicated to us, it's the first responders, the fire chiefs, the police, maybe as you detail later one, homeowners or neighbors and so on. But that's the source of these various categories that are listed?

A. For the most part. There were also general public and in the case of theft we did have some program participants who noted that theft was a concern.

287. Q. When looking at these various problems, did Health Canada look to see what could be done to

ameliorate or remediate some of these issues without taking away the license to produce?

A. As I've noted before, we looked at a number of options that would include allowing personal and designated production to continue. But given the rapid increase in the number of individuals getting licenses and the larger and larger number of plants being grown, we did not feel that that would sufficiently address these challenges that have been addressed -- that have been raised.

288. Q. Okay. So the size and volume are the predominant factor as opposed to trying to see if specific things could be fixed?

A. It was a factor, yes.

289. Q. It was a major factor, wasn't it?

A. It was a large factor, yes.

290. Q. When you refer to the -- Would you agree with me that all of the examples that you pose in your Affidavit appear to be some evidence of people who are abusing the MMAR as opposed to those who were in compliance?

A. No, I would not agree.

291. Q. If you look at paragraph 63, complaint there indicates that these people are cocaine and ecstasy dealers and have been busted a couple of times and

they're associated to a gangster and so on. So if you got that information, what would you do with it? Would you try and correct the situation or call the police or tell the police to get involved or do anything? Or just file it?

MR. BRONGERS: Mr. Conroy, you've asked that question previously and she's explained exactly how they've responded to these types of complaints. Do you want to ask whether she has any specific knowledge of this particular complaint, what they did with it?

BY MR. CONROY:

292. Q. Yes.

A. I don't recall this specific example or what would have been done with it. I don't know.

293. Q. But when you would get allegations of criminal behaviour on the part of these people would Health Canada follow up or not?

A. Our role was to inspect for compliance with regulations. We don't deal with law enforcement matters. So we would advise individuals with complaints such as this to advise local law enforcement.

294. Q. So you'd get back to the complainant and tell them to do something. Is that fair?

A. In some cases, yes that's fair.

295. Q. Okay. At paragraph 78 -- excuse me, 79 you

deal with the theft issue. Again, are there detailed statistics available at Health Canada with respect to the numbers in that regard?

A. I don't have anything with me.

296. Q. No, I appreciate that, but do they exist?

A. I don't know.

297. Q. You don't recall ever seeing them?

A. I don't recall ever seeing statistics about theft.

298. Q. Just to be clear, would there be a file in relation to each individual so that if complaints or things came in, they would go on that person's file in order for corrective action to be taken or not?

A. My recollection is that there was a -- there is of course a file for every program participant so that we could process their application and issue their authorizations and their licenses. Correspondence was tracked through a different system.

299. Q. They weren't tied -- or cross referenced?

A. I don't recall.

MR. BRONGERS: Mr. Conroy, it's now 4:00 in Ottawa, I really must be going. Is there a final question you would like to ask?

BY MR. CONROY:

300. Q. The computer problems at paragraph 105, are

they not fixable?

A. As you'll note, I've been advised by Stephane Lessard of the challenges. I would have to be advised by him whether or not they're fixable. I'm not myself, sure.

301. Q. All right. Thank you.

MR. BRONGERS: Thank you, Mr. Conroy. We'll see you tomorrow morning.

--- WHEREUPON THE EXAMINATION ADJOURNED AT THE HOUR OF 4:02 IN THE AFTERNOON.

THIS IS TO CERTIFY THAT the foregoing is a true and accurate transcription from the Record made by sound recording apparatus to the best of my skill and ability.

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Leigh Gordon, Court Reporter