Allard - Nov**ember 8th,2015** Legal update on the case and funding, projecting and anticipating the future with "The Cannabis Rights Coalition" (CRC), formerly the MMAR Coalition against Repeal, and brief responses to the comments of John Turmel and Nadine Bews.

A. Allard – Legal update on the case and funding and projecting and anticipating the future

It is now November 11th, 2015 and we still await the final decision of Mr. Justice Phelan of the Federal Court Trial division in the Allard case. The court has now been on reserve for approximately 3 to 4 months (since late July) after receiving additional submissions from the parties as a result of the R v. Smith decision (June 11, 2015) of the Supreme Court of Canada, http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15403/index.do striking down the limitation to "dried marihuana" in the MMAR, and allowing patients to possess and use cannabis in any of its forms.

Everyone is anxiously awaiting this final decision, and especially those who were "left out" by the interlocutory injunction decision of Mr. Justice Manson of the Federal Court Trial Division on March 21, 2014 and those who have been unable to move their "production sites" for valid reasons post-injunction, and those who have been further prejudiced by Health Canada's interpretation of that decision as requiring both one's Authorization to Possess (ATP) and one's Personal Production or Designated Grower License (PPL or DGL) to be valid or they both fail, when the decision does not say so and it was the court that picked the 2 different dates as opposed to one date that led to some, like the Plaintiffs Beamish and Hebert, to not be covered, as well as making **no** provision for the simple s. 53 Narcotic Control regulation authorization solution to ensure that patient "possession" remained legal without requiring Health Canada's reissuance of a license. We know that Health Canada could easily keep a record of these authorizations if filed with them.

What are the projections and anticipations for the future? In my opinion, and knowing that the Court may do just about anything within the law that it can, these are the probable options:

1. **The Court rules in favor of the Plaintiffs, plus costs, on all issues declaring the MMPR to be unconstitutional** to the extent that they do not allow patients to produce cannabis for themselves or to have a true caregiver do so for them if unable to do so for themselves and striking down the limit to "dried marihuana" in the MMPR and NCR (Smith was limited to the MMAR) as well as removing the 150 g limit imposed on MMAR patients by Manson J. and restoring the 30 day supply MMAR provision. The Court might schedule a 'remedies hearing' with respect to these issues and might suspend the "declaration of unconstitutionality" for a period of time to enable the government to make the MMPR constitutional with

appropriate amendments. If this should occur and the opportunity is given a submission will be made to not only continue the existing injunction terms pending the government amendments, but that the terms be expanded to at least enable changes in production sites and other necessary changes as they arise during that period.

In the normal course, one can expect that the Defendant Government of Canada would file an appeal.

Given the change in government and in the favorable attitude of the new government to the legalization of cannabis there is a possibility that they might not appeal, but that is far from clear and will depend in large part on what the Court rules.

2. **The Court rules against the Plaintiffs**, **plus costs and in favor of the Defendant, Government of Canada** and dismisses the action. The Plaintiffs have 30 days within which to file an appeal to the Federal Court of Appeal. One then has to order and file the Appeal Books consisting of the Record of the proceedings below, followed by various further requirements to file written arguments by the Appellants and the Respondents and then have the matter set down for hearing on a date agreeable to the parties and the Court. All of this requires significant further time and expense.

   Consequently, we will also have to seek a stay of the judgment in order to try and maintain in place the injunction pending appeal so that patients who were grandfathered by the injunction do not have to tear down and can continue to produce their medicine pending the outcome of the appeal. The Court may or may not grant such a stay and may or may not be willing to continue the injunction pending a decision on the appeal. Under these circumstances an expansion of the injunction terms is very unlikely;

3. **The decision of the court is mixed favoring the Plaintiffs in some respects, and the Defendant in others.** Again in the circumstances, it is possible that a "remedies hearing" will be required in order to deal with the different issues from the perspectives of both parties and to seek appropriate and just remedies in the circumstances. It may well be that speaking to the injunction and its expansion would be required to handle matters to continue pending final resolution, including the suspension of any declarations of unconstitutionality, continuation and/or expansion of the injunction and other outstanding issues that may exist in a mixed outcome type case.

B. Funding - the Cannabis Rights Coalition, Conroy and Company and others.

1. Fundraising continues through the **Cannabis Rights Coalition (CRC),** initially created as the **MMAR Coalition against Repeal** and coordinated by Jason Wilcox, together with numerous volunteers, many of whom are patients. The group maintains a website and puts on various fundraisers across the country to help pay for legal costs and expenses to date and anticipated in the future. It was the Coalition and Jason Wilcox that engaged John W. Conroy, QC and his law firm Conroy and Company initially to act as legal counsel on behalf of the patient's that would be impacted by the repeal of the MMAR and the introduction of the MMPR. Mr. Conroy is not a member of the Coalition, but is their legal counsel and counsel for the Plaintiffs in Allard. Mr. Conroy brought in the other lawyers Tonia Grace, Kirk Tousaw, Bibhas Vaze and Matthew Jackson. These proceedings would not have been possible, nor would they have reached the current stage without the dedication of all of the volunteers within the Coalition that have worked hard since the beginning to fundraise for this cause. Many of them are medical patients with chronic ailments on disability pensions and of limited income. Together, Jason Wilcox, the MMAR Coalition against repeal and now the Cannabis Rights Coalition have raised $130,250.

2. Fundraising on a donations basis also continues through **Conroy and Company's** website at www.johnconroy.com by clicking on the "MMAR Constitutional Challenge" link on the left that will take you to a page that contains updates on the status of the proceedings, as well as all of the pleadings and proceedings and evidence from the beginning to date, including all the junction materials and the decision of Mr. Justice Manson and of the Court of Appeal. PayPal and other credit card options are available, as well as simply sending funds to Conroy and Company "in trust" for the Allard matter or MMAR challenge. Funds can be sent by cheque, postal money order or bank draft. Regretfully, we are no longer able to accept 'cash' due to concerns from the Law Society of British Columbia and any funds raised in cash should be converted into cheques at a post office or bank or other service such as Money Mart accordingly before being deposited to the law from trust account. This account is maintained in accordance with the laws and regulations governing the Law Society of the Province of British Columbia and its members and Conroy and Company has complied with all such rules as can be verified by that Societies auditors by anyone who wishes to do so. Direct donations to Conroy and Company to date are in the amount of $160,341.

3. In addition, a number of patients who are also Plaintiffs in the invasion of privacy class-action suit involving the November 2013 letter from Health Canada that exposed many patients to their neighbors and others, and suffered repercussions, including causing many to want to move, but can't, have filled out **"pledges"** varying from 5 to 50% of their anticipated damages they might receive in that action, to the costs and expenses of this action. All funds ultimately received go "in trust" for the Allard action. The law firm of Branch McMaster acts for the Plaintiffs

in British Columbia in that invasion of privacy class-action case, and there are various other class-action law firms across the country involved. I understand that Mr. Justice Phelan is also the trial judge in that case, and that its status is that the Government of Canada has appealed the certification of the class. It will be up to the individual Plaintiffs to remember their pledges as the civil class-action law firms will not get involved in enforcing or collecting them for this action.

4. **Other attempts at fundraising** – e.g. IamCrowdFunding.com http://iamcrowdfunding.com/ - We were approached by Rodney Scott of West Coast Solutions as another possible way to fund raise for the cause but after engaging in appropriate videos to comply with these requirements he has not followed through and we have not heard further from him, despite repeated attempts to contact him. He made a similar proposal for Norml Canada and his website indicates that funds have been raised, but no one has been able to reach him or obtain the funds. Various others have made statements that they would be providing substantial funding but nothing significant has materialized, and those few who have contributed significantly know who they are.

5. A **full accounting of funds received by Conroy and Company in trust** from all sources has been given to the Cannabis Rights Coalition representatives on their undertaking not to make the actual documents public to protect the privacy interests of the various donors. Specific figures with respect to funds raised and how they have been allocated have been publicly made available. Conroy and Company and John Conroy, QC, in particular has contributed approximately $350,000 CAD of his time to date for which he is not been paid and funds remain owing to some of the other lawyers (Tonia Grace, Kirk Tousaw, Bibhas Vaze and Matthew Jackson) who have also made substantial contributions at reduced rates. It is impossible to predict how much we may require in the future because we do not know how far it will go, especially given the change in government and change in attitude. A substantial amount of money has been raised from all sources in the area of $290,500 and a target of another $750,000 for past and future costs and expenses is not unrealistic.

C. **Complaints** - As there are a large number of patients affected by the previous government's policies it is to be expected that not everyone will be happy with how things have developed in these proceedings to date. Some are unhappy with the Coalition and its management and others are unhappy with the decisions taken by us as legal counsel. Unquestionably those who were not covered by the March 21, 2014 Manson J. injunction, like the Plaintiffs Hebert and Beemish and an estimated 10,000 others of the total of 38,000 MMAR license holders as of March 31, 2014 have suffered greatly and Health Canada has compounded the situation by the position it takes as

indicated above. In addition, there are many who have very good valid reasons needing to move or change their production sites and make other changes and have been unable to do so.

(a) **The Left Outs and John Turmel** - this group led by Mr. Turmel, who is not a lawyer but an engineer, recently lost 16 applications for leave to appeal to the Supreme Court of Canada, the decision on the interlocutory appeal in the Allard case that originated with the claims of the Plaintiffs Beemish and Hebert and was compounded by the consequences to many approved patients after the injunction, who fell between the cracks or could not make modifications to fit as a result of the court's decision. The Court dismissed the applications for lack of jurisdiction. Mr. Turmel and his group did not have standing to appeal that decision. Mr. Turmel and this group blame myself Mr. Conroy for this situation because, as lead Plaintiff's counsel in Allard, I am responsible for the decision to abandon or discontinue that appeal from the clarification decision of Manson J. with respect to the injunction.

The facts that formed the basis for our decision to abandon or discontinue that appeal are as follows:

i) The Defendant government appealed the injunction granted by Manson J. of March 21, 2014 and the Plaintiffs cross appealed seeking to expand it to cover the "left outs" and others. We were particularly concerned about the consequences to the Plaintiffs Hebert and Beemish and others similarly situated;

ii) We applied to introduce new evidence in the Court of Appeal through the affidavits of my assistant Danielle Lukiv and Jason Wilcox as to the consequences to various patients **after** the injunction that could not be foreseen. The government opposed this application and said they wished to cross-examine each and every affiant and patient referred to if the evidence was allowed in. The Court of Appeal declined to admit the evidence on the appeal;

iii) The Court of Appeal dismissed the Appellant's/Defendant Government of Canada's appeal and affirmed the injunction and allowed the Plaintiffs/ Respondents cross-appeal, but only to the extent of sending the matter back to Manson J. for clarification with respect to his intent in relation to the Plaintiffs Hebert and Beemish;

iv) The parties went back before Manson J. who clarified that he intended to cut out the Plaintiffs Hebert and Beamish to limit the consequences of the injunction on the government and so as to not unduly interfere in the legislative scheme;

v) The Plaintiffs tried to go back to the same coram (same group of judges) of the Court of Appeal with that clarification to further argue their position on that appeal, but the court said that they had made

their decision and if we wished to go further, we would have to start a separate new appeal of the most recent judgment of Mr. Justice Manson. In other words start over again;

vi) By that time, February 2015, we were getting close to the end of the trial and preparing final submissions. Most importantly the evidence from my assistant Danielle Lukiv and from Jason Wilcox with respect to the consequences of the injunction to many medically approved patients was before the trial court and had not been challenged by the Defendant Government of Canada and was therefore uncontested before that court. Given the previous decision of the Federal Court of Appeal it was, in my opinion (one shared by the other counsel on the case), unlikely that that evidence would be admitted before another coram of the Court of Appeal;

vii) Consequently, bearing in mind that situation with respect to the evidence and the delays, further costs and expenses and other problems that might occur as a result of pursuing the interlocutory appeal on the trial process and final decision, it was decided that the better course was to argue the matter as part of our final submissions before Mr. Justice Phelan at trial, seeking modifications to the injunction pending his final decision and certainly as part of his final decision, and to abandon/discontinue the interlocutory appeal;

viii) The appeal was abandoned / discontinued, and the matter was argued before Mr. Justice Phelan and he reserved. Unfortunately by his decision of July 15th,2015 http://www.johnconroy.com/pdf/Order-Phelan-J-July-15-2015-re-Motion-to-Vary.pdf he declined to accept our motion to vary the injunction pending his final decision and in the result we await his final decision and hope that it will resolve situations in favor of the Plaintiffs and all past and future medically approved patients in Canada;

ix) In the recent case of Boivin et al. v. Canada in the BCSC http://www.courts.gov.bc.ca/jdb-txt/SC/15/17/2015BCSC1797.htm (argued by Kirk Tousaw, who is also counsel on Allard) the BC Supreme Court granted the Plaintiffs an injunction on the same terms as Allard with certain significant changes. The BC Court granted the Plaintiffs an exemption from the 150 g possession limit imposed by Manson J, on MMAR patients thus enabling them to possess up to a 10 day supply. The Court also permitted one patient, whose Doctor had doubled his prescribed daily dosage, to produce plants consistent with the new dosage rather than his former MMAR licensing. Because of the 10 day supply term (which, for these high-dosage Plaintiffs, enables them to possess well over 150g) the court declined another patient's request to allow him to change his storage site. The Crown did not appeal the Court of Appeal denial of the Crown's stay request

and did not appeal the BC Supreme Court's grant of the injunction described above. The matter will now be set down for trial. Dates are not yet known.

Mr. Turmel and his group of followers are entitled to their opinions. It may well be that if we had pursued that appeal to the Federal Court of Appeal and then on to the Supreme Court of Canada that we would by now be involved in pleadings before that court related to the injunction and awaiting a hearing date while the trial might have been suspended or held in abeyance pending that appeal. This could have meant a significant delay in moving the matter forward. We expect to receive a decision for Mr. Justice Phelan long before that case on appeal would have been heard and decided by the Supreme Court of Canada. If Justice Phelan rules against the Plaintiffs we have an appeal to the Federal Court of Appeal on the merits of the appeal and with that additional evidence in the record, that was not in the record on the interlocutory appeal, and a further appeal with leave to the Supreme Court of Canada.

With respect to the complaints, it is important to understand that lawyers are advocates and make arguments but have no direct control over the final decision that is made by Judges and Justices of the Court. Suggestions that lawyers somehow have the ability to ensure results in a disputed action betray a lack of understanding of the adversarial legal system. Further, it is impossible and unwise to take "kitchen sink" approaches to complex litigation and to make arguments that are exceedingly unlikely to win because doing so detracts from the arguments that have a chance to win. People are free to agree or disagree with tactical and strategic decisions and are, of course, free to instruct and retain their own counsel and/or to seek redress in the Courts without any counsel. I understand many have done so and/or attempted to do so and at no time have I or any counsel on this matter attempted to prevent anyone from seeking their own relief in our Courts.

D. **The Future and the change in government**

1. We now have a government that supports the legalization of cannabis for medical and social purposes. This is a policy position of the Liberal Party of Canada that has a large majority government and has committed to this position in writing and publicly as part of its policy. Not only has the Prime Minister Justin Trudeau spoken publicly on the issue in support, but the new Minister of Health, Jane Philpott has also spoken out favorably and it is believed that the new Minister of Justice Jody Wilson-Raybould is also supportive;

2. Health Canada is the instructing client to the Department of Justice on behalf of the Defendant Government of Canada's position in the Allard case and in relation to the MMAR and MMPR generally;

3. In my opinion, given the nature of the consequences to individual medically approved patients while awaiting the decision of Justice Phelan, it might be in order for all such patients, and particularly the "left outs", to write to the Minister of Health, Jane Philpott asking her to instruct her Department and the Department of Justice accordingly to immediately make provision through the Office of Medical Cannabis for the following:

   (a) To enable any former ATP holders under the MMAR whose possession permits in that regard expired before March 21, 2014 , having obtained a section 53 Narcotic Control regulation authorization from their Healthcare practitioner, to file that authorization with the Office of Medical Cannabis as proof of their lawful possession pending the decision of Mr. Justice Phelan in Allard;

   (b) To declare that the former ATP holders whose permits expired prior to March 21, 2014, and who have obtained a valid section 53 Narcotic Control regulation authorization from their Healthcare practitioner and continue to have a valid existing PPL or DGL under the MMAR as of September 30, 2013, are considered to both be valid under the terms of the injunction and able to continue to produce and possess their medicine;

   (c) To require the Office of Medical Cannabis to make provision in a corresponding database to the current frozen SAM database, a process whereby patients medically approved under the MMAR are enabled to change their production sites by the filing of an appropriate change of address with the office, together with a declaration of intended compliance with all local government bylaws at the new location and the subsequent filing of proof thereof with the Office of Medical Cannabis.

   (d) To seek amendments to the MMPR and NCR with respect to 'dried cannabis marihuana" consistent with the decision in R v. Smith SCC with respect to the MMAR;

   (e) To amend the MMPR 150 gm possession limit and restore the MMAR "up to 30 day supply" limit in all circumstances, unless authorized in writing by a healthcare practitioner to exceed that amount in certain circumstances.