Court File No. C53583

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

HER MAJESTY THE QUEEN

Appellant

- and -

MATTHEW MERNAGH

Respondent

- and -

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION
- and -
CANADIAN CIVIL LIBERTIES ASSOCIATION
- and -
CANADIAN AIDS SOCIETY, CANADIAN HIV/AIDS LEGAL NETWORK AND HIV & AIDS LEGAL CLINIC ONTARIO

Interveners

FACTUM OF THE INTERVENER, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Ryan D. W. Dalziel
Emily C. Lapper
BULL, HOUSSER & TUPPER LLP
3000-1055 West Georgia Street
Vancouver, B.C. V6E 3R3
Tel: (604) 641-4881
Fax: (604) 646-2671
E-mail: rdd@bht.com

Jessica R. Orkin
SACK GOLDBLATT MITCHELL LLP
20 Dundas Street West, Suite 1100
Toronto, Ontario M5G 2G8
Tel: (416) 979-4381
Fax: (416) 979-4430
E-mail: jorkin@sgmlaw.com

INDEX

PART I – INTERVENER'S STATEMENT AS TO FACTS

A. The BCCLA's Position

1. The Crown is prosecuting Matthew Mernagh because he produced marihuana, which is an activity that is generally proscribed by the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (the "*CDSA*"). But Mr. Mernagh, like Terrance Parker before him, attests that marihuana alleviates the constant, debilitating pain that he suffers as a result of his illnesses. This Court vindicated Mr. Parker's constitutional right of access to marihuana in similar circumstances 12 years ago. What has changed since then?

2. The Crown's answer is that the *Medical Marihuana Access Regulations*, SOR 2001/226 (the "*MMAR*") have changed everything. The *MMAR* permit an individual to legally access, possess and cultivate marihuana for medicinal purposes, provided the individual can obtain a medical declaration from a doctor. The Crown says that the *MMAR* create an effective exemption from the *CDSA* for medical users of marihuana.

3. Yet for Mr. Mernagh, and others like him, the *MMAR* have made no difference. For a number of reasons, Mr. Mernagh has found himself unable to obtain a medical declaration despite reasonable efforts. He is thus left subject to the ordinary operation of the bans set out in the *CDSA*. From his perspective, the *Medical Marihuana Access Regulations* are an empty promise that have failed to live up to their name.

4. In the result, the *CDSA*'s bans still deprive Mr. Mernagh and others like him of their liberty and security of the person, by criminally sanctioning (on threat of imprisonment) conduct that alleviates the suffering associated with their medical conditions. Before the *MMAR*, the deprivations of liberty and security of the person brought about by the *CDSA* were not in accordance with principles of fundamental justice, in two ways. First, the *CDSA*'s blanket

prohibitions did little or nothing to advance the state's interest in circumstances where marihuana was intended for medicinal use. Second, the exception made in the then-extant regulations permitting a physician to prescribe marihuana was of no practical benefit and illusory. See *R. v. Parker* (2000), 146 C.C.C. (3d) 193 (Ont. C.A.), at paras. 143-163.

5. After the advent of the *MMAR*, it can no longer be said that the *CDSA* contains "blanket prohibitions" so far as medical marihuana is concerned. The first of the two violations of principles of fundamental justice found in *Parker* has been cured. The question that remains to be resolved in this case is whether the exception made by the *CDSA* regulations (as they currently stand, in the form of the *MMAR*) is illusory.

6. The BCCLA submits that the exception *is* "illusory", in the sense the jurisprudence comprehends that term. The fundamental problem is that, like the exception to the abortion defence that depended upon the decision of a therapeutic abortion committee in *R. v. Morgentaler*, [1988] 1 S.C.R. 30, the exception here operates *erratically*, with the result that for at least some Canadians, the access offered by the *MMAR* is illusory (whether or not it is effective for others). This is so because the availability of the exception depends entirely on the judgment of an individual's doctor. And for a variety of reasons, doctors in Canada are, at present, incapable of exercising their judgment with sufficient reliability and consistency to make the exception carved out by the *MMAR* consistent with fundamental justice.

B. The Facts Upon Which the BCCLA Will Rely

7. The Crown seeks the reversal of a number of the findings of the trial judge, Taliano J. The Crown's attack on the trial judgment is generally focussed upon the trial judge's findings about the overall availability of medical marihuana in Canada, and the efficacy of the *MMAR* scheme in global terms.

8. Putting aside for now the question of how the *MMAR* operate for *everyone*, it is apparent that there are a number of facts that this Court can take for granted about how the *MMAR* operate for *some* people. In particular, the findings of the trial judge and the evidence in the record establish the following five facts:

(a) Mr. Mernagh suffers severe and debilitating pain, which is ameliorated through the use of marihuana (trial judgment, paras. 50-53);

(b) despite numerous efforts over a number of years, Mr. Mernagh has been unable to find a doctor who will sign the medical declaration required by the *MMAR* (trial judgment, paras. 54-58). Though one doctor was prepared to write a letter saying that marihuana alleviated Mr. Mernagh's symptoms, that doctor was not prepared to sign a medical declaration;

(c) the evidence of the other patient witnesses establishes that Mr. Mernagh's experience is not unique, and that a number of Canadians must go to extraordinary lengths to obtain a medical declaration (trial judgment, para. 203);

(d) there are significant regional disparities in the access afforded by the *MMAR* (respondent's factum, paras. 126-128);

(e) the medical profession has resisted the role given to it under the *MMAR*. It is noteworthy despite certain amendments to relax the *MMAR* in July 2003, at that time the Canadian Medical Association remained "steadfast" in its view that "[p]hysicians should not be the gatekeepers for a substance that has not gone through the established regulatory review process, as required by all other drugs" (trial judgment, para. 152). The trial judge said:

> Although these communications from national medical organizations are now several years old, and the regulations have been modified, there is no evidence before the court that the CMPA [Canadian Medical Protective Association] has changed its position with respect to its fundamental objection, that being that studies have not been done to ascertain the "risks and benefits" of the drug. […] Even though the doctor is no longer required [after amendments in 2005] to express an opinion on the benefits and risks of the drug, doctor [*sic*] are obligated by the ethics of their profession not to do anything to harm their patient, and therefore cannot knowingly approve the use of a product whose benefits and risks have not been verified by clinical studies. [para. 164]

PART II – RESPONSE TO APPELLANT'S ISSUES

9. The Crown alleges three errors on the part of Taliano J.

10. First, the Crown says that Taliano J. erred in making four findings of fact that were supported by no evidence. In particular, the Crown says that it was reversible error to find that:

(a) the patient witnesses were all entitled to obtain authorizations to possess marihuana;
(b) many of the physicians who dealt with the patient witnesses acted in an "arbitrary" and "biased" manner;
(c) the medical community in Canada had "massively boycotted" the *MMAR*; and
(d) the "vast majority" of persons who needed marihuana to treat serious illnesses had been unable to obtain medical declarations. [Crown factum, para. 63]

11. Second, the Crown says the trial judge erred in law in determining that the *Charter* was applicable to the medical decisions of physicians, who are non-state actors.

12. Third, the Crown argues that if the *MMAR* violate s. 7, they are nevertheless justifiable under s. 1.

13. Each of these alleged errors will be addressed in turn.

A. The Challenge to the Factual Findings

14. The Crown's attack on the trial judge's findings reveals the Crown's position to be premised on a significant misapprehension about the correct approach to the question of whether, in the context of a criminal prosecution, the *MMAR* creates an illusory defence.

15. The Crown frames the question as whether the medical exemption under the *MMAR* is "practically unavailable", referring repeatedly in this regard to *Hitzig v. Canada* (2003), 177 C.C.C. (3d) 449 (Ont.C.A.). Crucially, the Crown appears to believe that the question of the exemption's availability must necessarily be resolved at a global, systemic level, and must necessarily involve a judicial reassessment of the medical judgment of individual physicians.

This is tied to the Crown's concern about whether the evidence at trial demonstrated that *all* of the patient witnesses, or a "vast majority" of persons, ought properly to be able to obtain marihuana. But the Crown ignores the question of whether the trial evidence established that there are *some* patients whose s. 7 interests are engaged by their inability to access medical marihuana under the *MMAR*. The Crown's systemic focus explains as well why the Crown is at pains to establish that there has not been a "massive boycott" of the *MMAR* by physicians. But in so doing, the Crown sidesteps the question of whether *some* individuals are left without effective access to a drug that relieves their suffering, because they are unable to obtain the physician declaration required in order to participate in the *MMAR* scheme.

16. There are four reasons why the Crown's framing of the question is incorrect.

17. First, the Crown over-reads *Hitzig*. As a starting point, none of the litigants in *Hitzig* were in circumstances similar to Mr. Mernagh's. There were eight claimants in *Hitzig*: one ran a compassion club, four had *received* licences to possess marihuana under the *MMAR*, and the remaining three did not apply for a licence, claiming difficulties obtaining the support of a specialist (see paras. 18 and 20). About those latter three, this Court said:

> Only one of these applicants, Ms. Devries, can point to any difficulty, due to a lack of access, in getting specialist support for her application, and there is some doubt that this individual sought actively to meet this requirement, because she first spoke to a specialist only a few days before her cross-examination in this proceeding. [para. 143]

Hitzig simply did not present the problem this Court now confronts. No one before the *Hitzig* Court had made reasonable, sustained efforts to obtain the requisite physician support. The *Hitzig* challenge to the *MMAR* was, of necessity, pitched at a systemic level, in the absence of a claimant who had personally experienced a deprivation of a s. 7-protected interest as a result of the medical declaration requirement.

18. The *Hitzig* Court's focus on the overall level of physician participation reflects the systemic and abstract nature of the challenge in that case. It is worth repeating what the Court actually said in *Hitzig* about the doctor-as-gatekeeper system:

> Whether marihuana will mitigate the particular symptom of an individual with a particular serious medical condition is fundamentally a medical question. Just as physicians are relied on to determine the need for prescription drugs, it is reasonable for the state to require the medical opinion of physicians here, particularly given that this drug is untested. The second argument is answered by Lederman J.'s finding that despite the concerns of central medical bodies, a sufficient number of individual physicians were authorizing the therapeutic use of marihuana that the medical exemption could not be said to be practically unavailable. This finding of fact is entirely reasonable on the record in this case and we would not interfere with it. Of course, if in future physician co-operation drops to the point that the medical exemption scheme becomes ineffective, this conclusion might have to be revisited. [para. 139]

That is all that was said about this point. Nothing in *Hitzig* laid down a rule that the *only* way to ever again challenge the doctor-as-gatekeeper system would be to show a systemic drop in physician participation. The Court said only that on the record before it, there was no reason to believe the system was generally failing, and that a different record could produce a different conclusion about the system's overall efficacy. The *Hitzig* Court signalled no intention to depart from the ordinary rule that a case is authority only for what it decides, and that

> every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. [see *R. v. Henry*, [2005] 3 S.C.R. 609, at para. 53, quoting *Quinn v. Leathem*, [1901] A.C. 495 (H.L.), at p. 506]

Ultimately, given the ever-evolving nature of our s. 7 jurisprudence, and the frequency of both legislative change and litigation in the medical marihuana context, this Court should decline to join the Crown in reading its precedents so expansively.

19. Second, the groundbreaking *Morgentaler* decision, from which the principle that defences must not be illusory has its origin, lends no support to the proposition that a defence

must be illusory *for everyone*, or even for most people, in order for the offence to be rendered unconstitutional. In *Morgentaler*, a majority of the Supreme Court found unconstitutional the "therapeutic abortion committee" procedure then-prescribed by the *Criminal Code*, which charged therapeutic abortion committees (composed of a number of physicians) with the power to issue a certificate stating that the continuation of a woman's pregnancy would be likely to endanger her life or health thereby permitting a woman to obtain an abortion. The *Morgentaler* Court did not have affirmative proof that the therapeutic abortion committee procedure was failing from coast to coast. What mattered in *Morgentaler* was that 24.6% of hospitals did not have a medical staff large enough to have a therapeutic abortion committee (p. 66); that only 20.1% of hospitals had actually established such a committee (p. 67); and that:

> Doctors from the Chedoke-McMaster Hospital in Hamilton testified that they received telephone calls from women throughout Ontario who had applied for therapeutic abortions at local hospitals and been refused. At one point, 80 per cent of abortion patients at Chedoke-McMaster were from outside Hamilton, and the hospital was forced to restrict access for women from outside its catchment area. The Powell Report revealed that in over 50 per cent of Ontario counties in 1986, the majority of women obtaining abortions had the procedure away from their place of residence (p. 7). Even more telling is the fact that "a minimum of 5000 Ontario women obtain abortions each year in freestanding clinics in Canada and the United States" (p. 7). [p. 71]

Morgentaler thus establishes that far less than a "boycott" is required to render a defence illusory for constitutional purposes. When the Supreme Court heard and decided *Morgentaler*, abortions were taking place in Canada. Therapeutic abortion committees had been established, and for thousands of Canadian women, the regime had functioned acceptably. That was not good enough.

20. Third, the exclusively systemic inquiry invited by the Crown is also out of step with recent Supreme Court of Canada jurisprudence, and in particular the decision in *Canada (Attorney General) v. PHS Community Services Society*, [2011] 3 S.C.R. 134. That case

concerned the constitutional status of Insite, the safe injection site in the Downtown Eastside of Vancouver, the operation and use of which was contrary to the *CDSA*'s bans on possession and trafficking of hard drugs. The Court held that the Minister of Health's failure to grant Insite an exemption from the *CDSA*, under s. 56 of the same statute, violated the s. 7 rights of drug users, because it deprived them of access to health services arbitrarily and with grossly disproportionate effects.

21. *PHS Community Services* is significant for present purposes because it provides recent confirmation that a legislative regime has to work for every individual that comes within its embrace to withstand *Charter* scrutiny. The Court focussed not on the global operation of the *CDSA*'s bans on heroin and cocaine, but instead on the particular circumstances of a specific population (hard drug addicts in the Downtown Eastside of Vancouver), and specific individuals within that population (two individual plaintiffs who were users of the safe injection site). The Minister of Health's administration of the *CDSA* regime was found constitutionally wanting because it was contrary to principles of fundamental justice, *as applied to those individuals*.

22. Fourth and finally, to foreclose the possibility of a successful challenge to the *MMAR* regime based on the experience of a single individual would be fundamentally at odds with the purposes of s. 7. Section 7 guarantees *everyone* the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with principles of fundamental justice. It is not enough to say that the deprivations of protected interests brought about by a law are in accordance with fundamental justice more often than not. Any and every deprivation of life, liberty or security must be in accordance with fundamental justice, or s. 7 is violated. As the Supreme Court resolutely affirmed in *R. v. Ferguson*, [2008] 1 S.C.R. 96, a single individual's circumstances can therefore be enough to strike down a criminal law: see, for

instance, *R. v. Ruzic*, [2001] 1 S.C.R. 687 (duress defence insufficiently broad to capture threats made to Ms. Ruzic's family; provision struck down). *Parker* itself demonstrates this. Mr. Mernagh is, in any event, not anomalous or unique; the evidence of, and findings about, the experiences of the other patient witnesses make that clear.

23. In the result, the Crown's factual case is designed to meet the wrong legal standard. This Court can accept all of the Crown's factual arguments, and still dismiss this appeal. Part III of this factum will explain why.

B. The Application of the Charter to Physicians

24. The Crown is right to say that as a general rule, the *Charter* does not apply to physicians. Indeed, as we shall see, that is one of the problems with the doctor-as-gatekeeper regime.

25. That said, Taliano J. did not reach any contrary conclusion. The fault he found lies clearly with the regulatory regime (see paras. 248, 256, 257, and 259-261). As this Court recently affirmed in *Bedford v. Attorney General of Canada*, 2012 ONCA 186 at paras. 105-120, criminal prohibitions that engage s. 7 security of the person interests cannot escape *Charter* scrutiny merely because the effects of the ban are mediated by non-state actors.

C. Section 1

26. Section 7 protects absolutely essential personal interests. And s. 7 is only violated when those interests are interfered with in a manner that is contrary to fundamental justice. Accordingly, while the Supreme Court has contemplated that a s. 7 violation might be justified in extraordinary circumstances, thus far the Court has yet to ever uphold a s. 7 violation under s. 1.

27. The Chief Justice's judgment in *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, at para. 66, illustrates the approach taken:

> The state is permitted to limit rights — including the s. 7 guarantee of life, liberty and security — if it can establish that the limits are demonstrably justifiable in a free and democratic society. This said, violations of s. 7 are not easily saved by s. 1. In *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486, Lamer J. (as he then was) stated, for the majority:
>
> > Section 1 may, for reasons of administrative expediency, successfully come to the rescue of an otherwise violation of s. 7, but only in cases arising out of exceptional conditions, such as natural disasters, the outbreak of war, epidemics, and the like. [p. 518]
>
> The rights protected by s. 7 — life, liberty, and security of the person — are basic to our conception of a free and democratic society, and hence are not easily overridden by competing social interests. It follows that violations of the principles of fundamental justice, specifically the right to a fair hearing, are difficult to justify under s. 1: *G. (J.)*. Nevertheless, the task may not be impossible, particularly in extraordinary circumstances where concerns are grave and the challenges complex. [para. 66; emphasis added]

28. The problem that marihuana presents for Canadian society, though serious in the eyes of some, does not rise to the "extraordinary" or "exceptional" level contemplated by the Supreme Court's jurisprudence. Resort to s. 1 is not available to the Crown here.

PART III – ADDITIONAL ISSUES

29. The doctor-as-gatekeeper approach taken in the *MMAR* lies at the heart of the problem in this case. The balance of this factum will canvas three further points on that subject:

(a) it is constitutionally perilous for the application of an exception to a criminal law to depend upon the judgment of *any* non-governmental individual, including physicians;

(b) the perils associated with such delegation have materialized in the context of the *MMAR*, with attendant harm to the s. 7-protected interests of Mr. Mernagh; and

(c) in the circumstances, the appropriate remedy is to declare s. 7 of the *CDSA* invalid, and acquit Mr. Mernagh.

A. The Constitutional Perils of Delegating the Administration of the Criminal Law Outside of Government

30. Criminal law consists of a prohibition, backed by a penalty, with a criminal law purpose: *Reference re Firearms Act (Can.)*, [2000] 1 S.C.R. 783, at para. 27. In the ordinary course, when conduct is made criminal it is banned absolutely, as was the prohibition on marihuana prior to *Parker*. This leads to a degree of certainty and clarity in the application of the criminal law that is appropriate where the consequence of a violation of the law may be imprisonment.

31. In relation to marihuana, however, this Court has held that an absolute prohibition is constitutionally impermissible. Accordingly, the government developed the *MMAR* to provide an exemption for individuals who require marihuana as a medical treatment to alleviate certain symptoms and conditions. In their current form, the *MMAR* give physicians the discretion to authorize the use of marihuana for certain listed symptoms associated with certain listed medical conditions (Category 1 Symptoms), or for any debilitating symptom associated with a medical condition (Category 2 Symptoms). In addition, s. 6 of the *MMAR* requires that physicians indicate in the medical declaration that conventional treatments have been tried or considered and have been found ineffective or medically inappropriate.

32. It is said, as a result, that the *MMAR* scheme places physicians in the role of "gatekeeper". In order to obtain the benefit of the exception to the criminal bans in the *CDSA* (and lawful access to an otherwise illegal substance), an individual must obtain a signed declaration from a physician. Thus, the *MMAR* create a regime where physicians have a power of decision over whether an individual's possession of marihuana will be criminal or not.

33. This is not the first occasion on which s. 7 has been applied to a problem of this sort.

34. *Morgentaler* is the leading authority. Seven judges heard the case. Dickson C.J. gave judgment for himself and Lamer J. Beetz J. gave judgment for himself and Estey J. The Dickson and Estey judgments are conceptually similar in a number of respects (Wilson J., the fifth judge in the majority, took a different approach), but it is Dickson C.J.'s judgment that is particularly notable for present purposes, in that it articulated the principle of fundamental justice upon which Mr. Mernagh relies – namely that defences must not be illusory.

35. There are essentially three constitutional concerns that arise when judgments about the availability of a defence are placed in the hands of a third party, non-governmental decision-maker. *Morgentaler* is illustrative of all three. The following paragraphs will identify each of the three concerns, and explain how each concern is linked to other principles of fundamental justice, including the rule against arbitrariness and the right to a procedurally fair process.

36. First, the prohibition may apply erratically or arbitrarily, as opinions and approaches vary from one decision-maker to another.

37. That was the case in *Morgentaler*:

> Various expert doctors testified at trial that therapeutic abortion committees apply widely differing definitions of health. For some committees, psychological health is a justification for therapeutic abortion; for others it is not. Some committees routinely refuse abortions to married women unless they are in physical danger, while for other committees it is possible for a married woman to show that she would suffer psychological harm if she continued with a pregnancy, thereby justifying an abortion. It is not typically possible for women to know in advance what standard of health will be applied by any given committee. [pp. 68-69]

38. The concern about erratic or arbitrary decision-making may be linked to the principle of fundamental justice that laws, and decisions made in the administration of those laws, must not be arbitrary: see *PHS Community Services*, and *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519.

39. The second concern is that non-legal factors relevant to human decision-making, whether moral, political, or professional, may bear upon the exercise of discretion, in a manner that tends to frustrate the purpose of Parliament's decision to delegate, or to interfere excessively with constitutionally-protected interests.

40. This concern is at its apex when the decision-maker is left without a defined test or specific criteria to apply. Open-ended decision-making, even by physicians, is hazardous when *Charter*-protected interests are on the line. It is not enough that physicians are constrained by their oath to act in what they perceive to be the best interests of the patient. As Dickson C.J. observed:

> It is no answer to say that "health" is a medical term and that doctors who sit on therapeutic abortion committees must simply exercise their professional judgment. A therapeutic abortion committee is a strange hybrid, part medical committee and part legal committee. Again, in the words of Parker A.C.J.H.C., at p. 381:
>
> > Given the consequences of the issuing or refusing to issue a certificate, I have some difficulty in reducing the committee's powers to merely that of stating its opinion as to the likelihood of the continuation of the pregnancy endangering the applicant's life or health. The decision of the committee has a very real effect on access to abortion for the pregnant female applicant, and the potential criminal liability of both the applicant and the physician who performs the operation.
>
> When the decision of the therapeutic abortion committee is so directly laden with legal consequences, the absence of any clear legal standard to be applied by the committee in reaching its decision is a serious procedural flaw. [p. 69]

41. The third and final concern is that judicial review of private decision-making is difficult or impossible, with resulting potential for irremediable injustice in individual cases.

42. When the administration of a criminal law-based regime is delegated to a government actor possessing a statutory power of decision, that actor's decision-making will ordinarily be subject to judicial review, including review for *Charter* compliance. The Minister of Health in

PHS Community Services is a convenient example in this regard. The Court held that the Minister's exercise of the discretion vested in him by various provisions of the *CDSA* must be consistent with the *Charter*. Thus:

> If the Minister's decision results in an application of the *CDSA* that limits the s. 7 rights of individuals in a manner that is not in accordance with the *Charter*, then the Minister's discretion has been exercised unconstitutionally. [para. 117]

Similarly, in *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120, the majority distinguished *Morgentaler*, on the basis that the legislative regime at issue was not itself unworkable, in part because an appropriate legal standard was provided, and discretionary decisions were entrusted to government officials and hence were bounded by *Charter* principles and subject to *Charter* review (at paras. 127-128, 132-139).

43. By contrast, medical determinations regarding health do not generally involve the exercise of governmental power, and therefore are *not* subject to judicial review. Physicians are independent, non-governmental actors: *Rasouli v. Sunnybrook Health Sciences Centre*, 2011 ONCA 482.

44. When an individual is confronted by a physician with the power to decide how a constitutionally-required exception to the criminal law will apply to that individual, and the physician denies her the benefit of the exception, that individual has only two choices. She can abide by the physician's judgment, and go without the abortion or the drug she seeks, with attendant medical consequences and harm to her physical and psychological security. Or she can choose to go around the physician by violating the criminal law, and thereby exposing herself to a risk of imprisonment, with attendant stigma and financial and emotional hardship.

45. The individual's inability to obtain a review of a physician's decision before an independent and impartial judicial officer, despite the significant effect of the decision on the legal and *Charter*-protected interests of the individual, implicates the principle of fundamental justice that requires a fair review by an independent and impartial decision-maker, before the state may deprive an individual of a s. 7 interest: see *Charkaoui*, at paras. 28-31. As noted above, the principle discussed in *Charkaoui* cannot be directly applied here because the physician's decision is not a government decision. However, in determining whether a defence will for some individuals be illusory, the absence of judicial safeguards intended to ensure appropriate decision-making in all cases should be treated as a significant factor.

46. This review reveals that the principle that defences must not be illusory is linked to, and draws strength from, other principles of fundamental justice that together constitute s. 7's superstructure. It follows, therefore, that in determining how to apply the principle that defences must not be illusory in a given case, the concerns set out here should be informative.

B. For Some, the MMAR Exception is Illusory in the Morgentaler Sense

47. Mr. Mernagh has established that despite reasonable and sustained efforts, a medical declaration remains unavailable to him. Is the exception to the *CDSA* created by the *MMAR* illusory for persons in Mr. Mernagh's circumstances?

48. The answer is "yes". All three of the concerns that arise in the context of a criminal law delegation to physicians have materialized in the context of the *MMAR*, and indeed are demonstrated by Mr. Mernagh's case.

49. First, the exception carved out by the *MMAR* operates erratically or arbitrarily. Here, as in *Morgentaler*, the evidence of significant regional disparities in the approach taken by physicians is particularly telling.

50. The findings of the trial judge and the record in this case go some distance in explaining why, for the time being at least, physicians take inconsistent approaches to the medical declaration contemplated by the *MMAR*. The stigma associated with the fact that marihuana continues to be criminalized, together with the absence of clinical trials or scientific research upon which the medical profession can rely, combine to limit physicians' ability to exercise their professional judgment in favour of medical marihuana, and to make their judgment itself less reliable. As the trial judge observed, at para. 255:

> The legislation essentially asks doctors to do something that is outside of their knowledge and expertise; it asks them to perform a function that is arguably no longer a medical one.

And, at para. 249:

> The overarching problem with the *MMAR* is that they require physicians, who have taken an oath to do no harm, to endorse the use of a largely untested and unapproved drug without any safeguards.

In these circumstances, it is hardly surprising that the *MMAR* exception has been inconsistently applied.

51. The Crown appears to accept that this is so. Indeed, the Crown relies on Lederman J.'s finding in *Hitzig* that "not all physicians will feel comfortable with signing off on an unapproved medicine" (Crown factum, at para. 20). The result, however, is that the criminal law will not apply equally to all individuals. Some physicians may fail to sign the declaration due to their discomfort with the status of the treatment, rather than as a result of the presentation of the individual patient's symptoms and medical history. The result is that similarly situated patients who believe they require marihuana to treat their medical symptoms – or indeed, who have experienced relief through the use of marihuana – may vary in their ability to obtain a medical declaration. This, in turn, means the criminal law applies arbitrarily to would-be users of medical marihuana, which militates in favour of a finding that the *MMAR* defence is illusory.

52. Second, the absence of any legislatively-prescribed standard for the decision about whether to sign a declaration amplifies the difficulties faced by physicians. Here, as in *Morgentaler*, it is not acceptable for the Crown to simply say that the decision is a matter of purely professional judgment, when physicians have been asked to be the frontline administrators of a scheme that *determines the application of a criminal law prohibition and access to a constitutionally-required defence*. That is particularly so when the subject of the physician's decision is access to a stigmatized, criminalized medication.

53. It is the absence of a clear standard that permits a physician such as Mr. Mernagh's doctor in Bradford to be, on one hand, prepared to sign a letter attesting that marihuana helps Mr. Mernagh, but on the other, unwilling to sign a medical declaration that would actually permit Mr. Mernagh to get the help he needs. Even doctors who are sympathetic to medical marihuana do not have the scientific or statutory guidance that is needed to ensure the consistent and rational application of the *MMAR* exception.

54. Finally, the absence of a judicially-administered release valve in the *MMAR* (or the *CDSA* itself) means that there is no means of rectifying inappropriate decisions by physicians. As a result, the *MMAR* defence is truly and unchangeably illusory for persons such as Mr. Mernagh.

55. In *Hitzig*, this Court affirmed the role that courts, assisted as needed by experts, may play in determining whether an individual ought to be entitled to use marihuana for medical purposes:

> [T[he courts, relying on evidence of individuals' personal experiences and anecdotal evidence have determined that some seriously ill persons derive substantial medical benefit from the use of marihuana. The pronouncements in these cases reflect the normal process of judicial fact-finding made in the context of an adjudicative process based on the evidence and arguments led by the parties in a given case. These factual findings have in turn provided the basis for the legal conclusion that s. 7 of the *Charter* requires that a medical exemption be carved out of any criminal prohibition against the possession of marihuana. [para. 9]

56. Nothing in *Hitzig* suggested that the legal determination that a particular individual is constitutionally entitled to a medical marihuana exemption necessarily requires expert medical evidence, as the Crown now effectively asserts. The *Hitzig* Court expressly declined to define the precise contours of the group of persons entitled to a constitutionally sound medical exemption from criminal sanction for marihuana possession and/or production, and expressly commented that "we need not address what need be shown to establish the medical necessity to take marihuana or how grave a medical condition must be in order to qualify" (see para. 80). The Court certainly did not suggest that issues relating to constitutional entitlement in relation to medical marihuana were purely medical; indeed, the Court deliberately affirmed that "[i]n developing a medical marihuana policy, the Government must respect individual constitutional rights *as defined by the courts*" (para. 11, emphasis added).

57. The *Hitzig* Court's statement that "[w]hether marihuana will mitigate the particular symptom of an individual with a particular serious medical condition is fundamentally a medical question" (para. 139), upon which the Crown relies heavily in this case, must be read in this context. *Hitzig* simply held that the state's choice to require a medical opinion in order to access the *MMAR* regime was a reasonable one, in the context of a case in which none of the claimants had experienced a deprivation of a s. 7 interest as a result of this requirement. This phrase does not vest authority upon physicians for individual determinations of constitutional entitlement in respect of medical marihuana. Contrary to the Crown's contention, the trial judge was not required to consider medical evidence or to assess the decisions of medical professionals in order to make the legal determination that an individual was constitutionally entitled to access medical marihuana. Rather, this legal determination was properly made on the basis of the available evidence, as an application of the well-established constitutional principle that deprivation by

means of criminal sanction of access to medication reasonably required for treatment of a serious medical condition constitutes a breach of security of the person (see *PHS Community Services*, at para. 93; *Parker*, at paras. 93-97).

58. In this case, Mr. Mernagh persuaded Taliano J. that he is a seriously ill person who derives substantial medical benefit from the use of marihauna, based on his personal experience and medical history. He has also made reasonable efforts to access the regime that is held out as offering medical exemptions to individuals in these circumstances. This should have been enough for Mr. Mernagh to have lawful access to marihuana. The fact that it apparently was *not* enough, together with the other factors discussed above, lead irresistibly to the conclusion that for some, at least, the *MMAR* defence is illusory.

C. Remedy

59. In *Parker*, this Court declared section 4 of the *CDSA* to be of no force and effect, as a result of the absence of a constitutionally adequate medical exemption. The federal government, acting through the Governor in Council, responded by promulgating the *MMAR*. Parliament, on the other hand, did nothing. In particular, Parliament did not repeal and replace the legislation that was the subject of this Court's declaration of invalidity. As a result, this Court held subsequently to *Parker* that if the *MMAR* are shown not to have resolved the constitutional problems presented by s. 4 of the *CDSA*'s denial of access to marihuana for medical purposes, then s. 4 remains of no force and effect: *R. v. J.P.* (2003), 177 C.C.C. (3d) 522 (Ont. C.A.), at paras. 31, 33; *Hitzig*, at para. 170.

60. The same logic dictates that s. 7 of the *CDSA*, under which Mr. Mernagh was charged, is similarly frail. Mr. Mernagh has demonstrated that his s. 7 liberty and security of the person interests are engaged by the prohibition set out in s. 7 of the *CDSA*, and he has also demonstrated

that the *MMAR* fail to establish a constitutionally acceptable medical exemption. In the absence of an adequate medical exemption, Mr. Mernagh remains unconstitutionally subject to the offence created by s. 7.[1]

61. Having established a violation of his constitutional rights, Mr. Mernagh is entitled to an effective and responsive remedy: *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3, at para. 25. Since the *Charter* breach in Mr. Mernagh's case results from the legislative regime (the *CDSA* ban, coupled with the *MMAR*'s illusory defence), and not from governmental action, a stand-alone personal remedy under s. 24(1) is not available: *Ferguson*, at paras. 59-63. The unconstitutional effects of the legislative regime in Mr. Mernagh's case must be vindicated by way of s. 52(1). As in *Parker*, judicial reading-in is not an appropriate remedial option to cure the constitutional deficiency in the *MMAR*: *Parker*, at paras. 198-204. Thus, a declaration under s. 52(1) of the *Constitution Act, 1982*, that s. 7 of the *CDSA* is constitutionally invalid and of no force and effect, should issue.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 25th day of April, 2012.

Ryan Dalziel	Jessica Orkin	Emily Lapper

[1] In this regard, Mr. Mernagh's circumstances are to be distinguished from those recently discussed by this Court in *R. v. McCrady*, 2011 ONCA 820 and *R. v. Parker*, 2011 ONCA 819. In contrast to the appellants in *McCrady* and *Parker* (2011), Mr. Mernagh has demonstrated the constitutional infirmity of the existing *MMAR* regime, and established the link between the s. 7 *CDSA* offence and the infirmity identified in his case: see *McCrady*, at para. 30; *Parker* (2011), at para. 32.

SCHEDULE A – AUTHORITIES TO BE CITED

Jurisprudence

1. *Bedford v. Attorney General of Canada,* 2012 ONCA 186
2. *Canada (Attorney General) v. PHS Community Services Society,* [2011] 3 S.C.R. 134
3. *Charkaoui v. Canada (Citizenship and Immigration),* [2007] 1 S.C.R. 350
4. *Doucet-Boudreau v. Nova Scotia (Minister of Education),* [2003] 3 S.C.R. 3
5. *Hitzig v. Canada* (2003), 177 C.C.C. (3d) 449 (Ont. C.A.)
6. *Little Sisters Book and Art Emporium v. Canada (Minister of Justice),* [2000] 2 S.C.R. 1120
7. *Rodriguez v. British Columbia (Attorney General),* [1993] 3 S.C.R. 519
8. *R. v. Ferguson,* [2008] 1 S.C.R. 96
9. *R. v. Henry,* [2005] 3 S.C.R. 609
10. *R. v. J.P.* (2003), 177 C.C.C. (3d) 522 (Ont. CA)
11. *R. v. McCrady*, 2011 ONCA 820
12. *R. v. Morgentaler,* [1988] 1 S.C.R. 30
13. *R. v. Parker* (2000), 146 C.C.C. (3d) 193 (Ont. C.A.)
14. *R. v. Parker*, 2011 ONCA 819
15. *R. v. Ruzic,* [2001] 1 S.C.R. 687
16. *Rasouli v. Sunnybrook Health Sciences Centre,* 2011 ONCA 482
17. *Re B.C. Motor Vehicle Act,* [1985] 2 S.C.R. 486
18. *Reference re Firearms Act (Can.),* [2000] 1 S.C.R. 783

Legislation

19. *Canadian Charter of Rights and Freedoms*, s. 1, 7, 24(1)
20. *Constitution Act, 1982,* s. 52(1)
21. *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, s. 4, 7, 56
22. *Medical Marihuana Access Regulations,* SOR 2001/226 as. am.

SCHEDULE B – RELEVANT LEGISLATIVE PROVISIONS

Canadian Charter of Rights and Freedoms

GUARANTEE OF RIGHTS AND FREEDOMS

Rights and freedoms in Canada
1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

LEGAL RIGHTS

Life, liberty and security of person
7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

ENFORCEMENT

Enforcement of guaranteed rights and freedoms
24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Constitution Act, 1982

PART VII – GENERAL
PRIMACY OF CONSTITUTION OF CANADA

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Controlled Drugs and Substances Act, S.C. 1996, c. 19

PART I - OFFENCES AND PUNISHMENT

Possession of substance
4. (1) Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II or III.

Obtaining substance
(2) No person shall seek or obtain

(a) a substance included in Schedule I, II, III or IV, or

(b) an authorization to obtain a substance included in Schedule I, II, III or IV

from a practitioner, unless the person discloses to the practitioner particulars relating to the acquisition by the person of every substance in those Schedules, and of every authorization to obtain such substances, from any other practitioner within the preceding thirty days.

Punishment
(3) Every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule I

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding seven years; or

(b) is guilty of an offence punishable on summary conviction and liable

(i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and

(ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Punishment
(4) Subject to subsection (5), every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule II

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years less a day; or

(b) is guilty of an offence punishable on summary conviction and liable

(i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and

(ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Punishment
(5) Every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule II in an amount that does not exceed the amount set out for that substance in Schedule VIII is guilty of an offence punishable on summary conviction and liable

to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both.

Punishment
(6) Every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule III

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years; or

(b) is guilty of an offence punishable on summary conviction and liable

(i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and

(ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Punishment
(7) Every person who contravenes subsection (2)

(a) is guilty of an indictable offence and liable

(i) to imprisonment for a term not exceeding seven years, where the subject-matter of the offence is a substance included in Schedule I,

(ii) to imprisonment for a term not exceeding five years less a day, where the subject-matter of the offence is a substance included in Schedule II,

(iii) to imprisonment for a term not exceeding three years, where the subject-matter of the offence is a substance included in Schedule III, or

(iv) to imprisonment for a term not exceeding eighteen months, where the subject-matter of the offence is a substance included in Schedule IV; or

(b) is guilty of an offence punishable on summary conviction and liable

(i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and

(ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Determination of amount
(8) For the purposes of subsection (5) and Schedule VIII, the amount of the substance means the entire amount of any mixture or substance, or the whole of any plant, that contains a detectable amount of the substance.

Production of substance
7. (1) Except as authorized under the regulations, no person shall produce a substance included in Schedule I, II, III or IV.

Punishment
(2) Every person who contravenes subsection (1)

(a) where the subject-matter of the offence is a substance included in Schedule I or II, other than cannabis (marihuana), is guilty of an indictable offence and liable to imprisonment for life;

(b) where the subject-matter of the offence is cannabis (marihuana), is guilty of an indictable offence and liable to imprisonment for a term not exceeding seven years;

(c) where the subject-matter of the offence is a substance included in Schedule III,

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months; and

(d) where the subject-matter of the offence is a substance included in Schedule IV,

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding one year.

REGULATIONS, EXEMPTIONS AND DISQUALIFICATIONS

Exemption by Minister
56. The Minister may, on such terms and conditions as the Minister deems necessary, exempt any person or class of persons or any controlled substance or precursor or any class thereof from the application of all or any of the provisions of this Act or the regulations if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.

CANADA

CONSOLIDATION

CODIFICATION

Marihuana Medical Access Regulations

Règlement sur l’accès à la marihuana à des fins médicales

SOR/2001-227

DORS/2001-227

Current to April 2, 2012

À jour au 2 avril 2012

Last amended on March 11, 2010

Dernière modification le 11 mars 2010

Published by the Minister of Justice at the following address:
http://laws-lois.justice.gc.ca

Publié par le ministre de la Justice à l’adresse suivante :
http://lois-laws.justice.gc.ca

TABLE OF PROVISIONS

TABLE ANALYTIQUE

MARIHUANA MEDICAL ACCESS REGULATIONS

INTERPRETATION

1. (1) The following definitions apply in these Regulations.

"Act" means the *Controlled Drugs and Substances Act*. (*Loi*)

"adverse drug reaction" [Repealed, SOR/2005-177, s. 1]

"authorization to possess" means an authorization to possess dried marihuana issued under section 11. (*autorisation de possession*)

"category 1 symptom" means any symptom treated within the context of compassionate end-of-life care or a symptom set out in column 1 of the schedule that is associated with a medical condition set out in column 2 or with the medical treatment of that condition. (*symptôme de catégorie 1*)

"category 2 symptom" means a debilitating symptom that is associated with a medical condition or with the medical treatment of that condition and that is not a category 1 symptom. (*symptôme de catégorie 2*)

"category 3 symptom" [Repealed, SOR/2005-177, s. 1]

"conventional treatment" means, in respect of a symptom, a medical or surgical treatment that is generally accepted by the Canadian medical community as a treatment for the symptom. (*traitement conventionnel*)

"designated drug offence" means

(*a*) an offence against section 39, 44.2, 44.3, 48, 50.2 or 50.3 of the *Food and Drugs Act*, as those provisions read immediately before May 14, 1997;

(*b*) an offence against section 4, 5, 6, 19.1 or 19.2 of the *Narcotic Control Act*, as those provisions read immediately before May 14, 1997;

(*c*) an offence under Part I of the Act, except subsection 4(1); or

(*d*) a conspiracy or an attempt to commit, being an accessory after the fact in relation to or any counselling in relation to an offence referred to in any of

RÈGLEMENT SUR L'ACCÈS À LA MARIHUANA À DES FINS MÉDICALES

DÉFINITIONS ET INTERPRÉTATION

1. (1) Les définitions qui suivent s'appliquent au présent règlement.

« aire de production » Endroit où la marihuana est produite, à savoir :

a) soit entièrement à l'intérieur;

b) soit entièrement à l'extérieur;

c) soit en partie à l'intérieur et en partie à l'extérieur. (*production area*)

« autorisation de possession » Autorisation de possession de marihuana séchée, délivrée au titre de l'article 11. (*authorization to possess*)

« distributeur autorisé » S'entend au sens de l'article 2 du *Règlement sur les stupéfiants*. (*licensed dealer*)

« fins médicales » Fins visant l'atténuation chez une personne d'un symptôme de catégorie 1 ou 2 mentionné dans la demande d'autorisation de possession. (*medical purpose*)

« infraction désignée en matière de drogue » Selon le cas :

a) toute infraction prévue aux articles 39, 44.2, 44.3, 48, 50.2 ou 50.3 de la *Loi sur les aliments et drogues*, dans leur version antérieure au 14 mai 1997;

b) toute infraction prévue aux articles 4, 5, 6, 19.1 ou 19.2 de la *Loi sur les stupéfiants*, dans leur version antérieure au 14 mai 1997;

c) toute infraction prévue à la partie I de la Loi, à l'exception du paragraphe 4(1);

d) le complot ou la tentative de commettre toute infraction visée aux alinéas *a*) à *c*), la complicité après le fait à son égard ou le fait de conseiller de la commettre. (*designated drug offence*)

« infraction désignée relativement à la marihuana » Selon le cas :

paragraphs (*a*) to (*c*). (*infraction désignée en matière de drogue*)

"designated marihuana offence" means

(*a*) an offence, in respect of marihuana, against section 5 of the Act, or against section 6 of the Act except with respect to importation; or

(*b*) a conspiracy or an attempt to commit or being an accessory after the fact in relation to or any counselling in relation to an offence referred to in paragraph (*a*). (*infraction désignée relativement à la marihuana*)

"designated person" means the person designated, in an application made under section 37, to produce marihuana for the applicant. (*personne désignée*)

"designated-person production licence" means a licence issued under section 40. (*licence de production à titre de personne désignée*)

"dried marihuana" means harvested marihuana that has been subjected to any drying process. (*marihuana séchée*)

"licence to produce" means either a personal-use production licence or a designated-person production licence. (*licence de production*)

"licensed dealer" has the same meaning as in section 2 of the *Narcotic Control Regulations*. (*distributeur autorisé*)

"marihuana" means the substance referred to as "Cannabis (marihuana)" in subitem 1(2) of Schedule II to the Act. (*marihuana*)

"medical practitioner" means a person who is authorized under the laws of a province to practise medicine in that province and who is not named in a notice given under section 59 of the *Narcotic Control Regulations*. (*médecin*)

"medical purpose" means the purpose of mitigating a person's category 1 or 2 symptom identified in an application for an authorization to possess. (*fins médicales*)

a) toute infraction, relativement à la marihuana, prévue aux articles 5 ou 6 de la Loi, à l'exclusion dans ce dernier cas de l'importation;

b) le complot ou la tentative de commettre toute infraction visée à l'alinéa *a*), la complicité après le fait à son égard ou le fait de conseiller de la commettre. (*designated marihuana offence*)

« licence de production » Licence de production à des fins personnelles ou licence de production à titre de personne désignée. (*licence to produce*)

« licence de production à des fins personnelles » Licence délivrée au titre de l'article 29. (*personal-use production licence*)

« licence de production à titre de personne désignée » Licence délivrée au titre de l'article 40. (*designated-person production licence*)

« Loi » La *Loi réglementant certaines drogues et autres substances*. (*Act*)

« maladie en phase terminale » [Abrogée, DORS/2005-177, art. 1]

« marihuana » La substance appelée Cannabis (marihuana), inscrite au paragraphe 1(2) de l'annexe II de la Loi. (*marihuana*)

« marihuana séchée » Marihuana qui a été récoltée et soumise à un processus de séchage. (*dried marihuana*)

« médecin » Personne qui, en vertu des lois d'une province, est autorisée à exercer la médecine dans cette province et qui n'est pas désignée dans un avis prévu à l'article 59 du *Règlement sur les stupéfiants*. (*medical practitioner*)

« personne désignée » Personne désignée, dans une demande présentée au titre de l'article 37, pour produire de la marihuana pour le compte du demandeur. (*designated person*)

« réaction indésirable à une drogue » [Abrogée, DORS/2005-177, art. 1]

« spécialiste » Médecin reconnu comme spécialiste par les autorités médicales chargées de délivrer les licences

"personal-use production licence" means a licence issued under section 29. (*licence de production à des fins personnelles*)

"production area" means the place where the production of marihuana is conducted, that is

(*a*) entirely indoors;

(*b*) entirely outdoors; or

(*c*) partly indoors and partly outdoors. (*aire de production*)

"specialist" means a medical practitioner who is recognized as a specialist by the medical licensing authority of the province in which the practitioner is authorized to practise medicine. (*spécialiste*)

"terminal illness" [Repealed, SOR/2005-177, s. 1]

(2) For the purpose of sections 28 and 53, a site for the production of marihuana is considered to be adjacent to a place if the boundary of the land on which the site is located has at least one point in common with the boundary of the land on which the place is located.

SOR/2004-237, s. 29; SOR/2005-177, s. 1; SOR/2007-207, s. 1.

dans la province où il est autorisé à exercer la médecine. (*specialist*)

« symptôme de catégorie 1 » Tout symptôme dont le traitement est effectué au moyen de soins palliatifs en fin de vie ou l'un des symptômes figurant à la colonne 1 de l'annexe et associé à l'état pathologique mentionné à la colonne 2 ou au traitement médical de cet état. (*category 1 symptom*)

« symptôme de catégorie 2 » Symptôme débilitant associé à un état pathologique ou à son traitement médical, à l'exclusion d'un symptôme de catégorie 1. (*category 2 symptom*)

« symptôme de catégorie 3 » [Abrogée, DORS/2005-177, art. 1]

« traitement conventionnel » Traitement médical ou chirurgical qui est généralement reconnu dans la communauté médicale canadienne pour le traitement d'un symptôme. (*conventional treatment*)

(2) Pour l'application des articles 28 et 53, est réputé adjacent à un autre terrain le terrain dont l'une des limites touche au moins en un point à l'une des limites de cet autre terrain.

DORS/2004-237, art. 29; DORS/2005-177, art. 1; DORS/2007-207, art. 1.

PART 1

AUTHORIZATION TO POSSESS

Authorized Activity

2. The holder of an authorization to possess is authorized to possess dried marihuana, in accordance with the authorization, for the medical purpose of the holder.

Eligibility for Authorization to Possess

3. A person is eligible to be issued an authorization to possess only if the person is an individual who ordinarily resides in Canada.

SOR/2007-207, s. 2(E).

PARTIE 1

AUTORISATION DE POSSESSION

Opération autorisée

2. Le titulaire d'une autorisation de possession peut avoir en sa possession, conformément à l'autorisation, de la marihuana séchée à ses propres fins médicales.

Admissibilité à l'autorisation

3. Est admissible à l'autorisation de possession la personne physique qui réside habituellement au Canada.

DORS/2007-207, art. 2(A).

Application for Authorization to Possess

4. (1) A person seeking an authorization to possess dried marihuana for a medical purpose shall submit an application to the Minister.

(2) An application under subsection (1) shall contain

(*a*) a declaration of the applicant;

(*b*) a medical declaration made by the medical practitioner treating the applicant; and

(*c*) two copies of a current photograph of the applicant.

SOR/2003-387, s. 1; SOR/2005-177, s. 2.

Demande d'autorisation

4. (1) Quiconque souhaite obtenir une autorisation de possession de marihuana séchée, à des fins médicales, présente au ministre une demande à cet effet.

(2) La demande comporte les éléments suivants :

a) une déclaration du demandeur;

b) une déclaration médicale fournie par le médecin traitant du demandeur;

c) deux copies d'une photographie récente du demandeur.

DORS/2003-387, art. 1; DORS/2005-177, art. 2.

Applicant's Declaration

5. (1) The declaration of the applicant under paragraph 4(2)(*a*) must indicate

(*a*) the applicant's name, date of birth and gender;

(*b*) the full address of the place where the applicant ordinarily resides as well as the applicant's telephone number and, if applicable, facsimile transmission number and e-mail address;

(*c*) the mailing address of the place referred to in paragraph (*b*), if different;

(*d*) if the place referred to in paragraph (*b*) is an establishment that is not a private residence, the type and name of the establishment;

(*e*) that the authorization is sought in respect of marihuana to be

(i) produced by the applicant or a designated person, in which case the designated person must be named, or

(ii) obtained under section 70.2 from a licensed dealer producing marihuana under contract with Her Majesty in right of Canada or obtained from a medical practitioner under section 70.4;

(*f*) that the applicant is aware that no notice of compliance has been issued under the *Food and Drug Regulations* concerning the safety and effectiveness of marihuana as a drug;

Déclaration du demandeur

5. (1) La déclaration du demandeur visée à l'alinéa 4(2)*a*) comporte les renseignements suivants :

a) les nom, date de naissance et sexe du demandeur;

b) l'adresse complète de son lieu de résidence habituelle, ainsi que son numéro de téléphone et, le cas échéant, son numéro de télécopieur et son adresse électronique;

c) l'adresse postale de son lieu de résidence habituelle, si elle diffère de l'adresse mentionnée à l'alinéa *b*);

d) lorsque le lieu visé à l'alinéa *b*) n'est pas une habitation privée, le type d'établissement dont il s'agit et son nom;

e) la mention qu'il entend, selon le cas :

(i) produire la marihuana lui-même ou la faire produire par une personne désignée, auquel cas le nom de la personne désignée doit être mentionné,

(ii) obtenir la marihuana, en vertu de l'article 70.2, d'un distributeur autorisé qui la produit au titre d'un contrat avec Sa Majesté du chef du Canada ou l'obtenir, en vertu de l'article 70.4, d'un médecin;

f) la mention qu'il sait qu'aucun avis de conformité n'a été délivré en vertu du *Règlement sur les aliments et drogues* quant à l'innocuité ou à l'efficacité de la marihuana comme drogue;

(*g*) that the applicant has discussed the potential benefits and risks of using marihuana with the medical practitioner providing the medical declaration under paragraph 4(2)(*b*);

(*h*) that the applicant

(i) is aware that the benefits and risks associated with the use of marihuana are not fully understood and that the use of marihuana may involve risks that have not yet been identified, and

(ii) accepts the risks associated with using marihuana;

(*i*) if the daily amount stated under paragraph 6(1)(*c*) is more than five grams, that the applicant

(i) has discussed the potential risks associated with an elevated daily consumption of dried marihuana with the medical practitioner providing the medical declaration, including risks with respect to the effect on the applicant's cardio-vascular and pulmonary systems and psychomotor performance, risks associated with the long-term use of marihuana as well as potential drug dependency, and

(ii) accepts those risks; and

(*j*) that marihuana will be used only for the treatment of the symptom stated for the applicant under paragraph 6(1)(*b*).

(2) The declaration must be dated and signed by the applicant attesting that the information contained in it is correct and complete.

SOR/2003-387, s. 2; SOR/2005-177, s. 3.

g) la mention qu'il a discuté avec le médecin qui a fourni la déclaration médicale visée à l'alinéa 4(2)*b*) des avantages éventuels et des risques associés à l'usage de la marihuana;

h) la mention :

(i) d'une part, qu'il sait que les avantages et les risques associés à l'usage de la marihuana ne sont pas parfaitement compris et que son usage pourrait présenter des risques non prévus,

(ii) d'autre part, qu'il accepte les risques associés à l'usage de celle-ci;

i) si la quantité quotidienne mentionnée à l'alinéa 6(1)*c*) excède cinq grammes, la mention :

(i) d'une part, qu'il a discuté avec le médecin qui a fourni la déclaration médicale des risques que présenterait la consommation quotidienne d'une quantité élevée de marihuana séchée, notamment des risques associés à l'usage à long terme de la marihuana, du risque d'accoutumance à celle-ci et des effets qu'elle peut avoir sur les systèmes cardiovasculaire et pulmonaire du demandeur ainsi que sur ses aptitudes psychomotrices,

(ii) d'autre part, qu'il accepte ces risques;

j) la mention qu'il n'utilisera la marihuana que pour le traitement du symptôme mentionné à l'alinéa 6(1)*b*).

(2) La déclaration est datée et signée par le demandeur et atteste que les renseignements qui y sont fournis sont exacts et complets.

DORS/2003-387, art. 2; DORS/2005-177, art. 3.

Medical Declarations

6. (1) The medical declaration under paragraph 4(2)(*b*) must indicate

(*a*) the medical practitioner's name, business address and telephone number, facsimile transmission number and e-mail address if applicable, the province in which the practitioner is authorized to practise medicine and

Déclarations médicales

6. (1) La déclaration médicale visée à l'alinéa 4(2)*b*) comporte les renseignements suivants :

a) le nom du médecin, les adresse et numéro de téléphone de son lieu de travail, la province où il est autorisé à exercer la médecine, le numéro d'autorisation attribué par la province et, le cas échéant, son numéro de télécopieur et son adresse électronique;

the number assigned by the province to that authorization;

(*b*) the name of the applicant, the applicant's medical condition, the symptom that is associated with that condition or its treatment and that is the basis for the application and whether the symptom is a category 1 or 2 symptom;

(*c*) for the purpose of determining, under subsection 11(3), the maximum quantity of dried marihuana to be authorized, the daily amount of dried marihuana, in grams, and the form and route of administration that the applicant intends to use;

(*d*) the anticipated period of usage, if less than 12 months;

(*e*) that conventional treatments for the symptom have been tried or considered and have been found to be ineffective or medically inappropriate for the treatment of the applicant; and

(*f*) that the medical practitioner is aware that no notice of compliance has been issued under the *Food and Drug Regulations* concerning the safety and effectiveness of marihuana as a drug.

(2) In the case of a category 2 symptom, the medical declaration must also indicate

(*a*) if the medical practitioner making the medical declaration is a specialist, the practitioner's area of specialization and that the area of specialization is relevant to the treatment of the applicant's medical condition; and

(*b*) if the medical practitioner making the medical declaration is not a specialist,

(i) that the applicant's case has been assessed by a specialist,

(ii) the name of the specialist,

(iii) the specialist's area of specialization and that the area of specialization is relevant to the treatment of the applicant's medical condition,

b) le nom du demandeur, son état pathologique, le symptôme associé à cet état ou à son traitement et sur lequel la demande d'autorisation est fondée, avec mention de la catégorie 1 ou 2 du symptôme;

c) la quantité quotidienne de marihuana séchée, en grammes, ainsi que la forme posologique et le mode d'administration que le demandeur entend utiliser afin que soit déterminée, selon le calcul prévu au paragraphe 11(3), la quantité maximale de marihuana séchée à autoriser;

d) la période d'usage prévue, si elle est inférieure à douze mois;

e) la mention que des traitements conventionnels du symptôme ont été essayés ou envisagés mais se sont révélés inefficaces ou ne conviennent pas dans le cas du demandeur;

f) la mention que le médecin sait qu'aucun avis de conformité n'a été délivré en vertu du *Règlement sur les aliments et drogues* quant à l'innocuité ou à l'efficacité de la marihuana comme drogue.

(2) Dans le cas d'un symptôme de catégorie 2, la déclaration médicale comporte en outre les renseignements suivants :

a) si le médecin qui fournit la déclaration est un spécialiste, son domaine de spécialisation et la mention que celui-ci est lié au traitement de l'état pathologique du demandeur;

b) si le médecin qui fournit la déclaration n'est pas un spécialiste :

(i) la mention qu'un spécialiste a procédé à une évaluation médicale du dossier du demandeur,

(ii) le nom du spécialiste,

(iii) son domaine de spécialisation et la mention que celui-ci est lié au traitement de l'état pathologique du demandeur,

(iv) the date of the specialist's assessment of the applicant's case,

(v) that the specialist concurs that conventional treatments for the symptom are ineffective or medically inappropriate for the treatment of the applicant, and

(vi) that the specialist is aware that marihuana is being considered as an alternative treatment for the applicant.

SOR/2005-177, s. 4.

7. [Repealed, SOR/2003-387, s. 3]

8. A medical declaration under paragraph 4(2)(*b*) must be dated and signed by the medical practitioner making it and must attest that the information contained in the declaration is correct and complete.

SOR/2003-387, s. 4; SOR/2005-177, s. 5.

9. [Repealed, SOR/2005-177, s. 6]

PHOTOGRAPH

10. The photograph required under paragraph 4(2)(*c*) must clearly identify the applicant and must

(*a*) show a full front-view of the applicant's head and shoulders against a plain contrasting background;

(*b*) have dimensions of at least 43 mm × 54 mm (1 11/16 inches × 2 1/8 inches) and not more than 50 mm × 70 mm (2 inches × 2 3/4 inches), and have a view of the applicant's head that is at least 30 mm (1 3/8 inches) in length;

(*c*) show the applicant's face unobscured by sunglasses or any other object; and

(*d*) be certified, on the reverse side, by the medical practitioner making the medical declaration under paragraph 4(2)(*b*) to be an accurate representation of the applicant.

SOR/2003-387, s. 5; SOR/2005-177, s. 7; SOR/2007-207, s. 3.

(iv) la date de l'évaluation médicale du dossier du demandeur,

(v) la mention que le spécialiste est d'accord que les traitements conventionnels du symptôme sont inefficaces ou ne conviennent pas dans le cas du demandeur,

(vi) la mention que le spécialiste sait que la marihuana est une méthode subsidiaire de traitement pour le demandeur.

DORS/2005-177, art. 4.

7. [Abrogé, DORS/2003-387, art. 3]

8. La déclaration médicale visée à l'alinéa 4(2)*b*) est datée et signée par le médecin qui la fournit et atteste que les renseignements qui y figurent sont exacts et complets.

DORS/2003-387, art. 4; DORS/2005-177, art. 5.

9. [Abrogé, DORS/2005-177, art. 6]

PHOTOGRAPHIE

10. La photographie exigée à l'alinéa 4(2)*c*) doit permettre d'identifier le demandeur de façon précise et doit respecter les exigences suivantes :

a) elle montre sa tête et ses épaules, vues de face, sur un fond contrastant uni;

b) sa tête occupe un espace d'au moins 30 mm (1 3/8 po) de long sur la photographie, dont les dimensions minimales sont de 43 mm x 54 mm (1 11/16 po x 2 1/8 po) et les dimensions maximales, de 50 mm x 70 mm (2 po x 2 3/4 po);

c) son visage n'est pas caché par des lunettes de soleil ou d'autres objets;

d) elle comporte au verso une déclaration signée par le médecin qui a fourni la déclaration médicale visée à l'alinéa 4(2)*b*) et attestant que la photographie représente bien le demandeur.

DORS/2003-387, art. 5; DORS/2005-177, art. 7; DORS/2007-207, art. 3.

Issuance of Authorization to Possess

11. (1) Subject to section 12, if the requirements of sections 4 to 10 are met, the Minister shall issue to the applicant an authorization to possess for the medical purpose mentioned in the application, and shall provide notice of the authorization to the medical practitioner who made the medical declaration under paragraph 4(2)(*b*).

(2) The authorization shall indicate

(*a*) the name, date of birth and gender of the holder of the authorization;

(*b*) the full address of the place where the holder ordinarily resides;

(*c*) the authorization number;

(*d*) the name of the medical practitioner who made the medical declaration under paragraph 4(2)(*b*);

(*e*) the maximum quantity of dried marihuana, in grams, that the holder may possess at any time;

(*f*) the date of issue; and

(*g*) the date of expiry.

(3) The maximum quantity of dried marihuana referred to in paragraph (2)(*e*) or resulting from an amendment under subsection 20(1) is the amount determined according to the following formula:

$$A \times 30$$

where A is the daily amount of dried marihuana, in grams, stated under paragraph 6(1)(*c*) or subparagraph 19(2)(*d*)(i), whichever applies.

SOR/2005-177, s. 8.

Grounds for Refusal

12. (1) The Minister shall refuse to issue an authorization to possess if

(*a*) the applicant is not eligible under section 3; or

Délivrance de l'autorisation

11. (1) Sous réserve de l'article 12, le ministre délivre au demandeur l'autorisation de possession aux fins médicales précisées dans la demande si les exigences des articles 4 à 10 sont remplies; il en avise le médecin qui a fourni la déclaration médicale visée à l'alinéa 4(2)*b*).

(2) L'autorisation comporte les renseignements suivants :

a) les nom, date de naissance et sexe du titulaire de l'autorisation;

b) l'adresse complète de son lieu de résidence habituelle;

c) le numéro d'autorisation;

d) le nom du médecin qui a fourni la déclaration médicale visée à l'alinéa 4(2)*b*);

e) la quantité maximale de marihuana séchée, en grammes, que peut posséder le titulaire de l'autorisation;

f) la date de délivrance;

g) la date d'expiration.

(3) La quantité maximale de marihuana séchée visée à l'alinéa (2)*e*) ou résultant d'une modification aux termes du paragraphe 20(1) se calcule selon la formule suivante :

$$A \times 30$$

où A représente la quantité quotidienne de marihuana séchée, en grammes, déterminée aux termes de l'alinéa 6(1)*c*) ou du sous-alinéa 19(2)*d*)(i), selon le cas.

DORS/2005-177, art. 8.

Motifs de refus

12. (1) Le ministre refuse de délivrer l'autorisation de possession dans les cas suivants :

a) le demandeur n'est pas admissible selon l'article 3;

(*b*) any information, statement or other item included in the application is false or misleading;

(*c*) [Repealed, SOR/2005-177, s. 9]

(*d*) [Repealed, SOR/2003-387, s. 6]

(2) If the Minister proposes to refuse to issue an authorization to possess, the Minister shall

(*a*) notify the applicant in writing of the reason for the proposed refusal; and

(*b*) give the applicant an opportunity to be heard.

SOR/2003-387, s. 6; SOR/2005-177, s. 9.

b) la demande comporte des renseignements, déclarations ou autres éléments faux ou trompeurs;

c) [Abrogé, DORS/2005-177, art. 9]

d) [Abrogé, DORS/2003-387, art. 6]

(2) Lorsqu'il envisage de refuser de délivrer l'autorisation de possession, le ministre :

a) en avise le demandeur par écrit, motifs à l'appui;

b) lui donne la possibilité de se faire entendre.

DORS/2003-387, art. 6; DORS/2005-177, art. 9.

Expiry of Authorization

13. An authorization to possess expires 12 months after its date of issue or, if a shorter period is specified in the application for the authorization under paragraph 6(1)(*d*), at the end of that period.

Expiration de l'autorisation

13. L'autorisation de possession expire douze mois après la date de sa délivrance ou à la fin de toute période plus courte qui est indiquée dans la demande d'autorisation aux termes de l'alinéa 6(1)*d*).

Renewal of Authorization to Possess

14. (1) An application to renew an authorization to possess shall be made to the Minister by the holder of the authorization and must include

(*a*) the authorization number; and

(*b*) the material required under sections 4 to 10.

(2) For the purpose of paragraph (1)(*b*), a photograph referred to in paragraph 4(2)(*c*) is required only with every fifth renewal application.

SOR/2003-387, s. 7; SOR/2005-177, s. 10.

Renouvellement de l'autorisation

14. (1) La demande de renouvellement d'une autorisation de possession est présentée au ministre par le titulaire de l'autorisation et comporte les éléments suivants :

a) le numéro de l'autorisation visée;

b) les éléments exigés aux articles 4 à 10.

(2) Pour l'application de l'alinéa (1)*b*), il n'est nécessaire de fournir la photographie visée à l'alinéa 4(2)*c*) qu'à toutes les cinq demandes de renouvellement.

DORS/2003-387, art. 7; DORS/2005-177, art. 10.

15. and 16. [Repealed, SOR/2005-177, s. 11]

17. Subject to section 18, if an application complies with section 14, the Minister shall renew the authorization to possess for the medical purpose mentioned in the application.

18. The Minister shall refuse to renew an authorization to possess for any reason referred to in section 12.

SOR/2005-177, s. 12.

15. et 16. [Abrogés, DORS/2005-177, art. 11]

17. Sous réserve de l'article 18, le ministre renouvelle l'autorisation de possession aux fins médicales précisées dans la demande si celle-ci est conforme aux exigences de l'article 14.

18. Le ministre refuse de renouveler l'autorisation de possession dans les cas prévus à l'article 12.

DORS/2005-177, art. 12.

Amendment of Authorization to Possess

19. (1) An application to amend an authorization to possess shall be made to the Minister by the holder of the authorization when a change occurs with respect to

(*a*) the holder's name;

(*b*) the holder's address of ordinary residence or mailing address; or

(*c*) the daily amount of dried marihuana if the new amount requires an increase in the maximum quantity of dried marihuana, in grams, that the holder may possess at any time.

(2) The application must include

(*a*) the authorization number and, if applicable, the licence number of the licence to produce that has been issued on the basis of the authorization;

(*b*) the requested amendment;

(*c*) in the case of a change under paragraph (1)(*a*), proof of the change; and

(*d*) in the case of a change under paragraph (1)(*c*),

(i) a statement containing the information required under paragraph 6(1)(*c*), signed and dated by the medical practitioner who made the medical declaration under paragraph 4(2)(*b*), and

(ii) if the new daily amount is more than five grams, the statement required under paragraph 5(1)(*i*), signed and dated by the applicant.

SOR/2005-177, s. 13.

20. (1) Subject to subsection (2), if an application complies with section 19, the Minister shall amend the authorization to possess.

(2) The Minister shall refuse to amend an authorization to possess for any reason referred to in section 12.

SOR/2005-177, s. 13.

Modification de l'autorisation

19. (1) L'autorisation de possession fait l'objet d'une demande de modification à présenter au ministre par le titulaire de l'autorisation dans le cas où un changement survient à l'égard de l'un des éléments suivants :

a) le nom du titulaire;

b) l'adresse de son lieu de résidence habituelle ou son adresse postale;

c) la quantité quotidienne de marihuana séchée, s'il en résulte une augmentation de la quantité maximale de marihuana séchée, en grammes, que le titulaire est autorisé à posséder.

(2) La demande de modification comporte les éléments suivants :

a) le numéro d'autorisation et, le cas échéant, le numéro de la licence de production délivrée sur le fondement de l'autorisation;

b) la modification demandée;

c) dans le cas d'un changement visé à l'alinéa (1)*a*), une preuve à cet effet;

d) dans le cas d'un changement visé à l'alinéa (1)*c*) :

(i) une déclaration contenant les renseignements mentionnés à l'alinéa 6(1)*c*) que signe et date le médecin qui fournit la déclaration médicale visée à l'alinéa 4(2)*b*),

(ii) si la nouvelle quantité quotidienne de marihuana séchée excède cinq grammes, une déclaration comportant la mention prévue à l'alinéa 5(1)*i*) que signe et date le demandeur.

DORS/2005-177, art. 13.

20. (1) Sous réserve du paragraphe (2), le ministre apporte la modification à l'autorisation de possession si la demande de modification est conforme aux exigences de l'article 19.

(2) Le ministre refuse de modifier l'autorisation de possession dans les cas visés à l'article 12.

DORS/2005-177, art. 13.

21. (1) If an authorization to possess is amended with respect to the name or address of the holder of the authorization, the Minister shall, if applicable, amend the licence to produce that was issued on the basis of the authorization.

(2) If an authorization to possess is amended with respect to the daily amount of dried marihuana, the Minister shall, if applicable, amend the licence to produce that was issued on the basis of the authorization to reflect the change in the maximum number of marihuana plants that the holder of the licence may produce and the maximum quantity of dried marihuana that the holder of the licence may keep.

SOR/2005-177, s. 13.

22. [Repealed, SOR/2005-177, s. 13]

Providing Assistance to Holder

23. While in the presence of the holder of an authorization to possess and providing assistance in the administration of marihuana to the holder, the person providing the assistance may, for the purpose of providing the assistance, possess a quantity of dried marihuana not exceeding an amount equal to the maximum quantity of dried marihuana the holder is authorized to possess as set out in the authorization to possess, divided by 30.

SOR/2005-177, s. 14.

PART 2

LICENCE TO PRODUCE

Personal-use Production Licence

Authorized Activities

24. The holder of a personal-use production licence is authorized to produce and keep marihuana, in accordance with the licence, for the medical purpose of the holder.

Eligibility for Licence

25. (1) Subject to subsection (2), a person is eligible to be issued a personal-use production licence only if the

21. (1) Le ministre, s'il modifie le nom ou l'adresse du titulaire de l'autorisation de possession apporte, le cas échéant, les modifications voulues à la licence de production délivrée sur le fondement de l'autorisation.

(2) Le ministre, s'il modifie la quantité quotidienne de marihuana séchée mentionnée dans l'autorisation de possession apporte, le cas échéant, les modifications voulues à la licence de production délivrée sur le fondement de l'autorisation concernant le nombre maximum de plants de marihuana que peut produire le titulaire de la licence de production et la quantité maximale de marihuana séchée qu'il peut garder.

DORS/2005-177, art. 13.

22. [Abrogé, DORS/2005-177, art. 13]

Aide à un titulaire de l'autorisation

23. La personne qui aide le titulaire d'une autorisation de possession à prendre de la marihuana séchée peut, en sa présence, pendant qu'elle lui apporte son aide, avoir en sa possession, à cette fin, une quantité de marihuana séchée qui n'excède pas le résultat obtenu par la division de la quantité maximale de marihuana séchée que le titulaire de l'autorisation est autorisé à avoir en sa possession aux termes de l'autorisation par 30.

DORS/2005-177, art. 14.

PARTIE 2

LICENCE DE PRODUCTION

Licence de production à des fins personnelles

Opérations autorisées

24. Le titulaire d'une licence de production à des fins personnelles est autorisé à produire et garder, conformément à la licence, de la marihuana à ses propres fins médicales.

Admissibilité à la licence

25. (1) Sous réserve du paragraphe (2), est admissible à la licence de production à des fins personnelles la

person is an individual who ordinarily resides in Canada and who has reached 18 years of age.

(2) If a personal-use production licence is revoked under paragraph 63(2)(*b*), the person who was the holder of the licence is ineligible to be issued another personal-use production licence during the period of 10 years after the revocation,

SOR/2007-207, s. 4(E).

personne physique qui réside habituellement au Canada et qui a atteint l'âge de dix-huit ans.

(2) Toute personne dont la licence de production à des fins personnelles est révoquée aux termes de l'alinéa 63(2)*b*) est inadmissible, pour une période de dix ans suivant la révocation, à une nouvelle licence de production à des fins personnelles.

DORS/2007-207, art. 4(A).

Application for Licence

[SOR/2005-177, s. 15]

26. (1) An application for a personal-use production licence shall be considered only if it is made by a person who

(*a*) is the holder of an authorization to possess on the basis of which the licence is applied for; or

(*b*) is not the holder of an authorization to possess, but either has applied for an authorization to possess or is applying for an authorization to possess concurrently with the licence application.

(2) If paragraph (1)(*b*) applies, the Minister must grant or refuse the application for an authorization before considering the licence application.

SOR/2007-207, s. 5(E).

Demande de licence

[DORS/2005-177, art. 15]

26. (1) La demande de licence de production à des fins personnelles n'est examinée que si elle est présentée par une personne :

a) soit qui est titulaire d'une autorisation de possession sur le fondement de laquelle la licence est demandée;

b) soit qui n'est pas titulaire d'une autorisation de possession mais qui a présenté une demande d'autorisation, ou la présente en même temps que la demande de licence.

(2) En cas d'application de l'alinéa (1)*b*), le ministre statue sur la demande d'autorisation de possession avant d'examiner la demande de licence.

DORS/2007-207, art. 5(A).

27. (1) A person mentioned in subsection 26(1) who is seeking a personal-use production licence shall submit an application to the Minister.

(2) The application must include

(*a*) a declaration by the applicant; and

(*b*) if the proposed production site is not the applicant's ordinary place of residence and is not owned by the applicant, a declaration dated and signed by the owner of the site consenting to the production of marihuana at the site.

(3) The application may not be made jointly with another person.

SOR/2007-207, s. 6(E).

27. (1) La personne visée au paragraphe 26(1) qui souhaite obtenir une licence de production à des fins personnelles présente au ministre une demande à cet effet.

(2) La demande comporte les documents suivants :

a) une déclaration du demandeur;

b) dans le cas où le lieu de production proposé n'est pas le lieu de résidence habituelle du demandeur ni la propriété de celui-ci, une déclaration, datée et signée par le propriétaire du lieu, portant qu'il consent à la production de marihuana dans ce lieu.

(3) La demande de licence ne peut être présentée conjointement avec une autre personne.

DORS/2007-207, art. 6(A).

Applicant's Declaration

28. (1) The declaration of the applicant under paragraph 27(2)(*a*) must indicate

(*a*) the applicant's name, date of birth and gender;

(*b*) the full address of the place where the applicant ordinarily resides as well as the applicant's telephone number and, if applicable, facsimile transmission number and e-mail address;

(*c*) the mailing address of the place referred to in paragraph (*b*), if different;

(*d*) if the applicant is the holder of an authorization to possess, the number of the authorization;

(*e*) the full address of the site where the proposed production of marihuana is to be conducted;

(*f*) the proposed production area;

(*g*) if the proposed production area involves outdoor production entirely or partly indoor and partly outdoor production, that the production site is not adjacent to a school, public playground, day care facility or other public place frequented mainly by persons under 18 years of age;

(*h*) that the dried marihuana will be kept indoors and indicating whether it is proposed to keep it at

(i) the proposed production site, or

(ii) the ordinary place of residence of the applicant, if different; and

(*i*) a description of the security measures that will be implemented at the proposed production site and the proposed site where dried marihuana will be kept.

(2) The declaration must be dated and signed by the applicant and attest that the information contained in it is correct and complete.

Déclaration du demandeur

28. (1) La déclaration du demandeur visée au paragraphe 27(2)*a*) comporte les renseignements suivants :

a) les nom, date de naissance et sexe du demandeur;

b) l'adresse complète de son lieu de résidence habituelle, ainsi que son numéro de téléphone et, le cas échéant, son numéro de télécopieur et son adresse électronique;

c) l'adresse postale de son lieu de résidence habituelle, si elle diffère de l'adresse mentionnée à l'alinéa *b*);

d) dans le cas où le demandeur est titulaire d'une autorisation de possession, le numéro de cette autorisation;

e) l'adresse complète du lieu proposé pour la production de marihuana;

f) une mention indiquant l'aire de production proposée;

g) dans le cas où l'aire de production proposée est soit entièrement à l'extérieur, soit en partie à l'intérieur et en partie à l'extérieur, une mention indiquant que le lieu de production n'est pas adjacent à une école, un terrain de jeu public, une garderie ou tout autre lieu public principalement fréquenté par des personnes de moins de dix-huit ans;

h) une mention selon laquelle la marihuana séchée sera gardée à l'intérieur et indiquant dans lequel des lieux suivants il est proposé de la garder :

(i) le lieu de production proposé,

(ii) le lieu de résidence habituelle du demandeur, si ce lieu diffère du lieu de production;

i) la description des mesures de sécurité qui seront prises dans le lieu de production proposé et dans le lieu proposé pour garder la marihuana séchée.

(2) La déclaration est datée et signée par le demandeur et atteste que les renseignements qui y sont fournis sont exacts et complets.

Issuance of Licence

29. (1) Subject to section 32, if the requirements of sections 27 and 28 are met, the Minister shall issue a personal-use production licence to the applicant.

(2) The licence shall indicate

(*a*) the name, date of birth and gender of the holder of the licence;

(*b*) the full address of the place where the holder of the licence ordinarily resides;

(*c*) the licence number;

(*d*) the full address of the site where the production of marihuana is authorized;

(*e*) the authorized production area;

(*f*) the maximum number of marihuana plants that may be under production at the production site at any time;

(*g*) the full address of the site where the dried marihuana may be kept;

(*h*) the maximum quantity of dried marihuana, in grams, that may be kept at the site authorized under paragraph (*g*) at any time;

(*i*) the date of issue; and

(*j*) the date of expiry.

SOR/2007-207, s. 7(E).

Délivrance de la licence

29. (1) Sous réserve de l'article 32, le ministre délivre une licence de production à des fins personnelles au demandeur si les exigences visées aux articles 27 et 28 sont remplies.

(2) La licence comporte les renseignements suivants :

a) les nom, date de naissance et sexe du titulaire de la licence;

b) l'adresse complète de son lieu de résidence habituelle;

c) le numéro de la licence;

d) l'adresse complète du lieu où la production de marihuana est autorisée;

e) l'aire de production autorisée;

f) le nombre maximum de plants de marihuana qui peuvent être produits à la fois dans le lieu de production;

g) l'adresse complète du lieu où peut être gardée la marihuana séchée;

h) la quantité maximale de marihuana séchée, en grammes, qui peut être gardée à la fois dans le lieu autorisé aux termes de l'alinéa *g*);

i) la date de délivrance;

j) la date d'expiration.

DORS/2007-207, art. 7(A).

Maximum Number of Plants

30. (1) In the formulas in subsection (2),

(*a*) "A" is the daily amount of dried marihuana, in grams, stated under paragraph 6(1)(*c*) or subparagraph 19(2)(*d*)(i), whichever applies;

(*b*) "C" is a constant equal to 1, representing the growth cycle of a marihuana plant from seeding to harvesting; and

(*c*) "D" is the maximum number of marihuana plants referred to in subsection 21(2) and paragraphs 29(2)(*f*) and 40(2)(*g*).

Nombre de plants en production

30. (1) Dans les formules figurant au paragraphe (2) :

a) « A » représente la quantité quotidienne de marihuana séchée, en grammes, déterminée aux termes de l'alinéa 6(1)*c*) ou du sous-alinéa 19(2)*d*)(i), selon le cas;

b) « C » représente une constante de un, correspondant au cycle de croissance d'un plant de marihuana depuis l'ensemencement jusqu'à la récolte;

(2) The maximum number of marihuana plants referred to in paragraph (1)(*c*) is determined according to whichever of the following formulas applies:

(*a*) if the production area is entirely indoors,

$$D = [(A \times 365) \div (B \times 3C)] \times 1.2$$

where B is 30 grams, being the expected yield of dried marihuana per plant,

(*b*) if the production area is entirely outdoors,

$$D = [(A \times 365) \div (B \times C)] \times 1.3$$

where B is 250 grams, being the expected yield of dried marihuana per plant; and

(*c*) if the production area is partly indoors and partly outdoors,

(i) for the indoor period

$$D = [(A \times 182.5) \div (B \times 2C)] \times 1.2$$

where B is 30 grams, being the expected yield of dried marihuana per plant, and

(ii) for the outdoor period

$$D = [(A \times 182.5) \div (B \times C)] \times 1.3$$

where B is 250 grams, being the expected yield of dried marihuana per plant.

(3) If paragraph (2)(*c*) applies, the maximum number of marihuana plants for both periods of production shall be mentioned in the licence to produce.

(4) If the number determined for D is not a whole number, it shall be rounded to the next-highest whole number.

SOR/2005-177, s. 17.

Maximum Quantity of Dried Marihuana in Storage

31. (1) In the formulas in subsection (2),

c) « D » représente le nombre maximum de plants de marihuana visé au paragraphe 21(2) et aux alinéas 29(2)*f*) et 40(2)*g*).

(2) Le nombre maximum de plants de marihuana visé à l'alinéa (1)*c*) se calcule selon les formules suivantes :

a) dans le cas où l'aire de production est entièrement à l'intérieur :

$$D = [(A \times 365) \div (B \times 3C)] \times 1,2$$

où B représente le rendement prévu de marihuana séchée par plant, soit 30 grammes;

b) dans le cas où l'aire de production est entièrement à l'extérieur :

$$D = [(A \times 365) \div (B \times C)] \times 1,3$$

où B représente le rendement prévu de marihuana séchée par plant, soit 250 grammes;

c) dans le cas où l'aire de production est en partie à l'intérieur et en partie à l'extérieur :

(i) pour la période de production intérieure :

$$D = [(A \times 182,5) \div (B \times 2C)] \times 1,2$$

où B représente le rendement prévu de marihuana séchée par plant, soit 30 grammes;

(ii) pour la période de production extérieure :

$$D = [(A \times 182,5) \div (B \times C)] \times 1,3$$

où B représente le rendement prévu de marihuana séchée par plant, soit 250 grammes.

(3) Dans le cas visé à l'alinéa (2)*c*), le nombre maximum de plants de marihuana est indiqué, sur la licence de production, pour chacune des périodes de production intérieure et extérieure.

(4) Dans le cas où le résultat du calcul visé au présent article n'est pas un nombre entier, il est arrondi au nombre entier supérieur.

DORS/2005-177, art. 17.

Quantité de marihuana séchée entreposée

31. (1) Dans les formules figurant au paragraphe (2) :

(*a*) "D" is,

(i) if the production area is entirely indoors or outdoors, the maximum number of marihuana plants that the holder of the licence to produce is authorized to produce, calculated under paragraphs 30(2)(*a*) or (*b*), whichever applies,

(ii) if the production area is partly indoors and partly outdoors, the maximum number of marihuana plants that the holder of the licence to produce is authorized to produce, calculated under subparagraph 30(2)(*c*)(ii); and

(*b*) "E" is the maximum quantity of dried marihuana mentioned in subsection 21(2) and in paragraphs 29(2)(*h*) and 40(2)(*i*).

(2) The maximum quantity of dried marihuana referred to in paragraph (1)(*b*) is determined according to whichever of the following formulas applies:

(*a*) if the production area is entirely indoors,

$$E = D \times B \times 1.5$$

where B is 30 grams, being the expected yield of dried marihuana per plant,

(*b*) if the production area is entirely outdoors,

$$E = D \times B \times 1.5$$

where B is 250 grams, being the expected yield of dried marihuana per plant, and

(*c*) if the production area is partly indoors and partly outdoors,

$$E = D \times B \times 1.5$$

where B is 250 grams, being the expected yield of dried marihuana per plant.

SOR/2005-177, s. 18.

Grounds for Refusal

32. The Minister shall refuse to issue a personal-use production licence if

a) « D » représente :

(i) dans le cas où l'aire de production est soit entièrement à l'intérieur, soit entièrement à l'extérieur, le nombre maximum de plants de marihuana, visé aux alinéas 30(2)*a*) ou *b*), selon le cas, que le titulaire de la licence est autorisé à produire,

(ii) dans le cas où l'aire de production est en partie à l'intérieur et en partie à l'extérieur, le nombre maximum de plants de marihuana, visé au sous-alinéa 30(2)*c*)(ii), que le titulaire de la licence est autorisé à produire.

b) « E » représente la quantité maximale de marihuana séchée visée au paragraphe 21(2) et aux alinéas 29(2)*h*) et 40(2)*i*).

(2) La quantité maximale de marihuana séchée visée à l'alinéa (1)*b*) se calcule selon les formules suivantes :

a) dans le cas où l'aire de production est entièrement à l'intérieur :

$$E = D \times B \times 1,5$$

où B représente le rendement prévu de marihuana séchée par plant, soit 30 grammes;

b) dans le cas où l'aire de production est entièrement à l'extérieur :

$$E = D \times B \times 1,5$$

où B représente le rendement prévu de marihuana séchée par plant, soit 250 grammes;

c) dans le cas où l'aire de production est en partie à l'intérieur et en partie à l'extérieur :

$$E = D \times B \times 1,5$$

où B représente le rendement prévu de marihuana séchée par plant, soit 250 grammes.

DORS/2005-177, art. 18.

Motifs de refus

32. Le ministre refuse de délivrer la licence de production à des fins personnelles dans les cas suivants :

(*a*) the applicant is not a holder of an authorization to possess;

(*b*) the applicant is not eligible under section 25;

(*c*) any information or statement included in the application is false or misleading;

(*d*) the proposed production site would be a site for the production of marihuana under more than four licences to produce; or

(*e*) the applicant would be the holder of more than two licences to produce.

SOR/2010-63, s. 1.

Expiry of Licence

33. A personal-use production licence expires on the earlier of

(*a*) 12 months after its date of issue, and

(*b*) the date of expiry of the authorization to possess held by the licence holder.

DESIGNATED-PERSON PRODUCTION LICENCE

Authorized Activities

34. (1) The holder of a designated-person production licence is authorized, in accordance with the licence,

(*a*) to produce marihuana for the medical purpose of the person who applied for the licence;

(*b*) to possess and keep, for the purpose mentioned in paragraph (*a*), a quantity of dried marihuana not exceeding the maximum quantity specified in the licence;

(*c*) if the production site specified in the licence is different from the site where dried marihuana may be kept, to transport directly from the first to the second site a quantity of dried marihuana not exceeding the maximum quantity that may be kept under the licence;

a) le demandeur n'est pas titulaire d'une autorisation de possession;

b) le demandeur n'est pas admissible selon l'article 25;

c) la demande comporte des déclarations ou renseignements faux ou trompeurs;

d) le lieu proposé pour la production de marihuana serait visé par plus de quatre licences de production si la licence était délivrée;

e) le demandeur deviendrait titulaire de plus de deux licences de production si la licence était délivrée.

DORS/2010-63, art. 1.

Expiration de la licence

33. La licence de production à des fins personnelles expire à la première des éventualités suivantes à survenir :

a) l'expiration d'une période de douze mois suivant la date de sa délivrance;

b) l'expiration de l'autorisation de possession du titulaire de la licence.

LICENCE DE PRODUCTION À TITRE DE PERSONNE DÉSIGNÉE

Opérations autorisées

34. (1) Le titulaire d'une licence de production à titre de personne désignée est autorisé à mener, conformément à la licence, les opérations suivantes :

a) produire de la marihuana aux fins médicales du demandeur de la licence;

b) avoir en sa possession et garder, aux fins visées à l'alinéa *a*), une quantité de marihuana séchée ne dépassant pas la quantité maximale mentionnée dans la licence;

c) si le lieu de production mentionné dans la licence diffère du lieu où la marihuana séchée peut être gardée, transporter directement du premier lieu jusqu'au second une quantité de marihuana séchée ne dépassant

(*d*) subject to subsection (1.1), if the site specified in the licence where dried marihuana may be kept is different from the place where the person who applied for the licence ordinarily resides, to send or transport directly from that site to the place of residence a quantity of dried marihuana not exceeding the maximum quantity specified in the authorization to possess on the basis of which the licence was issued; and

(*e*) to provide or deliver to the person who applied for the licence a quantity of dried marihuana not exceeding the maximum quantity specified in the authorization to possess on the basis of which the licence was issued.

(1.1) A holder of a designated-person production licence sending dried marihuana under paragraph (1)(*d*) shall

(*a*) securely pack the marihuana in a package that

(i) will not open or permit the escape of its contents during handling and transportation,

(ii) is sealed so that the package cannot be opened without the seal being broken,

(iii) prevents the escape of odour associated with the marihuana, and

(iv) prevents the contents from being identified without the package being opened; and

(*b*) use a method of sending that involves

(i) a means of tracking the package during transit,

(ii) obtaining a signed acknowledgment of receipt, and

(iii) safekeeping of the package during transit.

(2) [Repealed, SOR/2003-387, s. 8]

SOR/2003-387, s. 8; SOR/2005-177, s. 19; SOR/2007-207, s. 8(E).

pas la quantité maximale qui peut être gardée en vertu de la licence;

d) sous réserve du paragraphe (1.1), si le lieu mentionné dans la licence où la marihuana séchée peut être gardée diffère du lieu de résidence habituelle du demandeur de la licence, expédier ou transporter du premier lieu directement jusqu'au second une quantité de marihuana séchée ne dépassant pas la quantité maximale mentionnée dans l'autorisation de possession sur le fondement de laquelle la licence a été délivrée;

e) fournir ou livrer au demandeur de la licence une quantité de marihuana séchée ne dépassant pas la quantité maximale mentionnée dans l'autorisation de possession sur le fondement de laquelle la licence a été délivrée.

(1.1) Le titulaire d'une licence de production à titre de personne désignée qui expédie, en vertu de l'alinéa (1)*d*), de la marihuana séchée doit prendre les mesures ci-après :

a) préparer son colis de façon à assurer la sécurité du contenu et conformément aux exigences suivantes :

(i) le colis ne peut s'ouvrir ou laisser son contenu s'échapper pendant la manutention ou le transport,

(ii) il est scellé de sorte qu'il soit impossible de l'ouvrir sans en briser le sceau,

(iii) son étanchéité est telle qu'aucune odeur de marihuana ne peut s'en échapper,

(iv) il est impossible d'en connaître le contenu à moins de l'ouvrir;

b) employer le moyen d'expédition qui assurera les fins suivantes :

(i) le repérage du colis pendant le transport,

(ii) l'obtention d'un accusé de réception signé,

(iii) la garde diligente du colis durant le transport.

(2) [Abrogé, DORS/2003-387, art. 8]

DORS/2003-387, art. 8; DORS/2005-177, art. 19; DORS/2007-207, art. 8(A).

Eligibility for Licence

35. A person is eligible to be issued a designated-person production licence only if the person is an individual who ordinarily resides in Canada and who

(*a*) has reached 18 years of age; and

(*b*) has not been found guilty, as as adult, within the 10 years preceding the application, of

(i) a designated drug offence, or

(ii) an offence committed outside Canada that, if committed in Canada, would have constituted a designated drug offence.

SOR/2007-207, s. 9.

Admissibilité à la licence

35. Est admissible à la licence de production à titre de personne désignée la personne physique qui réside habituellement au Canada et qui :

a) a atteint l'âge de dix-huit ans;

b) n'a pas été reconnue coupable, en tant qu'adulte, au cours des dix années précédant la demande, de la perpétration d'une des infractions suivantes :

(i) une infraction désignée en matière de drogue,

(ii) une infraction commise à l'étranger qui, si elle avait été commise au Canada, aurait constitué une infraction désignée en matière de drogue.

DORS/2007-207, art. 9.

Application for Licence

[SOR/2005-177, s. 20]

36. (1) An application for a designated-person production licence shall be considered only if it is made by a person who

(*a*) is the holder of an authorization to possess on the basis of which the licence is applied for; or

(*b*) is not the holder of an authorization to possess, but either has applied for an authorization to possess or is applying for an authorization to possess concurrently with the licence application.

(2) If paragraph (1)(*b*) applies, the Minister must grant or refuse the application for an authorization before considering the licence application.

37. (1) A person mentioned in subsection 36(1) who is seeking to have a designated-person production licence issued to a designated person shall submit an application to the Minister.

(2) The application must include

(*a*) a declaration by the applicant;

(*b*) a declaration by the designated person;

Demande de licence

[DORS/2005-177, art. 20]

36. (1) La demande de licence de production à titre de personne désignée n'est examinée que si elle est présentée par une personne :

a) soit qui est titulaire d'une autorisation de possession sur le fondement de laquelle la licence est demandée;

b) soit qui n'est pas titulaire d'une autorisation de possession sur le fondement de laquelle la licence est demandée, mais qui a présenté une demande d'autorisation, ou la présente en même temps que la demande de licence.

(2) En cas d'application de l'alinéa (1)*b*), le ministre statue sur la demande d'autorisation de possession avant d'examiner la demande de licence.

37. (1) La personne visée au paragraphe 36(1) qui souhaite qu'une licence de production à titre de personne désignée soit délivrée à une personne désignée présente une demande à cet effet au ministre.

(2) La demande comporte les éléments suivants :

a) une déclaration du demandeur;

b) une déclaration de la personne désignée;

(*c*) if the proposed production site is not the applicant's ordinary place of residence or of the designated person and is not owned by the applicant or the designated person, a declaration dated and signed by the owner of the site consenting to the production of marihuana at the site;

(*d*) a document issued by a Canadian police force establishing that, within the 10 years preceding the application, the designated person has not been convicted, as an adult, of a designated drug offence; and

(*e*) two copies of a current photograph of the designated person that complies with the standards specified in paragraphs 10(*a*) to (*c*), each of which is certified by the applicant, on the reverse side, to be an accurate representation of the designated person.

(3) The application may not be made jointly with another person.

SOR/2007-207, s. 10.

Applicant's Declaration

38. (1) The declaration of the applicant under paragraph 37(2)(*a*) must

(*a*) include the information referred to in paragraphs 28(1)(*a*) to (*d*);

(*b*) indicate the name, date of birth and gender of the designated person;

(*c*) indicate the full address of the place where the designated person ordinarily resides as well as the designated person's telephone number and, if applicable, facsimile transmission number and e-mail address; and

(*d*) indicate the mailing address of the place referred to in paragraph (*c*), if different.

(2) The declaration must be dated and signed by the applicant and attest that the information contained in the declaration is complete and correct.

c) dans le cas où le lieu de production proposé n'est pas le lieu de résidence habituelle du demandeur ou de la personne désignée ni la propriété de l'un d'eux, une déclaration, datée et signée par le propriétaire du lieu, portant qu'il consent à la production de marihuana dans ce lieu;

d) un document émanant d'un service de police canadien établissant que la personne désignée n'a pas été reconnue coupable, en tant qu'adulte, au cours des dix années précédant la demande, de la perpétration d'une infraction désignée en matière de drogue;

e) deux copies d'une photographie récente de la personne désignée satisfaisant aux exigences des alinéas 10*a*) à *c*), chacune comportant au verso une déclaration signée par le demandeur attestant que la photographie représente bien la personne désignée.

(3) La demande de licence ne peut être présentée conjointement avec une autre personne.

DORS/2007-207, art. 10.

Déclaration du demandeur

38. (1) La déclaration du demandeur visée à l'alinéa 37(2)*a*) comporte les renseignements suivants :

a) les renseignements visés aux alinéas 28(1)*a*) à *d*);

b) les nom, date de naissance et sexe de la personne désignée;

c) l'adresse complète du lieu de résidence habituelle de la personne désignée, ainsi que son numéro de téléphone et, le cas échéant, son numéro de télécopieur et son adresse électronique;

d) l'adresse postale du lieu de résidence habituelle de la personne désignée, si elle diffère de l'adresse mentionnée à l'alinéa *c*).

(2) La déclaration est datée et signée par le demandeur et atteste que les renseignements qui y sont fournis sont exacts et complets.

Designated Person's Declaration

39. (1) The declaration of the designated person under paragraph 37(2)(*b*) must

(*a*) include the information referred to in paragraphs 28(1)(*e*) to (*g*) and (*i*);

(*b*) indicate that the dried marihuana will be kept indoors and whether it is proposed to keep it at:

(i) the proposed production site, or

(ii) the ordinary place of residence of the designated person, if the proposed production site is not the ordinary place of residence of the applicant; and

(*c*) indicate that, within the 10 years preceding the application, the designated person has not been convicted, as an adult, of

(i) a designated drug offence, or

(ii) an offence that, if committed in Canada, would have constituted a designated drug offence.

(2) The declaration must be dated and signed by the designated person and attest that the information contained in it is correct and complete.

SOR/2007-207, s. 11.

Déclaration de la personne désignée

39. (1) La déclaration de la personne désignée visée à l'alinéa 37(2)*b*) comprend les renseignements suivants :

a) les renseignements visés aux alinéas 28(1)*e*) à *g*) et *i*);

b) une mention selon laquelle la marihuana séchée sera gardée à l'intérieur et indiquant dans lequel des lieux suivants il est proposé de la garder :

(i) le lieu de production proposé,

(ii) le lieu de résidence habituelle de la personne désignée, dans le cas où le lieu de production proposé diffère du lieu de résidence habituelle du demandeur;

c) la mention que la personne désignée n'a pas été reconnue coupable, en tant qu'adulte, au cours des dix années précédant la demande, de la perpétration d'une des infractions suivantes :

(i) une infraction désignée en matière de drogue,

(ii) une infraction commise à l'étranger qui, si elle avait été commise au Canada, aurait constitué une infraction désignée en matière de drogue.

(2) La déclaration est datée et signée par la personne désignée et atteste que les renseignements qui y sont fournis sont exacts et complets.

DORS/2007-207, art. 11.

Issuance of Licence

40. (1) Subject to section 41, if the requirements of sections 37 to 39 are met, the Minister shall issue a designated-person production licence to the designated person.

(2) The licence shall indicate

(*a*) the name, date of birth and gender of the holder of the licence;

(*b*) the name, date of birth and gender of the person for whom the holder of the licence is authorized to

Délivrance de la licence

40. (1) Sous réserve de l'article 41, le ministre délivre à la personne désignée une licence de production à titre de personne désignée si les exigences visées aux articles 37 à 39 sont remplies.

(2) La licence comporte les renseignements suivants :

a) les nom, date de naissance et sexe du titulaire de la licence;

b) les nom, date de naissance et sexe de la personne pour le compte de laquelle le titulaire de la licence est autorisé à produire de la marihuana, ainsi que

produce marihuana and the full address of that person's place of ordinary residence;

(*c*) the full address of the place where the holder of the licence ordinarily resides;

(*d*) the licence number;

(*e*) the full address of the site where the production of marihuana is authorized;

(*f*) the authorized production area;

(*g*) the maximum number of marihuana plants that may be under production at the production site at any time;

(*h*) the full address of the site where the dried marihuana may be kept;

(*i*) the maximum quantity of dried marihuana, in grams, that may be kept at the site authorized under paragraph (*h*) at any time;

(*j*) the date of issue; and

(*k*) the date of expiry.

SOR/2007-207, s. 12.

Grounds for Refusal

41. The Minister shall refuse to issue a designated-person production licence

(*a*) if the designated person is not eligible under section 35;

(*b*) if the designated person would become the holder of more than two licences to produce; or

(*b.1*) [Repealed, SOR/2009-142, s. 1]

(*c*) for any reason referred to in paragraphs 32(*a*) to (*d*).

SOR/2003-387, s. 9; SOR/2009-142, s. 1.

Expiry of Licence

42. A designated-person production licence expires on the earlier of

(*a*) 12 months after its date of issue, and

l'adresse complète du lieu de résidence habituelle de cette personne;

c) l'adresse complète du lieu de résidence habituelle du titulaire de la licence;

d) le numéro de la licence;

e) l'adresse complète du lieu où la production de marihuana est autorisée;

f) l'aire de production autorisée;

g) le nombre maximum de plants de marihuana qui peuvent être produits à la fois dans le lieu de production;

h) l'adresse complète du lieu où peut être gardée la marihuana séchée;

i) la quantité maximale de marihuana séchée, en grammes, qui peut être gardée à la fois dans le lieu autorisé aux termes de l'alinéa *h*);

j) la date de délivrance;

k) la date d'expiration.

DORS/2007-207, art. 12.

Motifs de refus

41. Le ministre refuse de délivrer la licence de production à titre de personne désignée :

a) dans le cas où la personne désignée n'est pas admissible selon l'article 35;

b) dans le cas où la personne désignée deviendrait titulaire de plus de deux licences de production;

b.1) [Abrogé, DORS/2009-142, art. 1]

c) dans les cas visés aux alinéas 32*a*) à *d*).

DORS/2003-387, art. 9; DORS/2009-142, art. 1.

Expiration de la licence

42. La licence de production à titre de personne désignée expire à la première des éventualités suivantes à survenir :

(*b*) the date of expiry of the authorization to possess on the basis of which the licence was issued.

a) l'expiration d'une période de douze mois suivant la date de la délivrance;

b) l'expiration de l'autorisation de possession sur le fondement de laquelle la licence a été délivrée.

General Provisions

Dispositions générales

Renewal of Licence to Produce

Renouvellement de la licence de production

43. An application to renew a licence to produce shall be made to the Minister by the person who applied for the licence and shall include

(*a*) the licence number; and

(*b*) the material required under sections 27 and 28 or under sections 37 to 39, whichever apply.

43. La demande de renouvellement d'une licence de production est présentée au ministre par le demandeur de la licence et comporte les renseignements suivants :

a) le numéro de la licence visée;

b) les éléments exigés aux articles 27 et 28 ou aux articles 37 à 39, selon le cas.

44. Subject to section 45, if an application complies with section 43, the Minister shall renew the licence to produce.

44. Sous réserve de l'article 45, le ministre renouvelle la licence de production si la demande est conforme aux exigences de l'article 43.

45. The Minister shall refuse an application to renew a licence to produce for any reason referred to in section 32 or 41, whichever applies.

45. Le ministre refuse de renouveler la licence de production dans les cas visés aux articles 32 ou 41, selon le cas.

Change of Production Site or Production Area

[SOR/2007-207, s. 13(F)]

Changement de lieu de production ou d'aire de production

[DORS/2007-207, art. 13(F)]

46. (1) A person who applied for a licence to produce shall submit an application to the Minister to amend the licence if the person proposes to change the location of the production site or the production area.

(2) The application under subsection (1) shall include

(*a*) the licence number;

(*b*) in the case of a proposed change in the location of the production site, the full address of the proposed new site and supporting reasons for the proposed change;

(*c*) in the case of a proposed change in the production area, the proposed new production area and supporting reasons for the proposed change; and

46. (1) Le demandeur de la licence de production présente au ministre une demande de modification de la licence s'il envisage de changer de lieu de production ou d'aire de production.

(2) La demande de modification comporte les éléments suivants :

a) le numéro de la licence;

b) si un changement de lieu de production est envisagé, l'adresse complète du lieu de production proposé et les motifs à l'appui du changement;

c) si un changement d'aire de production est envisagé, une mention de l'aire de production proposée et les motifs à l'appui du changement;

(*d*) the material required under sections 27 and 28 or sections 37 to 39, whichever apply.

SOR/2007-207, s. 14.

47. Subject to section 48, if an application complies with subsection 46(2), the Minister shall amend the licence to produce.

48. The Minister shall refuse to amend a licence to produce for any reason referred to in section 32 or 41, whichever applies.

Change of Site Where Dried Marihuana Is Kept

[SOR/2007-207, s. 15(F)]

49. (1) If the holder of a licence to produce proposes to change the location of the site where dried marihuana is kept, the holder shall apply to the Minister in writing, not less than 15 days before the intended effective date of the change.

(2) The application shall indicate

(*a*) the new site, selected from among those permitted under paragraph 28(1)(*h*) or 39(1)(*b*), whichever applies; and

(*b*) the intended effective date of the change.

(3) On receipt of an application that complies with subsection (2), the Minister shall amend the licence to reflect the change stated in the application.

SOR/2007-207, s. 16(F).

Notice of Change of Information

50. (1) The holder of a licence to produce shall, within 10 days after the occurrence, notify the Minister in writing of

(*a*) a change in the holder's name; or

(*b*) subject to subsection (2), a change in the holder's address of ordinary residence.

(2) If the holder's address of ordinary residence is also the address of the site for the production of marihuana under the licence, the holder shall make an application under section 46.

d) les éléments exigés aux articles 27 et 28 ou aux articles 37 à 39, selon le cas.

DORS/2007-207, art. 14.

47. Sous réserve de l'article 48, le ministre modifie la licence de production si la demande est conforme aux exigences du paragraphe 46(2).

48. Le ministre refuse de modifier la licence de production dans les cas visés aux articles 32 ou 41, selon le cas.

Changement de lieu de garde de la marihuana séchée

[DORS/2007-207, art. 15(F)]

49. (1) Le titulaire d'une licence de production qui envisage un changement quant au lieu où est gardée la marihuana séchée présente une demande de modification écrite au ministre au moins quinze jours avant la date du changement proposé.

(2) La demande de modification comporte les éléments suivants :

a) le nouveau lieu choisi parmi ceux visés aux alinéas 28(1)*h*) ou 39(1)*b*) selon le cas;

b) la date proposée du changement.

(3) Sur réception de la demande conforme au paragraphe (2), le ministre modifie la licence en conséquence.

DORS/2007-207, art. 16(F).

Avis de modification de renseignements

50. (1) Le titulaire d'une licence de production avise par écrit le ministre des changements suivants, dans les dix jours suivant leur survenance :

a) toute modification à son nom;

b) sous réserve du paragraphe (2), tout changement de son adresse de résidence habituelle.

(2) Si l'adresse de résidence habituelle du titulaire de la licence de production est aussi l'adresse du lieu où la production de marihuana est autorisée, le titulaire doit présenter une demande de modification aux termes de l'article 46.

(3) A notice under paragraph (1)(*a*) must be accompanied by proof of the change.

(4) On receiving a notice under subsection (1), the Minister shall amend the licence accordingly.

SOR/2007-207, s. 17.

51. [Repealed, SOR/2005-177, s. 22]

Restrictions

52. The holder of a licence to produce may produce marihuana only at the production site and production area authorized in the licence.

SOR/2007-207, s. 18.

52.1 The holder of a licence to produce shall not simultaneously produce marihuana partly indoors and partly outdoors.

SOR/2007-207, s. 18.

53. If the production area for a licence to produce permits the production of marihuana entirely outdoors or partly indoors and partly outdoors, the holder shall not produce marihuana outdoors if the production site is adjacent to a school, public playground, day care facility or other public place frequented mainly by persons under 18 years of age.

54. [Repealed, SOR/2003-387, s. 10]

54.1 [Repealed, SOR/2010-63, s. 2]

55. The holder of a licence to produce may keep dried marihuana only indoors at the site authorized in the licence for that purpose.

56. [Repealed, SOR/2003-387, s. 12]

Inspection

57. (1) To verify that the production of marihuana is in conformity with these Regulations and a licence to produce, an inspector may, at any reasonable time, enter any place where the inspector believes on reasonable grounds that marihuana is being produced or kept by the holder of the licence to produce, and may, for that purpose,

(3) Le titulaire de la licence de production joint à l'avis fourni en application de l'alinéa (1)*a*) une preuve du changement.

(4) Sur réception de l'avis prévu au paragraphe (1), le ministre modifie la licence en conséquence.

DORS/2007-207, art. 17.

51. [Abrogé, DORS/2005-177, art. 22]

Restrictions

52. Le titulaire d'une licence de production ne peut produire de la marihuana que dans le lieu de production et l'aire de production autorisés dans la licence.

DORS/2007-207, art. 18.

52.1 Le titulaire d'une licence de production ne peut pas produire de la marihuana à la fois en partie à l'intérieur et en partie à l'extérieur.

DORS/2007-207, art. 18.

53. Dans le cas où le titulaire d'une licence de production est autorisé à produire des plants de marihuana dans une aire qui est soit entièrement à l'extérieur, soit en partie à l'intérieur et en partie à l'extérieur, il ne peut les produire à l'extérieur dans un lieu de production qui est adjacent à une école, un terrain de jeu public, une garderie ou tout autre lieu public principalement fréquenté par des personnes de moins de dix-huit ans.

54. [Abrogé, DORS/2003-387, art. 10]

54.1 [Abrogé, DORS/2010-63, art. 2]

55. Le titulaire d'une licence de production ne peut garder la marihuana séchée qu'à l'intérieur, dans le lieu autorisé à cette fin dans la licence.

56. [Abrogé, DORS/2003-387, art. 12]

Inspection

57. (1) L'inspecteur peut, pour s'assurer que le titulaire d'une licence de production se conforme au présent règlement et à sa licence, procéder à toute heure convenable à la visite de tout lieu où il a des motifs raisonnables de croire que le titulaire produit ou garde de la marihuana. Il peut alors à cette fin :

(*a*) open and examine any receptacle or package found there that could contain marihuana;

(*b*) examine anything found there that is used or may be capable of being used to produce or keep marihuana;

(*c*) examine any records, electronic data or other documents found there dealing with marihuana, other than records dealing with the medical condition of a person, and make copies or take extracts;

(*d*) use, or cause to be used, any computer system found there to examine electronic data referred to in paragraph (*c*);

(*e*) reproduce, or cause to be reproduced, any document from electronic data referred to in paragraph (*c*) in the form of a printout or other output;

(*f*) take any document or output referred to in paragraph (*c*) or (*e*) for examination or copying;

(*g*) examine any substance found there and, for the purpose of analysis, take samples, as reasonably required; and

(*h*) seize and detain, in accordance with Part IV of the Act, any substance found there, if the inspector believes, on reasonable grounds, that it is necessary.

a) ouvrir et examiner tout contenant trouvé sur les lieux et pouvant contenir de la marihuana;

b) examiner toute chose trouvée sur les lieux et servant — ou susceptible de servir — à produire ou à garder la marihuana;

c) examiner les registres, les données électroniques et tous autres documents trouvés sur les lieux et se rapportant à la marihuana, à l'exception des dossiers sur l'état de santé de personnes, et les reproduire en tout ou en partie;

d) utiliser ou voir à ce que soit utilisé, pour examen des données électroniques visées à l'alinéa *c*), tout système informatique se trouvant sur les lieux;

e) reproduire ou faire reproduire, notamment sous forme d'imprimé, tout document provenant des données électroniques;

f) emporter, pour examen ou reproduction, tout document visé à l'alinéa *c*), de même que tout document tiré des données électroniques conformément à l'alinéa *e*);

g) examiner toute substance trouvée sur les lieux et en prélever, en tant que de besoin, des échantillons pour analyse;

h) saisir et retenir, conformément à la partie IV de la Loi, toute substance dont il juge, pour des motifs raisonnables, la saisie et la rétention nécessaires.

(2) An inspector may not enter a dwelling-place without the consent of an occupant of the dwelling-place.

(2) Dans le cas d'un local d'habitation, l'inspecteur ne peut procéder à la visite sans le consentement de l'un de ses occupants.

(3) An inspector who seizes marihuana shall take such measures as are reasonable in the circumstances to give to the owner or other person in charge of the place where the seizure occurred notice of the seizure and of the location where the seized marihuana is being kept or stored.

(3) L'inspecteur qui procède à la saisie de marihuana lors d'une visite prend les mesures justifiées dans les circonstances pour en aviser le propriétaire ou le responsable du lieu visité, en précisant l'endroit où se trouvent les biens saisis.

(4) If an inspector determines that the detention of marihuana seized under paragraph (1)(*h*) is no longer necessary to ensure compliance with these Regulations, the inspector shall notify in writing the owner or other

(4) L'inspecteur qui juge que la rétention de la marihuana saisie aux termes de l'alinéa (1)*h*) n'est plus nécessaire pour assurer l'application du présent règlement en avise par écrit le propriétaire ou le responsable du lieu

person in charge of the place where the seizure occurred of that determination and, on being issued a receipt for the marihuana, shall return it to that person.

SOR/2007-207, s. 19.

visité lors de la saisie et, sur réception d'un reçu à cet effet, lui restitue les biens.

DORS/2007-207, art. 19.

PART 3

GENERAL OBLIGATIONS

[SOR/2005-177, s. 23]

Documents

[SOR/2005-177, s. 23]

58. (1) On demand, the holder of an authorization to possess must show proof of their authority to possess dried marihuana to a police officer.

(2) On demand, the holder of a licence to produce must show the licence to a police officer.

SOR/2005-177, s. 24(E).

59. No one may add to, delete or obliterate from, or alter in any other way, an authorization to possess, a licence to produce or any other document provided to the holder of an authorization to possess or a licence to produce as proof of their authorization or licence.

SOR/2005-177, s. 25.

60. (1) If an authorization to possess, licence to produce or any other document provided to the holder of an authorization to possess or a licence to produce as proof of their authorization or licence is amended, the holder of the authorization or licence shall, within 30 days after receiving the amended document, return the replaced document to the Minister.

(2) If an authorization to possess or licence to produce is revoked, the holder of the authorization or licence shall, within 30 days after the revocation, return to the Minister the revoked document and any other document provided to the holder of the authorization or the licence as proof of their authorization or licence.

SOR/2005-177, s. 25; SOR/2007-207, s. 20(F).

PARTIE 3

OBLIGATIONS GÉNÉRALES

[DORS/2005-177, art. 23]

Documents

[DORS/2005-177, art. 23]

58. (1) Le titulaire d'une autorisation de possession présente à tout agent de police qui lui en fait la demande la preuve qu'il est autorisé à posséder de la marihuana séchée.

(2) Le titulaire d'une licence de production montre celle-ci à tout agent de police qui lui en fait la demande.

DORS/2005-177, art. 24(A).

59. Il est interdit de modifier de quelque façon que ce soit, notamment par adjonction ou suppression, une autorisation de possession, une licence de production ou tout autre document prouvant que le titulaire est autorisé à posséder de la marihuana séchée ou à en produire.

DORS/2005-177, art. 25.

60. (1) Dans le cas où l'autorisation de possession, la licence de production ou tout autre document prouvant l'autorisation de posséder de la marihuana séchée ou d'en produire est modifié, le titulaire doit, dans les trente jours suivant la date de réception du document de remplacement, remettre au ministre le document remplacé.

(2) Dans le cas où l'autorisation de possession ou la licence de production est révoquée, le titulaire doit, dans les trente jours suivant la révocation, remettre au ministre le document révoqué ainsi que tout autre document prouvant son autorisation de posséder de la marihuana séchée ou d'en produire.

DORS/2005-177, art. 25; DORS/2007-207, art. 20(F).

Security and Reporting Loss or Theft

61. (1) The holder of an authorization to possess or a licence to produce shall maintain measures necessary to ensure the security of the marihuana in their possession as well as the authorization or licence, or both, issued to them.

(2) In the case of the loss or theft of marihuana or of the holder's authorization or licence, the holder of the authorization or licence shall, on becoming aware of the occurrence,

(*a*) within the next 24 hours, notify a member of a police force; and

(*b*) within the next 72 hours, notify the Minister, in writing, and include confirmation that the notice required under paragraph (*a*) has been given.

Revocation

62. (1) The Minister shall revoke the authorization to possess and any licence to produce issued on the basis of the authorization, if the holder of an authorization requests that the authorization be revoked.

(2) Subject to section 64, the Minister shall revoke an authorization to possess and any licence to produce issued on the basis of the authorization if

(*a*) the holder of the authorization is not eligible under section 3;

(*b*) the medical practitioner who made the medical declaration under paragraph 4(2)(*b*) for the holder of the authorization advises the Minister in writing that the continued use of marihuana by the holder is contraindicated.

(*c*) the authorization was issued on the basis of false or misleading information; or

(*d*) the photograph submitted under paragraph 4(2)(*c*) or section 14 as part of the application for the authorization or renewal is not an accurate representation of the holder of the authorization.

SOR/2003-387, s. 13; SOR/2005-177, s. 26.

Sécurité et rapport de perte ou vol

61. (1) Le titulaire d'une autorisation de possession ou d'une licence de production prend les mesures de sécurité nécessaires à l'égard de la marihuana qu'il a en sa possession et à l'égard de son autorisation ou de sa licence.

(2) En cas de perte ou de vol de marihuana, de son autorisation ou de sa licence, le titulaire de l'autorisation ou de la licence :

a) en avise un membre d'un corps policier dans les vingt-quatre heures suivant la découverte;

b) en avise le ministre par écrit, dans les soixante-douze heures suivant la découverte, et lui confirme que l'avis prévu à l'alinéa *a*) a été donné.

Révocation

62. (1) Le ministre révoque l'autorisation de possession et, le cas échéant, la licence de production délivrée sur le fondement de cette autorisation si le titulaire de l'autorisation demande que son autorisation soit révoquée.

(2) Sous réserve de l'article 64, le ministre révoque l'autorisation de possession et, le cas échéant, la licence de production délivrée sur le fondement de cette autorisation dans les cas suivants :

a) le titulaire de l'autorisation n'est pas admissible selon l'article 3;

b) le médecin qui a fourni la déclaration médicale visée à l'alinéa 4(2*)b*) avise le ministre par écrit que l'usage continu de la marihuana est contre-indiqué pour le titulaire;

c) l'autorisation a été délivrée sur la foi de renseignements faux ou trompeurs;

d) la photographie fournie, en application de l'alinéa 4(2)*c*) ou de l'article 14, avec la demande d'autorisation ou de renouvellement ne représente pas bien le titulaire de l'autorisation.

DORS/2003-387, art. 13; DORS/2005-177, art. 26.

63. (1) On request by the holder of a licence to produce, the Minister shall revoke the licence.

(2) Subject to section 64, the Minister shall revoke a licence to produce if

(*a*) the holder is not eligible under section 25 or 35, whichever applies;

(*b*) the holder of a personal-use production licence is found guilty of a designated marihuana offence committed after the date of issue of the licence;

(*c*) the holder of a designated-person production licence is found guilty of a designated drug offence committed after the date of issue of the licence;

(*c.1*) the holder of a licence to produce contravenes section 52;

(*d*) the holder of a licence to produce marihuana outdoors produces marihuana in contravention of section 53;

(*e*) the photograph submitted under paragraph 37(2)(*e*) or section 43 as part of the application for a designated-person production licence or renewal is not an accurate representation of the designated person; or

(*f*) the licence to produce was issued on the basis of false or misleading information.

SOR/2010-63, s. 3.

63. (1) Le ministre révoque la licence de production si le titulaire en fait la demande.

(2) Sous réserve de l'article 64, le ministre révoque la licence de production dans les cas suivants :

a) le titulaire de la licence n'est pas admissible selon les articles 25 ou 35, selon le cas;

b) le titulaire de la licence de production à des fins personnelles est reconnu coupable d'une infraction désignée relativement à la marihuana commise après la délivrance de la licence;

c) le titulaire de la licence de production à titre de personne désignée est reconnu coupable d'une infraction désignée en matière de drogue commise après la délivrance de la licence;

c.1) le titulaire d'une licence de production contrevient à l'article 52;

d) le titulaire de la licence de production produit de la marihuana à l'extérieur en contravention de l'article 53;

e) la photographie fournie, en application du paragraphe 37(2)*e*) ou de l'article 43, avec la demande de licence de production à titre de personne désignée ou de son renouvellement ne représente pas bien la personne désignée;

f) la licence de production a été délivrée sur la foi de renseignements faux ou trompeurs.

DORS/2010-63, art. 3.

63.1 Subject to section 64, if a production site is authorized under more than four licences to produce, the Minister shall revoke the excess licences.

SOR/2010-63, s. 4.

63.1 Sous réserve de l'article 64, si le lieu de production est visé par plus de quatre licences de production, le ministre révoque toute licence excédentaire.

DORS/2010-63, art. 4.

64. The Minister shall not revoke an authorization to possess or a licence to produce under any of sections 62 to 63.1 unless

(*a*) the Minister has given the holder of the authorization or licence written notice of the reasons for the proposed revocation; and

64. Le ministre ne peut révoquer l'autorisation de possession ou la licence de production aux termes de l'un des articles 62 à 63.1 que si les conditions suivantes sont réunies :

a) il a envoyé au titulaire de l'autorisation ou de la licence un avis écrit exposant les motifs de la révocation;

(*b*) the holder has been given an opportunity to be heard.

SOR/2010-63, s. 5.

b) le titulaire a eu la possibilité de se faire entendre quant à la révocation.

DORS/2010-63, art. 5.

Destruction of Marihuana

65. (1) If an authorization to possess expires without being renewed or is revoked, the holder shall destroy all marihuana in their possession.

(2) If a licence to produce expires without being renewed or is revoked, the holder of the licence shall discontinue production of marihuana and, subject to section 66, destroy all marihuana in their possession.

(3) Within 10 days after destroying the marihuana, the holder of the authorization or the licence shall notify the Minister, in writing, of the amount of marihuana destroyed.

Destruction de marihuana

65. (1) Si l'autorisation de possession expire sans être renouvelée ou est révoquée, son titulaire doit détruire la marihuana qui se trouve en sa possession.

(2) Si la licence de production expire sans être renouvelée ou est révoquée, son titulaire doit cesser toute production de marihuana et, sous réserve de l'article 66, détruire la marihuana qui se trouve en sa possession.

(3) Le titulaire de l'autorisation ou de la licence avise le ministre par écrit de la quantité de marihuana détruite dans les dix jours suivant la destruction.

66. (1) If a personal-use production licence expires without being renewed but the holder remains the holder of a valid authorization to possess, the holder is not required to destroy dried marihuana that is not in excess of the maximum quantity permitted under the authorization.

(2) If a designated-person production licence expires without being renewed but the authorization to possess on the basis of which the licence was issued remains valid, the holder of the licence, before destroying marihuana, may immediately transport, transfer, give or deliver directly to the holder of the authorization not more than a quantity of dried marihuana that results in the holder of the authorization being in possession of the maximum quantity permitted under the authorization.

66. (1) Si la licence de production à des fins personnelles expire sans être renouvelée, son titulaire, s'il détient toujours une autorisation de possession valide, n'est pas tenu de détruire la marihuana séchée qui n'excède pas la quantité maximale prévue par l'autorisation.

(2) Si la licence de production à titre de personne désignée expire sans être renouvelée alors que l'autorisation de possession sur le fondement de laquelle la licence a été délivrée est toujours valide, le titulaire de la licence peut, avant de détruire la marihuana, transporter, transférer, donner ou livrer sans délai, directement au titulaire de l'autorisation, au plus la quantité de marihuana séchée qui lui manque pour atteindre la quantité maximale prévue par l'autorisation.

67. (1) If a licence to produce is amended under section 47 or at the time of the renewal to reflect a change in the production area, the holder of the licence must destroy any marihuana plants in production under the licence that are in excess of the maximum number of plants that may be produced under the licence, as amended.

(2) If a licence to produce is amended under section 47 or at the time of the renewal to reflect a change in the

67. (1) Si la licence de production est modifiée en application de l'article 47 ou au moment de son renouvellement, en raison d'un changement d'aire de production, le titulaire de la licence doit détruire les plants de marihuana en production qui excèdent, le cas échéant, la quantité maximale prévue par la licence modifiée.

(2) Si la licence de production est modifiée en application de l'article 47 ou au moment de son renouvelle-

production area, the holder of the licence must destroy any dried marihuana kept under the licence that is in excess of the maximum quantity of marihuana that may be kept under the licence, as amended.

SOR/2007-207, s. 21.

ment, en raison d'un changement d'aire de production, le titulaire de la licence doit détruire la marihuana séchée qu'il garde en excès, le cas échéant, de la quantité maximale prévue par la licence modifiée.

DORS/2007-207, art. 21.

Complaints and Communication of Information

[SOR/2005-177, s. 27(E)]

68. (1) An inspector shall receive and make a written record of any complaint from the public concerning a person who is a holder of an authorization to possess or licence to produce with respect to their possession or production of marihuana.

(2) The inspector shall report to the Minister any complaint recorded under subsection (1).

(3) The Minister is authorized to communicate to any Canadian police force or any member of a Canadian police force, any information contained in the report of the inspector, subject to that information being used only for the proper administration or enforcement of the Act or these Regulations.

SOR/2005-177, s. 28.

68.1 The Minister is authorized to communicate any of the following information to a Canadian police force or a member of a Canadian police force who requests the information in the course of an investigation under the Act or these Regulations, subject to that information being used only for the purpose of that investigation and the proper administration or enforcement of the Act or these Regulations:

(*a*) in respect of a named individual, whether the individual is the holder of an authorization to possess or a licence to produce;

(*b*) in respect of a specified address, whether the address is

(i) the place where the holder of an authorization to possess ordinarily resides and, if so, the name of the holder of the authorization and the applicable authorization number,

Plaintes et communication des renseignements

[DORS/2005-177, art. 27(A)]

68. (1) L'inspecteur consigne toute plainte reçue du public à l'égard du titulaire d'une autorisation de possession ou d'une licence de production quant à ses opérations de possession ou de production de marihuana.

(2) L'inspecteur fait rapport au ministre de toute plainte consignée aux termes du paragraphe (1).

(3) Le ministre est autorisé à communiquer, à tout corps policier canadien ou à tout membre d'un tel corps policier, tout renseignement contenu dans le rapport de l'inspecteur, sous réserve que son utilisation soit limitée à l'application ou l'exécution de la Loi ou du présent règlement.

DORS/2005-177, art. 28.

68.1 Le ministre est autorisé à communiquer les renseignements ci-après à tout corps policier canadien ou à tout membre d'un tel corps policier qui en fait la demande dans le cadre d'une enquête en application de la Loi ou du présent règlement, sous réserve que leur utilisation soit limitée à l'enquête en cause ou à l'application ou l'exécution de la Loi et du présent règlement :

a) dans le cas d'une personne identifiée, l'existence d'une autorisation de possession ou d'une licence de production;

b) dans le cas d'une adresse donnée, s'il s'agit :

(i) du lieu de résidence habituelle d'un titulaire d'une autorisation de possession et, dans l'affirmative, le nom de celui-ci ainsi que le numéro de l'autorisation,

(ii) d'un lieu de production de marihuana autorisé aux termes d'une licence de production et, dans

(ii) the site where the production of marihuana is authorized under a licence to produce and, if so, the name of the holder of the licence and the applicable licence number, or

(iii) the site where dried marihuana may be kept under a licence to produce and, if so, the name of the holder of the licence and the applicable licence number;

(*c*) in respect of an authorization to possess,

(i) the name, date of birth and gender of the holder of the authorization,

(ii) the full address of the place where the holder ordinarily resides,

(iii) the authorization number,

(iv) the maximum quantity of dried marihuana that the holder is authorized to possess,

(v) the dates of issue and expiry, and

(vi) if the authorization has expired, whether an application to renew the authorization has been made prior to the date of expiry and the status of the application; and

(*d*) in respect of a licence to produce,

(i) the name, date of birth and gender of the holder of the licence,

(ii) the full address of the place where the holder ordinarily resides,

(iii) the licence number,

(iv) the full address of the site where the production of marihuana is authorized,

(v) the authorized production area,

(vi) the maximum number of marihuana plants that may be under production at the production site at any time,

(vii) the full address of the site where dried marihuana may be kept,

l'affirmative, le nom du titulaire de la licence ainsi que le numéro de celle-ci,

(iii) d'un lieu où peut être gardée de la marihuana séchée aux termes d'une licence de production et, dans l'affirmative, le nom du titulaire de la licence ainsi que le numéro de celle-ci;

c) dans le cas d'une autorisation de possession :

(i) les nom, date de naissance et sexe du titulaire de l'autorisation,

(ii) l'adresse complète du lieu de résidence habituelle du titulaire,

(iii) son numéro,

(iv) la quantité maximale de marihuana séchée que le titulaire est autorisé à avoir en sa possession,

(v) ses dates de délivrance et d'expiration,

(vi) dans le cas où elle est expirée, l'existence d'une demande de renouvellement présentée avant l'expiration et l'état de cette demande;

d) dans le cas d'une licence de production :

(i) les nom, date de naissance et sexe du titulaire de la licence,

(ii) l'adresse complète du lieu de résidence habituelle du titulaire,

(iii) son numéro,

(iv) l'adresse complète du lieu où la production de la marihuana est autorisée,

(v) l'aire de production autorisée,

(vi) le nombre maximum de plants de marihuana que le titulaire est autorisé à produire au lieu de production,

(vii) l'adresse complète du lieu où peut être gardée la marihuana séchée,

(viii) la quantité maximale de marihuana séchée que le titulaire est autorisé à garder au lieu mentionné au sous-alinéa (vii),

(ix) ses dates de délivrance et d'expiration,

(viii) the maximum quantity of dried marihuana that may be kept at the site referred to in subparagraph (vii) at any time,

(ix) the dates of issue and expiry, and

(x) if the licence has expired, whether an application has been made to renew the licence prior to the date of expiry and the status of the application.

SOR/2005-177, s. 29; SOR/2007-207, s. 22(E).

69. The Minister may provide, in writing, any factual information that has been obtained about a medical practitioner under the Act or these Regulations to the licensing authority responsible for the registration or authorization of the person to practise medicine

(*a*) in the province in which the medical practitioner is authorized to practise if

(i) the authority submits to the Minister a written request that sets out the medical practitioner's name and address, a description of the information being sought and a statement that the information is required for the purpose of assisting an official investigation by the authority, or

(ii) the Minister has reasonable grounds to believe that the medical practitioner has

(A) contravened a rule of conduct established by the authority,

(B) been found guilty in a court of law of a designated drug offence, or

(C) made a false statement under these Regulations; or

(*b*) in a province where the medical practitioner is not authorized to practise, if the authority submits to the Minister

(i) a written request for information that sets out

(A) the name and address of the medical practitioner, and

(B) a description of the information being sought, and

(x) dans le cas où elle est expirée, l'existence d'une demande de renouvellement présentée avant l'expiration et l'état de cette demande.

DORS/2005-177, art. 29; DORS/2007-207, art. 22(A).

69. Le ministre peut communiquer par écrit des renseignements factuels, obtenus en vertu de la Loi ou du présent règlement au sujet d'un médecin, à l'autorité attributive de permis ou chargée d'autoriser l'exercice de la profession :

a) dans la province où le médecin en cause est autorisé à exercer, dans les cas suivants :

(i) il reçoit de cette autorité une demande écrite mentionnant les nom et adresse du médecin et la nature des renseignements demandés et précisant que les renseignements visent à aider l'autorité à mener une enquête officielle,

(ii) il a des motifs raisonnables de croire que le médecin :

(A) soit a enfreint une règle de conduite établie par cette autorité,

(B) soit a été reconnu coupable par un tribunal d'une infraction désignée en matière de drogue,

(C) soit a fait de fausses déclarations dans le cadre du présent règlement;

b) dans une province où le médecin n'est pas autorisé à exercer, s'il reçoit de cette autorité :

(i) une demande écrite précisant :

(A) les nom et adresse du médecin,

(B) la nature des renseignements demandés,

(ii) des documents démontrant que le médecin lui a présenté une demande pour obtenir l'autorisation d'exercer dans cette province.

DORS/2007-207, art. 23(A).

(ii) documentation that shows that the medical practitioner has applied to that authority to practise in that province.

SOR/2007-207, s. 23(E).

PART 4

SUPPLY OF MARIHUANA SEED AND DRIED MARIHUANA

Marihuana Seed

70. The Minister is authorized to import and possess viable cannabis seed for the purpose of selling, providing, transporting, sending or delivering the seed to

(*a*) the holder of a licence to produce; or

(*b*) a licensed dealer.

SOR/2003-387, s. 14; SOR/2005-177, s. 30.

70.1 A licensed dealer producing viable cannabis seed under contract with Her Majesty in right of Canada may provide or send that seed to the holder of a licence to produce.

SOR/2003-387, s. 14; SOR/2005-177, s. 30.

Dried Marihuana

70.2 A licensed dealer producing dried marihuana under contract with Her Majesty in right of Canada may provide or send that marihuana to the holder of an authorization to possess.

SOR/2005-177, s. 30.

70.3 A pharmacist, as defined in section 2 of the *Narcotic Control Regulations*, may provide dried marihuana produced by a licensed dealer under contract with Her Majesty in right of Canada to the holder of an authorization to possess.

SOR/2005-177, s. 30.

70.4 A medical practitioner who has obtained dried marihuana from a licensed dealer under subsection 24(2) of the *Narcotic Control Regulations* may provide the

PARTIE 4

FOURNITURE DE GRAINES DE MARIHUANA ET DE MARIHUANA SÉCHÉE

Graines de marihuana

70. Le ministre est autorisé à importer ou posséder des graines de marihuana viables en vue de les vendre, fournir, transporter, expédier ou livrer aux personnes suivantes :

a) le titulaire d'une licence de production;

b) le distributeur autorisé.

DORS/2003-387, art. 14; DORS/2005-177, art. 30.

70.1 Le distributeur autorisé qui produit des graines de marihuana viables au titre d'un contrat avec Sa Majesté du chef du Canada peut en fournir ou en expédier au titulaire d'une licence de production.

DORS/2003-387, art. 14; DORS/2005-177, art. 30.

Marihuana séchée

70.2 Le distributeur autorisé qui produit de la marihuana séchée au titre d'un contrat avec Sa Majesté du chef du Canada peut en fournir ou en expédier au titulaire d'une autorisation de possession.

DORS/2005-177, art. 30.

70.3 Le pharmacien, au sens de l'article 2 du *Règlement sur les stupéfiants*, peut fournir au titulaire d'une autorisation de possession de la marihuana séchée produite par un distributeur autorisé au titre d'un contrat avec Sa Majesté du chef du Canada.

DORS/2005-177, art. 30.

70.4 Le médecin peut fournir, à la personne qui est soumise à ses soins professionnels et qui est titulaire d'une autorisation de possession, de la marihuana séchée

marihuana to the holder of an authorization to possess under the practitioner's care.

SOR/2005-177, s. 30.

70.5 The Minister may sell or provide dried marihuana produced in accordance with section 70.2 to the holder of an authorization to possess.

SOR/2005-177, s. 30.

s'il l'a obtenue d'un distributeur autorisé en vertu du paragraphe 24(2) du *Règlement sur les stupéfiants*.

DORS/2005-177, art. 30.

70.5 Le ministre peut vendre ou fournir au titulaire d'une autorisation de possession de la marihuana séchée produite conformément à l'article 70.2.

DORS/2005-177, art. 30.

NARCOTIC CONTROL REGULATIONS

71. [Amendment]

RÈGLEMENT SUR LES STUPÉFIANTS

71. [Modification]

TRANSITIONAL PROVISION

72. If, on the coming into force of these Regulations, a person is, for a medical purpose, exempt under section 56 of the Act from the application of subsection 4(1) and, if applicable, section 7 of the Act in respect of marihuana, the person is, by virtue of this section, exempt from those provisions for a period of six months after the date of expiry for the section 56 exemption, on the same terms and conditions as those contained in the section 56 exemption except for any term or condition pertaining to the expiry date of the exemption.

DISPOSITION TRANSITOIRE

72. La personne qui, à la date d'entrée en vigueur du présent règlement, est exemptée en vertu de l'article 56 de la Loi, pour des raisons médicales, de l'application du paragraphe 4(1) et, le cas échéant, de l'article 7 de la Loi en ce qui concerne la marihuana, est, en vertu du présent article, soustraite, pour une période de six mois suivant la date d'échéance de l'exemption, à l'application de ces dispositions aux mêmes conditions que celles prévues par l'exemption qui lui a été accordée en vertu de l'article 56 de la Loi, exception faite de la date d'expiration de l'exemption.

COMING INTO FORCE

73. These Regulations come into force on July 30, 2001.

ENTRÉE EN VIGUEUR

73. Le présent règlement entre en vigueur le 30 juillet 2001.

SCHEDULE
(Section 1)

CATEGORY 1 SYMPTOMS

Item	Column 1 Symptom	Column 2 Associated Medical Conditions
1.	Severe nausea	Cancer, AIDS/HIV infection
2.	Cachexia, anorexia, weight loss	Cancer, AIDS/HIV infection
3.	Persistent muscle spasms	Multiple sclerosis, spinal cord injury or disease
4.	Seizures	Epilepsy
5.	Severe pain	Cancer, AIDS/HIV infection, multiple sclerosis, spinal cord injury or disease, severe form of arthritis

SOR/2005-177, s. 31.

ANNEXE
(article 1)

SYMPTÔMES DE CATÉGORIE 1

Article	Colonne 1 Symptôme	Colonne 2 État pathologique
1.	Violente nausée	Cancer, SIDA/infection au VIH
2.	Cachexie, anorexie, perte de poids	Cancer, SIDA/infection au VIH
3.	Spasmes musculaires persistants	Sclérose en plaques, lésion ou maladie de la moelle épinière
4.	Convulsions	Épilepsie
5.	Douleur aiguë	Cancer, SIDA/infection au VIH, sclérose en plaques, lésion ou maladie de la moelle épinière, forme grave d’arthrite

DORS/2005-177, art. 31.

Court File No. C53583

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

HER MAJESTY THE QUEEN

Appellant

- and -

MATTHEW MERNAGH

Respondent

- and -

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

- and -

CANADIAN CIVIL LIBERTIES ASSOCIATION

- and -

CANADIAN AIDS SOCIETY, CANADIAN HIV/AIDS LEGAL NETWORK AND HIV & AIDS LEGAL CLINIC ONTARIO

Interveners

FACTUM OF THE INTERVENER, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Ryan D. W. Dalziel
Emily C. Lapper
BULL, HOUSSER & TUPPER LLP
3000-1055 West Georgia Street
Vancouver, B.C. V6E 3R3
Tel: (604) 641-4881
Fax: (604) 646-2671
E-mail: rdd@bht.com

Jessica R. Orkin
SACK GOLDBLATT MITCHELL LLP
20 Dundas Street West, Suite 1100
Toronto, Ontario M5G 2G8
Tel: (416) 979-4381
Fax: (416) 979-4430
E-mail: jorkin@sgmlaw.com