Court File No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA
JUDICIAL DISTRICT OF _____

Between:

HER MAJESTY THE QUEEN
Respondent/Plaintiff

-and-

_____
Applicant/Accused

RECORD OF APPLICATION

For the Applicant

Name: _____

Address: _____

_____

Tel: _____

Fax: _____

Email: _____

For the Respondent:

_____

_____

Court File No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA
JUDICIAL DISTRICT OF _____

Between:

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TABLE OF CONTENTS

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IN THE COURT OF QUEENS BENCH OF ALBERTA
JUDICIAL DISTRICT OF _____

Between:

HER MAJESTY THE QUEEN
Respondent/Plaintiff

-and-

_____
Appellant

AFFADAVIT

I, _____, of the City of_____, in the Province of Alberta, MAKE OATH AND SAY: I believe that the FACTUM and the EXHIBITS I have provided are true and factual.

1.That I have filed in The Court of Queen's Bench of Alberta a NOTICE OF PROHIBITION to have withdrawn all charges related to marijuana as unknown to law.

2.That I do verily believe that my NOTICE OF PROHIBITION and the FACTUM and EXHIBITS have merit.

EXHIBITS:

Ex.1: 2000 Jul 31 Parker Ont.C.A. Order on CDSA S.4 (E1)
Ex.2: 2003 Mar 18 Krieger Ab.C.A. Memorandum on S.7 (E2)
Ex.3: 2002 Dec 05 Calgary Herald Krieger article (E6)
Ex.4: 2002 Dec 05 Calgary Sun Krieger article (E7)
Ex.5: 2003 May 14 Turmel holds back marijuana bill (E8)
Ex.6: 2003 May 16 S. David Frankel culpability clause (E9)
Ex.7: 2003 Dec 23 Krieger Supreme Court Order (E10)
Ex.8: 2003 Dec 23 Supreme Court of Canada Bulletin (E11)
Ex.9: 2003 Oct 07 Hitzig Ont.C.A. Order for MMAR fix (E13)
Ex.10: 2003 Oct 07 Turmel Ont.C.A. Order for Parker Day (E15)
Ex.11: 2003 Dec 08 Turmel stays 4000 since Parker Day (E17)
Ex.12: 2004 Apr 01 Turmel to A.G. for 100,000 more (E18)
Ex.13: 2009 Sfetkopoulos Sean Gaudet Memorandum (E19)

SWORN BEFORE ME at the City of _____, in the province of Alberta, this ____ day of _____ A.D. 2010.

_____

A Commissioner for Oaths in and
for the Province of Alberta.

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_____
Applicant/Accused

AFFADAVIT

For the Applicant

Name: _____

Address: _____

_____

Tel: _____

Fax: _____

Email: _____

Court File No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA
JUDICIAL DISTRICT OF _____

Between:

HER MAJESTY THE QUEEN
Respondent/Plaintiff

-and-

_____
Applicant/Accused

NOTICE OF APPLICATION FOR PROHIBITION

TAKE NOTICE THAT on _____ at _____am or so soon thereafter as can be heard the application to a judge at the courthouse at _____ for

A) an Order prohibiting prosecution of all charges relating to marijuana under the CDSA as unknown to law on the grounds that:

1) Parliament has not re-enacted the S.7 cultivation and S.4 possession prohibitions which underpin all other marijuana prohibitions in the CDSA since they were struck down by the Ontario and Albert Courts of Appeal; or
2) if the prohibitions were somehow resurrected without Parliament, that the Sfetkopoulos and Beren decisions create a similar period of retrospective invalidity dating back to December 3 2003, the date that s.41(b.1) and 54.1 were reintroduced into the MMAR pursuant to the Court in R. v. J.P.’s ruling that the combined effect of Parker and Hitzig meant there was no constitutionally valid marijuana possession offence between July 31 2001 and October 7 2003, the date the MMAR were constitutionally rectified by the decision in Hitzig.

B) And for an Order staying all charges for marijuana as abuse of the court process on the grounds all statutes related to marijuana are of no force and effect and ordering the Crown to cease and desist all marijuana prosecutions until Parliament reenacts a new constitutionally valid prohibition with a new Constitutionally valid exemption.

C) And an Order, in the absence of proof that all inmates convicted since the marijuana prohibitions were repealed have been released, that cites the Ministry of Justice for contempt of this Court by continuing prosecution after Crown Attorney S. David Frankel acknowledged to the Supreme Court of Canada in R. v. Krieger that the S.7 Cultivation and S.4 Possession prohibitions had been struck down by the highest court in Alberta and did not dutifully inform Canada's Law Enforcement to cease and desist arrests under the repealed statutes and now Crown Attorney Sean Gaudet too.

D) And an Order expunging the criminal records of all those convicted since the prohibitions have been invalidated.

E) And for any Order abridging the time for service, filing, or hearing of the application, or amending any defect as to form or content of the application, or for any Order deemed just.

Documentation to be used:

Ex.1: 2000 Jul 31 Parker Ont.C.A. Order on CDSA S.4 (E1)
Ex.2: 2003 Mar 18 Krieger Ab.C.A. Memorandum on S.7 (E2)
Ex.3: 2002 Dec 05 Calgary Herald Krieger article (E6)
Ex.4: 2002 Dec 05 Calgary Sun Krieger article (E7)
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Ex.12: 2004 Apr 01 Turmel to A.G. for 100,000 more (E18)
Ex.13: 2009 Sfetkopoulos Sean Gaudet Memorandum (E19)

Dated at _____ on _____

Applicant/Accused Signature

Name: _____

Address: _____

_____

Tel: _____

Fax: _____

Email: _____

TO: Ministry of Justice
TO: The Registrar of the Court

Court File No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA

JUDICIAL DISTRICT OF _____

Between:

HER MAJESTY THE QUEEN
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-and-

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Applicant/Accused

NOTICE OF APPLICATION

For the Applicant

Name: _____

Address: _____

_____

Tel: _____

Fax: _____

Email: _____

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APPLICANT'S FACTUM

OVERVIEW

1. This is an issue of national importance. Epilepsy.ca cites four deaths every day from among the 400,000 known epileptics and yet, after 10 years, due to the onerous Health Canada hurdles set before their doctors to get their prescriptions filled, there are only just over 4000 Health Canada exemptees in all of Canada for all illnesses with only a small fraction from Canada's epileptic community. 15,000 epileptics died in the 10 years it took for Health Canada to exempt 4000 Canadians. The vast majority of Canada's epileptics remain unexempted, including Terrance Parker. The MMAR's failure to provide a constitutionally acceptable medical exemption creates a genocide among Canada's epileptics. No epileptic should be without a cannabis joint. No epileptic should have been, should be, left unexempted. No prohibition against marijuana can exist while the majority of Canada's epileptics remain unexempted.

PART I - STATEMENT OF FACTS

2. On December 10 1997, Ontario Provincial Judge Sheppard stayed S.4(1) and S.7(1) charges against Terrance Parker ruling:

> "Mr. Parker will be granted immediate protection under Section 24(1) of the Charter of a stay of proceeding with respect to count I (cultivate a narcotic, Section 6(1) N.C.A.) and the September 18, 1997 count (possession of a controlled substance, Section 4(1) of the C.D.S.A). All plant material (three plants) seized from him by the Metropolitan Toronto Police Services on September 18, 1997 is to be returned to him forthwith..."
>
> "...It is ordered pursuant to Section 52, that Section 4(1) and Section 7(1) of the C.D.S.A. be read down so as to exempt from its ambit persons possessing or cultivating Cannabis (a schedule II substance) for their personal medically approved use.
>
> www.turmenlpress.com/sheppard.htm

3. On July 31 2000, the Crown's appeal against the S.4(1) possession ruling but not against the S.7(1) cultivation remedy, was dismissed by Ontario Court of Appeal Justices Rosenberg, Catzman and Charron who Ordered "the marijuana prohibition in s.4 of the CDSA to be invalid" for not providing access for medical purposes and suspended its ruling while granting Parker a constitutional exemption for 1 year. The court further wrote they would have invalidated the cultivation prohibition had the Crown appealed Parker's win on Section 7 too.

Ex.1: 2000 Jul 31 Parker Ont.C.A. Order on CDSA S.4 repeal
www.ontariocourts.on.ca/decisions/2000//july/parker.htm

4. Though Parker was not deprived of his rights in that year, 2400 to 4600 Canadian epileptics who were not exempted with him were deprived of their right to life and every year since then. With the Attorney General for Canada erroneously holding that

the CDSA prohibition had been saved by the MMAR, the courts have continued wrongly convicting hundreds of thousands of Canadians.

5. On December 11 2000 in R. v. Krieger, Alberta Justice Acton took care of that omission by declaring the prohibition in Section 7(1) to be of no force and effect and suspending her ruling for 1 year:

> "[44] I am satisfied that s. 7(1) of the CDSA deprives Mr. Krieger and those who are similarly situated of their rights under s. 7 of the Charter to the extent that it prohibits these individuals from producing raw cannabis marihuana for their own
> therapeutic purposes. I am also convinced that such deprivation is not in accordance with the principles of fundamental justice...
> [55] I am prepared to agree with the Applicant that s. 7(1) of the CDSA should be struck down to the extent that it deals with production of cannabis marihuana. If s. 4 were before me I, like the Ontario Court of Appeal in R. v. Parker, supra, would
> strike down the prohibition against possession of marihuana because to do otherwise would be, to use Dr. Kalant's word, "inhumane" to Mr.Krieger under the circumstances."
>
> www.albertacourts.ab.ca/jdb/1998-2003/qb/Criminal/2000/2000abqb1012.pdf

6. On July 30 2001, one day before the expiry of the suspension of the Parker declaration of invalidity, Health Canada issued the Marihuana Medical Access Regulations (MMAR) which the Ontario Court of Appeal later ruled in R. v. J.P. had failed to forestall the Parker Court's invalidation of the s.4(1) prohibition.

7. On August 1 2001, Parker's exemption expired without the MMAR having provided the necessary medical access which is why the Court of Appeal in R. v. J.P. ruled the marijuana prohibition in s.4 of the CDSA became invalid after July 31 2001.

8. On September 15 2001, Health Canada sent Parker a s.56 ministerial exemption after his constitutional exemption had expired, six weeks too late.

9. On November 28, upon a motion by Krieger Crown Attorney Scott Couper for an interim order extending suspension of Acton's order "until the appeal or until further order of the Court of Appeal," Alberta Court of Appeal Justice O'Leary granted an interim Order extending the suspension "until further order of the court."

www.turmelpress.com/oleary.pdf

10. On March 15 2002, the day after Parker's s.56 exemption had expired, Ontario Superior Court Justice Romain Pitt using his criminal jurisdiction granted Parker an *"Order extending the constitutional exemption granted to the applicant by the Ontario Court of Appeal until the Government has complied with the court's ruling."*

www.turmelpress.com/pittorde.jpg

11. On December 4 2002, Alberta Court of Appeal Justices Wittman, Costigan, and LoVecchio Order dismissed the Crown's appeal against Acton J.'s invalidation in R. v. Krieger:

> "[1] The Respondent was charged with possession of marihuana for the purpose of trafficking contrary to s. 5(2) of the CDSA and unlawful production of marihuana contrary to s. 7(1) of the Act.
> [2] The Crown appeals a voir dire ruling which struck down s. 7(1) and also appeals the Respondent's acquittal by a jury of the s. 5(2) charge.
> [..6] Nor are we satisfied that the trial judge imposed a positive obligation on the Crown to ensure a supply. The trial judge struck s. 7(1). Her order imposed no obligation.

[7] Therefore, we dismiss the appeal as it relates to the voir dire ruling."

Ex.2 Krieger Court of Appeal of Alberta Judgment
www.albertacourts.ab.ca/jdb/1998-2003/ca/Criminal/2003/2003abca0085.pdf

12. The Calgary Herald and Sun reports misrepresented the striking down of the S.7 and S.4 prohibitions as a personal exemption victory for Krieger and that the O'Leary interim stay still prevented the Acton ruling from taking effect. Calgary Herald's Daryl Slade wrote that *"Krieger's lawyer, Adriano Iovinelli, said outside court it was an important decision that permits his client to continue to cultivate and use marijuana for his own use to alleviate chronic pain caused by multiple sclerosis. Iovinelli said, as it stands, it is status quo on Krieger's charter exemption. But he suggested that would not apply to the general public.."* Also, it informed:

"Alberta Court of Appeal Justice Willis O'Leary last year extended that stay indefinitely, until there is an application to the courts to remove it."

Ex.3: 2002 Dec 05 Calgary Herald Krieger article
Ex.4: 2002 Dec 05 Calgary Sun Krieger article

13. Once the Court of Appeal for Alberta became functus officio after issuing its further final Order on March 18 2003, that court's interim Order by O'Leary J.A. staying the Acton invalidation of the prohibitions in Section 7(1) and, by implication, Section 4(1) of the CDSA, also lapsed. The only court not yet functus officio was the court of last resort and only a stay emanating pursuant to S.65.1(1) of the Supreme Court of Canada Act could stay the Acton invalidation from taking effect.

14. Section 65.1(1) of the Supreme Court of Canada Act:

"Stay of execution -- application for leave to appeal
65.1 (1) The Court, the court appealed from or a judge of either of those courts may, on the request of the party who has served and filed a notice of application for leave

to appeal, order that proceedings be stayed with respect to the judgment from which leave to appeal is being sought, on the terms deemed appropriate."

15. No stay was obtained.

16. On January 2 2003, in R. v. J.P., Windsor Provincial Judge Phillips quashed a s.4(1) marihuana possession charge laid on April 12 2002, after Terry Parker Day, declaring:

"[7] It is submitted by the Applicant therefore, that Rosenberg, J. A.'s judgment had the effect of declaring invalid the marihuana prohibition in s. 4 (1) effective on July 31, 2001 - twelve months after the release of the reasons in R. v. Parker. It is therefore argued that in keeping with s. 2(2) of the Interpretation Act, the enactment was deemed repealed.

(2) See the Interpretation Act, R.S.C. 1985, c. I-21 at Section 2(2) which states: "For the purposes of this Act, an enactment that has been replaced is repealed and an enactment that has expired, lapsed or otherwise ceased to have effect is deemed to have been repealed."

[8] The Controlled Drugs and Substances Act was not amended by Parliament, and no prohibition on the simple possession of marihuana has been re-enacted."

cannabislink.ca/legal/windsordecision.htm

17. On January 9 2003, Lederman J. ruled in Hitzig v. HMQ that the MMAR had failed to comply with the court's ruling, as had Pitt J. in 2002, and suspended his ruling 6 months.

www.canlii.org/on/cas/onca/2003/2003onca10584.html

18. On May 14 2003, to demonstrate that the prohibition was no longer valid in Canada on the day before the Minister of Justice was to introduce legislation to newly re-criminalize the prohibition of marijuana, John Turmel was charged at the doors of the House of Commons with possession of 3.3Kg of marijuana for the purpose of trafficking to the Prime Minister, Justice Minister, Supreme Court and others.

Ex.5: 2003 May 14 Turmel holds back marijuana bill

19. On May 15 2003, the Chretien Government held back the marijuana bill and S.7 nor S.4 were never re-enacted after being deemed repealed. Parliament has never re-enacted any new prohibitions since the repeal of S.7 and S.4 prohibitions by the Alberta Court of Appeal.

20. On May 16 Rogin J. in R. v. J.P. dismissed the Crown appeal of the Phillips decision on the technicality that ruled that once the legislation was going to be struck down on Terry Parker Day, a new statute had to be enacted by Parliament, not a fix of the statute that was being struck down. This is the third Ontario Superior Court Justice to have ruled that the MMAR had not functioned to save the CDSA:

> "[9] (1) On July 31, 2000, Rosenberg J. in R. v. Parker, severed marihuana from s. 4 of the Controlled Drugs and Substances Act and declared it invalid. Section 4 as it relates to substances other than marihuana remains in full force and effect.
> (2) The declaration of invalidity was suspended for a period of 12 months from July 31, 2000. Mr. Parker was granted an exemption from the marihuana provision in s. 4 during the period of suspended invalidity.
> (3) As of July 31/01, s. 4 of the Controlled Drugs and Substances Act as it related to marihuana was invalid...
> [15] It follows from these reasons, that neither Count 1 nor Count 2 contains an offence known to law...
> [16] The Crown Appeal from the judgment of Phillips J. is dismissed."
>
> Steven Rogin, Justice Released: May 16, 2003
> www.canlii.org/en/on/onsc/doc/2003/2003canlii45115/2003canlii45115.pdf

21. With no new legislation to replace that struck down by the Krieger court, on May 16 2003, in the Crown Memorandum to the Supreme Court of Canada Crown S. David Frankel pleaded for leave to appeal because:

> "[11] The Court of Appeal did not deal with O'Leary's order. Accordingly, it remains an offence to grow marihuana

in Alberta, unless a person has obtained a ministerial or judicial exemption. If the suspension order were to be vacated, then there would be no prohibition whatsoever on the cultivation of marihuana in the province."
[57 As matters now stand S.7(1) has been declared of no force and effect by the highest court in Alberta. An application to vacate O'Leary's Order could be brought at any time. If the suspension order were vacated, then the cultivation of marijuana would not be an offence in Alberta."

Ex.6: 2003 May 16 S. David Frankel culpability clause

22. An application to vacate cannot be brought ever once the Final Order closed closed the file and the court became functus officio. O'Leary J.A.'s interim Order out of a court that is functus officio does not need to be vacated. After the Crown did not obtain a Supreme Court stay pursuant to S.65., Frankel's only recourse was to argue that the stay out of the functus officio court continued in effect.

23. On December 23 2003, the Supreme Court of Canada dismissed the Crown's Application for leave to appeal the Acton decision declaring the prohibition against cultivation of marijuana in section 7(1) of the CDSA to be of no force and effect. From the December 23 2003, the Supreme Court of Canada Bulletin of Proceedings of the Krieger decision:

"29569 HER MAJESTY THE QUEEN v. GRANT WAYNE KRIEGER
(Crim) (Alta.)
Coram: McLachlin C.J. and Major and Fish JJ.

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Numbers 01-00011-A and 01-00288-0A, dated March 18 2003, is dismissed.

NATURE OF THE CASE

Canadian Charter of Rights and Freedoms - Criminal law - Cannabis marihuana - Cultivation and trafficking - Accused cultivating cannabis marihuana for his own medical needs and supplying others as well - Trial judge finding that prohibition on production of cannabis marihuana infringing accused's s. 7 Charter rights and not saved by s.1. Whether The Court of Appeal erred in holding that s.7 of the Charter guarantees the right to grow (and by implication, possess) marihuana, to anyone with a medical need for the drug..."

Ex.7: 2003 Dec 23 Krieger Supreme Court Order

Ex.8: Supreme Court of Canada Bulletin Dec 23 2003

www.lexum.umontreal.ca/csc-scc/en/bul/2003/html/03-12-23.bul.html

24. On October 06 2003, in an application to quash marijuana charges as unknown to law in R. v. Kurtiss Lee Masse, Judge Chen ruled:

> "[66].. If I am wrong in this, and it is possible for regulations addressing the concerns raised in Parker to halt the operation of the declaration of s.4's invalidity, then I agree with the decision in Hitzig that the MMAR were inadequate for this purpose because, as long as there is no legal supply of marihuana for persons requiring it for medical use, the infringement on s. 7 Charter rights identified in Parker has not been cured. The enactment of the Marijuana Exemption (Food and Drugs Act) Regulations on July 8, 2003 may or may not address the concerns raised in Hitzig but came too late to have any effect on the declaration of invalidity in Parker. July 31, 2001 had, by that time, already come and gone, and the legislation had already been rendered invalid. Once invalid, it became a nullity and could not be resuscitated; it could only be re-enacted.
>
> [67] It follows therefore, that there is no offence known to law at this time for simple possession of marihuana. The application is allowed."
>
> www.provincialcourt.bc.ca/judgments/pc/2003/03/p03_0328.htm

25. On October 7 2003, Ontario Court of Appeal Justices Doherty, Goudge, and Simmons ruled in R. v. J.P. that the invalidation of the prohibition in s.4(1) by R.v. Parker had taken effect after July 31 2001 noting that on April 12 2002 when J.P. was charged:

> "[11] Having determined in Hitzig that the MMAR did not create a constitutionally valid medical exemption... the prohibition against possession marihuana in s.4 of the CDSA was subject to the exemption created by the MMAR. As we have held, the MMAR did not create a constitutionally acceptable medical exemption... It follows that as of that date, the offence of possession of marijuana in s.4 of the CDSA was of no force and effect. The respondent could not be prosecuted."

26. The same court in Hitzig had amended the MMAR by striking down five (5) cancerous sections and opined that it had the effect that *"prohibition is now no longer invalid, but is of full force and effect"* but refused to include it in the Order herein when requested:

> "[2]...We have concluded that for those people the MMAR as drafted by the Government do not create a constitutionally acceptable medical exemption... the remedy we would impose, namely to declare invalid only five specific sections of the MMAR. This renders constitutional the medical exemption as described in the remaining provisions of the MMAR, thereby rendering the possession prohibition in s. 4 of the CDSA constitutional: R. v. Parker, supra."

Ex.9: 2003 Oct 07 Hitzig Ont.C.A. Order for MMAR fix
Ex.10: 2003 Oct 07 Turmel Ont.C.A. Order for Parker Day
www.ontariocourts.on.ca/decisions/2003/october/hitzigC39532.htm

27. On December 3, Health Canada reinstituted cancerous sections 41(b.1) and 54 of the MMAR which had been struck down in Hitzig as unconstitutional limitations on medical users' rights.

28. On December 8 2003, the Federal Crown stayed all 4000 pending s.4(1) possession charges laid after July 31 2001 across Canada.

Ex.11: 2003 Dec 08 Turmel stays 4000 since Parker Day

29. On the same day the Supreme Court dismissed the Crown's Krieger application for leave, the Court issued the Malmo-Levine ruling that recreational need cannot impede the government's power to prohibit marijuana despite though the Parker ruling certified that medical need does. Appellant agrees the Government can, our point is that the government has not made use of the power established in Malmo-Levine to do just that since the Parker and Krieger invalidations.

30. On April 1 2004, John Turmel wrote the Attorney General demanding redress for the injustice done to those convicted under the invalid sections with no response.

Ex.12: 2004 Apr 01 Turmel to A.G. for 100,000 more

31. The November 22 2004 submission of the Canadian AIDS society on the proposed amendments to the Marihuana Medical Access Regulations calls on Health Canada to comply with the Ontario Court of Appeal's ruling in Hitzig and requested s.41(b.1) and s.54.1 be removed from the MMAR.

wwww.turmelpress.com/cdnaids.htm

32. On October 27 2008, the Federal Court of Appeal in Attorney General of Canada v. Sfetkopoulos found that the MMAR re-institution of MMAR sections 41(b.1) and 54 had made the MMAR once again unconstitutional limitations on rights.

www.canlii.org/en/ca/fca/doc/2008/2008fca328/2008fca328.html

33. On February 02 2009, Justice Koenigsberg agreed with Sfetkopoulos in R. v. Beren:

> "[127] Adopting the reasoning in Hitzig and Sfetkopoulos, further bolstered by the evidence before this court, I find ss.41(b.1) and 54.1 of the MMAR contrary to s. 7 of the Charter.
>
> [129] As the matter now stands, the federal Court of Appeal in Sfetkopoulos declared s. 41(b.1) invalid and refused to suspend that declaration. The case is under appeal to the

Supreme Court of Canada.

[133] ..Consistent with the reasoning in Schachter v. Canada, [1992] 2 S.C.R. 679, 93 D.L.R. (4th) 1, these provisions, unduly restricting DPLs from growing for more than one ATP or growing in concert with two other DPLs, are hereby severed from the MMAR.

[135] The government, in my view, will need time to put in place appropriate monitoring and enforcement mechanisms in relation to such compassion clubs. Thus, it is appropriate to stay the effect of this declaration of invalidity for one year. Koenigsberg J."

www.courts.gov.bc.ca/jdb-txt/SC/09/04/2009BCSC0429.htm

34. In the Crown's Memorandum for leave to appeal Sfetkopoulos to the Supreme Court of Canada, Crown Sean Gaudet pleaded:

"[33] The judgment in this case may create confusion concerning the constitutional validity of the prohibition against the possession of marihuana as set out in S.4 of the CDSA and therefore compromise existing prosecutions under the CDSA. In R. v. Poelzer, for example, a prosecution currently underway in B.C. Supreme Court, defence counsel has argued that, by virtue of the Ontario Court of Appeal's judgment in R. v. J.P. the invalidation of s41(b.1) of the MMAR retrospectively invalidates s.4(1) of the CDSA in respect of marihuana. The Court in R. v. J.P. ruled that the combined effect of Parker and Hitzig meant there was no constitutionally valid marijuana possession offence between July 31 2001 and Oct 7 2003, the date the MMAR were constitutionally rectified by the decision in Hitzig. Courts may construe the Federal Court of Appeal's decision as creating a similar period of retrospective invalidity dating back to December 3 2003, the date that s.41(b.1) was re-introduced into the MMAR."

Ex.13 E19

35. In the Applicant's Memorandum for a stay:

1. The Federal Court of Appeal has declared s.41(b.1) of the MMAR constitutionally invalid.

"17. This Court has recognized that there is a public interest in avoiding harm to users and others caused by marihuana consumption." The effect of the judgment of this Court is to jeopardize this public interest in two ways:

(1) Courts are being urged and may interpret the FCA's judgment as retrospectively invalidating the offence of marijuana possession, trafficking and/or production in sections 4,5, and 7 of the CDSA.

(2) The public interest in maintaining the offence provisions of the CDSA

21. Members of the criminal defence bar have argued that s.4 of the CDSA is retrospectively invalid as a result of the judgments of the courts below. For example, defence counsel in the R. v. Poelzer appeal before the B.C. Supreme Court argued that the FCA's judgment means that Parliament failed to implement a constitutionally acceptable scheme for ensuring a licit supply of marijuana for medical reasons, as required in the Ontario Court of Appeal in Hitzig, and that the prohibition of possession of marijuana is therefore of no force and effect. While this argument was rejected by the Court in that case, this has not prevented it from being raised in other prosecutions. In a judgment issued on Feb 2 2009, without written reasons, Justice Koenigsberg of the B.C. Supreme Court declared that s41(b.1) of the MMAR to be unconstitutional on the same grounds as the FCA in this case, but suspended the declaration of invalidity for one year. She went further and, on the same grounds, struck down S.54.1 of the MMAR, which restricts the number of licensed growers who can grow in common."

36. On April 23 2009 and January 14 2010 the Supreme Court of Canada dismissed the applications for leave to appeal the unconstitutional sections of 41(b.1) and 54.1 of the MMAR, so they continue to taint the medical exemption process.

scc-csc.gc.ca/case-dossier/cms-sgd/dock-regi-eng.aspx?cas=32944

scc-csc.gc.ca/case-dossier/cms-sgd/dock-regi-eng.aspx?cas=33071

PART II - ISSUES

37. A) Should an Order be granted prohibiting prosecution of all charges relating to marijuana under the CDSA as unknown to law on the grounds that:

1) Parliament has not re-enacted the S.7 cultivation and S.4 possession prohibitions which underpin all other marijuana prohibitions in the CDSA since they were struck down by the Ontario and Albert Courts of Appeal; or

2) if the prohibitions were somehow resurrected without Parliament, that the Sfetkopoulos and Beren decisions create a similar period of retrospective invalidity dating back to December 3 2003, the date that s.41(b.1) and s.54.1 were re-introduced into the MMAR pursuant to the Court in R. v. J.P.'s ruling that the combined effect of Parker and Hitzig meant there was no constitutionally valid marijuana possession offence between July 31 2001 and Oct 7 2003, the date the MMAR were constitutionally rectified by the decision in Hitzig.

38. B) Should an Order be granted staying all charges for marijuana as abuse of the court process on the grounds all statutes related to marijuana are of no force and effect and ordering the Crown to cease and desist all marijuana Prosecutions until Parliament re-enacts a new constitutionally valid prohibition with a new constitutionally valid exemption.

39. C) Should an Order be granted, in the absence of proof that all inmates convicted since the marijuana prohibitions were repealed have been released, that cites the Ministry of Justice for contempt of this Court by continuing prosecution after Crown Attorney S. David Frankel acknowledged to the Supreme Court of Canada in R. v. Krieger that the S.7 Cultivation and S.4 Possession prohibitions had been struck down by the highest court in Alberta and did not dutifully inform Canada's Law Enforcement to cease and desist arrests under the repealed statutes and now, Crown Attorney Sean Gaudet says too.

40. D) Should an an Order be granted expunging the Criminal Records of all those convicted since the prohibitions were invalid.

PART III - ARGUMENTS

41. A)1. In R. v. J.P., Justices Phillips, Rogin, and in R v. Masse, Justice Chen, make very clear that when a statute has been invalidated by the courts as unconstitutional, it is to be deemed repealed pursuant to the Interpretation Act. The Parker Court invalidated the possession prohibition, the Krieger Court invalidated the cultivation prohibition and the J. P. Court of Appeal said the invalidated laws were only absent until the MMAR was fixed which they said they had. The Interpretation Act says "repealed," the Ontario Court of Appeal says only "absent until fixed." The Interpretation Act rules.

42. A)2. If the Hitzig court did resurrect the prohibitions, on December 3 2003, Health Canada re-instituted two of the bad conditions; Section 41.(b.1) of the MMAR found to be flawed in Sfetkopoulos and R. v. Beren as well as Section 54.1 found to be flawed in Beren. If four Hitzig flaws were enough to taint the MMAR, so too are re-instituted ones. The Sfetkopoulos and Beren decisions create a similar period of retrospective invalidity dating back to December 3 2003, the date that s.41(b.1) and 54 were re-introduced into the MMAR pursuant to the Court in R. v. J.P.'s ruling that the combined effect of Parker and Hitzig meant there was no constitutionally valid marijuana possession offence between July 31 2001 and October 7 2003, the date the MMAR were constitutionally rectified by the decision in Hitzig.

43. B) The Ministry of Justice DID NOT amend the Criminal Code to reflect the Parker invalidation in 2001, nor the Krieger invalidation in 2003, nor to reflect the Sfetkopoulos decision. Yet, Canada's lawyers and judges say: It's still in the Code so it must still be valid." An Order staying all charges for

marijuana as abuse of the court process on the grounds all statutes related to marijuana are of no force and effect must be granted to remedy their dereliction.

44. C) The Ministry of Justice's failure to reflect the judgments of the courts in the Criminal Code show a clear contempt at all levels of the court and should be treated as such.

45. D) The Ministry's failure to expunge its errors during the earlier two years of legislative invalidity show an obstinate dereliction that can only be corrected by order of this court.

ORDER SOUGHT:

46. Applicant seeks:

A) an Order prohibiting prosecution of all charges relating to marijuana under the CDSA as unknown to law on the grounds that

1) Parliament has not re-enacted the S.7 cultivation and S.4 possession prohibitions which underpin all other marijuana prohibitions in the CDSA since they were struck down by the Ontario and Albert Courts of Appeal; or

2) if the prohibitions were somehow resurrected without Parliament, that the Sfetkopoulos and Beren decisions create a similar period of retrospective invalidity dating back to December 3 2003, the date that s.41(b.1) and 54 were re-introduced into the MMAR pursuant to the Court in R. v. J.P.'s ruling that the combined effect of Parker and Hitzig meant there was no constitutionally valid marijuana possession offence between July 31 2001 and Oct 7 2003, the date the MMAR were constitutionally rectified by the decision in Hitzig.

B) And for an Order staying all charges for marijuana as abuse of the court process on the grounds all statutes related to marijuana are of no force and effect and ordering the Crown to cease and desist all marijuana prosecutions until Parliament re-enacts a new constitutionally valid prohibition with a new constitutionally valid exemption.

C) And an Order, in the absence of proof that all inmates convicted since the marijuana prohibitions were repealed have been released, that cites the Ministry of Justice for contempt of this Court by continuing prosecution after Crown Attorney S. David Frankel acknowledged to the Supreme Court of Canada in R. v. Krieger that the S.7 Cultivation and S.4 Possession prohibitions had been struck down by the highest court in Alberta and did not dutifully inform Canada's Law Enforcement to cease and desist arrests under the repealed statutes and now Crown Attorney Sean Gaudent says:

D) And an Order expunging the criminal records of all those convicted since the prohibitions have been invalidated.

Dated at _____ on _____

Applicant/Accused Signature

Name: _____

Address: _____

_____

Tel: _____

Fax: _____

Email: _____

To: Registrar of this Court
And: Attorney General for Canada

SCHEDULE A: Authorities to be cited (alphabetical)

R. v. Beren Koenigsberg BC Superior Court
www.courts.gov.bc.ca/jdb-txt/SC/09/04/2009BCSC0429.htm

HMTQ v. Mathew David Beren (BC) (Criminal) (By Leave (33071) SCC
www.scc-csc.gc.ca/case-dossier/cms-sgd/dock-regi-eng.
aspx?cas=33071

Hitzig v. HMTQ Lederman Ontario Superior Court
www.canlii.org/on/cas/onca/2003/2003onca10584.html

Hitzig Court of Appeal
www.ontariocourts.on.ca/decisions/2003/october/hitzigC39532.htm

R. v. J.P. Ontario Court of Justice
Phillips cannabislink.ca/legal/windsordecision.htm

R. v. J.P. Ontario Superior Court Rogin
www.canlii.org/on/cas/onsc/2003/2003onsc10765.html

R. v. J.P. Ontario Court of Appeal
www.ontariocourts.on.ca/decisions/2003/october/jpC40043.htm

R. v. Krieger Alberta Court of Appeal
www.albertacourts.ab.ca/jdb/1998-2003/qb/Criminal/2000/
2000abqb1012.pdf

R. Krieger Supreme Court of Canada Bulletin Dec 23 2003
www.lexum.umontreal.ca/csc-scc/en/bul/2003/html/03-12-23.bul.html

R. v. Masse BC Provincial Court Chen
www.provincialcourt.bc.ca/judgments/pc/2003/03/p03_0328.htm

R. v. Parker Ontario Provincial Court Sheppard
www.cyberclass.net/turmel/sheppard.htm

R. v. Parker Ontario Court of Appeal
www.ontariocourts.on.ca/decisions/2000//july/parker.htm

AGoC v. Sfetkopoulos Federal Court of Appeal
www.canlii.org/en/ca/fca/doc/2008/2008fca328/2008fca328.html

AGoC. v. Sfetkopoulos Supreme Court of Canada
www.scc-csc.gc.ca/case-dossier/cms-sgd/dock-regi-eng.aspx?cas=32944

SCHEDULE B
Relevant legislative Provisions

Interpretation Act Section 2.2
canlii.org/en/ca/laws/stat/rsc-1985-c-i-21/latest/rsc-1985-c-i-21.html

Court File No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA

JUDICIAL DISTRICT OF _____

Between:

HER MAJESTY THE QUEEN
Respondent/Plaintiff

-and-

_____
Applicant/Accused

APPLICANT'S FACTUM

For the Applicant

Name: _____

Address: _____

_____

Tel: _____

Fax: _____

Email: _____

C28732

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE MR. JUSTICE CATZMAN	**) MONDAY the 31st**
	)
THE HONOURABLE MADAM JUSTICE CHARRON	**) DAY OF**
	)
[illegible]OURABLE MR. JUSTICE ROSENBERG	**) JULY, A. D. 2000**

IN THE MATTER OF TERRANCE PARKER, acquitted and a stay of proceeding ordered at the City of Toronto, on the 10[th] day of December, 1997, by The Honourable Mr. Justice Sheppard, of: Cultivation of Marihuana, Possession of Marihuana;

[illegible] **THIS APPEAL of THE ATTORNEY GENERAL FOR CANADA,** against the [illegible] and the stay of proceedings ordered by The Honourable Mr. Justice Sheppard was heard on the 6[th], 7[th] and 8[th] days of October, 1999, at Osgoode Hall, Toronto.

ON READING the material filed, and on hearing the submissions of counsel for the Crown and counsel for the respondent, and judgment having been reserved until this day,

THIS COURT ORDERS that the remedy granted by the trial judge is varied by declaring the marihuana prohibition in s. 4 of the *Controlled Drugs and Substances Act* to be invalid. The declaration of invalidity is suspended for a period of 12 months and the respondent is exempt from the marihuana prohibition in s. 4 of the *Controlled Drugs and Substances Act* during the period of suspended invalidity for possession of marihuana for his medical needs. The part of the Sheppard J.'s judgment reading in a medical exemption into the former *Narcotic Control Act* and the *Controlled Drugs and Substances Act* are set aside and the plants seized in the September 1997 search are ordered to be returned. In all other respects, the Crown's appeal is dismissed.

JUL 3 1 2000

Signed and entered in the records of this Court this 31st day of July, 2000.

DESIREE VICERAL
SIGNING OFFICER
COURT OF APPEAL FOR ONTARIO

R. v. Krieger, 2003 ABCA 85

Date: 20030318
Dockets: 01-00011-A
01-00288-A

IN THE COURT OF APPEAL OF ALBERTA

THE COURT:

THE HONOURABLE MR. JUSTICE WITTMANN
THE HONOURABLE MR. JUSTICE COSTIGAN
THE HONOURABLE MR. JUSTICE LoVECCHIO

BETWEEN:

Docket: 01-00011-A

HER MAJESTY THE QUEEN

Appellant

- and -

GRANT WAYNE KRIEGER

Respondent
(Accused)

Appeal from the Judicial Stay of Proceedings by
THE HONOURABLE MADAM JUSTICE L.D. ACTON
Dated the 11th day of December, 2000

AND BETWEEN:

Docket: 01-00288-A

HER MAJESTY THE QUEEN

Appellant

- and -

GRANT WAYNE KRIEGER

Respondent
(Accused)

Appeal from the Acquittal by
THE HONOURABLE MADAM JUSTICE L.D. ACTON
Dated the 20th day of June, 2001

MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH

COUNSEL:

S.A. Couper
J. Henchey
For the Appellant

A. Iovinelli
For the Respondent

MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH

Costigan, J.A. (for the Court):

[1] The Respondent was charged with possession of marihuana for the purpose of trafficking contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 and unlawful production of marihuana contrary to s. 7(1) of the *Act*.

[2] The Crown appeals a *voir dire* ruling which struck down s. 7(1) and also appeals the Respondent's acquittal by a jury of the s. 5(2) charge.

[3] As to the *voir dire* ruling, the Crown says that the trial judge applied the wrong test in finding that the Respondent was deprived of his s. 7 *Charter* right to security of his person in the face of evidence that there were other untried and effective legal alternative treatments. We are not satisfied that the trial judge applied the wrong test, nor are we satisfied that the evidence established other effective alternatives. At best, the evidence on the effectiveness of the alternatives was equivocal. In those circumstances, the trial judge was entitled to find that the Respondent's right to security of his person was infringed by denial of a treatment which the evidence established was effective.

[4] The Crown also says that the trial judge erred in failing to find that the deprivation accorded with the principles of fundamental justice. The Crown says a s. 56 exemption, for which the Respondent did not apply, would have accorded with the principles of fundamental justice because the Respondent had an available supply from his own grow operation.

[5] We agree with the trial judge that s. 56 creates an absurdity because there was no legal source of marihuana. That absurdity is not removed by the fact that the Respondent had a personal supply at the time the charge was laid. There was no evidence as to how long the supply would last nor as to the duration of the potential s. 56 exemption.

[6] Nor are we satisfied that the trial judge imposed a positive obligation on the Crown to ensure a supply. The trial judge struck s. 7(1). Her order imposed no obligation.

[7] Therefore, we dismiss the appeal as it relates to the *voir dire* ruling.

[8] On the verdict of acquittal, the Crown argues that the trial judge erred in finding an air of reality to the defence of necessity and in her charge to the jury on that defence.

[9] The second prong of the defence of necessity requires that the act must be inevitable, unavoidable and afford no reasonable opportunity for an alternative course of action that does not involve a breach of the law.

[10] In both her analysis of whether the defence had an air of reality and in her charge to the jury on the second prong, the trial judge focussed on whether there was a legal source of marihuana rather than focussing on whether there was a legal alternative course of action available to those said to be in imminent peril. In doing so she erred. That error undercuts both her decision to put the defence to the jury and her explanation of the defence to the jury.

[11] In the result, the acquittal cannot stand. Accordingly, we order a new trial on the s. 5(2) charge.

APPEAL HEARD on December 4, 2002

MEMORANDUM FILED at Calgary, Alberta
this 18th day of March, 2003

Costigan, J.A.

Ex.3 E6

More MS news articles for December 2002

Pot rights upheld by appeal court

http://www.canada.com/calgary/calgaryherald/

December 5, 2002 Thursday Final Edition
Daryl Slade
Calgary Herald

Pot crusader Grant Krieger has won a partial, but significant victory in a federal Crown appeal of his right to grow and use cannabis marijuana for medical purposes. On Wednesday, the Alberta Court of Appeal upheld Queen's Bench Justice Darlene Acton's ruling two years ago, in which she said it was unconstitutional for the federal government to prevent Krieger from being able to obtain the drug to alleviate pain caused by his multiple sclerosis.

"We agree with the trial judge that there is no legal forum of marijuana for the accused," Justice Peter Costigan said in speaking for fellow justices Neil Wittmann and Sal LoVecchio. "There is no evidence how it could be supplied, even if he had a Section 56 (federal government) exemption."

Krieger's lawyer, Adriano Iovinelli, said outside court it was an important decision that permits his client to continue to cultivate and use marijuana for his own use to alleviate chronic pain caused by multiple sclerosis. "They upheld (Acton's) ruling from the voir dire, which found Grant Krieger's Section 7 charter rights were violated, specifically in the areas of liberty and health," Iovinelli said. "There was a breach, and it wasn't a reasonable breach. The result was Grant Krieger was given a charter exemption to cultivate and possess marijuana for his personal use," said Iovinelli.

Acton had issued a stay of her ruling for one year, to permit the federal government an opportunity to provide a source for people who require marijuana for health reasons. Alberta Court of Appeal Justice Willis O'Leary last year extended that stay indefinitely, until there is an application to the courts to remove it. But the appellate court's three-justice panel also ruled the trial judge had wrongly instructed the jury in the defence of necessity for having the drug, and quashed Krieger's acquittal on possessing marijuana for the purpose of trafficking.

Krieger, 48, who has admittedly supplied others whom he believes require the drug for health reasons, will have to go back to arraignments on Feb. 12 to have a trial date set on that charge. "As far as I'm concerned, there are no pot laws in this province," Krieger boldly declared outside court. "I'm ready to go in front of another jury for trafficking. The defence of necessity stands."

Crown lawyers Scott Couper and Janet Henchey declined to discuss the Court of Appeal ruling and said their next move is to go back to the federal government for instructions.

Iovinelli said, as it stands, it is status quo on Krieger's charter exemption. But he suggested that would not apply to the general public as Ottawa would move quickly to do something if the stay was removed and it was generally believed the possession law was struck down. "The reason for Acton's ruling was for there to be changes by the federal government," said Iovinelli. "There may or may not have been changes, but I'm leaning more towards yes, there have been. "The stay continues and it's a benefit to my client that nothing happens, because he has a charter exemption to cultivate and possess marijuana."

http://www.mult-sclerosis.org/news/Dec2002/CanadaMedMJRightsUpheld.html

Pubdate: Thu, 05 Dec 2002
Source: Calgary Sun, The (CN AB)

Contact: callet@sunpub.com
Website: http://www.fyicalgary.com/calsun.shtml
Details: http://www.mapinc.org/media/67
Author: Kevin Martin, Calgary Sun

COURT UPHOLDS DRUG ACQUITTAL

Pot crusader Grant Kreiger's licence to grow won't be chopped down by Alberta's top court.

A three-member Alberta Court of Appeal panel yesterday upheld Kreiger's acquittal on a charge of cultivating a narcotic.

The appeal judges agreed with a lower-court ruling that the federal government's exemption to pot possession was "an absurdity because there was no legal source of marijuana."

But the high court overturned Kreiger's acquittal on a charge of possession of the drug for the purpose of trafficking.

Justice Peter Costigan, in handing down the unanimous decision, said the trial judge erred in her explanation of the defence of necessity to the jurors, who found Kreiger not guilty.

Costigan said Queen's Bench Justice Darlene Acton was right when she ruled Kreiger didn't have to apply for an exemption to simply possess marijuana for his own use.

Crown prosecutor Scott Couper argued that Acton erred when she ruled that the cultivation law deprived Kreiger -- who suffers from multiple sclerosis - -- the right to his medicine of choice.

"The evidence clearly disclosed a number of alternatives," he said.

Ex.5 E8

Ottawa holds back marijuana bill

Minister denies he delayed tabling new pot legislation because of pressure from Americans

BY KIM LUNMAN, OTTAWA

The Liberal government has put off its plant to table legislation to decriminalize marijuana this week — a move opposition critics decried as bowing to pressure from the U.S. government.

But Justice Minister Martin Cauchon played down suggestions he is stalling tabling the bill because of a meeting a day earlier with U.S. Attorney-General John Ashcroft in Washington.

"We meet on a regular basis," he said. "It was a cordial meeting and I said I would be [introducing] the policy shortly after the week break."

Parliament does not sit next week, so the bill would not be tabled until the last week of May at the earliest.

"I believe that the policy we table will be good for Canada and we'll make sure the government sends a good message," Mr. Cauchon added.

New Democrat MP Libby Davies, a member of a special parliamentary committee on the non-medical use of drugs, saw the timing of the legislation after the meeting in the United States as "suspicious."

"Mr. Cauchon has been promising this legislation repeatedly," the [illegible] ask[illegible]'s o[illegible]

Pro-marijuana advocate John Turmel is arrested yesterday on Parliament Hill for allegedly possessing more than three kilograms of the drug. Justice Minister Martin Cauchon said Ottawa will not table legislation to change Canada's marijuana laws for at least another week.

"cordial," but would not elaborate on the U.S. administration's co[illegible]. It's [illegible] 10-year-o[illegible]ams [illegible] pr[illegible]ed [illegible]

common possession of the drug, while anyone with more than 30 [illegible] would result in more pot flowing across the border.

"But I'm not going to move forward until then," she added.

57. In addition, as matters now stand s. 7(1) has been declared of no force and effect by the highest court in Alberta. An application to vacate the order of O'Leary J.A. suspending the declaration could be brought at any time. If the suspension order were vacated, then the cultivation of marihuana would not be an offence in Alberta.

58. There is no compelling reason for granting special status to marihuana or, for that matter, any unapproved drug. Such matters are for the scientific / medical community, not the courts.

59. The judgment below raises important issues going to the very core of federal drug control and regulation. As such they warrant this Court's fullest consideration.

PART IV
NATURE OF ORDER SOUGHT

60. That the within application be allowed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

S. David Frankel, Q.C.
Counsel for the Applicant

May 16, 2003

Supreme Court of Canada | Cour suprême du Canada

[redacted]

No. 29569

December 23, 2003

Coram: McLachlin C.J. and Major and Fish JJ.

BETWEEN:

Her Majesty the Queen

Applicant

- and -

Grant Wayne Krieger

Respondent

JUDGMENT

The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Numbers 01-00011-A and 01-00288-A, dated March 18, 2003, is dismissed.

Le 23 décembre 2003

Coram : La juge en chef McLachlin et les juges Major et Fish

ENTRE :

Sa Majesté la Reine

Demanderesse

- et -

Grant Wayne Krieger

Intimé

JUGEMENT

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel de l'Alberta (Calgary), numéros 01-00011-A et 01-00288-A, daté du 18 mars 2003, est rejetée.

C.J.C.
J.C.C.

Ex.8 E11

Supreme Court of Canada / Cour suprême du Canada

Cases

SCC Case Information

Docket

29569

Her Majesty the Queen v. Grant Wayne Krieger

(Alberta) (Criminal) (By Leave)

Proceedings

Date	Proceeding	Filed By (if applicable)
2006-03-20	Close file on Leave	
2003-12-30	Judgment on leave sent to the parties	
2003-12-23	Decision on the application for leave to appeal, CJ Ma F, The application for leave to appeal from the judgment of the Court of Appeal of Alberta (Calgary), Numbers 01-00011-A and 01-00288-A, dated March 18, 2003, is dismissed. Dismissed, .	
2003-11-06	Correspondence received from, S. D. Frankel dated Nov. 3, 2003 re: further information (sent to the judges on Nov. 12, 2003)	Her Majesty the Queen
2003-09-29	All materials on application for leave submitted to the Judges, CJ Ma F	
2003-07-15	Correspondence received from, S. David Frankel, Q.C. dated 07/15/03 re: news release issued by Health Canada (attached)	Her Majesty the Queen
2003-07-15	Respondent's response on the application for leave to appeal, from Adriano Iovinelli dated 07/14/03 re: will not be filing any response, Completed on: 2003-07-15	Grant Wayne Krieger
2003-06-16	Letter acknowledging receipt of a complete application for leave to appeal	
2003-05-20	Application for leave to appeal, (see order), Completed on: 2003-06-16	Her Majesty the Queen
2003-03-27	Order on motion to extend the time to file and/or serve the leave application	Her Majesty the Queen
2003-03-25	Decision on motion to extend time to file	

Ex.8 E12

	and /or serve the leave application, 60 days from the reasons for judgment of the Alberta Court of Appeal, Arb Granted, .	
2003-03-24	Submission of motion to extend time to file and/ or serve the leave application, Arb	
2003-01-31	Correspondence received, I. Moore, Deputy Registrar of C.A. dated Jan. 30, 2003 (fax copy) re: memorandum of decision not available	
2003-01-31	Supplemental document, Form 25B	Her Majesty the Queen
2003-01-28	Motion to extend the time to file and or serve the application for leave to appeal, (to 60 days after the reasons for judgment are given) (Form 25B and oral judgment requested), Completed on: 2003-01-28	Her Majesty the Queen

Date Modified: 2009-05-22

Court of Appeal File No. C39532

COURT OF APPEAL FOR ONTARIO

The Honourable Mr. Justice Doherty	)	
The Honourable Mr. Justice Goudge	)	
The Honourable Madam Justice Simmons	)	
	)	Tuesday, the 7th day of October, 2003

BETWEEN:

WARREN HITZIG, ALISON MYRDEN, MARY-LYNNE CHAMNEY, CATHERINE DEVRIES, JARI DVORAK, STEPHEN VAN DE KEMP, DEBORAH ANNE STULTZ-GIFFIN & MARCO RENDA

Applicants
(Respondents in Appeal and Cross-appellants)

-and-

HER MAJESTY THE QUEEN

Respondent
(Appellant and Respondent in Cross-appeal)

ORDER

THIS APPEAL by Her Majesty the Queen, for an order setting aside the judgment of Mr. Justice Lederman, dated January 9, 2003, and replacing it with a judgment dismissing the applicants' applications, AND THIS CROSS-APPEAL by the

Respondents for an order declaring the *Marihauna Medical Access Regulations* to be inconsistent with section 7 of the *Charter* and declaring section 4 of the *Controlled Drugs and Substances Act*, to the extent that it applies to marihuana, to be of no force and effect, were heard on July 29, 30 and 31, 2003, at Osgoode Hall, 130 Queen Street West, Toronto, and judgment having been reserved until this day,

ON READING the material filed by the parties, and on hearing the submissions of counsel for the parties,

1. THIS COURT ORDERS that the appeal of Her Majesty the Queen is hereby dismissed;

2. THIS COURT ORDERS that the cross-appeal is allowed, in part, by setting aside the first two paragraphs of the judgment of Lederman J., and substituting therefore an order declaring that subsection 4 (2) (c), section 7, subsection 34 (2), subsection 41 (b) and section 54 of the *Marihuana Medical Access Regulations*, S.O.R./2001-227, are of no force and effect;

3. THIS COURT makes no order as to costs.

ENTERED AT/INSCRIT À TORONTO
ON/BOOK NO:
LE/DANS LE REGISTRE NO:

DEC 2 3 2003

PER/PAR. Apicella

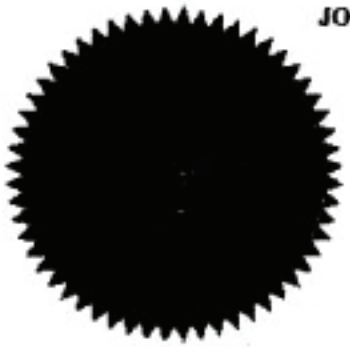
Apicella
(Signature of judge or registrar)
Registrar
Court of Appeal for Ontario

Court of Appeal File No: C39740

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE JUSTICE DOHERTY	)	
	)	TUESDAY THE 7TH DAY
THE HONOURABLE JUSTICE GOUDGE	)	OF OCTOBER, 2003
	)	
THE HONOURABLE JUSTICE SIMMONS	)	
	)	
	)	

BETWEEN:



JOHN C. TURMEL AND J.J. MARC PAQUETTE

Applicants
(Appellants and Respondents in Cross-Appeal)

and –

HER MAJESTY THE QUEEN

Respondent
(Respondent in Appeal and Cross-Appellant)

ORDER

THIS APPEAL by John C. Turmel and J.J. Marc Paquette, from the judgment of Mr. Justice Lederman, dated January 9, 2003, for (A) A declaration that the prohibition on the possession of marijuana (cannabis) in the Controlled Drugs and Substances Act (CDSA) is a genocidal violation of Applicants' S. 7 Right to Life in accordance with the decision of the Ontario Court of Appeal in R.v. Parker and has been of no force and effect since August 1, 2001 or in the alternative (B) granting Applicant a personal judicial exemption, AND THIS CROSS-APPEAL by the Respondent Her Majesty the Queen, for an order setting aside the judgment of Mr. Justice Lederman, dated January 9, 2003 and replacing it with a judgment dismissing the applicants' applications, were heard on July 29, 30 and 31, 2003, at Osgoode Hall, 130 Queen Street West, Toronto, and judgment having been reserved until this day,

ON READING the materials filed by the parties, and on hearing the submissions of John C. Turmel, appearing in person, and counsel for Her Majesty the Queen,

1. **THIS COURT ORDERS** that the appeal of John C. Turmel and J.J. Marc Paquette is hereby dismissed.

2. **THIS COURT ORDERS** that the cross-appeal of Her Majesty the Queen is hereby dismissed.

3. **THIS COURT** makes no order as to costs.

Deputy Registrar
Court of Appeal for Ontario

ENTERED AT/INSCRIT À TORONTO
ON BOOK NO.
LE/DANS LE REGISTRE NO:

SEP 16 2004

PER/PAR: S T

Ottawa stays pot charges in 4,000 cases

At same time, rules changed to improve patients' access to pot

GM 3 12 10 A8

BY JIM LAMBDIN, OTTAWA

Ottawa is making it a green Christmas for 4,000 people — it plans to stay thousands of charges of pot possession as a result of legal battles over medicinal marijuana.

The decision will apply to every person in Canada charged with possession of marijuana between July 31, 2001, and Oct. 7, 2003, Justice Department spokeswoman Pascale Bouley said yesterday.

The Justice Department intends to cease prosecutions on the cases because of an Ontario court ruling in 2000 that found medicinal-marijuana users had the right to possess less than 30 grams of pot. The judge delayed that ruling's effect for one year in the hope the federal government would introduce a medicinal-marijuana law.

But the government did not. Instead, the cabinet issued regulations for access to medicinal marijuana one day before the year-long grace period ended in 2001. The Ontario ruling created a legal loophole, effectively invalidating Canada's marijuana possession law as unconstitutional because it failed to provide an exemption for medical use.

"We estimate there are about 4,000 pending files," Ms. Bouley said. However, she said that criminal charges of marijuana possession will still be prosecuted today as a result of the government's announcement yesterday that it will not appeal the medicinal-marijuana case to the Supreme Court.

John C. Turmel, B. Eng.
8-37 Colborne E. Brantford, N3T 2G3
Tel: Email: turmel@ncf.ca
Thursday April 1 2004

Croft Michaelson, Christopher Leafloor, Vanita Goela
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christopher.leafloor@justice.gc.ca
VGoela@JUSTICE.GC.CA ("Goela, Vanita"),

Re: OCA #39738 (Parker), #39740 (Turmel-Paquette)

Dear Sirs and Lady:
On Oct 7 2003 the Ontario Court of Appeal granted our declaration that the prohibition on the possession on marijuana in the CDSA was invalid after July 31 2001 until Oct 7 2003.

On Dec 8, the Attorney General did not appeal and stayed all 4,000 pending charges under the non-existent statute. That's not good enough. Why should people's names be kept on the docket when the law did not exist? Our successful declaration of invalidity means that the law was not valid when their charges were laid and you have no right to keep their names on the court dockets.

I insist that those 4000 stayed charges between Aug. 1 2001 and Oct 7 2003 be withdrawn or
1) such complete relief will be further sought in our applications for leave to appeal to the Supreme Court of Canada in the Parker and Turmel cases; and,
2) http://www.cyberclass.net/turmel/medpot.htm will publish free blank forms online enabling anyone who wants to successfully drag you through the process, on offence for a change, to file a motion to have the charge that you only stayed under the invalid marijuana laws dismissed from the docket.

I further insist that the convictions registered against the other over 100,000 Canadians (Statistics Canada) who were charged and pleaded guilty during those 26 months be expunged and any jailed victims released or
1) such complete relief will be further sought in my application for leave to appeal to the Supreme Court of Canada in the Parker and Turmel cases;
2) http://www.cyberclass.net/turmel/medpot.htm will publish free blank appeal forms online enabling anyone who wants to successfully drag you through the process, on offence for a change, to file an appeal late to have their conviction overturned with restitution of their property and fines and release pending appeal.

You can do it and save yourselves the trouble or I can do it and send waves and waves of people to the Appeal Court to overturn their convictions. And you know I'd love to see Justices Doherty, Goudge and Simmons having to sign off on 30,000 Ontario applications for extensions of time to overturn convictions. Hoping you correct your omissions, I am, Yours truly

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant
(Appellant)

- and -

DORA SFETKOPOULOS, DAVID MCGREGOR, PRISCILLA LAVELL, EUGENE HARACK, ROBIN TURNEY, RONALD FOLZ, MICHAEL GIBBISON, TIMOTHY DEGANS, MARK HUKULAK, LEONARD SISSON, PAUL MANNING, RON REID, RON SPECK, JOHN LOBRAICO, EDDIE WALLACE, MICHAEL DELARMEE, RONALD GEORGE WILSON, AND JEFFREY LONG

Respondents
(Respondents)

ATTORNEY GENERAL OF CANADA'S MEMORANDUM OF ARGUMENT IN SUPPORT OF THE APPLICATION FOR LEAVE TO APPEAL

(Pursuant to ss. 40(1) of the *Supreme Court Act* and Rule 25 of the *Rules of the Supreme Court of Canada*)

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32. Given the high street value of marihuana and its wide use as a recreational drug, it was reasonable for the government to conclude that the risk that DPPL holders will use marihuana for non-medical purposes or that marihuana will be stolen from their premises is greater for larger scale grow operations than for smaller operations. It cannot be said that a provision limiting the size of such operations does "little or nothing" to achieve this objective.

33. The judgment in this case may also create confusion concerning the constitutional validity of the prohibition against the possession of marihuana as set out in section 4(1) of the *Controlled Drugs and Substances Act* (*CDSA*), and therefore compromise existing prosecutions under the *CDSA*. In *R. v. Poelzer*, for example, a prosecution currently underway before the B.C. Supreme Court, defence counsel has argued that, by virtue of the Ontario Court of Appeal's judgment in *R. v. J.P.*[21] the invalidation of section 41(b.1) of the MMAR retrospectively invalidates section 4(1) of the *CDSA* in respect of marihuana. The court in *R. v. J.P.* ruled that the combined effect of the *Parker* and *Hitzig* decisions meant that there was no constitutionally valid marihuana possession offence in force for the period between July 31, 2001, the date the declaration of invalidity made in *Parker* came into effect, and October 7, 2003, the date that the MMAR were constitutionally rectified by the decision in *Hitzig*. Courts may construe the Federal Court of Appeal's decision as creating a similar period of retrospective invalidity dating back to December 3, 2003, the date that s. 41(b.1) was re-introduced into the MMAR.[22]

[21] *R. v. J.P.*, 67 O.R. (3d) 321 (C.A.)

PART V – NATURE OF ORDER SOUGHT

39. The Applicant asks that leave be granted to appeal from the judgment of the Federal Court of Appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this 22nd day of December, 2008.

Per: Sean Gaudet
Counsel for the Applicant

Court File No. _____

IN THE COURT OF QUEENS BENCH OF ALBERTA

JUDICIAL DISTRICT OF _____

Between:

HER MAJESTY THE QUEEN
Respondent

-and-

_____
Applicant

RECORD OF APPLICATION

For the Applicant

Name: _____

Address: _____

_____

Tel: _____

Fax: _____

Email: _____