LIDSTONE & COMPANY
BARRISTERS AND SOLICITORS

CLIENT BULLETIN

TO:	Clients
FROM:	Sara Dubinsky
DATE:	March 31, 2014
RE:	**Constitutional exemption affecting new MMPR's**

On Friday March 21, 2014 Mr. Justice Manson of the Federal Court granted an interlocutory constitutional exemption which has the effect of delaying the implementation of certain aspects of the new medical marihuana regime and preserving many key aspects of the old regime.

The new Federal *Marihuana for Medical Purposes Regulations* ("MMPR's") are currently in force. The old regime, pursuant to the *Medical Marihuana Access Regulations* ("MMAR's"), is in the process of being phased out. In particular, the transition was supposed to occur as follows:

On or By March 31, 2014:

- All Authorizations to Possess (ATPs), Personal-Use Production Licences (PUPLs) and Designated-Person Production Licences (DPPL) expire on March 31, 2014, even if the licence shows a later expiry date.
- All marihuana (plants, seeds, dried) obtained under the *Marihuana Medical Access Regulations* (MMAR) must be destroyed and disposed of.

As of April 1, 2014

- Personal production and production by designated persons of marihuana is illegal. The only legal way to access marihuana is from a licensed producer when authorized by a healthcare practitioner.

Of particular relevance for local governments, this phasing meant that as of April 1, 2014, producing marihuana in a home or private dwelling would be illegal.

Due to the effect of the Federal Court order in the *Allard* case, **this transition is no longer occurring as set out above. The interlocutory order preserves the rights of authorized users and producers of medical**

marihuana under the MMAR regime to continue to possess and produce medical marihuana in keeping with terms and conditions of their now expired licences.

In particular, individuals holding an ATP, a PUPL or a DPPL under the MMAR's are exempt from the repeal of the MMAR's and their replacement with the MMPR's, to the extent that the provisions of the MMPR's are inconsistent with the MMAR's. In other words, this means that these persons are constitutionally exempt from the new MMPR regime, and instead remain bound by the terms and conditions of the licences issued to them under the MMAR's, with one exception: the maximum quantity of dried marihuana authorized for possession is that which is specified by the licence or 150 grams, whichever is less (the MMAR regime may have authorized a greater amount).

While there has been some uncertainty as to the scope of the ruling in *Allard* due to the precise wording of the order itself, on March 25, 2014 Justice Pearlman of the BC Supreme Court held that *Allard* applies to all "similarly situated" persons who held licences under the MMAR regime, such that all such individuals will have the benefit of the same constitutional exemption pending the trial in *Allard*.

The federal government issued a press release today announcing its intent to appeal the *Allard* ruling.[1]

Accordingly, until at least the earlier of the date on which the Federal Court hears and renders judgment in the *Allard* trial, or the Federal Court of Appeal hears the appeal and upholds or overturns the order granting the constitutional exemption, local governments and their police forces should not pursue enforcement of the MMPR regime or charges against individuals who were licensed under the MMAR regime, provided they are complying with the terms of the licences issued under that regime.

We note that the *Allard* decision does not affect the right of commercial medical marihuana producers to proceed with applications to Health Canada for licences under the MMPR's, although the *Allard* case may affect the profitability of such commercial ventures until the constitutionality of the MMPR regime is finally determined.

[1]Available online at http://news.gc.ca/web/article-en.do?mthd=index&crtr.page=1&nid=832809&_ga=1.44609316.1681756433.1395419050