

FILE NO. 37398

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE NEW BRUNSWICK COURT OF APPEAL)

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

– and –

GERARD COMEAU

Respondent

– and –

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LABRADOR, ATTORNEY GENERAL OF NORTHWEST TERRITORIES AND
GOVERNMENT OF NUNAVUT AS REPRESENTED BY THE MINISTER OF JUSTICE

Intervenor

**NOTICE OF MOTION OF
0883467 BC LTD. O/A “CANNABIS CULTURE”
FOR LEAVE TO INTERVENE**

Rules 47 and 55 of the Rules of the Supreme Court of Canada

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Intervenors

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**NOTICE OF MOTION OF
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FOR LEAVE TO INTERVENE**

Rules 47 and 55 of the Rules of the Supreme Court of Canada

TAKE NOTICE that a motion is hereby made to a Justice of this Honourable Court, pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada*, for an Order:

- a. granting 0883467 BC Ltd, operating as “Cannabis Culture”, leave to intervene in this appeal on the following terms and conditions;
 - a. Cannabis Culture shall file a factum not exceeding 10 pages;
 - b. Cannabis Culture shall be permitted to make oral submissions of up to 10 minutes (or such other duration as this Honourable Court may deem appropriate) at the hearing of this appeal;
 - c. No costs will be ordered for or against Cannabis Culture or any other dispensaries which it represents on this motion or on the appeals;
- b. any such further and other Order as this Honourable Court deems just.

AND FURTHER TAKE NOTICE that in support of this motion will be read the affidavit of Jodie Emery, sworn on September 15, 2017, and such further and other materials as counsel may advise and this Honourable Court permit.

AND FURTHER TAKE NOTICE that Cannabis Culture is representing 28 other corporations, non-profits and/or entities which collectively operate approximately 100 of the more than 350 cannabis dispensaries currently operating across Canada. Those dispensaries are: Pacifico Life, MMJ Total Health Care, Pacifico Health and Wellness, Pacifico Life Inc., Happy, The Flower Shoppe, Trips & Quads, Mary Jane's Closet, Kelowna Compassion Society, 3Kings, Canna Depot, Health Cannabis, Eden Medical Cannabis Dispensaries, King Canna, Star Greens, C|A|F|E, Green Aura, Greenworks Medicinals, Healing Health, Natural Green Healing, Whistler Bud Shop, MMJ Canada and the LOST Organization, Leaf Compassion, Trees, Royal Pharmacy, On the Go Releaf, and Phytos Apothecary and Wellness operating as "Canna Clinic".

AND FURTHER TAKE NOTICE that the motion will be made on the following grounds:

1. **Cannabis Culture** is a Canadian cannabis media and advocacy company that operates cannabis lounges and either operates, licenses, or allows its trademarks to be used in relation to the operation of, cannabis dispensaries across Canada in contravention of the *Controlled Drugs and Substances Act* as an act of civil disobedience. Cannabis dispensaries provide cannabis flowers and cannabis derivative products to consenting adults who are over the age of 19, including dispensaries that limit or attempt to limit their customers to those using cannabis for medical purposes and those who do not.
2. Cannabis Culture is owned by Jodie Giesz-Ramsay who is known professionally as Jodie Emery and upon whose affidavit Cannabis Culture relies.
3. The forthcoming *Cannabis Act* (Bill C-45) will impact the cannabis industry across Canada. Further, through a form of cooperative Federalism, the Act will empower each Province and Territory to enact its own internal rules regarding the distribution and sale

of cannabis and cannabis derivative products. The *Cannabis Act* retains criminal penalties associated with the production, distribution and possession of cannabis and, in particular, draws a stark distinction between cannabis produced pursuant to the *Cannabis Act* and sold via Provincially licensed retailers (which is deemed to be “licit” cannabis and not subject to criminal sanction) and that which is produced outside of the *Cannabis Act* and/or sold outside of Provincial retail regulatory structures (which it deems “illicit” cannabis and is subject to criminal sanction).

4. On September 8, 2017 the Province of Ontario conducted a press briefing and put out policy statements advising that it has elected to empower its Liquor Control Board of Ontario as the sole monopoly provider of recreational cannabis in Ontario through a storefront and mail order system. This decision by Ontario means the result in *Comeau* will have clear and direct consequences for the cannabis industry in Ontario.

5. It is anticipated that other provinces and territories will enact recreational cannabis distribution models that either consist of government monopolies such as Ontario proposes, or will enact public/private mixed retail systems or will enact private-only retail systems. It is anticipated that some provinces or territories will choose not to regulate retail distribution of recreational cannabis at all and in those circumstances the federal government has indicated that it will permit cannabis producers regulated by it to sell to consumers in those jurisdictions via mail order, irrespective of where the cannabis producer is physically located.

6. It is anticipated, and the Province of Ontario’s policy statements support, that if a Province elects to distribute cannabis via government monopoly retailers then no cannabis producers or retailers, including the prospective intervenors, will be permitted to sell cannabis within the Province of Ontario.

7. It is Cannabis Culture’s position that the LCBO’s control over all recreational cannabis distribution and sale is overly restrictive and amounts, in pith and substance, to a form of interprovincial trade barrier. It is Cannabis Culture’s position that any Province which seeks to exert exclusive control over the distribution and sale of cannabis and

cannabis derivative products through a Provincial entity is in effect creating a barrier to interprovincial trade.

8. Many other associated intervenors (named above) are also recreational cannabis dispensary owners and/or operators whose interests they agree are well-represented by Cannabis Culture at this proceeding. As well, many other intervenors (named above) operate compassion clubs and medical cannabis dispensaries which only provide cannabis to medically approved individuals. Many intervenors also operate mail-order distribution models that operate interprovincially and are equally affected. All associated intervenors agree that their position is represented by Cannabis Culture at this proceeding as it relates to s. 121 of the *Constitution Act of 1867*.

9. That section states that “[a]ll Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall...be admitted free into each of the other Provinces.”

10. Cannabis Culture supports the interpretation of s. 121 of his Honour Judge LeBlanc that s. 121 permits the free movement of items of growth, produce or manufacture (goods) among the provinces unrestrained by tariff and non-tariff trade barriers.

11. The Provincial Government of Ontario has announced that it will be licensing and regulating storefront recreational cannabis dispensaries through the Liquor Control Board of Ontario (LCBO). It is in this context that Cannabis Culture submits that it has a genuine interest in this appeal, and that Cannabis Culture will make submissions that are relevant, useful and different from those of the other parties.

12. Cannabis Culture contends that the ruling of the New Brunswick Provincial Court and New Brunswick Court of Appeal in *R v Comeau* is of pressing and substantial importance and interest not only to the extant and emerging cannabis industry in Ontario, but also across Canada where Provincial rules and regulations could create barriers to the free trade of cannabis products from Province to Province, and in which Provincial rules and regulations as they relate to the cannabis industry could constitute an

infringement of s. 121 of the *Constitution Act of 1867* that is not in accordance with Justice LeBlanc's ruling.

13. Cannabis Culture contends that it and the intervenors will be significantly impacted, legally and financially, by the ruling of this Court. Cannabis Culture also seeks to represent the public interest in non-discriminatory access to cannabis products. It has been the leading voice for cannabis legalization in Canada for more than two decades. The Cannabis Culture brand is synonymous with cannabis legalization efforts and the voice of the cannabis consumer. It believes that the public interest is best served, both from the perspective of the consumer and from the perspective of the public policy goal of transitioning away from a black market in cannabis products, through non-discriminatory access to cannabis products produced anywhere in Canada. This allows cannabis consumers to have a much broader range of unique and different strains of cannabis and variety of cannabis products than would otherwise be available.

14. Furthermore, the Canadian public interest is engaged because the context involves very large numbers of individuals who will benefit from being able to participate in this emerging industry, as well as large and small business owners represented by these intervenors, who may be affected by any decision which alters the interpretation of s. 121 and interprovincial trade.

15. **All Canadian cannabis dispensaries both medical and recreational have an interest in this proceeding.** The intervening dispensaries agree with Justice LeBlanc's ruling and wish to express that onerous Provincial regulations will amount to inexcusable forms of tariff and non-tariff trade barriers within Canada.

16. Existing cannabis businesses in this situation have a unique perspective because this ruling will determine how their burgeoning industry exists for the foreseeable future. It has been many years since the court ruled on *Gold Seal* and industry in Canada has changed significantly since that time. Cannabis dispensaries and licensed producers are uniquely situated to speak to the effects of interprovincial trade barriers because the decision made in *Comeau* will govern how their businesses operate for the foreseeable

future. The Court in *Bedford* announced a willingness to re-visit issues should a sea change in the legal, political, or social landscape occur. The legalization of cannabis and the emergence of an entirely new industry are precisely the type of sea change which needs to be heard in this case because of the effects interprovincial trade barriers have on the extant and emergent cannabis industry.

17. Cannabis dispensaries have been at the forefront of *Charter* litigation regarding cannabis legalization in Canada for the past 20 years. There is a serious fear that now that the Federal government is introducing a regime of legal cannabis the same problematic trade restrictions will come into force which will limit Canadian industry in a manner that runs contrary to what a purposive reading of s. 121 of the *Constitution Act* would suggest. In addition, the existing illegal industry will likely thrive if Provincial restrictions are overly onerous thereby exacerbating the issues surrounding interprovincial trade by diminishing licit business which runs contrary to the purpose of s. 121.

18. At present there are over 350 cannabis dispensaries spread across Canada, approximately 100 individual locations of which have consented to have Cannabis Culture represent their position on s. 121 as intervenors. Cannabis Culture thus brings a unique perspective to this appeal, by offering a perspective very different than that of the other parties and non-dispensary intervenors. Cannabis Culture and its fellow dispensary intervenors are private enterprises engaged, in some instances, in interprovincial trade and servicing consumers in every Province in Canada. They are the only entities in Canada that currently operate storefront cannabis dispensaries and bring valuable insight into the importance of non-discriminatory trade policies and the need for reasonable regulatory frameworks.

19. Further, Federally licensed producers (LPs) of cannabis are affected by this ruling but, to Cannabis Culture's knowledge, have not sought to intervene in this appeal. LPs who operate on a small scale with a focus on their regional customers may be unable to sell their products in provinces like Ontario if the LCBO's policies are too onerous. At present there are no LPs in the Yukon, Nunavut, Northwest Territories, Newfoundland

and Labrador, and Nova Scotia. There are 14 LPs in British Columbia, 3 in Alberta, 3 in Saskatchewan, 2 in Manitoba, 31 in Ontario, 1 in Quebec, 2 in New Brunswick, and 1 in Prince Edward Island (See attached Exhibit A a true copy of Health Canada's listing of LPs in Canada). This dispersion of LPs could result in less diverse trade potential between Provinces as well as a lack of product availability in regions with lower populations and lower numbers of LPs.

20. Moreover, the dominance of Ontario-based LPs and the lack of any LPs in 5 Provinces or Territories creates a situation whereby cannabis consumers in Ontario may have access to a range of diverse and plentiful products, but due to interprovincial trade barriers residents of other Provinces may not have access at all, or may have an artificially limited selection of products.

21. For these reasons, the proposed intervenors support Justice LeBlanc's ruling and urge the Supreme Court to re-evaluate the role section 121 of the *Constitution Act of 1867* plays.

22. Cannabis Culture submits it meets the test for applications for leave to intervene as it has a genuine interest in the appeal and its proposed submissions will be useful to the court and different from those of the parties and other intervenors. *R v Finta*, [1993] 1 S.C.R. 1138; *Reference Re Worker's Compensation Act, 1983 (Nfld.)*, [1989] 2 S.C.R. 335.

23. Cannabis Culture has a special interest in the outcome of this appeal. Cannabis Culture and its counsel have advocated on the issue of cannabis prohibition and the legalization of cannabis for decades. The free trade in cannabis is emblematic of the advocacy that it has engaged in and Cannabis Culture has supported litigation in this area consistently. Cannabis Culture submits that it and the intervenors it represents would suffer significant prejudice if not granted leave to intervene.

24. An overview of Cannabis Culture's proposed submissions appears above. Additional materials are set out in the affidavit of Jodie Emery sworn September 15, 2017.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of September, 2017.

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**THIS IS EXHIBIT "A" REFERRED TO IN THE
NOTICE OF MOTION OF CANNABIS CULTURE**

SWORN BEFORE ME THIS 15TH DAY

OF SEPTEMBER, 2017.

A COMMISSIONER ETC.