

Chief Justice, Justices. Thank you for the opportunity to make submissions on behalf of Cannabis Culture and other cannabis dispensaries. Canada is on the verge of making fundamental changes to our approach to cannabis, legalizing production and sale to recreational consumers, and this Court's decision may have significant effect on this emergent industry.

Cannabis is uniquely positioned right now because it is currently lawful for commercial entities to produce and sell directly via mail order to medical consumers. This regulatory regime operates wholly within the federal criminal law jurisdiction and currently permits over 200,000 Canadians to obtain cannabis direct from the producers without regard to the province or territorial location of either the consumer or producer.

The proposed Cannabis Act also sets out an exemption regime and appears to be an exercise of the criminal law power. It will exempt, from the offence provisions in the Act, the licensed production of cannabis and its sale through provincial or territorial retail regulations or, in jurisdictions that do not adopt such regulations, direct to consumer in the same way as medical cannabis is now lawfully sold.

Most provinces and territories have now signalled their general approach to retail distribution. Most appear to be tracking the way that alcohol is regulated. Several will create provincial monopolies over retail sales and it is clear in some cases (ON and QB) and reasonable to assume in others that these monopolies will function in the same way, or more restrictively, than current liquor monopolies function.

Cannabis dispensaries such as Cannabis Culture operate outside of any regulatory frameworks (with some municipal exceptions) and serve medical and sometimes recreational consumers. They obtain their products from a wide variety of unlicensed producers and processors and do not discriminate based on province of origin. As a result, cannabis dispensaries carry a much wider array of products than licensed federal producers, service more consumers and have been described the Federal Court of Canada as lying at the heart of access to medical cannabis.

Cannabis Culture is deeply concerned that proposed provincial monopolies over cannabis will undermine the emergence of the industry and the federal purpose of eliminating the illicit cannabis market. Indeed, as we speak this morning, a cannabis dispensary just down the street is being raided and Canadians arrested by police in an attempt to pave the way for ON to implement its proposed monopoly. The extant industry is vibrant, well-entrenched and more efficient than the current legal medical industry. Transitioning the industry out of the shadows and into the light is frustrated by provincial monopolies that stifle competition and entrepreneurship.

Cannabis Culture supports the decision below and supports an approach, or test, for section 121 that examines the effects of regulations, not simply the facial purpose. An inquiry that takes into consideration both the "essence and purpose" of the legislation as well as the practical effects, allows for the most principled analysis. Failing to allow courts to inquire into

the effects of legislation simply means that legislators seeking to enact inter-provincial trade barriers need only be clever and careful in their drafting and runs contrary to the way this Court approaches constitutional interpretation in other areas. Simply and exclusively looking to the purpose of legislation, rather than also considering the practical effect of that legislation, leads to what Cannabis Culture respectfully suggests is convoluted reasoning – the idea that a provincial liquor distribution branch that markets, publicizes and generates significant revenues from the sale of alcohol is doing so to improve public health. Accordingly, Cannabis Culture supports the positions of the Respondent and the intervenors that suggest various iterations of a test, or an approach, to analyzing legislation that probes the true nature of the enactment, rather than simply its facial purpose and in this regard finds the submissions of the Respondent and the intervenor Federal Express particularly convincing.

Cannabis Culture agrees with the intervener Alberta Small Brewers Association that retail provincial monopolies, whether existing liquor monopolies or coming cannabis monopolies, will often run afoul of the test being proposed because the monopolies create significant barriers to inter-provincial trade by directly or indirectly imposing costs on out of province producers or by limiting those out of province producers' access to retail distribution within the province. As the intervenor Federal Express points out, e-commerce transactions are a common feature of consumer life in Canada, and the enactment at issue in this case completely prohibits such transactions. This will be true for cannabis as well – but only applicable to recreational cannabis consumers (because medical ones can still buy direct from producers) and only those who live in jurisdictions that enact retail regulations; all other recreational consumers can purchase direct from producers. This leads to the odd result that consumers in jurisdictions without any retail regulations may have readier access to extra-provincial products than those in provinces or territories with retail schemes.

Cannabis Culture supports Alberta's approach to alcohol, which does not impose a provincial monopoly and allows private retail distribution in combination with fair and equal access to that retail system by alcohol producers irrespective of their geographic location within Canada. AB, like other jurisdictions, will mirror its approach to alcohol with cannabis. This approach is consistent with keeping regulatory control over the product without running afoul of the plain language of section 121 by impeding the free flow of commerce across provincial boundaries.

Cannabis Culture also submits that provincial monopolies over retail distribution reduce consumer choice and that prohibiting private dispensaries from participating in the licit cannabis industry works contrary to both the goal of the federal legislation and contrary to a balanced approach to federalism and the free flow of trade across the country.