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Eric Costen (affiant)
Cross-exam by Mr. Conroy

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May 28, 2015
Vancouver, BC

(PROCEEDINGS COMMENCED AT 1:02 P.M.)

ERIC COSTEN, affiant,
duly affirmed.

CROSS-EXAMINATION BY MR. CONROY:

Q Mr. Costen, I have your two affidavits, one of them sworn May 13th, 2015, and the other I think the following day, May 14th, 2015. Those are the two affidavits that you have sworn in these proceedings?

A That's correct.

Q And the second affidavit is simply an update of one of the charts in the first one where more information was retrieved to round out the statistics?

A Yes, sir.

Q All right. So if you have the first affidavit in front of you, I'll just take you through that, and so starting off, you're the executive director of the now Office of Medical Cannabis and have been since 2014?

A Correct.

Q You have attached an affidavit from Jeannine Ritchot of February 27, 2014, that was an affidavit filed in these proceedings. I believe that is your exhibit A, and that affidavit, you've adopted a significant number of paragraphs in it, and it all has to do with the administrative implications of the repeal of the marijuana medical access regulations and the steps that were taken to dismantle the Bureau of Medical Cannabis; fair enough?

A Yeah, that's correct.

Q Okay. So there was a Bureau of Medical Cannabis, and the name changed under the new MMPR to the Office of Medical Cannabis, so the BMC to the OMC; is that fair --

A Yes.

Q -- essentially?

A The names of the organizations are similar. Their mandates are unique.

Q And in paragraph 5 of your affidavit you indicate

1 referring to paragraph 100 of Ms. Ritchot's
2 affidavit that at the time when the MMAR was in
3 effect there were some 142 employees under that
4 organization, if I can call it that -- the BMC;
5 fair enough?
6 A Yeah, correct.
7 Q And the responsibilities of the Bureau of Medical
8 Cannabis, it's -- the process and the challenges
9 are all set out in your paragraphs 6, 7 and 8,
10 again referring to the content in Ms. Ritchot's
11 affidavit to give the detail?
12 A Yeah, correct. Those paragraphs describe the
13 administrative processes that were in place under
14 the old program.
15 Q All right. And then in paragraph 9 and 10 you
16 deal with the, first of all, staffing issues and
17 what would be required to restore the staffing to
18 its past levels; correct?
19 A Well, I believe paragraph 9 details that the -- it
20 describes the processes that Ms. Ritchot led to
21 staff up the BMC at a time when they were looking
22 to restore those standard levels -- the service
23 levels.
24 Q And that paragraph and the following paragraph
25 deal with issues of hiring and the number of
26 people that was required to perform and to be
27 trained and so on and so forth?
28 A I think that's a fair summary.
29 Q Yeah. Paragraph 10 in particular talks about the
30 training and mentoring problems in doing that and
31 the various efforts that were made during times
32 when there was an increase in volume under the
33 MMAR?
34 A Correct.
35 Q And then at paragraph 11 you refer to the
36 transition, and that is from the MMAR to the MMPR,
37 the marijuana for medical purposes regime; fair
38 enough?
39 A M'mm-hmm, yes.
40 Q And so it simply indicates there that it was
41 understood that at some point the MMAR was going
42 to be -- it was going to cease to exist, and the
43 entire situation involving the bureaucracy that
44 existed for the MMAR was going to disappear?
45 A Yes.
46 Q Or transfer over I assume between a staff that
47 worked for the MMAR that now worked under the OMC,

1 the Office of Medical Cannabis?

2 A There are some staff that worked under the old
3 program that now work in a new role in the new
4 office.

5 Q Okay. And I think you described that further on
6 in your affidavit, so we'll just carry on.
7 Paragraph 13 you indicate that on --

8
9 In July of 2014 Hillary Geller, the assistant
10 deputy minister of health, environments and
11 consumer safety branch of Health Canada
12 announced the intent to create a new
13 organization to support policy, regulatory
14 and other activities in support of the
15 department's mandate --

16
17 And I assume that should be --

18
19 -- to enable access to marijuana for medical
20 purposes.

21
22 Fair enough?

23 A Yes, sir.

24 Q And so by September of that year, 2014, the office
25 that you're now the executive director of was
26 created?

27 A Yes.

28 Q The OMC, if we can call it that. And so you
29 indicate there that your office works closely with
30 the office of controlled substances, and you
31 detail the role of the OMC in those subparagraphs
32 at paragraph 13; fair enough?

33 A Yes.

34 Q So the first one is:

35
36 Leading policy and regulatory development.

37
38 Can you just expand on that a little bit.

39 A Well, I can perhaps expand by providing an
40 example.

41 Q Okay.

42 A The -- we are in process of bringing four
43 regulatory amendments in order to require licensed
44 producers to share certain bits of information
45 with provincial regulatory colleges. Those
46 amendments were published in Canada because it won
47 last June, I believe, and subsequently the process

1 is carrying forward. My team would be responsible
2 for conducting the policy analysis and then the
3 regulatory -- the preparation of the regulatory
4 package in support of those amendments. So that
5 would be an example of one of the policy
6 regulatory activities that the office would
7 conduct.

8 Q So does that include to any extent issues
9 remaining or continuing to rise under the MMAR, or
10 is it limited to the MMPR?

11 A The functions are predominantly with respect to
12 the MMPR and the work required to enable the
13 implementation of those regulations. I pause to
14 reflect as to whether there were examples of work
15 that would have been conducted in support of the
16 MMAR, and none come immediately to mind.

17 Q So no emerging -- well, in your paragraph (b) you
18 talk about identifying current and emerging
19 priorities, and I assume again that's to do with
20 the MMPR.

21 A Correct. This would be in reference, say, for
22 instance, to the degree to which that we are
23 actively monitoring the emergence of the new
24 market, analyzing trends via-à-vis supply and
25 demand, those sorts of things.

26 Q So nothing, for example, to do with patients who
27 were under the MMAR or medically approved under
28 the MMAR who contact the office saying look, I was
29 covered by an injunction, but something has
30 happened; I need to make changes. That doesn't --

31 A No, this is very much a function that is entirely
32 devoted to the new regime.

33 Q Okay. And then (c):

34
35 Engaging in providing scientific information
36 and analysis.

37
38 Now, am I understanding that -- so the office
39 gathers what scientific information is available
40 or coming on stream in terms of medical marijuana?
41 A Yes, what that -- what (c) describes is really
42 ensuring an awareness of any developments in the
43 research field or the scientific field,
44 publication of new papers, research studies. This
45 function would also be where any updates to the
46 information for health care professionals, the
47 document that Health Canada had produced a number

1 of years ago, would be -- any updates to that
2 document would be generated out of those types of
3 activities.
4 Q If you suddenly get new scientific information
5 about some new development about medical marijuana
6 being used for one ailment or another, I take it
7 that would be --
8 A Correct.
9 Q -- information that would be included. And are
10 you able to then -- or do you need the permission
11 of the minister before you can talk about that
12 publicly or announce that or produce that? I
13 understand there's some limitations on talking
14 about new science as far as this government is
15 concerned. Are you subject to those types of
16 limits?
17 A I think what I'm describing is more research
18 that's created and published external to the
19 government.
20 Q So --
21 A So different studies that would be emerging in
22 different countries and ensuring that Canada has a
23 good understanding of how the science is emerging.
24 Q Okay.
25 A Less about generating original science within the
26 department. That's not a function that we carry
27 out.
28 Q But it would be information that goes to the
29 efficacy, for example, of cannabis for particular
30 medical ailments?
31 A It would be research across a broad spectrum of
32 issues. One certainly would be efficacy and
33 safety --
34 Q Safety being the other one.
35 A -- and these types of things, but it would be --
36 it's not defined by any particular objective.
37 It's just a situational awareness of how the
38 evidence base is emerging globally.
39 Q Okay. Because in that information for health care
40 professionals it's clearly set out, I think,
41 towards the end of it that cannabis has no lethal
42 dose ratio. Do you remember that?
43 MS. WRAY: I would pause here just for a moment. I'm
44 not sure where we're going with this. I mean,
45 clearly that's outside the scope of what this
46 affidavit is addressing, so I'm just hesitant that
47 we're verging into an area about efficacy, safety,

1 medicine and so forth that is not at all addressed
2 by these affidavits.

3 MR. CONROY: Well --

4 MS. WRAY: And I would believe that Mr. Costen would
5 not be in a position to answer those types of
6 questions.

7 MR. CONROY: Well, if he can't I would ask him to
8 simply say so, but he has put in the affidavit
9 what these functions of the OMC are, and I'm
10 exploring with him specifically 13(c) in terms of
11 the scientific information. He raised the health
12 care professional -- the document, and so I'm just
13 exploring how that is furthered in -- through his
14 office.

15 MS. WRAY: Sure. I think it is fair that he can speak
16 to the development of the scientific information
17 and then the analysis, but I don't think it's fair
18 that he could speak to the contents of the health
19 care professional's document or in any way the
20 medicine or science behind those contents.

21 MR. CONROY: Well, let me put the question I was going
22 to put and see if you have any difficulty with it.

23 Q In the health care professionals -- I recall
24 reading information about safety and an LD50,
25 which I understand to be the lethal dose ratio.
26 So my question is if there was more information
27 coming forward about safety, it would come to your
28 office before it would go into any publications
29 like that health care practitioners document. Is
30 that the process?

31 MS. WRAY: I think that's something that Eric would be
32 capable of answering.

33 THE WITNESS: Yes, I think in the scenario you
34 described that's what would happen.

35 MR. CONROY:

36 Q Okay. All right. And then (d) is:

37
38 Building and strengthening relationships with
39 external stakeholders.

40
41 Does that include MMAR medically approved patients
42 under the MMAR?

43 A That bullet is intended to reflect that there is a
44 few members of the staff whose job it is -- is to
45 respond to invitations to speak and provide
46 information about the MMPR. There are a number of
47 standing committees that we have with the medical

- 1 community, with members of the industry. Other
2 countries often approach Canada to learn about the
3 MMPR, and so this bullet really is intended to
4 describe those activities. There -- I'm not aware
5 of any direct activities that would be targeted to
6 the former licence holders under the MMAR.
- 7 Q What about medically approved patients under the
8 MMPR? Are they not a stakeholder?
- 9 A Yes, sir. So I, for instance, would have
10 conversations with both individuals who are
11 registered with licensed producers, and I've --
12 well, those occur -- those typically have occurred
13 when I make a presentation at a conference or
14 something like that, or perhaps they engage me
15 through correspondence and I will respond to them.
- 16 Q Okay. So the term "stakeholders" -- "external
17 stakeholders" is simply a reference to anybody
18 outside of Health Canada that has an interest in
19 the program? Would that be a broad, fair way to
20 put it?
- 21 A I think that's -- yes, that would be fair.
- 22 Q So that would include patients or producers or
23 others who have some role to play in this program?
- 24 A Yes.
- 25 Q Okay. And (e) is:
- 26
27 Providing litigation support for the
28 government's defence in marijuana for medical
29 purposes cases.
- 30
31 And so I take it that includes not just defence
32 but also prosecution.
- 33 A Yes, I suppose it would. This bullet is really
34 describing a group of individuals whose
35 responsibilities are to liaise with the Department
36 of Justice and help prepare materials in support
37 of different actions.
- 38 Q Because exhibit B in your affidavit is taken from
39 a criminal case, isn't it? If you go to the first
40 page at tab B it shows that it's a case between
41 Her Majesty the Queen and somebody; correct?
- 42 A It does indicate that. I unfortunately am not
43 able to differentiate at this point between a
44 criminal case or a civil action but ...
- 45 Q All right. If you look at the affidavit at tab A
46 it shows plaintiffs and defendants, doesn't it?
- 47 A Sorry, I'm looking here. Correct.

8
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1 Q Whereas this one shows it's something between Her
2 Majesty the Queen and somebody who is a defendant?
3 A Correct.
4 Q Fair enough?
5 A Correct.
6 Q And this is a further affidavit at exhibit B from
7 Jeannine Ritchot that she was asked obviously to
8 provide, and if you go to the last page,
9 paragraph -- I'm in 137. It's clear that it's in
10 connection with the prosecution of somebody, isn't
11 it?
12 A Yes, paragraph 137 makes reference to the
13 prosecution.
14 Q Okay. And while we're on it, paragraph 4
15 similarly refers to a request from the Crown
16 prosecutor?
17 A Yes, it does.
18 Q And if we go down to paragraph 8 -- first 7 -- now
19 this -- just to be clear, this affidavit was done
20 back in October of 2010 when the MMAR was still in
21 existence; correct?
22 A I believe that's correct, yes.
23 Q And so the paragraph 7 and 8 of this affidavit
24 essentially describe what was going on at that
25 time, for example, in keeping the SAMM database up
26 to date and so on? Paragraph 8 in particular.
27 A Yes, I believe that's what these paragraphs are
28 describing.
29 Q So -- and you attach this to show what the process
30 was at that time?
31 A Yes, sir.
32 Q Okay. So it used to be, as indicated in
33 paragraph 8, that the record-keeping system under
34 the MMAD, which was the name given, as I
35 understand it, to the department at Health Canada,
36 but -- involved the administration of the MMAR;
37 correct? The MMAD, am I right on that?
38 A My understanding of the organization structure was
39 such that the MMAD was a division within the
40 bureau.
41 Q Okay. All right.
42 A But yes, it was charged with the responsibility of
43 administering those regulations.
44 Q And they would -- as is indicated, the record-
45 keeping system consisted of paper files and an
46 electronic database; correct?
47 A Yes.

- 1 Q And then it says -- and I take it this is an
2 additional database, or is that the electronic
3 database, the safe access to medical marijuana
4 database?
5 A My understanding is it's one database.
6 Q Just one database. Okay. But -- so the person or
7 the people involved would keep paper files and
8 maintain this electronic database, which they at
9 that time would keep up to date by not just adding
10 to the database as indicated but also to the paper
11 files; correct?
12 A Correct.
13 Q And then they would provide information on all
14 applications for either, it says:
15
16 As well as for authorizations to possess and
17 licences to produce granted under the MMAR.
18
19 Correct?
20 A Yes, that's what it says.
21 Q And then it would also -- or the SAMM database
22 would also keep a record of incoming and outbound
23 calls or call log -- outbound call logs; correct?
24 A Yes.
25 Q And then in paragraph 9 it's further indicated
26 that the information provided in this affidavit
27 was obtained from the paper files kept by MMAD,
28 and they were confirmed by information contained
29 in the SAMM database; correct?
30 A Yes, that's what it says.
31 Q Okay. All right. If we go back to paragraph 14
32 of your affidavit, so we're back then to talking
33 about the OMC, and you talk there about the staff
34 having been -- or the office and the staff created
35 to meet the objectives of the MMPR and that that's
36 unique to the -- or unique and distinct from the
37 BMC; correct?
38 A Yes.
39 Q You talk about different skill sets between the
40 staff who worked under the BMC and now the staff
41 under the OMC; correct?
42 A Correct.
43 Q But what you're referring to there is their
44 familiarity with the regulations and the process
45 involved and the different regulations; fair
46 enough?
47 A Actually, no.

- 1 Q Okay.
2 A Given the functions -- the functions that are
3 currently the core mandate of the OMC are really
4 policy-driven. So the staff that are employed in
5 the office are by and large policy analysts,
6 people with a background or an experience in
7 developing and analyzing policy, some perhaps with
8 more of an economic or business background. The
9 staff -- my understanding of the staff that were
10 employed in the BMC by and large were -- had
11 clerical skill sets, and so they weren't, for
12 instance -- wouldn't have had any experience or
13 any knowledge of policy development or regulatory
14 development. Their job was the review and the
15 administration of licence applications, and so
16 it's not only a reference to an understanding of
17 the different regimes, but it's actually a
18 reference to a fundamentally different face of the
19 workforce.
20 Q And the total workforce is the 42 indicated in
21 paragraph 15?
22 A That's correct.
23 Q But then you set out in detail under 15 in (a),
24 (b) and (c) three categories, the first being
25 policy regulatory and stakeholder engagement,
26 which appears to be a merging of what we discussed
27 under paragraph 13(a) and perhaps (b) and (c); is
28 that correct?
29 A The --
30 Q Well, and part (d) as well I suppose in terms of
31 stakeholders.
32 A Honestly, mapping the organization -- the
33 description of the organizational structure, which
34 is 15(a), (b) and (c), there are three units in
35 the structure.
36 Q I see.
37 A In many ways wouldn't directly map to the goals --
38 the organizational goals or the function. So for
39 instance, there are corporate activities described
40 in 15(b) that would cut across all of the
41 objectives described in 13(a) to (e).
42 Q Right.
43 A So one is an articulation of an organizational
44 mandate, and the other is a description of the
45 structure itself.
46 Q But some of these 42 individuals do some type of
47 clerical work, don't they?

- 1 A Yes, sir.
2 Q They answer the phones, some of them?
3 A That's correct.
4 Q They make notes in files?
5 A Correct.
6 Q Electronic or paper?
7 A Yes, yes.
8 Q Okay. And so the skill sets of those who were
9 doing that would be the same as the skill sets of
10 those who were performing those functions under
11 the MMAR, or the BMC I should say; is that
12 correct?
13 A I'm giving consideration to the operational tasks
14 that are currently carried out in the OMC. So for
15 instance, one of the key functions of that
16 operation's unit is responding to access to
17 information requests, so the searching of records,
18 the printing of records, the collecting of
19 records. So there possibly is some analogy
20 between that function and what was done
21 previously, but it's in my mind still unique from
22 that of somebody who would have operated in a
23 licensing environment where they were assessing
24 merits of an application and granting a licence.
25 Q But under, say, 15(a)(i) you talk at the bottom
26 about:
27
28 Ongoing engagement with a range of
29 stakeholders including the health care
30 community, law enforcement, other levels of
31 government, the international community and
32 the general public.
33
34 I take it from that you're getting information or
35 you're interacting with people in those various
36 capacities and recording it for purposes of the
37 OMC, if it's in furtherance of the program.
38 A I'm not sure I understand.
39 Q You're gathering information from people keeping
40 records of it in order to further the work of the
41 OMC?
42 A I think the text that you're referring to
43 describes something slightly different than the
44 gathering of knowledge and the keeping of records.
45 Q Okay. Let's go to (b) then, operations. You
46 still -- operations still has a call centre?
47 A Yes, sir.

1 Q As did the BMC?
2 A Yes, sir.
3 Q And you have something called "information
4 management" that's part of operations?
5 A Correct.
6 Q And that means information that comes in, you
7 manage the information somehow by putting it in a
8 file or keeping it on an electronic database; fair
9 enough?
10 A Fair enough.
11 Q Okay. Coordination of marijuana-related requests
12 under the *Access to Information* and *Privacy Act*
13 that you talked about. Somebody gets that
14 request, makes a note of what it's about, searches
15 the database if required and provides that
16 information pursuant to the *Access to Information*
17 *Act* or *Privacy Act*; fair enough?
18 A Yes, that's a fair description.
19 Q So those staff members at least are involved in
20 receiving information, sometimes from the public
21 or patients; fair enough?
22 A M'mm-hmm.
23 Q Recording the information from the patients and
24 putting it somewhere into the records of the OMC?
25 A I would just note that the information is diverse
26 in nature, so it's not simply coming from
27 patients.
28 Q No, no. I'm just using patients as an example of
29 one of many. I'm not -- I'm quite sure you -- but
30 you do get some from patients?
31 A That's correct, yes.
32 Q So the call centre and the information management
33 and coordination involved information from all
34 sorts of people but including medically approved
35 patients?
36 A Yes, that's correct.
37 Q Okay. And then the litigation support in (c) is
38 the sort of thing that we have -- you're familiar
39 with the affidavit of Danielle Lukiv that attaches
40 an affidavit of Christina MacInnis?
41 A Correct.
42 Q And that is part of the function of the litigation
43 support group; am I right? Somebody calls in --
44 a police officer calls in, and he's doing an
45 investigation of a particular address and wants to
46 know if it's legal or not, and so somebody like
47 Christina will go look at the SAMM database, see

1 what was there as of March 31st, 2014, and then
2 presumably print out or make -- gather what
3 information is being requested and in some cases
4 put it into an affidavit, like exhibit B to the
5 affidavit of Ms. Ritchot, attaching various
6 licences and so on so that there is proof of what
7 existed as of March 31st, 2014?
8 A So the function of responding to police queries
9 actually occurs -- it's carried out by staff who
10 are in the operations unit, not the litigation
11 support unit.
12 Q Oh, okay.
13 A The litigation support unit is principally charged
14 with acting as a liaison between the office and
15 the Department of Justice and then coordinates the
16 collection of information in support of different
17 actions.
18 Q Okay. Because in that affidavit of Christina
19 MacInnis she -- and this is exhibit A to the
20 affidavit of Danielle Lukiv that's part of the
21 motion. She describes herself in paragraph 2 as
22 the staff of a litigation support office. Is that
23 something different?
24 A I'm just looking for the date.
25 Q Oh, the date would be February 16th, 2015.
26 A No, that's correct, sir. This is the same
27 litigation support office.
28 Q So it's maybe a bit of an overlap between
29 operations and litigation support where the --
30 you know, the request is made by somebody -- the
31 example we're using is the police -- for certain
32 information to assist them in an investigation,
33 and that person in the office, whether in
34 operations or litigation support, is able to
35 gather the information requested and put it into
36 an affidavit?
37 A That's correct.
38 Q And if somebody was to call subsequently about
39 that same address, that information would be
40 available that there had been a previous call by
41 the police about that particular licence or
42 location; isn't that correct?
43 A That is correct.
44 Q Okay. At paragraph 16 you then talk about the
45 three full-time equivalents and basically are
46 telling us that of your total number of employees
47 there's a certain amount that's allocated to deal

1 with what's described as "residual services in
2 support of former MMAR licence holders"?
3 A That's correct.
4 Q And so they would be the people who, as indicated
5 in paragraph 17, respond to requests for reprints
6 of documents, for example?
7 A Yes, sir.
8 Q So we get MMAR -- medically approved patients
9 under the MMAR calling in, saying, I've lost my
10 document or it's been destroyed or something and
11 can I get a reprint?
12 A Yes, as an example, that's accurate.
13 Q And so the person like Christina MacInnis or
14 whoever hears that from the patient pulls up the
15 SAMM 2 database, sees what the situation was as of
16 March 31st. Because they have an existing profile
17 in the database, they're able to print off the old
18 licence and send it to the patient.
19 A Yes.
20 Q That's essentially the process in relation to that
21 particular --
22 A Yes, in that scenario you can imagine the database
23 previously created a PDF file, an image of the
24 original licence that -- which then can be
25 printed.
26 Q Right. And then the other example, opening and
27 returning documents mailed to the -- "MMAF" now is
28 used. It went from D to P. I don't know if that
29 really matters. It basically -- it's the same
30 program; somebody calls in or writes wanting to
31 get a licence, but it's after March 31st. You
32 open the mail; you see that there's no provision
33 for that anymore; you send it back. Is that -- am
34 I understanding that correctly, opening and
35 returning documents mailed to the MMAF?
36 A So with respect to your question about the D and
37 the P, I think the D previously discussed is in
38 reference to the previous organizational division.
39 Q Right.
40 A The P --
41 Q Program?
42 A -- is typically referring to the program in
43 general.
44 Q All right.
45 A And the scenario around why someone might send
46 mail sounds like a reasonable one. People still
47 do send us requests for new licences, and we

1 return those.
2 Q And then the third thing that's referred to here
3 is responding to police queries, so that's the
4 other function that those three full-time
5 equivalents are involved with?
6 A Correct.
7 Q And then you indicate the research was done by
8 Ms. Skalski about the volume of mail received,
9 licences reprinted and application forms returned
10 on a weekly basis, and that's the chart that's
11 exhibit C; correct?
12 A That's correct.
13 Q And that chart at exhibit C essentially, as you
14 say, is limited to those issues: mail received,
15 licence reprints sent out, application forms
16 returned, licence and reprints sent out -- I'll
17 get you to explain that in a minute -- and
18 returned information missing. Those are the
19 topics that the chart deals with.
20 A Yes, sir.
21 Q And so we have at the top the number up to March
22 31st, 2014, and then showing mail received
23 starting in June of 2013, and that -- as I
24 understand it, that date is picked as the date of
25 the coming into force of the MMPR; is that right?
26 A That's correct.
27 Q And so we have from June the 7th, 2013, right
28 through in this chart up to May 5th of 2015; fair
29 enough?
30 A That's correct.
31 Q And so if we look at mail received we've got large
32 numbers in 2013, reducing by the time we get to
33 November of 2013. We're down, it appears, into a
34 significant reduction compared to the calls up to
35 October of 2013. Suddenly there's a drop-off?
36 A Yes, it appears that in early October it went from
37 2,002 to 775.
38 Q And so we've gone from in June of -- if we take
39 the first entry, June 7th, 2013, 1,246 pieces of
40 mail received, but by May 5th of 2013 you're down
41 to 18 pieces; correct?
42 A That's correct.
43 Q So the volume is substantially reduced, isn't it?
44 A That's correct.
45 Q And the same is true, I take -- well, licence
46 reprints sent out, at the top it's indicated 419,
47 and that's after March 31st, 2014. And then

1 there's no entries until we go to March 31st,
2 2014, and so the reprints are the numbers after
3 that date right through to May 5th again; correct?
4 A The -- if you look at the column titled "licences
5 and reprints sent out."
6 Q Yeah.
7 A My understanding, the reason the information is
8 presented this way is that prior to March 31 that
9 data field wasn't tracked independent, so you've
10 got a collective number of 29,942.
11 Q And it's a fair -- the numbers seem to be fairly
12 low. Would you agree with that?
13 A I'm sorry, which numbers?
14 Q The volume of licence reprints sent out is not a
15 large number per month or per date that we have as
16 entries?
17 A You're referring to the 419?
18 Q Yes. And I'm referring to the entries in the
19 actual columns like zero and 5, and there's one
20 that's up to 60, but most of them are ...
21 MS. WRAY: Perhaps -- Mr. Conroy, I'm also confused.
22 Could you just clarify which column we're looking
23 at at this time?
24 MR. CONROY: "Licence reprints sent out."
25 MS. WRAY: So the third column from the left?
26 MR. CONROY: Yes.
27 THE WITNESS: And I'm sorry, the question was?
28 MR. CONROY:
29 Q I'm just saying that the demand or the volume of
30 requests is low, isn't it?
31 A The volume of requests is -- hasn't described
32 whether it's low or high. I'm not sure what to
33 compare it to.
34 Q Let me put it this way: it's not a large number
35 of requests, is it?
36 MS. WRAY: I think again, Mr. Conroy, he has nothing to
37 compare this to. He's already indicated that
38 there is no comparator, so it's impossible for him
39 to say if it's small or large or medium or in
40 between.
41 MR. CONROY: All right.
42 Q Well, let me put it to you this way: in terms of
43 the amount of work that these people have to do,
44 it's not a large number of requests, is it?
45 A Well, I think the -- I think the staff are busy.
46 I'm not sure that -- I think that the number of
47 employees that existed under the program to

1 support the activities described prior -- you
2 know, prior to March 31 were considerably greater
3 than the three individuals who have not only these
4 duties to carry out but others as well, so I
5 wouldn't want to leave the impression that they're
6 underworked.

7 Q No, I'm being specific to this task. I completely
8 understand they've got all kinds of other tasks.
9 I mean, they're shown here in the document, but in
10 relation to this particular task they're not
11 getting a huge number of requests for reprints,
12 are they?

13 A They don't appear to be a huge number.

14 Q I mean, you knew that there was in excess of
15 38,000 people approved by March 31st, 2014, didn't
16 you?

17 A I did know that, yes.

18 Q I think that's in your affidavit.

19 A Yes.

20 Q So bearing that in mind, the number of reprint
21 requests is not huge as one of the tasks that
22 they're doing?

23 A Correct, compared to the total number of former
24 licence holders it is not.

25 Q And similarly the column "application forms
26 returned as," correct me if I'm wrong, but that
27 means people who applied and they were just sent
28 back because there was no remaining provision to
29 process those applications; is that fair? In
30 other words, the MMAR had been repealed?

31 A Yes. So earlier we discussed about the returning
32 of mail that had been sent in, and this would
33 articulate the volume of that mail that's being
34 returned.

35 Q And the next column, "licences and reprints sent
36 out," how is that different? Is that just the
37 statistics prior to March 31st? I think that's --

38 A Yes, that's correct.

39 Q Okay. So that would be our comparator then, would
40 it, to the column "licence reprints sent out,"
41 third from the left? Would we be comparing the
42 figures at the bottom that continue on after
43 March 31st and this column, second from the right,
44 is all of the requests prior to March 31st?

45 A So I think the column entitled "licences and
46 reprints sent out" includes two activities. One
47 would be prior to March 31st, somebody who had

1 lost a licence and required a copy of the
2 original, and it would also include, however, the
3 issuance of new licences, whereas the column third
4 from the left which is titled "licence reprints
5 sent out" only makes reference to reprints. So
6 they're not quite comparable columns.
7 Q All right. And the last column, "returned
8 information missing," if I'm understanding, that's
9 again prior to March 31st: application comes in;
10 something is incomplete; it's sent back to be
11 completed if the person wants to do so?
12 A That's correct.
13 Q All right. Okay. And while -- so just to be
14 clear then, that exhibit, it relates to only those
15 items and does not relate to the police calls;
16 correct?
17 A Yes.
18 Q And it's the next exhibit, exhibit D, that relates
19 to the police calls; fair enough?
20 A Exhibit D refers to both the police inquiries as
21 well as inquiries from other parties.
22 Q Other people?
23 A Yes.
24 Q Fair enough. And so what we have if we look at
25 exhibit D, we've got 2013 number of calls --
26 you've got the weeks broken down and then the
27 number of calls to the -- now it says OMC. Should
28 that be BMC until March 31st and then OMC
29 thereafter --
30 A Yes.
31 Q -- probably?
32 A That is correct.
33 Q Because it's covering both MMAR and MMPR?
34 A Yes, that's correct.
35 Q So this is -- so this shows that you've got a
36 total number of calls -- let's just go with the
37 first one -- of 1,030 in that week of June the
38 5th.
39 A M'hm-hmm.
40 Q 400 of them were from the police.
41 A It's cumulative, sir.
42 Q Oh.
43 A So it would be 1,030 from the general public,
44 licence holders, and in addition to that it would
45 be 400 --
46 Q Oh, I see, sorry.
47 A -- to a unique line, and in total --

1 Q The total is the 1,430 on the right there?
2 A Correct.
3 Q Yeah. So 1,030 calls from patients, members of
4 the public, whoever, and an additional 400 just
5 from the police for the total of 1,430?
6 A Yes.
7 Q And that's how to read the -- this exhibit?
8 A Yes.
9 Q And the data unavailable that's shown on the first
10 page is the information that's in your second
11 affidavit?
12 A Correct.
13 Q If we go to the second page of this exhibit, so if
14 we look at April 6th to April 12th, that's 2014 on
15 this page; correct?
16 A Yes.
17 Q And so it shows a drop-off starting April 13 to
18 19, doesn't it in number of calls from other than
19 the police?
20 A I might say the drop-off seems to begin on
21 April 6th from 3,600 down to 1,200.
22 Q Yeah, right. And then it seems to significantly
23 drop further, and I'm only talking about those
24 calls at the moment, the general calls; fair
25 enough?
26 A It seems to taper off from there, yes.
27 Q I mean, you're down to 312 by March 28th of 2015
28 compared to 1,159 back in February of 2014?
29 A That's correct.
30 Q And then if we go to the police calls, they --
31 it's a large number there in that first
32 February 16th of 754, and then it seems to vary.
33 There's a significant reduction, but then the odd
34 occasion there's an increase, but we seem to be
35 down in the 200 to 300 range at least fairly soon
36 after March 30th, 2014; fair enough? That would
37 be -- yeah, March 30th date is seven rows down on
38 that page. February -- starts with February 16th.
39 A Sorry, which row are you referring to?
40 Q Well, let's start at the top. It says 754 for
41 that week of February 16th?
42 A And you're still on page 2?
43 Q Yeah.
44 A Okay. Yes, I see that.
45 Q And then if we drop down to March 30th it's down
46 to 168, isn't it?
47 A I see that, yes.

1 Q And then if we go across to the total calls we're
2 up at 3,859, as of the date of repeal of the MMAR,
3 total calls?
4 A Total calls, yes.
5 Q And then it drops down to 1,555?
6 A Correct.
7 Q And then we go down a few, it drops into the 900s
8 and then seems to slowly and usually reduce, but
9 there's the odd time when there's a jump; fair
10 enough?
11 A Yeah, I see the numbers fluctuate down the line.
12 Q But we're basically way down from the 1,913 from
13 February of 2014 down to 589 by March of 2015;
14 correct?
15 A Yes, that is correct.
16 Q So the volume of inquiries by the public or the
17 police have generally reduced since the repeal of
18 the MMAR?
19 A I think that's a fair summary.
20 Q All right. But you're still getting all these
21 calls from the public and from the police post the
22 repeal of March 31st, 2014; correct?
23 A We do get, I would say, a significant number of
24 inquiries from the public and others.
25 Q All right. Let's move on with your affidavit
26 then. The next section that you deal with is the
27 SAMM 2 database, and basically paragraph 19 you
28 describe essentially what the -- that the BMC
29 managed this database under the MMAR; correct?
30 A Yes.
31 Q And you point out at paragraph 20 that it was a
32 record-keeping system maintained and again under
33 the -- and consistently with the *Privacy Act* and
34 the *Library and Archives of Canada Act*; fair
35 enough?
36 A Yes, that's what it says.
37 Q And again it's paper files and electronic
38 information being maintained?
39 A Well, of course the SAMM database itself is only
40 electronic, but there are also paper files.
41 Q All right. So you were then informed by Kaylene
42 Funk -- she's the database analyst, and she
43 describes the modules under the SAMM 2 database,
44 correct, in paragraph 21?
45 A That's correct.
46 Q Now, she says there:
47

1 The database was comprised of three modules
2 and that currently these modules have the
3 following capabilities.
4

5 So she's describing there what can currently be
6 done?

7 A She's describing the state of the modules
8 currently and whether and how they're used
9 currently.

10 Q And if I understand it, she then describes the
11 correspondence and call management in (a),
12 application processing and licence issuing in (b),
13 and (c), marijuana supply, and she's actually
14 saying that (b) or -- yeah, (b) and (c) -- (c)
15 isn't used at all anymore. (b), it's simply a
16 matter of reading what the database says up to
17 March 31st, 2014. Fair enough, those two?

18 A Yes, sir.

19 Q And so the main continued function, that involves
20 more than just the database is this correspondence
21 and call management part. In other words, you're
22 getting correspondence and calls to an individual
23 working in the OMC who is responding and providing
24 information that's in the SAMM database up to
25 March 31st, 2014?

26 A Yes.

27 Q Nothing is added; nothing is changed. The
28 database -- the database remains the same, but the
29 person is providing the information to whoever is
30 inquiring?

31 A Correct. So the data contained in the system is
32 unchanged. It's -- in many ways it's a historic
33 record which is consulted for various reasons.

34 Q Yeah.

35 A Yet when a correspondence occurs there's something
36 that resembles a comment or a note box whereby it
37 can be logged that there was some type of
38 interaction on that day and time. This is
39 separate and apart from the data of the database,
40 however.

41 Q All right. So I'm maybe understanding computers a
42 little bit, and so if you open up your computer
43 because -- or you're on your computer, the call
44 comes in, you can click somewhere to bring up the
45 database?

46 A Yes.

47 Q And you can tell people what's on that database,

- 1 if that's their question?
- 2 A Correct, if you're a former -- if you're a former
3 licence holder and you have questions about your
4 licence, the analyst can initiate the database and
5 then call up the record and read off the screen.
- 6 Q And then this note thing that you just talked
7 about -- so the person is being asked a question
8 and wants to make a note about what the people are
9 asking them. You described a function a few
10 minutes ago. Explain that to us again. What do
11 they do?
- 12 A So once the call is complete and that screen of
13 the database is shut down --
- 14 Q Yes.
- 15 A -- and then there is the corresponding -- the call
16 log, which is a different screen, and a note can
17 be made that indicates that correspondence has
18 occurred.
- 19 Q Okay. So you can put so-and-so, the name of the
20 person. If it was a patient, for example, that
21 called, that would be put in the note?
- 22 A Correct.
- 23 Q Could be. And what they called about?
- 24 A Correct.
- 25 Q And so if somebody then calls in afterwards and it
26 happens to be about the same address or the same
27 patient, the call taker presumably has access not
28 only to that database but also to this note?
- 29 A I'm not sure I'm understanding the question.
- 30 Q Well, you say that the person -- they close down
31 the database, they make a note about the call, who
32 it was, what it was about. So if there's a
33 subsequent call about the same licence or it's the
34 same person, I take it that the call taker, when
35 they bring up anything to do with that particular
36 licensee or person, will have access to that note.
- 37 A That is correct.
- 38 Q Yeah. So a person receiving a call from a patient
39 can make a note about what the question was or the
40 information provided, whatever it might be, and
41 any subsequent call about that particular licence
42 or that particular location will be available to
43 the next call taker if there's another call about
44 that particular licence; fair enough?
- 45 A Yes.
- 46 Q Thank you. Okay. So if the patient called up and
47 said -- and I understand it has to be a patient

- 1 that's got an existing profile in your database,
2 not some new person. So if such a person calls up
3 and says, I had a fire in my house; it wasn't
4 because of my production site, and I -- so I have
5 to move; I'm medically approved; I have to move.
6 I have a new site; here's the address. The call
7 taker could note all of that in the note, and that
8 would be available next time if a policeman called
9 about the old address, the March 31 address;
10 correct? Or the patient.
- 11 A So in the scenario that you just described, while
12 the act of typing in the additional information of
13 a new address and noting it in the comment field
14 is certainly possible, the challenge lies in how
15 the SAMM 2 database actually functions. So of
16 course that information is separate and apart from
17 the information contained in the licence itself,
18 and when a police query occurs, the database is
19 only built to enable searching in one of two ways:
20 searching by the patient name or by the address.
- 21 Q Right.
- 22 A And it's fairly typical when police make their
23 queries that they provide only an address.
- 24 Q Right.
- 25 A So in the scenario that you just describe [sic]
26 where effectively a production address has
27 changed, SAMM 2 is incapable of searching
28 information in the comment field. So if the query
29 was about, for instance, the new production site,
30 SAMM 2 would not be able to find it.
- 31 Q You would only have the old site?
- 32 A You would only have the old site, and you would
33 end up in a situation of potentially providing
34 inaccurate information.
- 35 Q So the patient would have to provide their name,
36 and if the patient provided their name, then
37 that -- sorry, the police officer would have to
38 provide the name of their target or whatever, not
39 just the address, and then you would be able to
40 determine, first of all, did that person -- was
41 that person a patient up to March 31st according
42 to the SAMM database, and you would then also be
43 able to access the note that came, if it was a
44 note that came from the patient at an earlier
45 time?
- 46 A So again, the two means of searching is name and
47 address.

- 1 Q Right.
- 2 A I think the other point that I might want to -- I
3 think is relevant to your question is in the past
4 when changes to production sites were requested,
5 these weren't done over the phone. They were done
6 through a paper process, and it would enable the
7 patient to be able to confirm a number of details
8 that I think were germane to the question of the
9 location of the new production site: what were
10 the security measures that were intended, whether
11 there were other licences, whether there was a
12 consent of the property owner. There were a
13 number of factors that were considered in the
14 course of an amendment to the licence for the --
15 so I think the notation in the comment field,
16 separate and apart from the challenge associated
17 with searching the database to be able to
18 recognize the new licence, would also bring in to
19 bear some of these other factors.
- 20 Q Sure. But if the policeman calls up and says,
21 I'm doing an investigation about this particular
22 person or a particular address, the first thing
23 that the call taker can do is first see what the
24 status of the person was under SAMM 2 up to
25 March 31st, 2014; fair enough?
- 26 A Yes, when a query -- when a police inquiry comes
27 on an individual --
- 28 Q He gives a name.
- 29 A -- they give the name; we can search the database
30 and provide the information such as it existed on
31 March 31st.
- 32 Q And the call taker can say, well, this person had
33 a licence as of March 31st; let me check and see
34 if there's any notes or anything to do with that
35 person in our other notes that are not in the SAMM
36 database, the note that you talked about; fair
37 enough?
- 38 A So again, in a situation where the name is
39 provided, yes.
- 40 Q Obviously if it's an address that you have no
41 record of, you have no record of it. It has to be
42 something you have a record of that the police are
43 asking you, do you have a record of it; fair
44 enough?
- 45 A Yes. I just want to make sure that it's very
46 clear that even if you made a record of it in the
47 comment box as we're describing, it would be

1 impossible to locate it when searching the
2 database if all we were provided with was the
3 address.
4 Q Absolutely.
5 A So you would end up in, I think, a fairly
6 challenging situation.
7 Q But if the patient provides a name to the call
8 taker then the call taker can access that note,
9 and if the note said I've moved to a different
10 address, that would be available to the call taker
11 to tell the police; isn't that correct?
12 A Yes, sir.
13 Q And the same would be true if somebody's
14 authorization to possess had expired before
15 March 21st, 2014, which is the date Justice Manson
16 set for authorizations to possess. If that person
17 went to their doctor and obtained an authorization
18 under section 53 of the narcotic control
19 regulations to cover their possession, and they
20 phoned in to the call taker and said, call taker,
21 I had -- give us a name -- I had an authorization
22 to possess under the MMAR, but it expired before
23 March 21st; I want you to make a note that I've
24 since obtained authority from my doctor under
25 regulation 53; would you please make a note about
26 that in case anybody calls asking. That could be
27 done, couldn't it?
28 A While it would be my understanding it would be a
29 significant deviation from practice for amending
30 licences including dosage amount from the previous
31 regime, adding a notation into the comment field
32 is physically possible.
33 Q The previous regime is described in the
34 regulations, what you had to do to change an
35 address, et cetera --
36 A Correct.
37 Q -- and that's all been repealed, hasn't it?
38 A That's correct, yeah.
39 Q So here we're talking about a measure because we
40 have an outstanding -- a case, and we're talking
41 about something to be done until we get a
42 decision, an interim process, aren't we?
43 A Yes, I believe that's the case.
44 Q And so -- but you're confirming to me, though,
45 that it is physically possible for the Office of
46 Medical Cannabis to have the call taker make a
47 note of a changed address of a section 53

1 authorization and perhaps other types of
2 information from the patient that is available to
3 a subsequent call taker to be able to provide it
4 to the caller such as a police officer in the
5 future; isn't that right?
6 A The -- yes, given the construct that you have just
7 sort of laid out, it is theoretically possible.
8 Q Okay. And just then going back to your affidavit,
9 because the government got out completely of the
10 marijuana supply thing referred to at 21(c);
11 correct? So no staff or anything are being used
12 to have to deal with that issue at all?
13 A That's correct.
14 Q And the same I assume is also true with respect to
15 (b). They don't have to deal with application
16 processing and licence issuance, so the major
17 residual assistance is responding to patients or
18 police sending out reprints or providing
19 information; fair enough? In terms of MMAR.
20 A Yes, insofar as in paragraph 16 and 17 I describe
21 that there are some minor residual activities that
22 occur.
23 Q Yeah.
24 A They are indeed related to reprinting original
25 licences, responding to police queries and then
26 answering questions from the public, including
27 former licence holders.
28 Q All right. Because in paragraph 22 you say that
29 when the MMAR was repealed on March 31st, 2014, as
30 a result of the Allard injunction, certain people
31 who had ATPs, let's say, authorizations to
32 possess, personal production licensed or
33 designated growers, were going to be able to
34 continue to possess and produce for medical
35 purposes under the existing terms until the court
36 issues its decision on the merits; correct?
37 A That's what it says, yes.
38 Q And then you go on though to say that it -- as a
39 result it was appreciated by Health Canada,
40 presumably, that in order to protect them from
41 criminal liability under the *Controlled Drugs and*
42 *Substances Act* you would continue to provide these
43 residual services. That was the intention;
44 correct?
45 A I believe that sentence simply just refers to the
46 fact that the injunction protects those who are
47 eligible from criminal liability.

- 1 Q Right. So if we have a person who was protected
2 by the injunction and then had a fire, not caused
3 by the production site, and is still medically
4 approved, if they move, without notifying Health
5 Canada that they've moved, they're at risk of
6 criminal liability under the Controlled Drugs and
7 Substances Act, aren't they?
- 8 A Yes, that's my understanding.
- 9 Q And all of the consequences that may go along with
10 that including forfeiture of their property. Are
11 you aware of that?
- 12 A I'm not aware of all of the consequences but ...
- 13 Q Okay. All right. And this is where it's
14 indicated that there were -- Health Canada
15 estimates anyway that about 28,000 of the 38,436
16 existing ATPs and production licences were
17 captured by the injunction order?
- 18 A Yes, sir.
- 19 Q So roughly 10,000 that weren't?
- 20 A Yeah.
- 21 Q Okay. Now, you go on to refer to Ms. Ritchot
22 again in paragraph 23 and right through to 27
23 basically dealing with the problems experienced
24 with SAMM 2 and how temperamental it was and how
25 it wasn't fixed and so on; fair enough?
- 26 A Yes.
- 27 Q And then at 28 you say that the SAMM 2 is not part
28 of the OMC primary functions, and then it says:
29
30 The BMC makes limited use of SAMM.
31
- 32 Now, should that be the OMC, given that the BMC is
33 gone? Or are these people who work for the OMC
34 still considered to be BMC?
- 35 A No, I think you're right. I think that's a typo.
- 36 Q That should be OMC?
- 37 A That should be OMC.
- 38 Q Okay. All right. So again this is a reference as
39 I think it's paragraph 15 to the 42 -- some of the
40 42 individuals perform these support residual
41 services that pertain to the old MMAR?
- 42 A Largely makes reference to those in paragraph 16,
43 the three individuals who provide those services.
- 44 Q Yeah. And again describes what they do in
45 terms of the reprints and police queries at
46 paragraph 28?
- 47 A Yes, sir.

- 1 Q Yeah, okay. All right. And then the section here
2 on staffing, 19 through 34, if I'm understanding
3 correctly, this is based on if one had to put back
4 together the entire bureaucracy under the MMAR.
5 Am I understanding that correctly?
- 6 A I think what it's intended to describe isn't
7 necessarily about reconstituting the entire
8 bureaucracy but more to sort of acknowledge that
9 any staffing that would be required to support
10 additional activities have to conform with the
11 processes articulated and are in place for the
12 public service.
- 13 Q Right. But this part of the affidavit addresses
14 if you were basically putting all of the services
15 that were being provided under the MMAR back into
16 place rather than just a very limited part; isn't
17 that fair?
- 18 A For instance, the staffing processes articulated
19 by the public service commission are those that we
20 have to abide by whether we're hiring one person
21 or whether we're hiring a hundred people.
- 22 Q All right. But you've told us that you've got
23 three full-time equivalents now under the OMC?
- 24 A Correct.
- 25 Q If you needed three more, you're not going to have
26 to go through all of the processes that you
27 described here?
- 28 A No, I will.
- 29 Q Well, are you telling us it's going to take the --
30 it will take five and a half months, for
31 example -- I'm sorry, that may be not --
- 32 A 5.3.
- 33 Q 5.3 months to just get another person?
- 34 A In fact that is what it's saying. The public
35 service -- the report that I'm making reference to
36 in that exhibit is describing what the average
37 time -- the average time frame required to staff
38 in the public service. One position on average
39 takes 5.3 or 5.5 months to staff.
- 40 Q So if the court said that you have to have a
41 provision so that there are enough people there
42 to -- in providing just these residual services,
43 no more, you're telling us that it might take five
44 or six months to get a new person?
- 45 A I think our -- and this is also articulated in
46 Ms. Ritchot's affidavit. The experience of
47 staffing in the public service is one that takes a

- 1 significant amount of time.
- 2 Q But so you're talking about practical
- 3 administrative difficulties in trying to get
- 4 enough staff to perform the tasks?
- 5 A Yes, sir.
- 6 Q Okay. All right. And that's similarly the
- 7 section on the office space, the amount of office
- 8 space used and so on. We're not talking about
- 9 needing another three floors or several floors in
- 10 three different buildings here, are we?
- 11 A The office space is determined by the number of
- 12 staff required.
- 13 Q Right. Okay. And then we come to deal
- 14 specifically with the police inquiries at
- 15 paragraph 36, and so you point out there that it
- 16 was section 68.1 of the MMAR that authorized the
- 17 minister to communicate specific information to
- 18 the police. Do you know if that was continued or
- 19 some provision continued after the repeal of the
- 20 MMAR?
- 21 A I'm not aware that it was continued.
- 22 Q Whether it was or not, as you've told us, the BMC
- 23 call centre continues to provide this specific
- 24 service as far as police inquiries? Sorry, OMC it
- 25 should be.
- 26 A Just so I'm -- just to be clear, the OMC call
- 27 centre is responsible for answering phone calls
- 28 from the public, whether it's people interested in
- 29 having information on how to access marijuana for
- 30 medical purposes or former licence holders
- 31 inquiring about the status of their licence.
- 32 There is a pager. There is a pager line that is
- 33 available for police to call Health Canada during
- 34 the course of an investigation.
- 35 Q They can do it from their car -- from the police
- 36 car at the scene?
- 37 A Yeah, sure. I'm sure they could do it from all
- 38 manner of places. But the receiving end is not
- 39 the call centre; it's a pager.
- 40 Q Right. But the pager alerts somebody that there's
- 41 a police calling, and then somebody in the call
- 42 centre then responds to the policeman?
- 43 A The person responsible for making the call back to
- 44 the police officer is not the call centre.
- 45 Q Right.
- 46 A It's actually an individual who is assigned to the
- 47 pager.

- 1 Q I see.
2 A It's just different functions in the operational
3 unit.
4 Q So let me see if I understand it. So if it's a
5 police call it always goes to the pager?
6 A That's correct.
7 Q If it's a public call it goes to the call centre?
8 A That's correct.
9 Q So the police do not call the call centre; they
10 call the pager number? Or is it ...
11 A For the purposes of during the course of an
12 investigation, the appropriate place to call is
13 the pager line, not the call centre.
14 Q Okay. And then the person though who responds to
15 the pager is part of your three full-time
16 equivalents in the OMC?
17 A That's correct.
18 Q And so as well as the -- you have additional
19 people in the call centre besides the three
20 full-time equivalents, because they're also
21 dealing with other issues?
22 A The nomenclature call centre perhaps suggests a
23 capacity that's not there. It's two people answer
24 calls from the public.
25 Q For MMAR or MMPR or whatever?
26 A Any -- there's a 1-800 number that ends up with
27 one of two people who answer the phone.
28 Q But they then refer to whoever is able to answer
29 the question, such as if a policeman called that
30 line instead of the pager, the call centre people
31 would refer them to the people who deal with the
32 pager inquiries?
33 A In that instance the call centre would provide the
34 correct number to call. The call -- the
35 individuals who answer calls from the public are
36 equipped to answer a wide range of topics and
37 referrals are typically not necessary.
38 Q Okay. In paragraph 37 you talk about Health
39 Canada recognizing the importance to former MMAR
40 authorization and licence holders of continuing to
41 disclose potentially exculpatory information to
42 law enforcement agencies actively investigating
43 criminal offences under the *Controlled Drugs and*
44 *Substances Act*; fair enough?
45 A Yes, that's what it is.
46 Q And so the recognition by Health Canada there was
47 that it was important to patients that there be

1 some process if the police are investigating that
2 they could verify with Health Canada that they're
3 licensed?

4 A That is correct.

5 Q And as it goes on it says:

6
7 Health Canada concluded that so long as the
8 authorizations and licences were being used
9 by persons formerly authorized by the MMAR
10 providing limited information relating to
11 specific authorizations and licences would be
12 consistent with safeguarding the rights of
13 individuals who fell under the injunction
14 order.

15
16 A Fair enough?

17 A Yes.

18 Q So the three full-time equivalents, their purpose
19 is to try and provide that in the face of the
20 police call so that patients, medically approved
21 patients under the MMAR with existing profiles,
22 will not be prosecuted if they're lawful, if their
23 licence is lawful is in effect. That's the
24 object; correct?

25 A Yes, with the caveat that they also are
26 responsible for some of those other activities
27 that we described previously.

28 Q Yeah.

29 A This isn't their sole activity.

30 Q But I take it you know, given the aspects of
31 policy and regulatory development and so on and so
32 forth, that these patients are medically approved
33 because the courts ruled that if they didn't have
34 some sort of access that their constitutional
35 rights would be put in jeopardy.

36 MS. WRAY: Well, I think that's actually a legal
37 question. I'm not sure --

38 MR. CONROY: I'm asking if he knew that.

39 MS. WRAY: -- Mr. Costen can answer that.

40 MR. CONROY:

41 Q Do you know that?

42 MS. WRAY: Still, it's a legal question. If you pose
43 it in a different way perhaps --

44 MR. CONROY: All right.

45 MS. WRAY: -- but what you've asked him is what the
46 courts have said.

47 MR. CONROY:

- 1 Q Well, do you know -- I take it you knew that the
2 whole program was created or required to be put
3 together as a result of court decisions.
- 4 A I'm aware of that.
- 5 Q And that it involved preventing the violation of
6 people's constitutional rights?
- 7 MS. WRAY: Again, that's asking him a legal question.
8 I think he's aware that the program came about in
9 response to various court decisions, but I'm not
10 sure that Mr. Costen, having no legal training,
11 can speak to violations of constitutional rights.
- 12 MR. CONROY: I'm not asking him to speak to violations.
- 13 Q I'm simply asking you is it within your knowledge
14 that this was about the violation of people's
15 constitutional rights?
- 16 A Yes, I'm generally aware of those things.
- 17 Q Thank you. And so I take it you would agree with
18 me then that the entire program revolves around
19 whether it's MMAR or MMPR revolves around
20 medically approved patients and trying to provide
21 them with reasonable access to the medicine; is
22 that fair?
- 23 A Yeah, I am aware that the reason for the program
24 is in order to enable reasonable access to
25 marijuana for medical purposes to clients who are
26 authorized to do so.
- 27 Q So you would agree with me that they are the
28 primary stakeholders in the scheme?
- 29 A May I ask what do you mean, "primary
30 stakeholders"?
- 31 Q Well, the whole thing revolves around medically
32 approved patients, doesn't it?
- 33 A It revolves around enabling access.
- 34 Q For medically approved patients?
- 35 A Yes.
- 36 Q I mean, you can have police, you can have Health
37 Canada employees, you can have other interested
38 parties, but the whole program is about trying to
39 do something for medically approved patients,
40 isn't it?
- 41 A The program is about enabling access to marijuana
42 to --
- 43 Q So if somebody, again to use the example, was
44 covered by the injunction and then has some
45 problem arise -- let's use the fire example
46 again -- has another place where they could move
47 to, wouldn't it be one of the primary

- 1 considerations would be to try and prevent that
2 person from having problems with law enforcement
3 given that they're medically approved patients?
4 Wouldn't your department with concerned about
5 that?
- 6 A I think enabling lawful access to marijuana for
7 medical purposes is something the department is
8 very interested in, and through the 25 licensed
9 producers that exist today has in fact enabled a
10 legal access point, and so in a situation where
11 whether it is an individual who was previously
12 licensed under the former regulations or not, a
13 new patient in -- that lawful access or that
14 lawful access point does in fact exist for them.
- 15 Q Well, do you accept that some of them can't afford
16 the prices that are put out by the licensed
17 producers?
- 18 A I'm aware of correspondence to that effect. I'm
19 also aware that the -- that there's a wide
20 variation in price points available or made
21 available by licensed producers.
- 22 Q At the whim of the licensed producers though and
23 not required by law; correct?
- 24 A The regulations do not specify a price limit.
- 25 Q And I take it you knew that Health Canada had
26 people that were being subsidized before under the
27 MMAR that couldn't afford the \$5 a gram through
28 Prairie Plant? Are you aware of that?
- 29 A I am aware of that generally.
- 30 Q So there were people who were cut off and were
31 sued by Health Canada to try and recover the
32 moneys they owed?
- 33 A I'm not aware of that.
- 34 Q So if a person had a -- they were MMAR approved,
35 had a fire, had a new place that they want to move
36 to, can't afford the LP prices or the black market
37 and they go ahead and move, they're a medical
38 patient that then is at risk of being prosecuted
39 if they go to an address that Health Canada is not
40 aware of; correct?
- 41 A Yes.
- 42 Q Okay. And so is that not a concern to the Office
43 of Medical Cannabis to put something in place to
44 enable that to protect those patients pending the
45 decision of the court?
- 46 A As I think my affidavit describes in a bit of
47 detail, the primary mandate of the Office of

- 1 Medical Cannabis is really centred around enabling
2 access to medical marijuana under the new regime.
- 3 Q All right. So it's not an emerging priority or
4 concern of the Office of Medical Cannabis that
5 some patients can't afford the new regime and need
6 some interim help?
- 7 A It is the interest of the Office of Medical
8 Cannabis to ensure that the new regime provides a
9 reasonable access point to patients who require
10 it.
- 11 Q At paragraph 38 of your affidavit reference is
12 made to -- at the end to the -- in correspondence
13 and call management module. Am I understanding
14 correctly that that's a module within SAMM 2?
- 15 A You're in paragraph 38, sir?
- 16 Q Yes.
- 17 A That is in reference to 21(a), the correspondence
18 and call management module that's described in
19 that part of the affidavit.
- 20 Q And so we went over what they are able to do
21 earlier. I see this paragraph also talks about
22 replying to email inquiries, so you've got the
23 police calling a pager number. Is there a
24 particular email that they would email if it's a
25 police inquiry?
- 26 A That's correct.
- 27 Q So there's a pager number and an email?
- 28 A That's correct.
- 29 Q And again whoever is in the call centre or
30 available at the time responds, whether it's an
31 email or -- sorry, whoever is in the pager
32 department responds if it's a page. Does the call
33 centre respond to the emails?
- 34 A No, sir. It really is -- there's one person who
35 is assigned to respond to police queries, whether
36 they come in through email or whether they come in
37 through the pager.
- 38 Q All right. And so if they come in through email,
39 I take it that email is for future purposes
40 connected to whatever that inquiry was about, the
41 particular licence, the particular address,
42 whatever it might be.
- 43 A I'm not ...
- 44 Q Well, if somebody came along subsequently again to
45 search or there was an inquiry again about a
46 particular patient or a particular address, that
47 information that's come in by email, there would

1 be a record of that?
2 A Yes, sir, yeah.
3 Q And it would be accessible by the call taker who
4 is responding to the new call?
5 A Yes, I believe so.
6 Q I mean, they could go to SAMM, and there's nothing
7 new in SAMM 2, but there would be the paper file
8 or the other electronic file that would correlate
9 to the prior inquiry under SAMM 2 that that call
10 taker would have access to?
11 A So much like when a phone conversation happens
12 between the staff member and the police officer
13 and a note is made, a note is made that the call
14 has occurred.
15 Q Yeah.
16 A A similar note would be made that an email
17 correspondence exists.
18 Q And let me give you an example and say somebody
19 has a designated grower under the medical
20 marijuana access regs, and the designated grower
21 decides to quit, and so the patient is now without
22 somebody producing for them, and that patient
23 decides that they want to go under the MMPR and
24 just go get a medical document. Can they call in
25 and say look, I'm cancelling or revoke my licence
26 or whatever so that some record is then there so
27 that that address of the production site is no
28 longer valid because the patient has said, okay,
29 he's quit or she's quit, stop, keep a record of
30 that so the police would be aware of that?
31 A I don't know.
32 Q That could be done though, couldn't it? The
33 person could call in and say look, I had a DG who
34 was producing at this site; we've stopped our
35 relationship; I'm going under MMPR; please make a
36 note that place is no longer valid.
37 A Yes, I'm sure that type of call could --
38 Q And then it could be kept in the record, and if
39 somebody calls in about -- if a policeman calls in
40 subsequently about that address, the person would
41 be able to say okay, in the SAMM database it
42 indicated that was a valid address, but in our
43 note here we have something from the patient
44 saying that relationship is over so that you could
45 tell the police, no, that's no longer valid?
46 A So again, as similar to the earlier questions, I
47 think given that construct it's possible we would

1 still run into some of perhaps the same challenges
2 via-à-vis the fact that --
3 Q You need a name?
4 A -- we couldn't -- yeah, if the -- when the police
5 query came in on a particular address, it would be
6 impossible to cross-reference that with the
7 notation.
8 Q You'd need a name, wouldn't you, of the patient?
9 A The police would -- the query would have to occur
10 through the name, not the address.
11 Q Yeah, so the call takers would have to say to the
12 police we need a name, we can't -- all we can tell
13 you is that that was a valid address under the
14 MMAR. Whether it's still valid or not, we need --
15 well, would the call taker be able to pull up the
16 name of the patient? In the SAMM database they
17 would?
18 A No, that's the challenge I'm trying to articulate,
19 that the -- in that instance if -- maybe I can use
20 an example. If the police said, is there a
21 licence associated with number 1 Main Street.
22 Q Yeah.
23 A And in fact a month prior to that someone notified
24 us that they had moved from number 2 Main Street
25 to number 1 Main Street, when we search number 1
26 Main Street it will come up as if there is no
27 licence associated with it.
28 Q No, I understand that.
29 A So it would be similar.
30 Q But if the police called in about this production
31 site that was a valid production site and are
32 asking is this still a valid production site, the
33 person -- the call taker could or the whoever
34 pulls up the database and would be able to see
35 who -- not only the producer, the personal -- the
36 designated grower I think in the example we used
37 and who the patient is associated to that address?
38 Health Canada would be able to determine that from
39 the address, wouldn't they?
40 A The address ...
41 Q You get the address, you look in the database, the
42 database will show who the patient and the
43 producer are, won't it? It shows who the DG is
44 and who the patient is.
45 A Yes.
46 Q So the call taker could then say to the police,
47 well, we have -- according to our records as of

1 March 31st, 2014, this is the patient and this is
2 the producer; that's all we can tell you. Or
3 would you be able to say but that patient has
4 called in and has added that their relationship is
5 over and therefore that site is no longer valid?
6 A If there is no -- if a search is done for an
7 address where there is no licence, the search will
8 come up --
9 Q Zero?
10 A -- a zero.
11 Q Yeah.
12 A So in any instance where all that you have is a
13 notation in the comment field of a new address --
14 Q Yeah.
15 A -- you will never be able to identify that by
16 doing a site search.
17 Q That's not what I'm putting to you. I'm saying
18 you've got an existing valid address. There's a
19 production site because there's a designated
20 grower and there's a patient, and so --
21 A And nothing has changed.
22 Q Well, the police call in because they're
23 investigating the address that happens to be that
24 production site, and so your call taker can pull
25 up the SAMM database, and knowing that that --
26 there's an existing profile that's connected to
27 that address, you go to that in the SAMM database,
28 and that will tell you who the patient is and who
29 the designated grower is, won't it?
30 A That is my understanding of how it works, yes.
31 Q And that call taker could then say to the police,
32 this is what our records show; there's this person
33 who's a patient and this person who is a
34 designated grower, and if that's all, that's the
35 information that they could give to the police and
36 say it's a valid licence; correct?
37 A My understanding of how it works currently, yes.
38 Q But if the patient has called in and said look,
39 our relationship is over; forget the designated
40 grower; I'm now going to go MMPR or whatever, then
41 when the call taker has got the address from the
42 police, seen that it's valid in SAMM 2, can also
43 go though to a corresponding note of the call
44 received from the patient to say that according to
45 our records the relationship has ended so that's
46 no longer a valid site; isn't that right?
47 A Yes, yes.

- 1 Q Just in the same way if the person didn't have an
2 authorization to possess but was gone and got a
3 section 53 authorization from the doctor and
4 that's found in -- the call taker first pulls up
5 the database, sees the ATP expired prior to
6 March 21st but the personal production or the
7 designated grower was still valid, could go to the
8 note and say oh, but this person has told us that
9 they've got a section 53 and maybe has sent
10 something in, but at least a note has been made
11 that this person's patient has called in to say
12 that. That would be available to the call taker,
13 wouldn't it?
- 14 A So the comment field is designed in such a way
15 that there are no constraints to the nature of the
16 information that can be inserted into this blank
17 box.
- 18 Q Right.
- 19 A The challenge becomes, and it's described a little
20 bit in the affidavit -- the challenge then becomes
21 that the more information that gets added into the
22 database and the more people that use the
23 database, a database that is not functional in any
24 modern sense of the word, starts to create some
25 fairly, I think, significant technological
26 challenges the more information that gets added,
27 the more people that are accessing it and using
28 it, which were challenges that were experienced --
29 certainly experienced at the height of the use of
30 the program.
- 31 Q All right. But they're all searchable, right, the
32 databases? Not just the SAMM but whatever the
33 call taker's notes that they've been keeping
34 record of that relates to the inquiries, it's all
35 searchable by either name or licence number or
36 something like that; right? Isn't that right?
- 37 A I'm not sure what you mean. There's only one
38 database.
- 39 Q Let's go to an example again. It might be the
40 easiest. We've got a person who wants to change
41 their licence and has -- so in the SAMM database
42 you've got an authorization to possess and a
43 personal production licence associated to a
44 particular licence and address and that's in the
45 SAMM database and that can't be manipulated or
46 changed. That's there to read only?
- 47 A Correct.

- 1 Q Meanwhile the person has called in and said hey, I
2 need to change my address because of whatever
3 reason, provides sufficient information to the
4 bureau or the office to identify the address and
5 so on, and so the note taker has put that in the
6 comment field we've been talking about. A
7 subsequent call taker, if another inquiry comes in
8 about that same licence or address or whatever,
9 will be able to search the other information to
10 find that note that corresponds to that place;
11 isn't that correct?
- 12 A That's where I think you're losing me, the other
13 information. In the example that you've provided,
14 if someone makes a notation in the comment field,
15 it is saved and there to be read subsequently.
- 16 Q In connection with the same licence or address or
17 whatever?
- 18 A The comments, the notes, are attached, if you
19 will, electronically to a licence, yes.
- 20 Q So anybody subsequently looking at that licence
21 will see that new information, won't they?
- 22 A Yes.
- 23 Q Yeah, okay. And as we discussed with respect to
24 your second affidavit, really it was just adding
25 in those additional figures, wasn't it?
- 26 A Yes, sir.
- 27 Q All right. So Isabelle Skalski is referred to in
28 your affidavit in a number of places as the
29 manager of operations?
- 30 A That's correct.
- 31 Q And she's the one who did the research and
32 tabulating the volume of calls like the police
33 requests, our exhibit D, for example.
- 34 A Yes, she prepared those two exhibits.
- 35 Q And so to do that she would go to a database of
36 some sort that keeps a record of these sorts of
37 things that are in both exhibit D and E, or do you
38 know exactly what she would have to do to find
39 that information?
- 40 A With regard to the volumes of calls to the 1-800
41 number line, so -- which is the public line, as a
42 part of the software that exists in support of
43 that, it's not at all connected with SAMM 2.
- 44 Q Separate database?
- 45 A It's software that we have with the
46 telecommunications company. They provide us
47 reports with the number of calls received.

1 Q Oh, I see.
2 A With respect to the police line, that is something
3 that is actually manually tabulated by the
4 individual responsible for that function.
5 Q Okay.
6 A So that's my knowledge of how that report was
7 generated.
8 Q Okay. All right. So if I'm understanding
9 correctly, there is information in the SAMP 2
10 database with respect to all patients who are
11 medically approved and their designated growers up
12 to March 21st, 2014, to start off with.
13 A Yes.
14 Q In addition there would be paper files in relation
15 to each one of those patients; is that correct?
16 A That's correct.
17 Q When a call or inquiry comes in in whatever manner
18 about a particular patient, the office is able to
19 go to a file that has everything you need to know
20 about the interaction by that patient with Health
21 Canada. Whether it's the original application,
22 changes that were made in the past or new
23 information that they have phoned in afterwards,
24 Health Canada has a record of it at least in the
25 paper file, but probably also in an electronic
26 way, not in SAMP 2 but available to employees?
27 A So the paper record would be a complete record of
28 the file, and any electronic information that
29 exists is contained in SAMP 2.
30 Q No, but after SAMP 2 -- after March 31st it's not
31 in SAMP 2, it's kept somewhere else, right, or is
32 it connected to SAMP 2?
33 A So the comment field that we've been describing --
34 Q Is still -- yeah.
35 A -- is part of the what we described in 21(a). The
36 correspondence module --
37 Q So it's part of that module.
38 A -- is the only part. That comment field is the
39 only -- it's all part of SAMP 2.
40 Q So it's still part of SAMP 2. So the call taker
41 doesn't have to go elsewhere. Once they've pulled
42 up SAMP 2 they will know that there is this note
43 if there's been a prior inquiry about the specific
44 same address or patient or whatever?
45 A My understanding of the functionality is that the
46 different modules can only be -- they cannot be on
47 at the same time.

1 Q Sure.
2 A So you can call up one module and close -- you
3 have to close it before you open a second, so ...
4 Q But the call taker knows to check the other module
5 in responding to the police, for example?
6 A So the call taker would read the information
7 contained in the original licence when providing a
8 response to the police.
9 Q All right. And anything in this envelope note?
10 A I'm not aware that when speaking to police that
11 there's any reference made to the --
12 Q No, but it's available to them is my point.
13 You're saying that somebody calls in about a
14 particular licence, they make a little note, it's
15 somehow connected to the SAMM 2 database so that
16 when they -- if they have occasion to recheck the
17 SAMM 2 database, they're going to know there's a
18 note in addition to what was there before?
19 A Yes, if they manage to locate the correct file.
20 Q Yeah, okay. I take it you knew that Justice
21 Manson imposed a 150-gram limit on people's
22 possession -- MMAR patients' possession as part of
23 the terms of the injunction? Did you know that?
24 A I'm aware of that, yes.
25 Q And are you aware that under the MMAR people
26 sometimes have different production sites to
27 storage sites to residences, they aren't always
28 the same place?
29 A I'm generally aware of that.
30 Q And are you aware from correspondence that there
31 were people who were having problems because of
32 that 150 gram limit in terms of moving between
33 their production site and storage site and
34 residence?
35 A Not an issue that I'm very familiar with.
36 Q But if people wanted to change their storage
37 site, for example, because of the problem of
38 transporting between production site and storage
39 site, they want to put them in one place because
40 that 150-gram limit required them to do a hundred
41 trips instead of just one, would you agree that
42 again the patient could call in and say look, I'm
43 moving everything -- I'm going to keep everything
44 in my production site. I'm moving my storage site
45 to the production site. Health Canada through the
46 OMC could make a record of that in one of these
47 notes that relates to the specific licence or

1 patient and address so that in the future somebody
2 checking could see that that person has moved
3 their storage site to their production site?
4 That's possible? That can be done; isn't that
5 fair?

6 A As we said earlier, it's a significant deviation
7 on how these types of changes would have been
8 noted in the past, but from a technological
9 perspective making that kind of notation is --

10 Q It can be done?

11 A It's physically possible.

12 Q Okay.

13 MS. WRAY: Mr. Conroy, I note that we're 15 minutes
14 from 3:00.

15 MR. CONROY: Okay.

16 MS. WRAY: Do you intend to go past that? If so, maybe
17 we should take a quick break.

18 MR. CONROY: Do you want to take a brief break? Sure.

19

20 **(PROCEEDINGS ADJOURNED AT 2:45 P.M.)**

21 **(PROCEEDINGS RECONVENED AT 2:49 P.M.)**

22

23 MR. CONROY:

24 Q I asked your counsel to ensure that you had had a
25 chance to read not the current affidavit of
26 Danielle Lukiv, but there was an earlier one, and
27 there one was from Jason Wilcox. You had a chance
28 to do that?

29 A Yes, sir.

30 Q And rather than take you through specific
31 examples, I take it you would agree with me that
32 the exhibits attached or referred to in those two
33 affidavits provided examples of patients saying
34 that they had fallen between the cracks on the
35 injunction in one way or another and were seeking
36 to move their site or make changes because of
37 their particular situation.

38 A My recollection is that the correspondences had to
39 do with a variety of circumstances that led
40 individuals to want to move their sites.

41 Q People who either -- the example we've been using,
42 the lady who had the fire from the dryer who then
43 wants to continue to produce for herself has a
44 place but can't move her site. Remember that one?

45 A Yes, I do.

46 Q And there was another one where the township came
47 and changed the name of the street and everything,

- 1 and so the people are worried that their address
2 is changed not by them but by the municipality?
- 3 A M'mm-hmm.
- 4 Q Again, I take it that's the kind of situation
5 where the patient could communicate with Health
6 Canada, with your office, and say hey, look, this
7 is what's happened; please make a note in case the
8 police call wondering about the address, and in
9 the future if the police call, you would have that
10 information and you could tell -- the call taker
11 could tell the policeman; fair enough?
- 12 A We've said that situation is possible. I believe
13 it also presents some risks and challenges but ...
- 14 Q Yeah, risks and challenges because you may need
15 more people because you may get more calls. Is
16 that what you're saying?
- 17 A I think partly a question of volume. Talking
18 about one example is one thing, talking about an
19 undetermined volume of situations is another. I
20 think another risk that we've talked a little bit
21 about is really around the searchability of the
22 database and the fact that it would be challenging
23 if a query came -- or it would be impossible if a
24 query came and the only information we were
25 provided was the address to be able to search and
26 identify where a change had occurred. Again, it's
27 unusual insofar as the address changes in the past
28 always required a certain amount of verification
29 of certain factors such as the consent of the
30 owner of the property and these sorts of things.
31 And then you're right; there is also a -- there's
32 an operational challenge via-à-vis the stability
33 of the information in the database and then the
34 staff required to actually carry out the
35 functions.
- 36 Q But the staff that would carry out this function
37 would be mostly clerical staff, wouldn't it?
- 38 A The practice in the past when there were 142
39 people, they were largely clerical administrators
40 of the a type.
- 41 Q But to fulfil the function that we've been talking
42 about of receiving a call, checking the database,
43 checking for any updates is essentially a clerical
44 task, isn't it?
- 45 A Yeah, I think that's a fair description.
- 46 Q And it's much easier to get clerical employees
47 than it is people with -- that have to have a

- 1 particular type of training; isn't that right?
2 A The staffing process that public servants have to
3 follow doesn't discriminate between clerical or
4 administrative positions or science-based
5 positions or policy positions. The process is the
6 same regardless of the classification or the group
7 of the position you're looking to staff.
8 Q So it takes as long -- so you put out an ad that
9 you need a number of clerical employees and you
10 get a thousand applications immediately because
11 there's tons of people out there looking for work,
12 and you're telling me it's going to take an
13 average of 5.3 months to hire a clerical staff as
14 it would for somebody who required all kinds of
15 qualification?
16 A So I've been in the public service for over ten
17 years, and all of my experience staffing positions
18 would suggest that the five-month -- the
19 approximately five months as an average described
20 in that report is accurate and perhaps even
21 represents the lower end of the time frame
22 associated with staffing, especially if you had to
23 review a thousand applications.
24 Q Well, here we know that there's -- the total
25 population that we're dealing with is 38,463, or
26 something along those lines, that you have in your
27 affidavit; correct? And we know that those who
28 say they fell between the cracks then amount to
29 about 10,000, because Health Canada estimates
30 28,000 were covered by the injunction; correct?
31 A We certainly estimate there are 28,000, and yet I
32 believe that some of the individuals indicated in
33 Mr. Wilcox's affidavit are not simply those who
34 weren't covered by the injunction, but also those
35 who were covered and had some circumstance whereby
36 they -- so I think you're right. When we look at
37 a potential population of 38,000, and in the past
38 we had over 142 staff in place to service those,
39 that volume of individuals, that it does represent
40 a significant ...
41 Q But right now you've got the three full-time
42 equivalents that are responding to any calls,
43 whether it's people who were covered and then had
44 a problem or people who weren't covered; correct?
45 And I'm not talking new people. I'm talking still
46 existing MMAR patients, and -- your affidavit
47 specifically I think refers to the numbers.

1 That's paragraph 22. You say:
2
3 Health Canada estimates approximately 28,000
4 of the 38,436 existing licence holders were
5 captured by the injunction order.
6
7 Fair enough?
8 A Yes, yes.
9 Q So as long as we're not talking about your staff
10 having to deal with new applications or say
11 changes to people's dosages or things like that
12 and they're limited to people wanting to change
13 their site or have you keep a record of a
14 section 53 authorization or get a reprint of a
15 lost document, those sorts of things, we're
16 talking about a total population potentially of
17 38,436 who might call in; correct?
18 A Correct, yeah.
19 Q And approximately 10,000 who weren't covered by
20 the injunction?
21 A Yes, sir, yeah.
22 Q So we know what our potential numbers are in terms
23 of providing that limited type of service to
24 those; fair enough?
25 A The only -- well, one number that I don't know
26 would be how many are looking to change their
27 production site.
28 Q Yeah, but that could -- well, that still has to be
29 people who are either covered by the injunction or
30 who weren't?
31 A Sure.
32 Q So we do have a definite number, don't we?
33 A Fewer than 38,000.
34 Q Yeah.
35 A Yes.
36 Q Okay. And we also know that assuming that the
37 28,000 that were covered are mostly okay with
38 what's going on pending the decision that the --
39 most of the demands are likely to come from the
40 10,000 who weren't covered; fair enough?
41 A I honestly couldn't speculate where most of the
42 demands would come from.
43 Q Well, of the stuff -- the exhibits to Mr. Wilcox
44 and to Ms. Lukiv, they were primarily people who
45 weren't covered; isn't that correct? There was
46 the odd one who was.
47 A I honestly don't recall that detail.

1 Q All right. Okay. So what happens if suddenly in
2 Canada we have some kind of a bird flu epidemic
3 or something like that, and Health Canada needs
4 to hire a number of employees to deal with this
5 epidemic? Are you telling us that they just
6 couldn't do anything to do that for about
7 5.3 months?

8 MS. WRAY: I'm not going to object, although I'm
9 tempted to. The relevance here is really thin.

10 MR. CONROY: We're trying to understand why it's so
11 complicated.

12 MS. WRAY: No, to be serious, I do think Mr. Costen has
13 explained the staffing limitation process quite
14 comprehensively.

15 MR. CONROY:

16 Q But is there not some allowance for urgency or
17 emergency that can occur?

18 A In a crisis situation there are allowances. I
19 don't know that I could describe them because I'm
20 not -- but I think in whether it's in the health
21 field or any other field, in the times of an
22 emergency or crises, there are activities which
23 the government undertakes to create a surge of
24 capacity. What I was describing was in the
25 experience of running a program, the way you staff
26 it are in accordance to the details that are laid
27 out in the affidavit.

28 Q Of course if the court says you have to do this,
29 then you just have no choice in the matter and you
30 have to hire the people to do it; correct?

31 A I would think so, yes.

32 MR. CONROY: All right. Thank you. That's all I have.
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1 MS. WRAY: Thank you. There's no re-examination.
2

3 (PROCEEDINGS ADJOURNED AT 3:00 P.M.)
4 (TOTAL TIME: 1 HOUR, 54 MINUTES)
5

6 **Reporter's Certification:**
7

8 I, Leanne N. Kowalyk, Official Reporter in
9 the Province of British Columbia, Canada, BCSRA
10 No. 606, do hereby certify:
11

12 That the proceedings were taken down by me in
13 shorthand at the time and place herein set forth
14 and thereafter transcribed, and the same is a true
15 and accurate and complete transcript of said
16 proceedings to the best of my skill and ability.
17

18 IN WITNESS WHEREOF, I have hereunto subscribed
19 my name and seal this 29th day of May, 2015.
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Leanne N. Kowalyk
25 Official Reporter
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