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Case Name:

Metropolitan Toronto Condominium Corp. No. 659 v. Truman

Between
Metropolitan Toronto Condominium Corporation
No. 659 ("MTCC 659"),
Plaintiff, and
Chris Truman, Defendant

[2015] O.J. No. 4500

Court File No.: SC-14-00002468-0000

Ontario Superior Court of Justice
Small Claims Court - Toronto, Ontario

J.C.F. Hunt Deputy J.

Heard: May 26, 2015; written submissions
and replies thereto variously dated
and received by the Court between June 8 and 23, 2015.
Judgment: August 28, 2015.

(68 paras.)

Counsel:

K. Phung, counsel for the plaintiff.

K. Hodge, paralegal for the defendant.

REASONS FOR JUDGMENT

1 J.C.F. HUNT DEPUTY J.:-- The plaintiff, Metropolitan Toronto Condominium Corporation No. 659 ("MTCC 659") is a commercial condominium corporation. The complex is comprised of twenty units and is located at 32 Goodmark Place in Rexdale, Ontario.

2 The defendant is the owner of unit seven in the complex. Mr. Truman uses this unit as a place to grow marihuana. He does so legally.[1]

3 MTCC 659 has alleged, and has sought to prove, that Mr. Truman's use of his unit to produce marihuana for medical purposes and private consumption has led to a disproportionate and excessive consumption of water.

4 Because MTCC 659 is billed three times a year (on varying dates, usually in January, May and September) by the City of Toronto for water, sewer and solid waste management fees, it is impossible to establish with any precision when, exactly, the consumption of water and the cost of that consumption began to increase significantly.

5 I accept as a fact[2] that management first noticed the increase, an increase beyond historic variations, in the spring of 2012. Mr. Truman moved into unit seven in August, 2011.

The Issues

6 Counsel for MTTC 659 has submitted that there are three issues. These are succinctly stated to be:

> *1. Was there excessive water usage at the complex?*
>
> *2. If yes, was this excessive usage attributable to Mr. Truman's unit?*
>
> *3. Should Mr. Truman be responsible for that usage?*[3]

7 The defendant's representative has vigorously argued that any accounting which seeks to attribute any excess consumption to Mr. Truman prior to August, 2013 is the merest of surmise and conjecture. Prior to June, 2013, the entire twenty unit complex had but one water meter providing the periodic readings upon which the thrice yearly billings were based. It was sometime in that month and year that MTCC 659 arranged to have Mr. Truman's unit separately metered. The first City billing attributed to that separate meter occurred in August, 2013.

8 Mr. Hodge has also submitted, on Mr. Truman's behalf, that the plaintiff has failed to mitigate its damages and that somehow its conduct has created a kind of estoppel preventing MTCC 659 from making claim against Mr. Truman. The argument was presented this way:

> *Instead of warning the Truman, (sic) the MTCC 659 chose to sit back and allow damages to grow with the expectation of claiming damages afterwards; therefore the MTCC 659 contributed to its own damages and is liable to pay the same.*
>
> *Furthermore; failure of an accurate Invoice invalidates the invoice and also prevents the court from enforcing any alleged debt.*
>
> *In fact any damages that rise (sic) after August 5, 2013, that appears on the notice dated December 10, 2013 or Invoice # 112 dated May 8, 2014 should be denied.*
>
> *MTCC 659 had been knowledgeable of potential damages prior to those damages occurring and chose to do nothing.*[4]

The Witnesses -- and the Facts

9 Milovan Bozovic testified for the plaintiff. He is its property manager and supervises maintenance, accounting and other issues which may arise; he generally supervises the complex.

10 He is a member of the Association of Condominium Managers of Ontario (ACMO). I found his evidence to be straightforward and its delivery to be candid. There was no prevarication and I could discern no unnecessary flourishes. I believe he meant what he said and said what he meant.

11 The plaintiff has produced two sets of utility bills.[5] As noted,[6] these City of Toronto utility bills were delivered three times a year to the plaintiff, for oversight and payment. The water component is easily distinguished from that for sewer and for solid waste management.

12 The first set runs from October 9, 2008, to March 2, 2012. There are ten bills in this set and the number of days covered by each varies, as does the number of gallons consumed within that number of days. The number of days covered by each bill ranges from a low of 110 days, to a high of 141 days. Consumption, in gallons ranges from a low of 130,000 gallons to a high of 220,000 gallons and the cost of that consumption ranges from a low of $1,158.46 to a high of $2,061.88.[7]

13 It must be noted that these figures reflect the total consumption of all twenty units in the complex at 32 Goodmark Place as measured and billed by the City of Toronto through its readings of the single meter in place at the time. I accept the accuracy of these figures.

14 The second set of utility bill runs from March, 2012, to October, 2013. This set is comprised of five bills and, again, the number of days varies from a low of 73 days to a high of 164 days. Water consumption ranges from a low of 101,600 gallons (the 73 day period) to a high of 1,308,400 gallons (the 164 day period). The cost of that consumption ranges from a low of $1,209.55 to a high of $14,809.87.

15 This latter set of bills comprises the three for 2012 and the first two for 2013. These **five** bills total $28,545.53. This represents an average of $5,709.11 *per* utility bill for water alone.

16 The first set of bills comprises the last billing for 2008 and all three billings for each of 2009, 2010 and 2011. These **ten** bills total $16,423.71. This represents an average of $1,642.37 *per* utility bill for water.

17 The difference is obviously striking.

18 Mr. Bozovic testified that there had been no changes at MTCC 659 from 2008 to 2013, other than Mr. Truman's acquisition of unit seven in August, 2011. I accept this evidence.

19 The first significant increase in water consumption became apparent with the third utility billing received by the plaintiff after Mr. Truman's August, 2011 acquisition of unit seven. This bill had a reading date of June 19, 2012 and was the first of the three to be received for that year. It revealed an increase of 230,000 gallons over the previous bill and covered a period of 109 days.[8]

20 Because the condominium at 32 Goodmark Place is a commercial complex Mr. Truman's home is elsewhere. Mr. Truman testified that he *"started operations in August"*. It does not stretch credulity to infer that it will have taken him some time to get those operations underway.

21 The defendant has denied that his enterprise was hydroponic and has testified that it was organic; in other words, the marihuana plants were grown in soil. He also testified that he utilizes *"large reservoirs"* and has seven 45 gallon (200 litre) plastic drums. Mr. Truman, under cross-examination acknowledged that his plants require purified water and that he has a purification system. The need for purification requires wastage of approximately 30%; thus, 200 litres of purified water requires 260 litres to achieve it.

22 The defendant stated that he had one hundred plants under cultivation. Each required three litres every other day, of purified water. They are allowed to dry out and then soaked to five per cent overflow.

23 Mr. Truman's Health Canada Production Licence[9] allows him to have under production at any one time 292 plants. The maximum quantity of dried marihuana that he may keep at the storage site, at any one time is 13,140 grams. The maximum amount he may possess (carry, or transport) is 1,800 grams.[10]

24 Reference was earlier made to the first measured *"significant increase in water consumption"*.[11] Mr. Bozovic thought that there may have been a leak somewhere in the complex or a problem with the water main. He called Misho Maric who was told by Mr. Bozovic that *". . . we needed to check for leaks -- throughout the building -- and around the building."*

25 Mr. Maric has been a licenced plumber since April, 2004. He is a master plumber and his company, Flawless Mechanical Ltd.(Flawless), deals also with heating, ventilating and air conditioning (HVAC), natural gas and other mechanical issues. Flawless first contracted with the plaintiff in 2010-2011 and is on call for emergencies. He was very objective in his evidence, and disinterested, in the positive sense; he was not an advocate and did not try to be. He always works with his apprentice.

26 He conducted his inspection, inside and out and found nothing. He opened the ceiling in the complex where the main line runs and no leaks were found. However, an electrical upgrade was found for unit seven.[12] As the result of an eventual inspection by a Provincial Inspection Officer of the Electric Safety Authority (ESA), it became apparent that a marihuana "grow op" was taking place in unit seven. The ESA issued an order and in a follow up inspection it was accepted that there had been subsequent compliance.

27 In his June, 2012 visit, Mr. Maric had concluded from the amount consumed and the absence of leakage that it was onsite usage. He was aware that only one meter existed to measure the usage, in total, for all twenty units.

28 After the plaintiff found out about the "grow op" Mr. Maric was asked by Mr. Bozovic as to *". . . the best way to measure usage"*. So Flawless installed a water meter for unit seven where the water line branches off to the unit. The meter has a tracking licence number and is registered with the City.

29 The meter was installed on June 19, 2013. Its readings were tracked and recorded every 30 to 45 days by Mr. Bozovic and by Mr. Maric. This record was signed by both and entered into evidence.[13] Between June 19, with a reading of zero, and February 5, 2014, a total of 231 days, a total of 269,683 gallons of water were consumed in unit seven.[14]

Declaration Pursuant to the Condominium Act[15]

30 Even if it is established that Mr. Truman's use of water was disproportionate, even excessive, the larger question, it appears to me, is whether any consequences flow from that usage.

31 In order for this issue properly to be framed, it is necessary to look to the Declaration and By-Law which enable MTCC 659 both to exist, and to have the status to bring this action.

32 Each unit is required to pay maintenance fees with which MTCC 659 establishes an operating fund and a reserve fund (this latter fund exists for major repairs to the common areas). It is out of this operating fund that the plaintiff corporation undertakes to pay certain common expenses:[16]

> *any and all public and private suppliers of insurance coverage, utilities, and services, including, without limiting the generality of the foregoing, monies payable on account of:*
>
> * *snow removal and landscaping*
>
> * *insurance premiums*
>
> * *electricity respecting common elements*
>
> * *water, **except such that is used for commercial and industrial purposes,** and except hot water.*

33 I should also like to make note of Schedule "D" of the Declaration[17] which identifies the units in the complex by number and sets out the corresponding "percentage of contribution to common expenses" and the "percentage of common interest". The percentages are the same in both columns for the same unit in every case. However, the percentages do vary per unit and range from a low of 3.78% for unit nineteen to a high of 8.60% for unit eleven. Mr. Truman's unit, number seven, is assessed at 5.13%, or just over one twentieth of the whole.

34 On December 10, 2013, Zoran Properties Inc., for and on behalf of MTCC 659, sent a letter to Mr. Truman. It was signed by Mr. Bozovic and asserted that the disproportionate use of water in unit seven was for commercial purposes and demanded payment of the sum of $19,066.53 by December 23, 2013.[18] Mr. Truman did not reply.

35 When asked on cross-examination what had taken him so long to make a demand, Mr. Bozovic illustrated, again, how cautious he is. He replied that *". . . I just wanted to be sure"*. The Plaintiff's Claim was issued a little over five months later, on May 30, 2014, and in its prayer for relief is seeking the same sum as was set out in Mr. Bozovic's letter of December 10.

The Arguments and the Law

36 The plaintiff's argument in chief relied, in large part, on logic and common sense. In response to a question from the Court, Mr. Truman freely admitted that he has provided marihuana to another, also authorized, as a patient, legally to use marihuana for medical reasons. The defendant also indicated that he received no payment for doing so. There was no evidence whatsoever to rebut this and I have been given no reason to disbelieve it, other than the plaintiff's suspicions.

37 Rather, the plaintiff submits that *". . . this constitutes a commercial use as Truman is producing marijuana for something other than his own personal use and is using the corporation's resources to do so"*.[19]

38 In the same vein, the plaintiff argues that Mr. Truman has been producing marihuana on such a massive scale that it constitutes an "industrial" use of water,[20] for which he is not paying, in direct violation of the plaintiff Corporation's Declaration and Schedule "E" thereto.[21]

39 These two approaches also create a legal conundrum. Although I can find no compelling reason to treat the words "commercial" and "industrial" in any sense other than applying their ordinary and common usage, for the sake of greater precision, I will. The Oxford English Dictionary[22] variously defines "commercial" as:

* *Having reference to or bearing on commerce.*

* *Of or pertaining to commerce or trade.*

    * *Such as passes current in the transaction of commerce.*

    * *Viewed as a mere matter of business; looking toward financial profit.*

and "industrial" as:

    * *Pertaining to or of the nature of industry or productive labour; resulting from industry. Of persons: Engaged in or connected with an industry or industries.*

* *One engaged in industrial pursuits.*

40 The legal conundrum arises because both words evoke production, trade, sales and profit. In this Country, that is clearly a criminal offence. To make such a finding is not only beyond the jurisdiction of this Court, it would fly in the face of and make a mockery of Mr. Truman's Permission to Produce, issued by Health Canada and providing his medical practitioner information.[23]

41 What I find to be considerably more persuasive is that part of the plaintiff's argument which submits that:

> *. . . the personal use that is contemplated by Truman's "Personal Use Production Licence" is <u>not</u> the same personal use of water . . . that is contemplated by MTTC 659's Declaration . . . they have completely different objectives and are directed at different individuals . . .one at marijuana growers . . . the other at condominium unit owners . . . Truman cannot rely on his Personal Use Production Licence as a way to absolve himself of liability . . . because the Declaration simply does not contemplate "personal use" in the same way as his Canada Health Licence.*[24]

42 I agree. The parties were not *ad idem* on what constitutes either "commercial" or "industrial" or "personal" use of water.

43 Moreover, I find that there is no ambiguity in those terms, and although the defence of *contra proferentem* was not raised, either in the pleading or, in argument, I hold that it would not and could not apply against the interests of the *proferor*, the plaintiff, in any case. I say this in addition not only to the lack of ambiguity but because of the operation of sections 119(1) and (3) of the *Condominium Act*:[25]

> ***Compliance with Act***
>
> *A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules.*
>
> ***Right against owner***
>
> *A corporation, an owner and every person having a registered mortgage against a unit and its appurtenant common interest have the right to require the owners and the occupiers of units to comply with this Act, the declaration, the by-laws and the rules.*

44 The plaintiff has also emphasized the importance of *proportionality* in dealing with common expenses and has referred to that part of the Declaration dealing with common expenses:[26]

> *Each owner, including the Declarant, shall pay to the Corporation his **proportionate** share of the common expenses, as may be provided for by the By-Laws of the Corporation and the assessment and collection of contributions toward the common expenses may be regulated by the board pursuant to the By-Laws of the Corporation.*

45 The plaintiff's point regarding proportionality had also to do with the principles of equity and fairness. These principles, it was submitted, would be offended if *". . . the other unit owners bear the $19,000 (plus) in costs for Truman's water usage when he alone reaped the benefit . . . The Small Claims Court, as a Court of Equity and a Court of Good Conscience, cannot allow Truman to unfairly push his cost onto other innocent unit owners . . .*[27]

46 I agree; both in fact and in law. It would amount to a form of unjust enrichment, if the damages claimed by the plaintiff have been properly quantified.

47 The written submissions on behalf of Mr. Truman put forth a defence which is essentially three-fold:

* The plaintiff has failed to mitigate its damages and is thereby estopped from making claim to be indemnified; whatever damages it might have suffered were exacerbated by its inactivity and failure to act;

* Any losses which might be attributable to the water usage of the defendant prior to the installation of a separate meter for unit seven are mere speculation; the fact that that usage cannot be known with certainty, in the absence of a specific meter was confirmed in the evidence of both Mr. Bozovic and Mr. Maric;

* In any case the plaintiff's claim is statute-barred pursuant to the *Limitations Act, 2002*.[28]

48 I will first deal with this last point. The *Limitations Act, 2002* was not pleaded in the Amended Defence; nor was a motion brought at trial seeking to do so. No evidence was led at trial suggesting that such a defence might exist.

49 The Court of Appeal for Ontario has dealt with this issue. *Collins v. Cortez*[29] was an appeal from an order of Gordon, J. of the Superior Court granting summary judgment and dismissing the plaintiff's action for damages for injuries sustained in a motor vehicle accident. More than two years had passed and no facts or alleged facts had been pleaded by the plaintiff which would raise the issue of discoverability.

50 The decision was unanimous and was delivered by van Rensburg, J.A. The rigours of pleading in Superior Court, including the right to reply, were explored and basically determined the outcome of the appeal. However, for the purposes of this case, especially because the trial has concluded, the following is binding on this Court:

> *The expiry of a limitation period is a defence to an action that* ***must be pleaded*** *in a statement of defence . . .*[30]

51 Consequently, the failure to plead the *Limitations Act, 2002* is fatal and this aspect of the defendant's argument must fail.

52 Nor am I persuaded by the argument that the plaintiff has failed to mitigate its damages. I find it to be a mere bald assertion, not only not supported by the evidence, but belied by the evidence and by my findings of fact.

53 I have found the plaintiff, through Milovan Bozovic, to be conscientious, prudent and cautious. When he became aware of the "spike" in water usage in June, 2012, he took steps to discover its source and obviously incurred costs in doing so by calling on Misho Maric, several times, for diagnostic reasons, possible preventive reasons and finally monitoring reasons.

54 I find it illogical to suggest that the plaintiff has exacerbated its damages and increased the defendant's exposure while the opposite seems, in fact, to be true; throughout the period of diagnosis, monitoring and demand, Mr. Truman continued to enjoy excess water usage and through that usage increased, incrementally, the harm suffered by the plaintiff and, inferentially, by the other unit owners. No estoppel can be seen to have arisen. I do not accept any aspect of this part of the defence nor of the arguments in support of it.

Damages

55 If the defendant is to succeed, to any extent, it must be in his criticism of the plaintiff's calculation of its damages. I find the dates utilized in the Defendant's Written Submissions to be inaccurate. The water meter installed for unit 7, I have found to be June 19, 2013,[31] not April, 2013. "Accurate" readings began on the former date at zero, not on August 5, 2013, as submitted by the defendant.

56 In essence, the defendant argues that anything attributed to Mr. Truman and the water use in unit 7 prior to the installation of the water meter is incapable of proof because it cannot be measured and anything thereafter is to be considered unenforceable because *". . . failure of an accurate Invoice invalidates the invoice and also prevents the court from enforcing any alleged debt . . . any damages that rise after August 5, 2013, that appears on the notice dated December 10, 2013 or Invoice #112 dated May 8, 2014 should be denied . . . MTCC 659 had been knowledgeable of potential damages prior to those damages occurring and chose to do nothing.*[32]

57 The defendant has also made reference to a decision of Justice Rosenberg in *York Region Condominium Corp. v. Year Full Investment*[33] in support of the proposition that a condominium owner should only pay more than its allotted percentage of common expenses if there is excessive usage and monitored (metered) objective proof of it.

58 As counsel for the plaintiff has correctly pointed out, the decision goes considerably further than that and was affirmed on appeal,[34] unanimously. The decision was delivered by the Court. The panel was comprised of Goodman, Labrosse and Austin, JJ.A. The conclusions of the (then) Ontario Court of Appeal are clearly set out in the plaintiff's Reply Submissions:[35]

> *(1) Courts should adopt a broad and equitable approach to resolving disputes in the area of condominium law;*
>
> *(2) The condominium declaration is to be interpreted in a fair and equitable manner;*
>
> *(3) The intent of a declaration is to apportion common expenses among unit holders in percentages as close as possible to the percentage of use made and enjoyment received by each unit holder; and*
>
> *(4) Excessive usage by a unit holder is not to be included in common expenses, but should be the responsibility of the user.*

59 I accept, without hesitation, that Mr. Truman's use of water was disproportionate to the allotted 5.13% share of common expenses and in the result, inequitable and unfair, not only to the plaintiff, but to the other nineteen unit owners. In effect his cultivation of medical marihuana was being subsidized.

60 Although it pains me to use the expression, and I hesitate to do so, the plaintiff's claim to be indemnified for excess water usage is actually a claim for unliquidated damages. How best to quantify it?

61 I find that the clearest, most logically accurate and fairest assessment is to be found at tab 7 of Exhibit 1. In the absence of actual bills supported by meter readings, I find it to be the best evidence available. It was assembled by Mr. Bozovic about whose integrity I have already commented, several times. I find that there has been no over-reaching.[36] The claim is not open-ended.

62 Mr. Bozovic prepared a chart. It identifies four billing periods, two in 2012, June 19 and November 30 and two in 2013, May 30 and October 1. The reading for each is recorded (in gallons). The consumption in gallons is recorded. Average consumption (historical, from 2008 - 2013) is identified for each period and is then **subtracted** from the actual consumption. This avoids any double recovery or even the appearance that it might have occurred. Actual billings are then listed for each billing period as well as the cost per gallon for each period.

63 That cost per gallon is then applied **to the differential in gallons consumed only.**

64 The total of that cost differential, I find, has been fairly arrived at, applied to a limited period of time, and amounts to $19,066.53.

Conclusion

65 My findings of fact and conclusions of law have occurred throughout these reasons and need not be repeated here. The plaintiff has been completely successful and shall have judgment for the sum of $19,066.53 plus pre and post judgment interest in accordance with the *Courts of Justice Act* from May 22, 2014.

Costs

66 The plaintiff is also entitled to its costs. It was represented by counsel. Pursuant to section 29 of the *Courts of Justice Act*, I award costs to the plaintiff in the amount of $2,860.00 plus its assessable disbursements pursuant to Rule 19.01(1) of the *Rules of the Small Claims Court.*

67 However, this award of costs may be considered to be contingent to enable the parties to make submissions regarding costs if they so choose. The parties will have until 5 pm, September 9, 2015 to exchange those submissions and deliver them, by fax or otherwise to the trial scheduling office. There are to be no replies.

68 If I have received no submissions by the specified date and time, the order contained in paragraph [66] will be final.

J.C.F. HUNT DEPUTY J.

1 **Mr. Truman is licenced by Health Canada with a "Personal Use -- Production Licence Dried Marihuana for Medical Purposes". This two page document was entered into evidence as Exhibit 3. Its date of issue is May 23, 2013. It was issued pursuant to section 29 of the *Marihuana Medical Access Regulations* (MMAR). The defendant also testified that he has been "approved" to grow marihuana for medical purposes since 2009. However, his Amended Defence states, in paragraph 2, that he has been licenced to produce medical marihuana for personal use since August 23, 2011. This date is repeated in paragraph 3 of the Written Submissions of the Defendant.**

2 **More will be written about this subsequently in these reasons when the evidence is both reviewed and analyzed.**

3 **Written Submissions of the Plaintiff, at paragraph 2.**

4 **Written Submissions of the Defendant, at paragraphs 14, 18, 19 & 20.**

5 **Exhibit 1, tabs 3 and 4.**

6 ***Supra,* at paragraph [4].**

7 **Mr. Bozovic prepared a chart which I find accurately reflects the ten utility bills referred to in footnote 5, *supra.* I also found it to be very helpful. It is found at tab 5, page 1, of Exhibit 1.**

8 Exhibit 1, tab 4 and tab 5, page 1.

9 **Entered as Exhibit 3; *supra,* at paragraph [2] and footnote 1.**

10 ***Ibid***

11 ***Supra,* at paragraph [19].**

12 *Mr. Truman is also an electrical contractor. I make the observation but draw no conclusion as it is not material to what is in issue in this lawsuit.*

13 **Exhibit 1, tab 6, pages 1 and 2.**

14 ***Ibid***

15 *Condominium Act,* S.O. 1998, C. 19; the Declarant for registration was 1860 Jane Street Limited and the Declaration enabling the registration was executed December 28, 1984, pursuant to the predecessor statute, the *Condominium Act,* R.S.O. 1980, C. 84 and the regulations made thereunder.

16 **Exhibit 1, tab 1, page 30, Schedule "E", paragraph (b).**

17 ***Ibid,* at page 29.**

18 **Exhibit 1, tab 8 (the accompanying invoice to that letter was incorrectly dated).**

19 **Written Submissions of the Plaintiff, *op cit,* paragraph 10.**

20 ***Ibid,* at paragraphs 11 and 12.**

21 ***Op cit,* at footnote 16.**

22 **Oxford University Press, 1971**

23 ***Op cit,*** **Exhibit 3.**

24 ***Op cit,*** **at footnote 19, paragraph14.**

25 ***Op cit,*** **at footnote 15.**

26 **Exhibit 1,** ***op cit,*** **tab 1, section II (2) at page 3.**

27 **Written Submissions of the Plaintiff,** ***op cit,*** **at paragraph 15.**

28 **S.O. 2002, c. 24, Sched. B.**

29 **2014 ONCA 685 (CanLII), Weiler, Laskin and van Rensburg JJ.A.,** ***per*** **van Rensburg, J.A.**

30 ***Ibid,*** **at paragraph [10], wherein reference is also made to** ***Beardsley v. Ontario,*** **[2001] O.J. No. 4574 (C.A.) at para. 21 and** ***S.(W.E.) v. P.(M.M.)*** **(2000), 50 O.R. (3d) 70 (C.A.) at paras. 37-38.**

31 ***Supra,*** **at paragraph [29] and footnotes 13 and 14.**

32 **Written Submissions of the Defendant,** ***op cit,*** **at paragraphs 18, 19 and 20.**

33 **(1992), 10 O.R. (3d) 670**

34 **(1993), 12 O.R. (3d) 641; 1993 CanLII 8639 (ON CA)**

35 **Reply Submissions of the Plaintiff, paragraph 3.**

36 **Water usage returned to normal in early 2014 when Federal government regulations created a** ***de facto*** **moratorium on the production and possession of medical marihuana by licenced growers. See also Exhibit 4, an undated letter from Health Canada confirming that licenses were no longer being issued as of April 1, 2014.**