Action No. T-1931-13

FEDERAL COURT

PROPOSED CLASS ACTION

BETWEEN:

JOHN DOE and SUZIE JONES

PLAINTIFFS

- and -

HER MAJESTY THE QUEEN

DEFENDANT

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the Plaintiffs' solicitor or, where the Plaintiffs do not have a solicitor, serve it on the Plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this Statement of Claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your Statement of Defence is sixty days.

Copies of the *Federal Courts Rules,* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone: 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: Dec. 11/13

ORIGINAL SIGNED BY MICHAEL KOWALCHUK

Issued by: _____
[Registry Officer]

Address of local office: 1801 Hollis Street,
17th Floor, Suite 1720
Halifax, N.S. B3J 1S7

To: The Attorney General of Canada
Attention: Mr. William F. Pentney, Deputy Attorney General of Canada

Amended Claim

1. The Plaintiffs claim on their own behalf and on behalf of the proposed Class Members (as defined below):

    a. An Order pursuant to Rules 334.16(1) and 334.17 of the *Federal Courts Rules* (the "Rules") certifying this action as a class proceeding and providing any ancillary directions;

    b. An Order pursuant to Rules 334.12(3), 334.16(1)(e) and 334.17(b) appointing the Plaintiffs as the representative plaintiffs for the Class;

    c. A declaration that Health Canada was in breach of warranty and contract;

    d. A declaration that Health Canada owed a duty of care to the Plaintiffs and the other Class Members, and the Defendant breached that duty causing the Plaintiffs and the other Class Members to suffer damages;

    e. A declaration that Health Canada breached the confidence of the Plaintiffs and the other Class Members;

    f. A declaration that Health Canada committed the tort of intrusion upon seclusion;

    g. A declaration that Health Canada committed the tort of publicity given to private life;

    h. A declaration that Health Canada infringed the Plaintiffs' and other Class Members' right to informational privacy pursuant to sections 7 and/or 8 of the *Canadian Charter of Rights and Freedoms,* R.S.C. 1985, App. II, No. 44, Schedule B (the "Charter");

    i. Damages for breach of contract, breach of warranty, negligence, breach of privacy, breach of confidence, intrusion upon seclusion and publicity given to private life, including damages for:

        (i) costs incurred to prevent home invasion, theft, robbery and/or damage to personal property including marihuana plants and related paraphernalia;

        (ii) costs incurred for personal security;

        (iii) damage to reputation;

        (iv) loss of employment;

        (v) reduced capacity for employment;

        (vi) mental distress;

        (vii) out of pocket expenses; and

        (viii) inconvenience, frustration and anxiety associated with taking precautionary steps to reduce the likelihood of home invasion, theft, robbery and/or damage to personal property and to obtain personal security;

    j. General damages;

    k. Aggravated damages;

l. Punitive damages;

m. An Order pursuant to Rule 334.28(1) and (2) for the aggregate assessment of monetary relief and its distribution to the Plaintiffs and the Class Members;

n. Pre-judgment and post-judgment interest pursuant to sections 36 and 37 of the *Federal Courts Act*, R.S.C. 1985, c. F-7;

o. Costs, if appropriate; and

p. Such further and other relief as this Honourable Court deems just.

Parties

2. The Plaintiff, John Doe, is an individual who resides in Nova Scotia. He is employed in the health care field.

3. The Plaintiff, Suzie Jones, is an individual who resides in Ottawa, Ontario. She is employed in the legal profession.

4. The Plaintiffs' address for service is 1300-1969 Upper Water Street, Halifax, Nova Scotia, B3J 3R7.

5. The Plaintiffs bring this action on their own behalf and on behalf of the members of the proposed class, which is defined as follows:

> All persons who were sent a letter from Health Canada in November 2013 that had the phrase Marihuana Medical Access Program or a similar French phrase visible on the front of the envelope (the "Class Members").

6. The Defendant, Her Majesty the Queen, is named as a representative of the Government of Canada and Health Canada. Health Canada administers the Marihuana Medical Access Program (the "Program") under the *Marihuana Medical Access Regulations*, SOR/2001-227 (the "*Regulations*"). Pursuant to s. 3 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, the Attorney General of Canada is liable for the matters alleged of Her Majesty the Queen in Right of Canada.

Personal Information

7. In this pleading, "Personal Information" shall refer to the name, address, health condition and association with the Program of the Plaintiffs and other Class Members.

Medical Marihuana Access Program

8. Through the Program, Health Canada grants access to marihuana for medical use to Canadians suffering from grave and debilitating illnesses.

9. Marihuana (cannabis) is categorized as a controlled substance, regulated in Canada under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19. With few exceptions, it is not legal to grow or possess marihuana except with legal permission by Health Canada under the Program.

10. The Plaintiffs and each Class Member applied for authorization under the Program to possess marihuana for their personal medical use ("Possession Authorization") or to produce marihuana for the medical use of an individual holding a Possession Authorization ("Designated-Person Production License").

11. Pursuant to the *Regulations*, the Plaintiffs and each Class Member were required to provide a mailing address to Health Canada and are required to notify Health Canada of any changes to their mailing address.

12. Pursuant to the *Regulations*, Health Canada issued the Possession Authorization to possess "dried marihuana ... for the medical purpose of the holder."

13. To obtain a Possession Authorization under the Program, an applicant's symptoms and conditions must fall within either Category 1 or Category 2, as determined by a licensed medical practitioner (medical doctor).

14. Category 1 includes:

    (a) any symptom treated within the context of compassionate end-of-life care, or;

    (b) symptoms related to specific medical conditions or the treatment of such medical conditions, namely: severe pain and/or persistent muscle spasms from multiple sclerosis, a spinal cord injury, or spinal cord disease; severe pain, cachexia, anorexia, weight loss, and/or severe nausea from cancer or HIV/AIDS infection; severe pain from severe forms of arthritis; or seizures from epilepsy.

15. Category 2 includes a debilitating symptom that is associated with a medical condition or with the medical treatment of that condition, other than those described in Category 1.

16. Pursuant to the *Regulations*, Health Canada issued the Designated-Person Production License to produce "marihuana for the medical purpose of the person who applied for the [Possession Authorization]" and "possess and keep...a quantity of dried marihuana".

17. Some Class Members were also issued a personal-use production licence by Health Canada under the Program pursuant to the *Regulations* that permits users who hold an Authorization "to produce and keep marihuana ... for the medical purpose of the holder" ("Personal-Use Production License").

18. Designated-Person Production Licenses and Personal-Use Production Licenses are collectively referred to herein as "Production Licenses".

Disclosure of the Plaintiffs' Personal Information

19. Prior to November 2013, all correspondence in relation to the Program sent by Health Canada to the Plaintiffs and other Class Members was delivered by courier service, or Canada Post Xpresspost™ or Lettermail™, in envelopes that referenced Health Canada but did not identify the Program or bear the word "marihuana".

20. In or about the week of November 18, 2013, Health Canada sent the Plaintiffs and other Class Members a letter in a bulk mailing to approximately 40,000 individuals by Canada Post Lettermail™. In addition to the recipient's name and mailing address, the envelope for each letter had the following information visible on the front (the "Envelope"):

    Health
    Canada

    Marihuana Medical Access Program
    Health Canada
    AL: 0300A
    Ottawa ON K1A 0K9

21. Health Canada's letter inside the Envelope stated:

> ...Health Canada has heard many concerns that the Marihuana Medical Access Program (MMAP) was widely open to abuse. The current practice of allowing individuals to grow marijuana for medical purposes poses risks to the safety and security of Canadians. The high value of marijuana on the illegal market increases the risk of violent home invasion and diversion to the black market. In addition, these production operations present fire and toxic mould hazards. These risks are not only felt by the individuals licensed to grow, but potentially also by their neighbours and community members.

22. Notwithstanding Health Canada's emphasis on the "risks to the safety and security of Canadians" posed by the practice of permitting individuals to grow marihuana for medical purposes, including the risk of "violent home invasion", Health Canada perpetuated such a risk by delivering the letter to the Plaintiffs and other Class Members in the Envelope which disclosed their association with the Program and entitlement to possess and/or produce marihuana.

23. The Plaintiffs state that a reasonable person seeing the Envelope would conclude that:

    (a) the addressee is associated with the Program;

    (b) the addressee holds a Possession Authorization to possess marihuana and/or a Production License;

    (c) the addressee suffers from either a grave or debilitating illness or medical condition that is required to participate in the Program; and

    (d) the addressee possesses and/or consumes marihuana.

24. Health Canada's disclosure of the Plaintiffs' and other Class Members' Personal Information created a security concern by alerting other individuals that the Plaintiffs and other Class Members may possess and/or grow marihuana at the address on the Envelope.

25. Neither the Plaintiffs nor the other Class Members consented to the release of their Personal Information. In particular, neither the Plaintiffs nor the other Class Members consented to the disclosure of:

    (a) their association with the Program;

    (b) their status as a holder of a Possession Authorization and/or a Production License;

    (c) the fact that they suffer from a grave or debilitating illness or medical condition; and/or

    (d) the fact that they possess and/or consume marihuana.

26. On November 21, 2013, the Deputy Minister of Health Canada, George Da Pont, issued the following statement on Health Canada's website:

> Health Canada recently sent approximately 40,000 informational letters to individuals with an interest in upcoming changes to the Marihuana Medical Access Program.

I have been advised that as the result of an administrative error the envelopes were labelled to indicate that they were sent by the Program. This is not standard Health Canada practice.

On behalf of Health Canada, I deeply regret this administrative error. Health Canada is taking steps to ensure this does not happen again.

Protection of personal information is of fundamental importance to Health Canada. We are in discussion with the Office of the Privacy Commissioner of Canada.

27. The Privacy Commissioner of Canada was first notified of the privacy breach by Class Members, not Health Canada.

Breach of Contract and Warranty

28. The Plaintiffs and other Class Members each entered into an express or implied agreement with Health Canada when they completed an application for a Possession Authorization and/or a Production License under the *Regulations* with respect to the collection, retention, and disclosure of their Personal Information. As part of this agreement, the Plaintiffs and each Class Member were required to provide their personal and health information to Health Canada pursuant to the *Regulations*.

29. The express or implied terms of the agreement provided that any Personal Information provided by the Plaintiffs and the other Class Members in connection with an application for a Possession Authorization and/or Production License under the *Regulations* would only be used by Health Canada for internal purposes and would not be publicly disclosed.

30. The express or implied terms of the agreement include but are not limited to the following terms:

    (a) Health Canada would comply with all relevant statutory obligations and policies concerning the collection, retention and disclosure of the Plaintiffs' and other Class Members' Personal Information, including the obligations set out in the *Privacy Act*, R.S.C., 1985, c. P-21 ("*Privacy Act*");

    (b) Health Canada would not collect, retain, or disclose the Personal Information except in the manner and for the purposes expressly authorized by the *Regulations* and/or the *Privacy Act*;

    (c) Health Canada would keep the Personal Information secure and confidential;

    (d) Health Canada would take steps to prevent the Personal Information from being disseminated or disclosed to unauthorized persons;

    (e) Health Canada would not disclose the Personal Information without consent; and

    (f) Health Canada would protect the Personal Information from compromise or disclosure.

31. The agreement offered peace of mind to the Plaintiffs and other Class Members that in exchange for providing the Personal Information required under the *Regulations*, the Personal Information would be used by Health Canada for limited purposes and would otherwise be kept secure and would not be disseminated or disclosed to unauthorized persons.

32. Health Canada warranted that it would keep the Personal Information secure and confidential, comply with the obligations set out in the *Privacy Act*, and would take steps to prevent the Personal Information from being disseminated or disclosed to unauthorized persons.

33. Health Canada's privacy responsibilities are governed by the *Privacy Act* and the Treasury Board Privacy Protection Policy.

34. Section 8(1) of the *Privacy Act* prohibits disclosure of the Personal Information without the consent of the individual to which the information relates.

35. Section 3.4 of the Treasury Board Privacy Protection Policy states: "Heads of the government institutions are responsible for the effective, well-coordinated, and proactive management of the *Privacy Act* and *Privacy Regulations* within their institutions."

36. Health Canada breached the express or implied terms of the agreement and warranty by recklessly and improperly disseminating, disclosing or releasing the Personal Information and by failing to comply with the obligations set out in the *Privacy Act*.

37. Health Canada's breach has caused the Plaintiffs and each Class Member to suffer damages, as particularized below, for which the Defendant is liable.

Negligence

38. At all material times, Health Canada owed a duty of care to the Plaintiffs and each Class Member in the collection, retention and use of their Personal Information, and to maintain the confidentiality of their Personal Information.

39. Furthermore, Health Canada had a statutory duty under subsection 8(1) of the *Privacy Act* to not disclose Personal Information without that individual's consent. The Plaintiffs' and the other Class Members' participation in the Program constitutes personal information under the *Privacy Act* as it is confidential information that includes their medical history.

40. Health Canada breached its duty of care owed to the Plaintiffs and the other Class Members by:

    (a) Failing to meet its statutory duties and/or its own established policies in the collection, retention, security and disclosure of the Personal Information;

    (b) Failing to establish policies for the effective, well-coordinated, and proactive management of the Personal Information;

    (c) Failing to take reasonable steps to ensure the Personal Information was not disclosed;

    (d) Failing to keep Personal Information secure and confidential;

    (e) Failing to communicate with the Plaintiffs and the other Class Members in a confidential manner that did not disclose their Personal Information;

    (f) Publishing the Personal Information on the Envelopes;

    (g) Disclosing the Personal Information to the public without consent; and

    (h) Other such particulars as counsel may advise.

41. As a result of Health Canada's negligence, the Plaintiffs and the other Class Members suffered reasonably foreseeable damages, which are particularized below, for which the Defendant is liable.

42. Health Canada knew that a breach of its duty of care would cause damage to the Plaintiffs and the other Class Members. Despite having advised the Plaintiffs and other Class Members in Health Canada's letter that changes to the Program were necessitated by the "risk of violent home invasion and diversion to the black market" caused by growing marihuana, Health Canada nonetheless published the Personal Information on the Envelope thereby creating the specific risk that gave it cause for concern.

Breach of Confidence

43. The Plaintiffs state that Health Canada committed the tort of breach of confidence for which the Defendant is liable.

44. In applying to participate in the Program, the Plaintiffs and other Class Members conveyed confidential information in confidence to Health Canada.

45. In its actions stated above, Health Canada misused the Plaintiffs' and other Class Members' Personal Information to the Plaintiffs' and other Class Members' detriment.

Intrusion upon Seclusion

46. Health Canada's actions constitute an intentional and reckless intrusion on seclusion in a manner that would be highly offensive to a reasonable person for which the Defendant is liable.

47. Health Canada invaded, with no lawful justification, the Plaintiffs' and other Class Members' private affairs.

48. Health Canada invasion was highly offensive causing distress, humiliation and anguish to the Plaintiffs and other Class Members.

Publicity Given to Private Life

49. Through its actions stated above, Health Canada gave publicity to the Plaintiffs' and other Class Members' Personal Information for which the Defendant is liable.

50. The Plaintiffs' and other Class Members' Personal Information is of no legitimate concern to the public. Health Canada's disclosure of the Plaintiffs' and other Class Members' Personal Information is highly offensive to a reasonable person.

Breach of *Charter* Right to Privacy

51. At all material times, the Plaintiffs and other Class Members had a reasonable expectation of privacy pursuant to sections 7 and/or 8 of the Charter.

52. Sections 7 and/or 8 of the Charter guaranteed the Plaintiffs' and other Class Members' right to determine for themselves when, how and to what extent their Personal Information is communicated to others.

53. Health Canada's actions stated above infringed or denied the Plaintiffs' and other Class Members' right pursuant to sections 7 and/or 8 of the Charter.

Relief Sought

54. Health Canada's actions have caused the Plaintiffs and the other Class Members to suffer the following damages for which the Defendant is liable:

(a) costs incurred to prevent home invasion, theft, robbery and/or damage to personal property including marihuana plants and related paraphernalia;

(b) costs incurred for personal security;

(c) damage to reputation;

(d) loss of employment;

(e) reduced capacity for employment;

(f) mental distress;

(g) out of pocket expenses;

(h) inconvenience, frustration and anxiety associated with taking precautionary steps to reduce the likelihood of home invasion, theft, robbery and/or damage to personal property and to obtain personal security;

(i) general damages and

(j) such further or other damages as counsel may advise.

55. Health Canada's conduct, as particularized above, was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful and in complete disregard of the rights of the Plaintiffs and other Class Members, and as such, renders the Defendant liable to pay aggravated and punitive damages.

General

56. The Plaintiffs propose that this trial take place in the location that will permit the most expeditious hearing of this action.

DATED at Halifax, in the Province of Nova Scotia, this 25th day of November 2013.

AMENDED at Halifax, in the Province of Nova Scotia, this 11th day of December 2013.

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