File No. CI 20-01- 22204

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

JESSE CONNER LAVOIE,

Applicant,

- and -

THE GOVERNMENT OF MANITOBA,

Respondent.

APPLICATION UNDER: *The Constitutional Questions Act*, C.C.S.M. c. C180
The Liquor, Gaming and Cannabis Control Act, C.C.S.M. c. L153
Cannabis Act, S.C. 2018, c. 16
Constitution Act, 1867 (UK), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985 App. II, No. 5
Constitution Act, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11
The Court of Queen's Bench Rules, Man. Reg. 553/88

NOTICE OF APPLICATION
Civil Uncontested List
HEARING DATE: Monday, September 28, 2020 at 10:00 a.m.

MLT AIKINS LLP
30th Floor - 360 Main Street
Winnipeg, MB R3C 4G1

ANDREW W. BOUMFORD / JENNIFER A. SOKAL
Lawyers for the Applicant
Telephone No.: 204-957-4892 / 4870
Fax No.: 204-957-4295 / 0840
Email: aboumford@mltaikins.com / jsokal@mltaikins.com
File No.: 0146741.00001

Box 3

FILED AUG 26 2020

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

JESSE CONNER LAVOIE,

Applicant,

- and -

THE GOVERNMENT OF MANITOBA,

Respondent.

APPLICATION UNDER: *The Constitutional Questions Act*, C.C.S.M. c. C180
The Liquor, Gaming and Cannabis Control Act, C.C.S.M. c. L153
Cannabis Act, S.C. 2018, c. 16
Constitution Act, 1867 (UK), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985 App. II, No. 5
Constitution Act, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11
The Court of Queen's Bench Rules, Man. Reg. 553/88

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing before a Judge, Monday, September 28, 2020 at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

August 26, 2020

Issued by B. ROBINSON DEPUTY REGISTRAR COURT OF QUEEN'S BENCH FOR MANITOBA
Deputy Registrar

TO: The Government of Manitoba
Attention: Dave Wright, Deputy Attorney-General
110 Legislative Building
450 Broadway
Winnipeg MB R3C 0V8

AND TO: The Attorney-General of Manitoba
Attention: Dave Wright, Deputy Attorney-General
110 Legislative Building
450 Broadway
Winnipeg MB R3C 0V8

AND TO: The Attorney General of Canada
Office of the Deputy Attorney General of Canada
Prairie Regional Office – Winnipeg
Department of Justice Canada
Suite 301, 310 Broadway
Winnipeg, Manitoba R3C 0S6

APPLICATION

1. **The Applicant, Jesse Conner Lavoie, makes Application for:**

a) An Order pursuant to s. 52(1) of the *Constitution Act, 1982* severing and striking down s. 101.15 of *The Liquor, Gaming and Cannabis Control Act*, and more particularly declaring that:

i. section 101.15 of *The Liquor, Gaming and Cannabis Control Act* is inconsistent with the Constitution of Canada, *ultra vires*, invalid and of no force or effect; and

ii. the Respondent lacks the jurisdiction and constitutional authority to enact s. 101.15 of *The Liquor, Gaming and Cannabis Control Act*;

b) In the alternative, an Order pursuant to s. 52(1) of the *Constitution Act, 1982* excluding the application of s. 101.15 of *The Liquor, Gaming and Cannabis Control Act*, and more particularly declaring that:

i. the application of s. 101.15 of *The Liquor, Gaming and Cannabis Control Act* is inconsistent with the Constitution of Canada and of no force or effect; and

ii. the application of s. 101.15 of *The Liquor, Gaming and Cannabis Control Act* is outside the jurisdiction and constitutional authority of the Respondent;

c) In the further alternative, an Order pursuant to s. 52(1) of the *Constitution Act, 1982* rendering s. 101.15 of *The Liquor, Gaming and Cannabis Control Act* inoperative, and more particularly declaring that:

i. section 101.15 of *The Liquor, Gaming and Cannabis Control Act* and the *Cannabis Act* are inconsistent with one another;

ii. section 101.15 of *The Liquor, Gaming and Cannabis Control Act* frustrates the purpose of the *Cannabis Act*; and

iii. section 101.15 of *The Liquor, Gaming and Cannabis Control Act* is of no force or effect;

d) Costs; and

e) Such further and other relief as counsel may advise and this Honourable Court may deem just.

2. The grounds for the Application are:

a) The Applicant, Jesse Conner Lavoie, is a resident of the Province of Manitoba;

b) The Applicant is materially affected by s. 101.15 of *The Liquor, Gaming and Cannabis Control Act* and is genuinely interested in the matter and the outcome of this Application;

c) This Application is a reasonably effective manner for the matter to be adjudicated in accordance with the principle of proportionality and access to justice;

d) The *Cannabis Act* was enacted by the Parliament of Canada and came into effect on October 17, 2018, which created a legal framework for controlling the production, distribution, sale and possession of cannabis across Canada;

e) The *Cannabis Act* allows, *inter alia*, that persons who are 18 years of age or older may cultivate, propagate and harvest up to four cannabis plants in his or her dwelling-house;

f) On June 4, 2018, the Respondent, the Government of Manitoba, amended *The Liquor and Gaming Control Act* to include a complete prohibition of residential cultivation of cannabis, as s. 101.15 of *The Liquor, Gaming and Cannabis Control Act* (the "**Prohibition**");

g) Manitoba remains the only province or territory in Canada with a complete ban on residential cultivation of cannabis;

h) Every province or territory that allowed a form of residential cultivation of cannabis has continued to do so since the *Cannabis Act* came into effect;

i) Quebec had enacted a legislative ban identical in effect to the Prohibition, however, on September 3, 2019, the Quebec Superior Court ruled that the legislative ban was unconstitutional, *ultra vires* Quebec's legislative authority and invalid;

j) A person who contravenes *The Liquor, Gaming and Cannabis Control Act* is guilty of an offence and liable on conviction to a fine of not more than $100,000, imprisonment for up to one year, or both;

k) *The Preset Fines and Offence Descriptions Regulation*, Man. Reg. 96/2017, enacted under *The Provincial Offences Act*, C.C.S.M. c. P160, establishes, *inter alia*, a schedule of preset fines for offences, including a preset fine for an offence by contravention of the Prohibition;

l) The scheduled categories in *The Preset Fines and Offence Descriptions Regulation* are alphabetical from "A" to "J", "J" being the category with the greatest total fine amount of $2,542, which is just less than double the total fine amount of the below category "I", $1,296;

m) An offence by contravention of the Prohibition is categorized as "J", the highest fine under *The Preset Fines and Offence Descriptions Regulation*, along with serious offences such as supplying liquor to a minor (see *The Liquor, Gaming and Cannabis Control Act*, s. 62(1));

n) In addition to the preset fine, *The Liquor, Gaming and Cannabis Control Act* provides that "any thing" that is evidence of a contravention of the Prohibition can be seized, and that such seized items can be forfeited to the Crown and disposed of (see ss. 125 and 150);

o) Furthermore, *The Criminal Property Forfeiture Act*, C.C.S.M. c. C306 provides that property which is an instrument or proceeds of a contravention of the Prohibition may be forfeited to the Respondent;

p) The pith and substance of the Prohibition is to restrict access to cannabis in Manitoba and to establish an absolute criminal ban on residential cultivation of cannabis in Manitoba;

q) The purpose of the Prohibition is to establish an absolute ban of a practice on the bases of moral values and social acceptability, and to replace, stiffen and strengthen the criminal law;

r) The Prohibition is a law in relation to criminal law and is therefore *ultra vires*;

s) Section 91(27) of the *Constitution Act, 1867* confers on the Parliament of Canada the exclusive authority and power to make laws in relation to criminal law;

t) Provincial legislatures cannot interfere with or encroach upon criminal matters by purporting to replace, stiffen or strengthen the criminal law;

u) The Respondent's enactment of the Prohibition was not within the distributed powers and jurisdiction of provincial legislatures pursuant to s. 92 of the *Constitution Act, 1867*;

v) Pursuant to s. 52(1) of the *Constitution Act, 1982*, the Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect;

w) The Prohibition is *ultra vires* and inconsistent with ss. 91 and 92 of the *Constitution Act, 1867*, the distribution of legislative powers of the Constitution of Canada and is therefore invalid and of no force or effect;

x) The Prohibition is not inextricably bound to the other provisions of *The Liquor, Gaming and Cannabis Control Act*, and that legislation may survive independently of the Prohibition, such that the Prohibition may be severed and struck from *The Liquor Gaming and Cannabis Control Act*;

y) In the alternative, the application of the Prohibition affects and impairs the core of the federal power of criminal law, and the application of the Prohibition ought to be excluded or its interpretation read down;

z) In the further alternative, the Prohibition is inconsistent with and frustrates the purpose of the *Cannabis Act*, and the Prohibition ought to be rendered inoperative and of no force or effect;

aa) The Applicant pleads and relies upon:

i. *The Constitutional Questions Act*, C.C.S.M. c. C180;

ii. *The Liquor, Gaming and Cannabis Control Act*, C.C.S.M. c. L153, s. 101.15;

iii. the *Cannabis Act*, S.C. 2018, c. 16, Part 1;

iv. the *Constitution Act, 1867* (UK), 30 & 31 Vict., c. 3, ss. 91 and 92, reprinted in R.S.C. 1985 App. II, No. 5;

v. the *Constitution Act, 1982,* s. 51, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11; and

vi. *The Court of Queen's Bench Rules*, Man. Reg. 553/88, Rules 1.04(1), 3.02(1), 14.05 and 38;

bb) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the Application:

a) The Affidavit of Jesse Conner Lavoie, to be sworn and filed; and

b) Such further and other material as counsel may advise and this Honourable Court may permit.

August 26, 2020

ANDREW W. BOUMFORD / JENNIFER A. SOKAL
MLT AIKINS LLP
30th Floor, 360 Main Street
Winnipeg, MB R3C 4G1
Lawyers for the Applicant