

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

Plaintiffs

AND

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS  
REPRESENTED BY THE ATTORNEY GENERAL OF BRITISH COLUMBIA, THE MINISTER  
OF PUBLIC SAFETY and THE COMMUNITY SAFETY UNIT**

Defendants

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff(s) for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL** to file the response to civil claim within the time for response to civil claim described below.

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## CLAIM OF THE PLAINTIFF

1. The Plaintiff seeks:

- (a) damages in the amount of at least \$40,000,000, or as determined at trial, in respect of the loss of income resulting from the negligent failure of the Province of British Columbia (the “**Province**”) to enforce the *Cannabis Control and Licensing Act* and related legislation (the “*Cannabis Control and Licensing Act*”);)
- (b) An Order requiring the defendants to enforce the *Cannabis Control and Licensing Act* by prohibiting any person from:
  - i. Establishing and operating, or permitting the establishment or operation of, a cannabis store without a valid and subsisting cannabis store agreement with the British Columbia Liquor and Cannabis Regulation Branch.
  - ii. Allowing any unlicensed retailers on “Reserves” as defined in the *Indian Act* R.S.C., 1985, c.I-5 or anyone else to do, any of the following without being authorized to do so pursuant to a retail cannabis store licence issued under the *Cannabis Control and Licensing Act*:
    1. Establishing and operating a cannabis store.
    2. Selling cannabis on a retail basis.
  - iii. Allowing any unlicensed retailer situated on Reserve to sell cannabis or any class of cannabis that:
    1. Has not been purchased from the British Columbia Liquor and Cannabis Distribution Branch.
    2. Is not authorized for sale under the *Cannabis Act* (Canada).
    3. Is not packaged, labelled and stamped in accordance with federal

requirements.

- iv. Allowing any unlicensed retailer on Reserve to possess cannabis in British Columbia for the purpose of sale, without being licensed to do so under the *Cannabis Control and Licensing Act*.
  - h. Costs.
2. Such further and other relief as counsel may advise and this Honourable Court may allow.

### **The Parties**

3. The defendant, the Attorney General of British Columbia, is her Majesty's Attorney General for British Columbia, and has the management and direction of the Ministry of the Attorney General, pursuant to the *Attorney General Act*, R.S.B.C. 1996, c. 22. The Attorney General is the proper respondent to a proceeding in the Supreme Court of British Columbia pursuant to the *Crown Proceedings Act*, RSBC 1996, Chapter 89.
4. The defendant, Minister of Public Safety of the Province of British Columbia (the “**Minister**”), is responsible for ensuring compliance with the *Cannabis Control and Licensing Act*.
5. The defendant, Community Safety Unit (“**CSU**”), under the Policing and Security Branch of the Ministry of Public Safety and Solicitor General, is responsible for compliance and enforcement under the *Cannabis Control and Licensing Act*, with a focus on the illegal sale of cannabis.

6. The plaintiff, BC1178980, (“**BC 980**”), is a British Columbia corporation operating a licensed cannabis retail location in\_\_\_\_\_

7. The plaintiff, BC1221580 (“**BC 580**”), is a British Columbia corporation operating a licensed cannabis retail location in\_\_\_\_\_

8. The plaintiff, BC1155387 (“**BC 387**”), is a British Columbia corporation operating a licensed cannabis retail location in\_\_\_\_\_

9. The plaintiff, BC 1207297 (“**BC 297**”), is a British Columbia corporation operating a licensed cannabis retail location in\_\_\_\_\_

10. The plaintiff, 1826900 Alberta Ltd. (“**900**”), is an Alberta corporation operating a licensed cannabis retail location in \_\_\_\_\_.

11. The plaintiff, BC1155274 (“**BC 274**”), is a British Columbia corporation operating a licensed cannabis retail location in\_\_\_\_\_

12. The plaintiff, BC1187520 (“**BC 520**”), is a British Columbia corporation operating a licensed cannabis retail location in\_\_\_\_\_

13. The plaintiff, BC1142545 (“**BC 545**”), is a British Columbia corporation operating a licensed cannabis retail location in\_\_\_\_\_

14. The plaintiff, BC1201852 (“**BC 852**”), is a British Columbia corporation operating a licensed cannabis retail location in\_\_\_\_\_

15. The plaintiff, BC1187613 (“**BC 613**”), is a British Columbia corporation operating a licensed cannabis retail location in\_\_\_\_\_

16. The plaintiff, BC1156356 (“**BC 356**”), is a British Columbia corporation operating a licensed cannabis retail location in\_\_\_\_\_

17. The plaintiff, BC1143782 (“**BC 782**”), is a British Columbia corporation operating a licensed cannabis retail location in\_\_\_\_\_

18. The plaintiff, 2090442 Alberta Inc. (“**442 Alberta**”), is an Alberta corporation operating a licensed cannabis retail location in\_\_\_\_\_

19. The plaintiff, BC1142367 (“**BC 367**”), is a British Columbia corporation operating a licensed cannabis retail location in\_\_\_\_\_

## **BACKGROUND**

### *Cannabis legislation*

20. As a result of the enactment by the Federal Parliament of Canada of the *Cannabis Act* (Canada), S.C. 2018 c.16 and the passage of the *Cannabis Control and Licensing Act* S.B.C.

2018, Chapter 29 (the “*Cannabis Control and Licensing Act*”), the sale and use of cannabis for non-medical purposes has been legal in British Columbia effective October 17, 2018.

21. The development of the legalized market for the sale and use of cannabis has been carefully licensed and regulated to ensure protection of children and youth, promote health and safety, keep the criminal element out of cannabis, keep British Columbia’s roads safe, ensure a viable retail cannabis industry through a system of licensing and enforcement against illegal retailers, and support economic development.

22. Together, federal and provincial legislation establishes a comprehensive "seed to sale" approach to the regulation of non-medical cannabis. Legal cannabis must be produced by federally-licensed producers at all stages. Regulated production ensures safety of the product supplied to the general public and protects the retail industry from competition by illegal producers.

23. Provincial legislation maintains the integrity of the supply chain because legally produced cannabis can only be sold in British Columbia by a person who first enters into a cannabis store retailer agreement with the British Columbia Liquor Distribution Branch (“**LDB**”) and obtains a retail cannabis license issued by the Liquor and Cannabis Regulation Branch (“**LCRB**”) under The *Cannabis Distribution Act*, SBC 2018, Chapter 28. A separate retail cannabis license is required for each location where a person operates a store.

24. All cannabis sold at a retail store must have been purchased from the LDB by the holder of the retail cannabis license. This regime is intended to safeguard and give the public confidence in the legal cannabis product they buy and use and to ensure only legally obtained cannabis is sold in the licensed retail market.

25. In addition, retailers who operate within the regulated regime are required to actively support, develop and contribute to social responsibility initiatives in relation to the sale and consumption of cannabis, in accordance with provincial legislation and retail cannabis store agreements.

26. Since legalization, total retail sales of cannabis in British Columbia for the single month of July was \$48.52 million in July 2021, compared to \$34.71 million in July 2020, and \$5.97 million in July 2019. According to the Minister of Public Safety, this continued growth can be attributed to an increasing number of provincially authorized stores, over 400, a declining number of illicit stores, and the release of new, high quality cannabis products at prices that are competitive with the illicit market.

### ***Enforcement of the Cannabis Control and Licensing Act***

27. The Solicitor General, through the Ministry of Public Safety of the Province of British Columbia, is responsible for ensuring compliance with the *Cannabis Control and Licensing Act*.

28. The Community Safety Unit (“CSU”), under the Policing and Security Branch of the Ministry of Public Safety and Solicitor General, is responsible for compliance and enforcement under the *Cannabis Control and Licensing Act*, with a focus on the illegal sale of cannabis.

29. CSU investigators carry out compliance and enforcement activities against unlicensed cannabis retailers and other illegal sellers across the province.

30. The CSU has the authority to enter premises where cannabis is being sold without a provincial retail store license and take enforcement action, including making seizures of cannabis. A person may be charged for a provincial or criminal offense and be subject to an administrative monetary penalty under the *Cannabis Control and Licensing Act* for the same contravention. Conviction of a provincial offense under the *Cannabis Control and Licensing Act* can result in fines up to \$100,000, imprisonment for up to 12 months, or both. In addition to enforcement action by the CSU, a person illegally selling cannabis may be subject to enforcement action by police.

31. According to the Minister of Public Safety and Deputy Premier, Mike Farnsworth (“**Farnsworth**”), as of the end of 2021, the CSU has taken enforcement actions against over 70 unlicensed cannabis retailers; removed approximately \$25 million worth of cannabis products from the illegal market, issued 39 administrative monetary penalties; and over 170 unlicensed stores have closed because of the CSU actions.



32. However, the decline in illicit cannabis stores and enforcement actions against such stores have taken place almost entirely on lands not designated as Indian Reserves, which illicit sales are the subject of the present action.

*Application of the Cannabis Control and Licensing Act to Sales on Indigenous Lands*

33. British Columbia has some 300 Indian “Reserves”, tracts of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of an “Indian Band”, and on which some 50,000 individuals “Indians” within the meaning of the *Indian Act* R.S.C., 1985, c.I-5 (the “*Indian Act*”), reside.

34. The *Cannabis Control and Licensing Act* applies equally to all territory of British Columbia, including Indian “Reserves” as defined under the *Indian Act*.

35. There is nothing in federal law, in the federal *Indian Act* or inherent to the exclusive federal authority over Indians and land reserved for Indians under section 91(24) of the *Constitution Act*, 1867 (U.K.) 30 & 31 Vict., C. 3 that would ordinarily bar the application of the Act as regards Indians, Indian Bands or Reserves.

36. The *Cannabis Control and Licensing Act* applies directly to Indians of its own force, as it does not invade exclusive federal authority over Indians or their lands.

37. In any event, should the *Cannabis Control and Licensing Act* be found to invade exclusive federal jurisdiction, which is denied, section 88 of the *Indian Act* reads as follows:

88. Subject to the terms of any treaty and any other Act of Parliament, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that those laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that those laws make provision for any matter for which provision is made by or under this Act.

38. The *Cannabis Control and Licensing Act* is a provincial law of general application as it applies to all residents of the province equally and does not single out Indians or Indian Reserve lands for special treatment on the basis of geography, intention or in terms of the effect of those statutes on Indian status or rights.

39. s.119 of the *Cannabis Control and Licensing Act* specifically provides that the Minister of Public Safety, with the approval of the Lieutenant Governor in Council, may enter into agreements with an “Indigenous Nation” authorizing the sale of cannabis, subject to a number of requirements, in particular that only cannabis produced by federal license holders for commercial purposes may be sold pursuant to an agreement under s.119. The sales occurring on Reserves are almost entirely of illegally obtained cannabis and in breach of any s.119 agreements that may exist.

40. Notwithstanding the application of the Act to Indians, Indian Bands and Reserves, the defendants have failed to enforce the licensing requirement of the *Cannabis Control and Licensing Act* to retail cannabis locations operating on Indian Reserves, leading to damages to the plaintiffs described below.

*Defendants' knowledge of Illicit Sales on Reserves*

41. In July 2020, during questioning in the Provincial Legislature, the Minister of Public Safety and Deputy Premier acknowledged that since legalization of cannabis in British Columbia, there has been a proliferation of unlicensed retail outlets on Indian Reserves (the “**Illicit Retailers**”). The Honourable Minister and Deputy Premier assured the public that the government was working on ways to deal with the situation.

42. According to the Minister, at that time there were some 50-100 unlicensed retailers operating on Indian Reserves in British Columbia. Since then, the number has grown significantly and existing sales have increased.

43. The cannabis that is being sold on Indian Reserves is not produced in accordance with the regulatory regime in the *Cannabis Act* (Canada), which regulates all aspects of production stages (i.e. from "seed to sale"). Rather, the cannabis that is being sold is not authorized under the *Cannabis Act* (Canada), and is therefore illicit. The sale of illicitly obtain cannabis and the growth of the illicit industry on Reserve Lands is leading to significant risk to the public and loss of income to licensed cannabis retailers.

44. These Illicit Retailers on Indian Reserves are not authorized under British Columbia law to operate retail cannabis stores. There is no retail cannabis store license issued by the LCRB in relation to these retailers.

45. In addition, there is no valid and subsisting cannabis store agreement in relation to these retailers with the LCRB. Such agreements are a statutory pre-requisite to qualifying for a retail cannabis license under the *Cannabis Control and Licensing Act*.

46. The Illicit Retailers sell black market products or illegally obtained product that has not been purchased from the British Columbia government as required under the Act, nor authorized for sale under the *Cannabis Act* (Canada).

47. The absence of any cannabis store agreement with the LCRB, and the absence of any retail cannabis store license, means that all sales of cannabis occurring on Indian Reserves without such legal compliance and licensing are contrary to the laws of British Columbia and Canada, notably, the:

- a. *Cannabis Control and Licensing Act*, S.B.C. 2018, Chapter 29;
- b. *Cannabis Distribution Act*, SBC 2018, Chapter 28; and
- c. *Cannabis Act* (Canada), S.C. 2018, c.16.

48. The defendants are permitting the Illicit Retailers to operate in a manner that is circumventing and disregarding, and entirely contrary to, the prevailing legislative and regulatory regime in British Columbia for the retail sale of cannabis.

49. The defendants are aware of the continued, and growing retail sales of cannabis on Indian Reserves in a manner that is circumventing and disregarding the prevailing legislative and regulatory regime in British Columbia for the retail sale of cannabis.

50. The defendants have been repeatedly advised of the unlicensed sales occurring on Reserve Lands, with specific information regarding the location of illicit retailers. However, the defendants have failed to act.

51. For example, on September 16 and 17, The Minister of Public Safety and Solicitor General was advised of sales of unregulated cannabis on Reserves and provided a list of locations from where such Illicit Retailer were operating.

52. The defendants did not act to terminate the illicit sales, and the illicit retailers continue to operate outside of the legal cannabis regime.

53. The defendants are aware of the violations of the legal framework for the retail sale of cannabis, and are allowing unlicensed retailers on Indian Reserves to flout the law by persisting in operating unlicensed retail locations, in complete disregard for, and entirely contrary to, the laws of general application in the Province.

54. Once the policy decision to regulate the retail sale of cannabis was taken, the defendants was under a duty to use all reasonable care in the actual operational decisions involved in enforcing compliance with the existing legal regime in place, including, but not limited to pursuit of enforcement measures, design of enforcement plans, consultation with licensed retailers, as well as assessing and ensuring efficacy of its enforcement efforts. The defendants failed to do so.

55. In the alternative, if the decision not to enforce the *Cannabis Control and Licensing Act* on Indian Reserves was a policy decision, then it was not taken in the *bona fide* exercise of discretion. The *bona fide* exercise of discretion required that the defendants take proper account of factors relevant to their statutory mandate in enforcing the *Cannabis Control and Licensing Act* and associated legislation and regulations.

56. These factors include, but are not limited to, the safety and quality of the cannabis sold through retail locations in British Columbia, and the effect that illicit sales would have on the economic interest of legal retailers who invested significant sums in obtaining licensing approvals and operating legal retail cannabis locations. The defendants failed to take proper account of any of these factors into consideration in the crafting of their enforcement activities, and thus failed to exercise their discretion in accordance with proper principles.

57. The defendants have admitted that they took no independent action to prevent illicit sales on Reserves. The Minister of Public safety is aware that an enforcement “gap” exists regarding Indian Reserves and that there is no plan to enforce the relevant regulatory provisions on “First Nations Lands” at this time. The Minister is aware that these decisions put retailers of cannabis who comply with the regulations at a commercial disadvantage.

58. The defendants and agencies responsible for enforcement of cannabis laws ignored their statutory mandate. As a matter of public policy liability should be imposed.

59. The defendants were negligent in informing retailers in 2019 that enforcement measures would be taken against illicit sales on Reserves and publicly stating that illegal retailers who did not obtain a license would be closed or would face increasing enforcement action by the CSU. The defendants stated that such enforcement would take place in communities across British Columbia. None of these claims has proven to be accurate and no such enforcement activity on Reserves was initiated or applied.

60. The Provincial Legislature intended that that regular enforcement of Act would take place when the Act was passed in 2018. The plaintiffs state that the defendants failed to act in a reasonable manner in the *bona fide* exercise of discretion and were negligent in failing to have in place a continuous active monitoring and improvement mechanism for cannabis enforcement, as they indicated would be in place prior to and following enactment of the legislation.

61. There is no privative clause in the *Cannabis Control and Licensing Act* limiting the defendants' liability, or otherwise restricting the plaintiffs' right to recovery in this action.

62. Despite conducting enforcement throughout the province, the defendants have failed to enforce the Act in areas contributing to the greatest amount of illegal sales, being the Illicit Retailers on Reserves.

63. The plaintiffs state that the defendants were grossly negligent in allowing the continued sale of cannabis by Illicit Retailers despite knowing the deleterious effect on the legal retail industry.

### **Damages to Legal Retailers**

64. As a result of the defendants' failure to enforce the *Cannabis Control and Licensing Act*, the plaintiffs have each suffered, and continue to suffer damages in the form of loss of income, and loss.

65. On average, it takes approximately 2 years to obtain approval for licensing operate a retail cannabis location.

66. Licensed retailers face a significant regulatory burden and compliance costs to obtain and maintain their licenses to sell retail cannabis and operate their retail locations.

67. Among other things, licensed retailers must:

- i. undergo a detailed character and financial integrity analysis to be issued a license.
- ii. Pay an application fee to obtain a retail cannabis license;
- iii. Pay an annual license maintenance fee;
- iv. Buy directly from the LDB;
- v. Pay a fixed 15% markup on all products purchased from the LDB in the form of a “Distribution Fee”; and
- vi. Abide by strict requirements governing the physical retail premises from which their cannabis products are sold.

68. In addition, licensed cannabis retailers are subject to wide ranging regulatory requirements, including limitations on modes of advertising, price controls for retail products, marketing limitations, government certification requirements for employees, mandatory security requirements, mandatory inspections and reporting and record keeping requirements.

69. Licensed cannabis retailers accept these costs and regulatory burdens in the interest of protecting the legal cannabis industry, and on the understanding that the defendants have undertaken to safeguard their investment in operating licensed cannabis retail locations by enforcing the *Cannabis Control and Licensing Act* throughout the province.



70. On average, each of the plaintiffs has seen a \$500,000 yearly reduction in its gross sales due to business lost to Illicit Retailers operating on Reserves with the knowledge of the defendants.

71. The defendants, while aware of the impact of its enforcement failures on the legal retail cannabis market, has taken no action to enforce the *Cannabis Control and Licensing Act* against the Illicit Retailers.

### **Duty of Care**

72. The retail cannabis industry in British Columbia has grown rapidly, expected to reach \$1 billion in annual sales by 2024.

73. At all material times, the defendants undertook the duty to safeguard the legal cannabis industry and prevent the illicit sale of unregulated cannabis products in the province.

74. The purpose of the enforcement provisions in the *Cannabis Control and Licensing Act* is to prevent the sale of illicit products that could both affect public health and could be harmful to the establishment and maintenance of a viable legal retail cannabis industry.

75. The plaintiffs state and the fact is that at all material times the defendants were under a duty of care to ensure the viability of the legal cannabis industry by effectively enforcing the *Cannabis Control and Licensing Act*.

76. The plaintiffs were entitled to expect, and did expect, that the defendants would use all reasonable skill in ensuring that enforcement measures were undertaken to protect the industry as they promised that they would do. Legal retailers relied on these promises in deciding to undertake the licensing process and the investment into their retail locations. The defendants failed in their duties to the plaintiffs.

77. The plaintiffs were entitled to rely, and did rely, on the representations of the defendants that their goal was to ensure a viable retail cannabis industry in the Province, and that enforcement against illegal retailers would be undertaken as a crucial component of achieving that result. These representations were *prima facie* inaccurate and misleading.

78. The intent of the Legislature was that the basic provisions of the *Cannabis Control and Licensing Act* required at all material times that enforcement activities against unlicensed retailers were undertaken across the province, especially against illicit retailers whose sales form the vast majority of illicit retail sales.

79. The plaintiffs state that the defendants were under a duty to conduct enforcement against these illicit retailers across the Province. This was not done.

80. It was in the reasonable contemplation of the defendants that a failure on their part to take reasonable care in the enforcement of the *Cannabis Control and Licensing Act* would lead to detrimental effects on the legal retail cannabis market and the livelihood of licensed retailers thereby.

81. Clearly, there is sufficient proximity between the defendants and licensed retailers to impose a duty of care on the defendants in this action. This is especially true given the power imbalance and necessary trust between licensed cannabis retailers and the defendants, and the inherent vulnerability of the plaintiffs to damage from the negligent acts of the defendants.

82. Parliament has expressed the clear and unmistakable will that government actors in the context of the carrying out of their regulatory duties must be held accountable.

### **Standard of Care**

83. The British Columbia provincial legislature by enacting the *Cannabis Control and Licensing Act* conferred upon the defendants the power to make regulations but left the nature and scale on which this discretion was exercised to be determined by the defendants.

84. The crafting and promulgation of measures taken to enforce the licensing regime under the *Cannabis Control and Licensing Act* were operational decisions stemming from the discretionary policy decision to regulate. The defendants were required to use all reasonable care in ensuring that enforcement measures addressed the areas of greatest known challenge to the viability of the licensed retail cannabis industry. The defendants failed to do so, and thereby breached the requisite standard of care.

85. In the alternative, if the crafting and promulgation of enforcement measures taken under the *Cannabis Control and Licensing Act* were policy decisions by the defendants, they required the *bona fide* exercise of discretion. By not addressing large and growing sales by Illicit Retailers

on Reserves, the defendants irresponsibly failed to take proper account of factors relevant to their statutory mandate, and thereby breached the requisite standard of care.

86. The initial decision to not to implement required enforcement measures against Illicit Retailers on Reserves was operational in nature. The defendants were required to use all reasonable care in ensuring that an ongoing, active and effective enforcement system was in place, particularly as the defendants had held out to the public that such a system would be in place. The defendants failed to do so, and thereby breached the requisite standard of care.

87. In the alternative, the initial decision to decline to enforce the *Cannabis Control and Licensing Act* against Illicit Retailers on Reserves were policy decisions requiring the *bona fide* exercise of discretion. The defendants were required to take proper account of factors relevant to their statutory mandate in deciding not to ensure that an ongoing, active and effective enforcement system was in place, particularly as the defendants had held out to the plaintiffs that such a system would be in place.

88. By failing to address enforcement considerations in general, and with respect to the effect on licensed retailers of the illicit sales on Reserves in the specific, in the assessment of the need for ongoing enforcement of the *Cannabis Control and Licensing Act*, the defendants failed to take proper account of factors relevant to their statutory mandate, and thereby breached the requisite standard of care.

89. The decision by the defendants to put in place a system to protect the licensed cannabis retail industry through enforcement against unlicensed sellers was a policy decision. Once the decision to enforce was made, the defendants were under a duty to ensure that the system of enforcement was reasonable and was executed properly.

90. An enforcement system that allows the majority of illegal cannabis sales to continue and to grow significantly is *prima facie* unreasonable, improperly executed, and a breach of the requisite standard of care.

91. The plaintiffs state that the defendants were grossly negligent in allowing sales by illicit cannabis retailers on Reserves to grow throughout the period since legalization.

92. The plaintiffs state that the defendants did not act in accordance with reasonable standards of regulatory rulemaking and reasonable standards of administration and enforcement at the relevant times.

93. In the alternative, the plaintiffs state that if the defendants did act according to such standards at the relevant times, which is not admitted but is specifically denied, then:

- a) the standards themselves were negligent;
- b) the standards were fraught with obvious risk;

- c) the standards were such that anyone would be capable of finding them to be negligent or inadequate without the necessity of adjudging matters requiring expertise;
- d) the standards failed to include obvious and reasonable precautions necessary to ensure that the illicit sales on Reserves would not continue and expand; or
- e) the standards which were in effect were negligently, inadequately or inconsistently enforced and/or applied by the defendants.

94. Further particulars of the wrongful acts and omissions of the defendants cannot be provided by the plaintiffs until complete records have been produced by the defendants and the plaintiffs have had these records reviewed by appropriate experts competent to opine as to the nature and extent of the defendants' regulatory oversights and other wrongs in the circumstances of this action, and the standards breached thereby.

### **Causation**

95. But for the negligent failure of the defendants to enforce the *Cannabis Control and Licensing Act*, the plaintiffs would not have suffered the damages described herein, including loss of income, and loss of the value of their investment.

96. It was reasonably foreseeable by the defendants that carelessness on their part in ensuring proper enforcement of cannabis legislation on Reserves would have a detrimental effect on the retail cannabis industry in British Columbia.

97. It was reasonably foreseeable by the defendants that the failure to have in place an ongoing, active and effective monitoring and enforcement system to ensure only licensed retailers were selling retail cannabis at the material times could and would result in damages to the plaintiffs.

98. The plaintiffs state that the wrongs and breaches of legal obligations committed by the defendants have caused or materially contributed to the injuries and damages suffered by the plaintiffs.

99. The defendants were under a duty to act as soon as they became aware of these circumstances of Illicit Retailers operating on Reserves.

100. This positive duty to act was enhanced because it was the operational negligence of the defendants in their implementation of the enforcement system that created the hazard of continued and expanding sales by Illicit Retailers.

101. The defendants did not even take the basic, expedient and common sense step in enforcing minimal requirements under the *Cannabis Control and Licensing Act* and regulations, such as ensuring that unlicensed retailers on Reserves completed the required “Responsible Selling” course, complied with advertising limitations, installed security monitoring in their premises, or maintained a cannabis register. In fact, the defendants took no actions whatsoever on their own initiative to control sales by Illicit Retailers on Reserves.

102. Had the defendants taken these simple and expedient steps in a timely fashion, the harm suffered by the plaintiffs would not have occurred.

103. The failure of the defendants to enforce the *Cannabis Control and Licensing Act* denied the plaintiffs the opportunity to take measures to protect themselves against the Illicit Retailers by avoiding or minimizing their investment in operating licensed cannabis retail locations.

104. The plaintiffs state that the decision to not warn licensed retailers that the defendants would not in fact enforce against Illicit Retailers was a negligent operational decision by the defendants. In the alternative if it was a policy decision it was arbitrary, unreasonable, irresponsible and not taken in the *bona fide* exercise of discretion.

105. The plaintiffs state that, having negligently misled the licensed retailers as referred to above, the defendants were under an enhanced duty to protect licensed cannabis retailers such as the plaintiffs from any negative consequences arising from their negligence, and had a duty to make all reasonable efforts to ensure that any possible damages to licensed cannabis retailers that may have resulted thereby were mitigated.

106. Licensed cannabis retailers such as the plaintiffs have lost cash receipts of over 40% of potential retail sales to the Illicit Retailers as a result of the defendants' failure properly to enforce the *Cannabis Control and Licensing Act* on Reserves. The plaintiffs have suffered, and continue to suffer, severe and debilitating loss of income due to continued and growing sales by the Illicit Retailers and the failure of the defendants to stop them



107. The plaintiffs have suffered, and continue to suffer, loss of business opportunities.
108. The plaintiffs have suffered a diminution in the value of their businesses.
109. The plaintiffs have suffered a diminution in the value of their real property.
110. The plaintiffs have suffered, and continue to suffer, loss of enjoyment of life.
111. The plaintiffs have suffered, and continue to suffer, emotional upset and mental distress.
112. The plaintiffs have suffered real and substantial loss of income, including past, present and future loss of income, because of their economic situation arising out of the aforesaid wrongs of the defendants. Full particulars of these damages will be provided prior to the trial of this action.
113. The plaintiffs have incurred and will continue to incur, both before and after trial, damages for expenses relating to their efforts to replace all or part of the income they have lost arising out of the aforesaid wrongs of the defendants. Full particulars of these damages will be provided prior to the trial of this action.