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Frank Fedorak		
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COURT FILE NO. \_\_\_\_\_

## FEDERAL COURT

B E T W E E N:

DRUG USERS LIBERATION FRONT and VANCOUVER  
AREA NETWORK OF DRUG USERS

Applicants

and

THE ATTORNEY GENERAL OF CANADA, THE MINISTER OF  
HEALTH, and THE DIRECTOR GENERAL OF CONTROLLED  
SUBSTANCES DIRECTORATE, HEALTH CANADA

Respondents

## NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at (*place where Federal Court of Appeal (or Federal Court) ordinarily sits*).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305

prescribed by the Federal Courts Rules and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

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 OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Dated: \_\_\_\_\_ Issued by: (Registry Officer)  
Address of Pacific Centre  
local office PO Box 10065  
701 West Georgia Street  
Vancouver, BC V7y 1B6

**TO:** **The Attorney General of Canada**  
Civil Litigation Section  
Department of Justice Canada  
50 O'Connor Street, 5th Floor  
Ottawa, ON K1A 0H8

**AND TO:** **The Minister of Health**  
Deputy Minister's Office  
Health Canada  
Brooke Claxton Building, Tunney's Pasture  
Postal Locator: 0906C  
Ottawa, ON K1A 0K9

**AND TO:** **The Director General of Controlled Substances**  
**Directorate, Health Canada**  
Health Canada  
Address Locator: 1801B  
Ottawa, ON K1A 0K9

## APPLICATION

1. This is an application for judicial review, pursuant to s. 18.1 of the *Federal Courts Act*, RSC 1985, c. F-7, of the decision (the “**Denial**”) by the Director General of Health Canada’s Controlled Substances Directorate (the “**Director General**”) to deny an exemption from the *Controlled Drugs and Substances Act*, SC 1996, c. 19 (“**CDSA**”), pursuant to s. 56(1) of the CDSA, to enable the Applicants to operate a Safe Supply Fulfillment Centre and Cocaine, Heroin and Methamphetamine Clubs in Vancouver, BC.

### THE APPLICANTS APPLY FOR:

- a) An order in the nature of *certiorari* quashing the Denial;
- b) An order in the nature of *mandamus* that the Director General grant an exemption for the Option 2 safe supply model described below;
- c) In the alternative, an order setting aside the Denial and remitting this matter to the Director General to be determined in accordance with this Court’s reasons;
- d) An order for special costs or, in the alternative, ordinary costs of and incidental to this application; and
- e) Such further and other relief as this Court deems appropriate and just.

### THE GROUNDS FOR THIS APPLICATION ARE:

#### Part I: Factual Background

##### *The Drug Toxicity Crisis*

2. Canada, and British Columbia in particular, are currently suffering a devastating drug overdose crisis. In 2020, 16.6 out of every 100,000 Canadians died by drug overdose. In British Columbia, the rate that year was twice as high: 32.4 deaths per 100,000 population. For comparison,

deaths from COVID-19 in BC since the beginning of the pandemic in early 2020 through to September 2021 totalled 2,033; over the same period there were 2,938 deaths in BC from drug overdoses. Currently, approximately six British Columbians lose their lives to drug overdose every single day.

3. This drug overdose crisis is both persistent and worsening. The crisis began prior to 2016, the year British Columbia's Public Health Officer declared a public health emergency due to the rising rate of drug overdoses in the province. The death rate in BC has continued to climb precipitously following that emergency declaration – from 7.8 per 100,000 in 2014, to 20.4 in 2016, to 43.6 in 2021.
4. The cause of this crisis is clear: it is the persistent unpredictability of the content and potency of the illicit drug market. The supply of illicit drugs – including commonly-used street drugs such as heroin, cocaine and methamphetamine – has been contaminated by increasingly volatile substances, including fentanyl, carfentanil and benzodiazepines. These substances are currently found in street drugs in inconsistent concentrations, such that people who use drugs cannot accurately predict the potency of the drugs on which they are dependent or which they otherwise choose to use. The result is that a dose of a street drug in a quantity that might normally produce a safe high can instead be at a lethal level of toxicity.
5. The necessary response to this crisis is likewise clear: it is to provide people who use drugs with a supply of those drugs that is free of the highly toxic additives (including fentanyl, carfentanil and benzodiazepines) – or that contains them in known, consistent quantities – so that the potency of the drugs is predictable. Such an approach is commonly referred to as “safe supply” or “safer supply”. Providing a safer, regulated supply of drugs would not remove all of the underlying

dangers involved in using drugs like cocaine, heroin and methamphetamine. But it would address the immediate cause of this crisis and save many lives. By ensuring that their drugs do not contain fentanyl, carfentanil or benzodiazepines – or that their content is known and consistent – a safer, regulated supply of drugs would allow people who use them to predict the potency of their drugs, so that they can take an amount that will not cause an overdose but will still produce a high and/or avoid withdrawal.

6. This application for judicial review concerns the Applicants' efforts to provide a safer, regulated supply to entrenched drug users in the area of British Columbia where the overdose crisis is most acute: the Downtown Eastside of Vancouver. As described more fully below, the Applicants would do so by way of a Safe Supply Fulfillment Centre and Cocaine, Heroin and Methamphetamine ("**CHM**") Clubs (together, the "**Safer Supply Models**"). The Safer Supply Models would involve the Applicants purchasing cocaine, heroin and methamphetamine from known sources, testing the drugs through established methods to ensure they are free of the highly toxic additives discussed above, and distributing the drugs to members, all of whom would be known to be long-standing drug users over the age of 19.
7. The CDSA, however, prohibits the purchase, possession and distribution of cocaine, heroin and methamphetamine, and so the Applicants requested, pursuant to s. 56(1) of the CDSA, a short term exemption from the prohibitions under the CDSA, in order to allow them to operate the Safer Supply Models. The Minister of Health's delegate – Jennifer Saxe, the Director General of Health Canada's Controlled Drugs and Substances Directorate – denied the exemption request. This application is for judicial review of that Denial.

### ***The Applicants, DULF and VANDU***

8. The Drug User Liberation Front (“**DULF**”) is an incorporated non-profit formed in May of 2020, spurred on by the record breaking months of overdose deaths in British Columbia. DULF is composed primarily of people who use drugs and drug user groups, though the coalition also contains medical professionals, academics, and several advocacy groups. DULF’s mandate is to provide tangible solutions to the ongoing drug toxicity crisis. Its activities have historically entailed operating episodic CHM Compassion Clubs, as well as, currently, an Evaluative CHM Compassion Club and Fulfillment Centre.
9. The Vancouver Area Network of Drug Users (“**VANDU**”) is a well-established organization formed in 1998 to bring together groups of people who use drugs in Vancouver BC. VANDU is committed to increasing the capacity of people who use illicit drugs to live healthy and productive lives. It promotes that goal by affirming and strengthening people who use illicit drugs to reduce harm both to themselves and their communities.

### ***The Respondents***

10. The Minister of Health (the “**Minister**”) is the federal minister mandated by the CDSA to decide applications for exemptions pursuant to s. 56(1) of that Act.
11. Jennifer Saxe, the Director General of Health Canada’s Controlled Drugs and Substances Directorate (the “**Director General**”), is the Minister’s delegate who made the Denial decision.
12. The Attorney General of Canada is the representative of the federal government as a whole in proceedings against the federal Crown.

### ***The Applicants' Section 56(1) Exemption Request and the Denial***

13. The Applicants made their original request for the exemption on August 31, 2021. In light of both the urgency of the overdose crisis – and hence the request – and the iterative process by which Health Canada assesses exemption requests, the Applicants also added to their original exemption request in further correspondence.

#### **August 31, 2021**

14. The Applicants' original exemption request on August 31, 2021 was a detailed submission that referenced and relied upon current, authoritative research on addictive drugs and harm reduction policy. The submission set out (i) an overview of the exemption request, (ii) the gravity of the toxic drug crisis, (iii) the evidence that providing drug users with non-toxic drugs vastly lowers the death rate, (iv) the evidence that barriers to accessing non-toxic drugs (such as through a medicalized, prescription-based model) causes many drug users to turn back to unsafe street drugs, (v) the plain reality that prohibitionist approaches do not work, (vi) the evidence that the Applicants' Safer Supply Models do work, (vii) details of how the Safer Supply Models would operate under the s. 56 exemption, and (viii) the nature of the s. 56 exemption requested.
15. With respect to (vii) – how their Safer Supply Models would operate – the Applicants set out how the drugs would be obtained, stored, tested, packaged and distributed, how members would be screened and supported, and how the models would be financed and evaluated. With respect to obtaining the drugs, the Applicants stated that the preferred method is to obtain pharmaceutical-grade cocaine, heroin and methamphetamine from a properly licensed and regulated producer. However, as there currently is no such producer (a point further addressed in later correspondence), the Applicants proposed to purchase the drugs from illicit suppliers accessed by way of the darknet.

16. Regarding (vii) – the evidence that the Applicants’ Safer Supply Models do work – the Applicants provided a sworn affidavit from one of the DULF co-founders, Eris Nyx, who attested that DULF had to that point distributed a safe supply of over 900 doses of cocaine, heroin and methamphetamine over four different days, and that none of those doses had resulted in overdose. The submission also appended signed statements from nine VANDU members relaying the dangers they have personally encountered from the toxic drug supply, and how a safe supply of non-toxic drugs would increase their physical security.
17. The submissions further appended a letter of support from the local health authority, Vancouver Coastal Health.
18. The Applicants submitted in the original request that its Safe Supply Model is clearly in the public interest and has high potential to help protect the rights of people who use drugs to life and security of the person, as guaranteed by section 7 of the *Charter of Rights and Freedoms* (the “**Charter**”). The Applicants requested that the exemption be granted on that basis.
19. The Applicants observed that, in light of the intensity of the crisis, a decision was needed on an urgent basis. The Applicants respectfully asked for a decision by October 15, 2021 at the latest. The Applicants welcomed engagement with the Respondents, including to answer any questions, address any concerns, or discuss potential modifications in the approach.
20. The submission provided full citations to the research it referenced, as well as hyperlinks in most cases, and it indicated that the sources referenced should be considered part of the application. The Applicants offered to provide a hardcopy file with the referenced sources if that would assist (subsequently, the Respondents never requested a



hardcopy file or raised any concern about accessing the referenced sources).

### **September 24, 2021**

21. On September 24, 2021, the Applicants submitted a supplementary application for funding under Health Canada's Substance Use and Addictions Program ("**SUAP**") in order to evaluate the ongoing compassion club activities. This program has been the federal government's preferred tool for fostering innovation in this field.
22. The SUAP application aimed to support a pilot project, wherein a tested supply of cocaine, methamphetamine, and heroin would be provided through the compassion club model to 200 participants from drug user groups in Vancouver. The participants would be screened for need, with priority given to populations who are most at risk, such as Indigenous men, those who use alone, and those who have a history of repeat overdose. The objectives of the pilot project included reducing the death rate to zero among the participants and lowering barriers to accessing a safer supply of drugs. The pilot project would include evaluation by an independent researcher.

### **October 15, 2021**

23. Following the original submission on August 31, 2021, the Applicants received and conveyed to the Respondents additional letters of support for their s. 56(1) exemption request. One of those letters of support was from the First Nations Health Authority. The City of Vancouver also passed a motion supporting the exemption application, with the stipulation that the safe supply of drugs be obtained from a legal regulated source that does not benefit organized crime.
24. On October 15, 2021, the Applicants wrote to the Respondents to follow up on and add to their original exemption request. The Applicants had

requested a decision by that date at the latest, but to that point they had received no response from the Respondents at all. The Applicants reiterated the urgency of the situation, noting that, based on recent data from the BC Coroners Service, BC was on track to experience its deadliest year of the overdose crisis yet.

25. Further, the Applicants noted the support from the First Nations Health Authority and the City of Vancouver. They also referenced their recent SUAP funding application and asked that it be considered alongside the exemption request.
26. The Applicants also expanded on the relevance of the Charter for the decision. The Applicants urged the Respondents to proportionately balance the rights under the Charter implicated by the decision with any other public interest they regarded as relevant. With respect to section 7 of the Charter, the Applicants submitted that granting the exemption would significantly assist in preserving the life and security of the person of the users of street drugs that could be reached by the Safe Supply Models, and that denying the exemption would not be in accordance with the principles of fundamental justice. In addition, the Applicants observed that many people use illicit drugs because of addiction, a recognized form of disability, and that denying the exemption would perpetuate disadvantage and discrimination for such people, contrary to section 15 of the Charter.

### **November 2, 2021**

27. On November 2, 2021, the Applicants wrote to the Honourable Jean-Yves Duclos and the Honourable Carolyn Bennett, who had just been appointed Minister of Health and Minister of Mental Health and Addictions, respectively. The Applicants informed them of the application for the s. 56(1) exemption, as well as their recent SUAP application, which they asked be considered alongside the exemption request. They

reminded the Ministers that, given the depth of the toxic drug public health emergency, the exemption request was extremely urgent. They advised that even a temporary exemption while the proposals are being considered would be acceptable.

**December 2, 2021**

28. By December 2, 2021, the Applicants had still not received any reply from the Respondents. On that date they wrote to the Respondents again and urged them to respond. The Applicants enclosed: further letters of support, including from the BC Green Party; a digital petition supporting the exemption application, signed by 1,175 supporters; and five “remembrance stories” describing the lives of five people who died because of the absence of a safe drug supply.

**December 15, 16 and 17, 2021**

29. On December 15, 2021, the Applicants received a preliminary response from the Director General. She advised that Health Canada was currently reviewing the application but that they needed some clarification on certain matters, including: DULF’s organizational structure; the sourcing and testing of the drugs under the pharmaceutical and illicit models; and the link between the SUAP application and funding for operating the fulfillment centre.
30. The Applicants replied on December 16, 2021, and provided further information in response to the Director General’s queries. On December 17, 2021, Dr. Mark Tyndall, the Executive Director of the MySafe Society – an existing medicalized safe supply program distributing hydromorphone tablets – wrote further to the Director General in support of the s. 56(1) exemption request and provided further information regarding the machines used by the MySafe Society, which could also be used for the Applicants’ proposed project.

## March 11, 2022

31. On March 11, 2022 the Applicants followed up again on their s. 56(1) application and urged the Respondents to act in response to the toxic drug crisis. They noted for the Respondents that the BC Coroner had reported that there were 2,224 deaths in BC in 2021 from drug toxicity, a 26% increase over the prior year, and the most ever recorded in a calendar year. They quoted the BC Coroner's urgent plea:

This public health emergency has impacted families and communities across the province and shows no sign of abating. In 2021 alone, more than 2,200 families experienced the devastating loss of a loved one. In the past seven years, the rate of death due to illicit drug toxicity in our province has risen more than 400%. Drug toxicity is now second only to cancers in B.C. for potential years of life lost. We cannot simply hope that things will improve. It is long past time to end the chaos and devastation in our communities resulting from the flourishing illicit drug market, and to ensure, on an urgent basis, access across the province to a safe, reliable regulated drug supply.

32. The Applicants attached the BC Coroner's report on illicit drug toxicity deaths in BC in the 2021 calendar year, and referred and hyperlinked to her associated news release. They also attached and quoted from the BC Coroners Service Death Review Panel's report, "Review of Illicit Drug Toxicity Deaths", which was released on March 9, 2022, and they urged the Respondents to review it closely. The panel was comprised of multi-disciplinary experts in substance use and addictions, medicine, public health, lived experience, regulatory practices, First Nations health, education, poverty reduction, policy, research, housing, labour and law enforcement. Among other findings, the panel observed:

The primary cause of increased deaths is the growing toxicity and unpredictability of the street supply of drugs. The current drug policy framework of prohibition is the primary driver of this illegal, unregulated and toxic street supply. Until new regulatory approaches are implemented within the national drug policy framework, and

improvements in the quality and reach of the continuum of support, harm reduction and treatment services are made, the risk of significant harms, death and this public health emergency are unlikely to improve.

33. The Applicants noted for the Respondents that the panel found that “[a] new approach is required, one that includes a specific focus on the toxic drug supply.” With respect to safer supply, the panel stated: “As people use drugs for a variety of reasons, a variety of approaches will be required to provide a safer drug supply to those who need it in the communities where they live. A medicalized model on its own is not sufficient to deliver safer supply to all who need it.” The panel stressed that “an urgent response is required commensurate with the magnitude of the current crisis”, and it called for immediate action in providing a safer supply of drugs.

#### **March 23 and 29, 2022**

34. On March 23, 2022, DULF representatives with Health Canada representatives. The latter advised that the Applicants’ SUAP application was going to be rejected on the basis that Health Canada could not fund a model that included otherwise illegal elements without a s. 56(1) exemption to the CDSA. The formal rejection was communicated by email on March 29, 2022. That email advised that “SUAP is unable to provide funding for your project”. The email did not provide reasons why.

#### **April 21, 2022**

35. On April 21, 2022, the Director General sent her first substantive response to the Applicant’s s. 56(1) exemption request. In that letter the Director General stated her intention to deny the request and she invited further written representations by the Applicants within 14 days.
36. The Director General noted that the Applicants had proposed two possible models for delivering a safe supply: (1) one whereby licit pharmaceutical-grade substances would be purchased from a supplier

licensed under the CDSA, and (2) one whereby illegally produced substances would be obtained from illegal vendors on darkweb markets. The Director General stated that insufficient details had been provided in respect to the first model. As for the second model, the Director General stated that it entails certain public health and public safety risks: the anonymity of the darkweb facilitates criminal marketplaces, which are increasingly being used by Canadian organized crime groups; the second model would breach Canada's obligations under the International Drug Control Conventions; and that model would financially support the criminal organizations that produce and sell illegal substances and would undermine efforts to suppress the illegal drug trade.

37. The Director General concluded: "the second model is not an option that can be approved by Health Canada given the public health and public safety risks", and "[s]upplying drugs from the dark web is not a viable option for advancing the objectives of the CDSA, namely the protection of public health and the maintenance of public safety."
38. The Director General did not refer at any point in her letter to the ss. 7 and 15 Charter rights of drug users implicated by the exemption request, let alone indicate how she balanced those rights against the objectives of the CDSA.

**May 3, 2022**

39. The Applicants submitted their written representations in response to the notice of intention to deny on May 3, 2022.
40. As a general matter, the Applicants urged Health Canada to take a more proactive role in finding ways to protect Canadians from the toxic drug supply. The Applicants noted that 1,333 British Columbians had died from that toxic drug supply in the eight months since the Applicants had submitted their exemption request. The Applicants reiterated the finding of the BC Coroners Service Death Review Panel that "[t]he primary

cause of increased deaths is the growing toxicity and unpredictability of the street supply of drugs. The current drug policy framework of prohibition is the primary driver of this illegal, unregulated and toxic street supply.” The Applicants urged the Director General to reconsider her approach to the exemption application in light of the ss. 7 and 15 Charter rights at stake and the points set out in the Applicants’ submissions.

41. The Applicants also addressed the specific concerns raised in the notice of intention to deny regarding the two models: Option 1, whereby pharmaceutical-grade substances would be obtained from legal vendors; and Option 2, whereby illegally produced substances would be obtained from illegal vendors on darkweb markets.
42. With respect to Option 2, the Applicants reiterated that it is not their preferred option, but it is currently the only option available for a safer supply, particularly in light of the lack of support from Health Canada toward setting up a legal supply chain. The Applicants challenged the Director General’s assertion that Option 2 posed an “unacceptable risk to the health and safety of Canadians”, given that the status quo constitutes a devastating public health crisis. The Applicants observed that the public health risks involved with Option 2 are not dissimilar from other harm reduction strategies Health Canada had already supported, including decriminalization, drug checking and supervised consumption sites. As Vancouver Coastal Health’s Deputy Chief Medical Officer Mark Lysyshyn stated in his letter to Health Canada supporting the exemption request, the Fulfillment Centre and Compassion Clubs would essentially act as amplifiers of community-based drug checking services, which have previously been granted exemptions by Health Canada.
43. The Applicants further observed that the concern that Option 2 would increase organized crime is illogical and unsupported by any evidence. Option 2 “essentially proposes to act as a harm reduction and drug

checking intermediary between people who are already accessing drugs through the illicit market and the people who are already selling substances.” As demonstrated by the research and the very fact of the overdose crisis, the plain reality is that, without a safe, regulated supply, people will continue to purchase and consume contaminated, unpredictable drugs from illegal street-based sources despite the risks, and the result will be many more deaths that could have been avoided.

44. In light of Health Canada’s concerns and the urgency of the toxic drug crisis, the Applicants stressed that they were seeking a short-term exemption for distributing non-toxic drugs through the Option 2 model until an Option 1 model becomes available.
45. With respect to Option 1 – the pharmaceutical supply model – the Applicants responded to the Director General’s assertion that insufficient information was provided. The Applicants observed that information pertaining to licensed dealers, secure storage and distribution were provided. The Applicants also provided further supporting documentation, including a further letter from Fair Price Pharma Inc. (“FPP”), which is seeking to develop the capacity (which it does not yet have) to deliver pharmaceutical-grade substances as a licensed, regulated supplier. That letter reiterated that, if a s. 56(1) exemption were granted, then “FPP would be pleased to supply pharmaceutical grade diacetylmorphine to the collective provided that this was allowed by all relevant federal and provincial regulators.”
46. The Applicants also noted that a medicalized, prescription-based model entails barriers to accessing safe drugs that will exclude many drug users, as the *BC Coroners Service Death Review Panel Report* likewise observed:

Safer supply is a broad concept that exists on a spectrum from a medicalized model treating people with a substance



use disorder to a non-prescriber public health model that provides a safer supply of regulated drugs to people. As people use drugs for a variety of reasons, a variety of approaches will be required to provide a safer drug supply to those who need it in the communities where they live. A medicalized model on its own is not sufficient to deliver safer supply to all who need it.

47. The Applicants also noted the unreality of Health Canada's expectation that, in the midst of an urgent public health crisis, the Applicants would be able to create a wholly new pharmaceutical supply chain without the federal government's expressed support and assistance. The Applicants urged Health Canada to take serious action to address the toxic drug supply crisis.

#### **July 4, 2022**

48. On July 4, 2022, the Applicants followed up with the Respondents again. They gave Health Canada notice that, in light of the urgency of the toxic drug crisis, they would be moving forward with their compassion club model for 40 people and evaluating the impacts of the model over the next six months. The Applicants provided the Respondents with the program framework, entitled "The DULF and VANDU Evaluative Compassion Club: A Strategic Framework for Preventing Overdose Deaths due to the Unpredictable Illicit Drug Supply".
49. In their July 4, 2022, correspondence, the Applicants also further addressed how decriminalization and medicalized safe supply will not meaningfully reduce the number of deaths from the toxic drug crisis.

#### **July 27 and 28, 2022**

50. By July 27, 2022, Dr. Mark Lysyshyn, the Medical Health Officer of Vancouver Coastal Health, had advised the Applicants that he was going to grant an Overdose Prevention Site designation for the DULF Compassion Club at 390 Columbia Street, Vancouver, BC. As

contemplated by s. 52(2) of the *Public Health Act*, SBC 2008, c. 28 and Ministerial Order M488 under s. 5.2 of the *Emergency Health Services Act*, RSBC 1996, c. 182, Dr. Lysyshyn was satisfied that DULF had met the requirements for providing drug checking, packaging and labelling and supervised consumption services as overdose prevention services at the site.

51. On July 27, 2022, DULF's representative, Jeremy Kalicum, met with the Honourable Carolyn Bennett, the Federal Minister of Mental Health of Addictions and Associate Minister of Health, and informed her that DULF would now be operating a compassion club with a provincial Overdose Prevention Site designation.
52. On July 28, 2022, Dr. Lysyshyn formally granted the Overdose Prevention Site designation.

### **July 29, 2022**

53. On July 29, 2022, the Director General issued her decision to deny the Applicants' exemption request with brief reasons. The Director General stated that "Health Canada is bound to consider the purposes of the CDSA, which are the protection of public health and the maintenance of public safety." She did not make any mention of the Charter rights implicated by the decision, or Health Canada's obligation to proportionately balance them against the objectives of the CDSA.
54. With respect to Option 2 – providing a safe supply of drugs obtained from illegal sources – the Director General stated that she had considered the Applicants' latest correspondence and determined that "the risks to public health and safety from purchasing drugs over the dark web remain." She advised that "Health Canada remains open to exploring options to expand access to safer supply, but not to the authorization of the purchase of controlled substances over the dark web."

55. As for Option 1 – purchasing legal pharmaceutical-grade substances from a licensed dealer and distribute them through compassion clubs – the Director General stated that it was incumbent upon the requester for an exemption to provide the necessary information, and she listed categories of information that would need to be supplied for Health Canada to consider an exemption for Option 1. She observed that under a pharmaceutical model “[t]he controlled substances would generally require market authorization, which is a requirement under the *Food and Drug Regulations* that cannot be exempted through a section 56 exemption under the CDSA.” She also noted that, while Fair Price Pharma is in the process of securing the required approvals for its site and its products, it is not yet a licensed dealer or pharmacy and does not have market authorization for its proposed products, and therefore it could not currently supply the Applicants with the needed substances for Option 1.

## **Part II: Legal Basis**

56. Despite the Applicants’ exemption request squarely putting the question in issue, the Director General did not address the ss. 7 and 15 Charter rights implicated by the exemption request, let alone proportionately balance them against the objectives of the CDSA. As a result, a correctness standard of review applies to the Denial, and the Denial is incorrect. In the alternative, the Director General’s failure to address a central issue arising from the exemption request renders the Denial unreasonable.

57. The Denial is also incorrect or, in the alternative, unreasonable because:

- a. Proportionately balancing the ss. 7 and 15 Charter rights implicated by the exemption request and the objectives of the CDSA requires that an exemption be granted for Option 2, at least on a temporary basis;

- b. The Director General had a closed mind in respect of Option 2, regardless of the gravity of the implications of the Denial for ss. 7 and 15 Charter rights;
  - c. The Director General relied on reasons that are illogical and inconsistent with the evidentiary record; and
  - d. The bases for the Denial are insufficiently transparent, intelligible and justified.
58. In light of the urgency of the crisis, the plain result of the proportionate balancing of the implicated Charter rights against the objectives of the CDSA, the Director General's closed mind, among other factors, no useful purpose would be served in sending the matter back to the Director General for reconsideration, and the court should instead order that an exemption be granted.

#### **Urgency of this Application for Judicial Review**

59. The circumstances pertaining to this application are urgent. Six British Columbians are dying each day from the toxic drug supply. The Applicants respectfully request case management on an urgent basis, an expedited hearing process, and an early hearing date.

#### **Certified Tribunal Record Requested**

60. Pursuant to Rule 317 of the *Federal Courts Rules*, the Applicants request that the Director General provide the Applicants and the Registry with a Certified Copy of the record on the Applicants' exemption request, including:
- a. All correspondence between the Applicants and the Respondents regarding the exemption request;
  - b. All sources referenced in such correspondence; and

c. The Denial decision dated July 29, 2022.

This Application will be supported by the following material:

- a. The Certified Tribunal Record;
- b. One or more affidavits of representatives of the Applicants, to be sworn;  
and
- c. Any further material, including fresh evidence, this Court permits to be  
admitted.

Dated: August 26, 2022

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