S.C.C. NO. 33556

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN

ATTORNEY GENERAL OF CANADA and
MINISTER OF HEALTH FOR CANADA

APPELLANTS
(Respondents on Cross-Appeal)

- and -

VANCOUVER AREA NETWORK OF DRUG USERS (VANDU)

RESPONDENT
(Appellant on Cross-Appeal)

- and -

PHS COMMUNITY SERVICES SOCIETY,
DEAN EDWARD SILSON, SHELLY TOMIC

RESPONDENTS

- and -

ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT
(Intervener)

- and -

ATTORNEY GENERAL OF QUEBEC

INTERVENER

FACTUM OF THE RESPONDENT / APPELLANT ON CROSS APPEAL
VANCOUVER AREA NETWORK OF DRUG USERS - VANDU

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PART I. OVERVIEW AND STATEMENT OF FACTS

A. OVERVIEW

1. In the 1990's the Province of British Columbia, through the Vancouver Coastal Health Authority (VCHA), determined that there was a "public health disaster" in the Downtown Eastside (DTE) of Vancouver, BC. They determined that rampant injection drug use was central to the problem, resulting in epidemic levels of HIV/AIDS, transferrable tuberculosis, syphilis, hepatitis A and B, and a hepatitis C epidemic (90% infection rate) associated with needle sharing, and a drug overdose epidemic among injection drug users producing fatal and non-fatal overdoses. Consequently the VCHA implemented a specialized health care plan for the DTE that included "harm reduction" strategies, including needle exchange programs and a supervised injection site (Insite).[1]

2. Initially Insite operated with a *Controlled Drugs and Substances Act (CDSA)* s.56 exemption through the Minister of Health for Canada commencing September 2003 for a three year term, which was extended to December 31st, 2007 and then again to June 30th, 2008. However, as the last end date approached, the Government of Canada signaled its intention to allow the exemption to lapse despite support for its continuation by the Province of British Columbia, the City of Vancouver and the Vancouver Police Department, leaving them to deal with the ongoing health consequences that would result from the continued enforcement of the *CDSA* on those addicted. [2]

3. Consequently, the Vancouver Area Network of Drug Users (VANDU), and the Portland Hotel Society that operates Insite under license from the provincial government (PHS), took separate proceedings, joined at trial, seeking to ensure the continued operation of Insite as part of the effort to continue to grapple with the serious health consequences that are ongoing in the DTE to their members, patients and clients.[3]

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[1] Appellant's Record, (*"Record"*) Volume I, Reasons for Judgment at Trial, paras. 13-46
[2] *Record,* Volume I, Reasons for Judgment at Trial, p. 10, para. 2, p. 18, para. 46
[3] Appellant's Factum, paras. 5-10; *Record*, Volume 1, Reasons for Judgment at Trial, pp.10-11, paras 1-8

4. At trial, Pitfield, J. dismissed the Plaintiffs' claims based on the division of powers (inter-jurisdictional immunity) applying the doctrine of "Paramountcy" to the Government of Canada's occupation of the "Double aspect field" of "Health" through the use of the broad "Criminal Law" power. However, the court found that the federal government, in the exercise of those powers, was violating s.7 of the *Charter* by adversely affecting the lives, liberty and the security of the persons of those addicted to various drugs and was doing so in an arbitrary or overbroad manner, with grossly disproportionate effects contrary to those "principles of fundamental justice".[4]

5. On appeal, in a 2-1 decision, the British Columbia Court of Appeal allowed the cross appeal with respect to inter-jurisdictional immunity, finding it unnecessary to decide the s.7 issue. The majority nevertheless indicated that, if it had been necessary to decide the point, they would have dismissed Canada's appeal on the basis of 'Overbreadth' and 'Gross disproportionality in effects', but limited their decision to the geographical boundaries of the site itself and not outside Insite. Canada appealed the finding of inter-jurisdictional immunity and argues that s.7 of the *Charter* has no application. PHS and VANDU seek to uphold the Court of Appeal's decision based on inter-jurisdictional immunity. In addition, VANDU says that s.7 of the *Charter* is engaged as determined by the trial judge and the Court of Appeal, and that the violation applies generally to the enforcement of s.4 of the *CDSA* in relation to "addicted persons" anywhere in Canada. It is not geographically limited to Insite.[5]

6. Neither the trial judge nor the Court of Appeal dealt with the relationship between the division of powers issue and the *Charter* issue. While it may be logical to determine the division of powers issue first[6], it is still necessary to decide the s.7 issue, because it may have some bearing on the delineation of federal and provincial jurisdictions, particularly in a 'double aspect' field such as 'health', where it is shown that (a) the exercise of the federal paramount criminal law power is having the opposite effects to its

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[4] *Record*, Volume I, Reasons for Judgment at Trial, p. 31, para. 121, p. 36, para 152

[5] *Record*, Volume I, Reasons for Judgment of Court of Appeal, p. 106, para. 173-176 (Huddart, J.A. on the question of interjurisdictional immunity) and p. 112, para. 199 (concurring re: s.7), p.59, para. 1 (Rowles, J.A. re: interjurisdictional immunity), p. 76, para 78 (Rowles, J.A. conclusion re: s.7), Smith, J.A. in dissent: p. 125, para. 245 (re: interjurisdictional immunity) and p. 140, para. 304 (s.7 of the *Charter*)

[6] Appellant's Factum, paragraphs 92-93, footnote 139

intended purpose by an arbitrary and overbroad application of its powers, and that (b) it is intruding into the health jurisdiction of the Province by interfering with and preventing or making it more difficult for the Province to exercise its jurisdiction over public health in the Province, including dealing with the consequences of a public health emergency arising from narcotic or addictive drug use and the treatment of such narcotic dependent persons, as affirmed by this court in *R. v. Schneider*.[7] Once the application of the criminal law power is found to result in grossly disproportionate effects on the lives, liberty and the security of 'addicted' persons (by causing them to engage in unsafe practices in unsafe places, to neglect medical treatment and put at risk public health and by preventing or inhibiting them from accessing health care and treatment for their illness), Canada has exceeded its power in violation of s.7 of the *Constitution* and has wrongfully intruded into the established jurisdiction of the Provinces over public health.

7. It is settled in the jurisprudence of this court that there are constitutional limits to government action that has the likely effect of impairing a person's health, or imposes serious and profound effects on a person's psychological integrity by depriving, by means of the threat or application of a criminal sanction, access to health care, reasonably required for the treatment of a medical condition that threatens the life or health of the person, or where the means chosen by Parliament to achieve its objective is so disproportionate to the desired end so that it results in grossly disproportionate effects. [8] That is the consequence of Canada's conduct in this case. It exacerbates the difficulty of the delivery of health care in a negative way and inhibits the Province from exercising its health jurisdiction.

8. With respect to the costs issue, it was the Appellant Canada's conduct in signaling its intention to not renew the s.56 exemption that led to these two non-profit organizations seeking the help of *pro bono* counsel to commence these proceedings to protect the lives, liberty and the security of the person of their members, patients and clients. Even though the issues in these cases directly affected the constitutional

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[7] *R. v. Schneider* [1982] 2 S.C.R. 112

[8] *R. v. Monney* [1999] 133 CCC (3) 129, paras. 55; *New Brunswick Minister of Health and Community Services v. G(J.)* (1999) 177 DLR (4th) 124; *Suresh v. Canada (Minister of Citizenship and Immigration)* [2002] 1 S.C.R. 3; *R. v. Malmo Levine: R. v. Caine* [2003] 3 S.C.R. 571 in particular para. 88

position of the province, the BC government declined to participate in these proceedings at trial, leaving these two organizations on their own to put forward what amounted to the province's position and to bear the costs of prosecuting their cases. They succeeded at trial and on appeal and were correctly awarded "special costs" by both courts. Costs should be awarded on the same basis in this court so that the costs of these proceedings seeking to enforce the constitutional rights of citizens against an intransigent Canada do not fall entirely on the backs of the non-profit organizations and their *pro bono* counsel.

B. STATEMENT OF FACTS

9. VANDU accepts the Statement of Facts of the Appellant Canada under its headings B. (The Respondents and Their Claims), and C. (The Evidence at trial, including a summary of the reasons of the trial judge and the reasons of the Court of Appeal), as fairly summarizing these matters.

10. In addition, VANDU emphasizes the following additional facts:

1. All parties agreed that drug addiction is an illness and accepted the Canadian Society of Addiction Medicine definition as follows:

> A primary, chronic disease, characterized by impaired control over the use of a psychoactive substance and/or behaviour. Clinically, the manifestations occur along biological, psychological, sociological and spiritual dimensions. Common features are change in mood, relief from negative emotions, provision of pleasure, pre-occupation with the use of substance(s) or ritualistic behaviour(s); and continued use of the substance(s) and/or engagement in behaviour(s) despite adverse physical, psychological and/or social consequences. Like other chronic diseases, it can be progressive, relapsing and fatal.[9]

2. The trial court accepted the evidence of Dr. David Marsh on the nature of the illness of addiction and its consequences, noted that the evidence of Dr. Frank Evans did not dispute much of Dr. Marsh's opinion and that Dr.

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[9] *Record*, Volume I, Reasons for Judgment at Trial, pp.18-19 (*PHS Community Services Society v. Attorney General of Canada,* 2008 BCSC 661, paras. 48)

Marsh's experience with persons of the kind resident in the DTE was markedly greater than that of Dr. Evans, who was most closely associated with health care professionals and airline pilots, a significantly different group from the injection drug users of the DTES. Pitfield, J. found the correlation between Dr. Marsh's opinion and the reality to be reflected in the circumstances of the individual Plaintiffs Mr. Wilson and Ms. Tomic.[10]

3. The trial judge summarized the evidence pertaining to the individual Plaintiffs Dean Wilson and Shelley Tomic, which was not challenged by Canada.[11]

4. The unchallenged evidence of Dean Wilson, an injection drug user addict and member of VANDU is that he goes into the dark alleys to avoid law enforcement taking away his drugs, he shoots up often in darkness and misses his veins and causes abscesses because he is looking over his shoulder worrying about law enforcement coming to take away his drugs or rigs (injection equipment). The evidence further discloses that addicts like him interact with other members of society and thereby spread infectious diseases in addition to spreading diseases by sharing needles amongst themselves.[12]

5. Law enforcement agencies and other front line workers recognize that it is the law and fear of the law and its enforcement that leads to overdose deaths, among other consequences, one of the grossly disproportionate effects as a result of the enforcement of s.4 in relation to addicted persons. The evidence of the grossly disproportionate effects of enforcement of the law is contained in the Canadian Community Epidemiology Network on Drug Use Report (CCENDU)[13], the Vancouver

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[10] *Record*, Volume I, Reasons for Judgment at Trial, pp.19-20, paras. 49-59)
[11] *Record*, Volume I, Reasons for Judgment at Trial, pp. 20-23, paras. 60-79)
[12] *Record*, Volume II, p. 47 (Affidavit of Dean Wilson sworn September 1, 2006, paras. 17-25)
[13] *Record*, Volume XIX – Volume XX 43 (Vancouver Drug Use Epidemiology, June 2007 prepared by Jane Buxton, Vancouver Site Coordinator for the Canadian Community Epidemiology Network on Drug Use, (CCENDU) p. 158

Police Department Overdose Response Policy[14] and the evidence of Dean Wilson.[15] In other words, those involved or working on the front line, the addicts, the police and the health care workers are of the view that enforcement of the law in relation to an addicted person achieves the opposite effect of that intended by Parliament.[16]It causes harm.

6. Rowles, J.A., in her Judgment in the Court of Appeal below, after reviewing the conclusions about the evidence as set out in the Appellant Canada's Factum, found the following:[17]

> [27] ... The users of Insite do not use it directly to treat their addiction, but the assistance and services they receive at Insite virtually eliminate the risk of overdose that is a feature of their illness and they avoid the risk of being infected or of infecting others by injection. Insite also provides them with access to counselling and consultation that may lead to abstinence and rehabilitation. All of the services provided to addicts at Insite constitute health care..."
>
> [35] The evidence of the personal respondents and the judge's findings on the nature and extent of the health care crisis and epidemic in the DTES reveals the impact of the application of ss. 4(1) of the *CDSA* on addicted persons in the DTES and how that is related to addicted persons engaging in unsafe practices, which result in overdoses and the spread of infectious diseases and other harms"

7. While the trial judge and all three judges in the Court of Appeal found s.7 of the *Charter* to be engaged insofar as "life, liberty and the security of the person" are concerned, the trial judge focused on "arbitrariness" as the 'principle of fundamental justice' in issue, and also found the principles of

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[14] *Record,* Volume XX, (Vancouver Police Department Overdose Response Policy) p.41
[15] *Record,* Volume II, (Affidavit of Dean Wilson sworn September 1, 2006) p. 47
[16] *Record*, Volume XIX,– Volume XX 43 (Vancouver Drug Use Epidemiology, June 2007 prepared by Jane Buxton, Vancouver Site Coordinator for the Canadian Community Epidemiology Network on Drug Use, (CCENDU) p. 158; Volume XX, (Vancouver Police Department Overdose Response Policy, Vancouver), p.41; Volume II, (Affidavit of Dean Wilson sworn September 1, 2006) p. 47
[17] Appellant's Factum, paragraph 29; *Record*, Volume I, Reasons for Judgment from Court of Appeal pp. 64-66, paras. 27 and 35

'overbreadth' and 'grossly disproportionality in effects' to be applicable on the same analysis.[18]

8. The Court of Appeal, Rowles, J.A. giving judgment for the majority on this issue albeit apparently *in obiter*, focused on the principles of 'overbreadth' and 'grossly disproportionality in effects'. However, the court appeared to focus primarily on the principle of 'overbreadth', finding that the application or enforcement of s.4 of the *CDSA* at Insite as a health care facility was 'overbroad'.

9. The focus of VANDU is on the 'grossly disproportionate effects' that result from the enforcement of the s.4 of the *CDSA* on addicted persons generally *occurring outside of Insite* and that Insite is designed to ameliorate. VANDU was therefore given leave to appeal by way of Cross Appeal to ensure that the broad s.7 issue affecting drug addicts generally, not just at Insite, would be before the court.

PART II. THE ISSUES

11. On September 2, 2010, the Chief Justice stated the following constitutional questions:

1. Are ss.4(1) and 5(1) of the *Controlled Drugs and Substances Act,* S.C. 1996, c.19, constitutionally inapplicable to the activities of staff and users at Insite, a health care undertaking the Province of British Columbia?

2. Does s.4(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c.19, infringe the rights guaranteed by s.7 of the *Canadian Charter of Rights and Freedoms?*

3. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s.1 of the *Canadian Charter of Rights and Freedoms*?

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[18] *Record*, Volume I, (Reasons for Judgment at Trial) p. 36, para 152; Appellant's Factum, para. 32

4. Does s.5(1) of the *Controlled Drugs and Substances Act,* S.C. 1996, c. 19, infringe their rights guaranteed by s.7 of the *Canadian Charter of Rights and Freedoms?*

5. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s.1 of the *Canadian Charter of Rights and Freedoms?*

12. The only further issue raised by the Appellants is:

1. Did the trial judge err in awarding costs to the respondents?

PART III. ARGUMENT

A. Division of Powers Issue (Constitutional Question No. 1)

(i) Inter-jurisdictional Immunity

13. VANDU adopted the submissions of its co-Respondent PHS on this issue at trial and on appeal and in particular its submissions with respect to the doctrine of Inter-jurisdictional Immunity. VANDU will again adopt the division of power submissions and arguments advanced by the co-Respondent PHS and the Intervener Attorney General of British Columbia on this Appeal and therefore will make only limited submissions on this issue.

14. Subject to the submissions of the Respondent PHS and the AGBC, VANDU accepts that the area of constitutional overlap in this case is "health" and that jurisdiction over health is shared between the Federal Parliament and Provincial Legislatures. It is Constitutionally "amorphous" and is a subject matter that presents dual aspects, some falling within federal constitutional responsibility and some within provincial constitutional responsibility.[19]

15. Section 4 of the *Controlled Drugs and Substances Act* prohibiting the possession of various scheduled drugs is federal legislation enacted under the criminal law power,

[19] Appellant's Factum, p. 19, para. 47 and footnotes 77, 78 and 79

s.91(27) of the *Constitution Act of 1867.* This court has upheld that provision as valid federal legislation in relation to the possession of marihuana in its decision in *R. v. Malmo Levine.*[20] The Province of British Columbia on the other hand has duly enacted the *Health Authorities Act* under its jurisdiction arising pursuant to provincial jurisdiction under s.92(7) in relation to the establishment, maintenance and management of hospitals in and for the Province and derives further jurisdiction over health through s.92(13) – property and civil rights in the province and generally in relation to "all matters of a merely local or private nature of the Province" (then s.92(16)). This jurisdiction was affirmed by this court in its decision in *R. v. Schneider*[21] upholding the constitutional validity of the *BC Heroin Treatment Act* (1978) as valid provincial legislation relating to public health for the voluntary and compulsory treatment of those "who were and could have been psychologically or physically dependent upon a narcotic". The court held that the legislation there was not legislation in relation to "the control of narcotics", but rather as dealing with the "consequences of narcotic use from a provincial aspect".

16. In *Schneider* (supra) the court referred to a 1955 Special Committee of the Senate, which stated that the treatment of drug addicts was a provincial responsibility, as well as the 1973 LeDain Commission Report, which stated that it was a provincial responsibility to eliminate a medical condition and not to deter crime, and a 1977 B.C. report entitled A Plan for the Treatment and Rehabilitation of Heroin Users in British Columbia, prepared by the Alcohol and Drug Commission for the provincial Minister of Health, to the same effect.

17. The court in Schneider (supra) made the following significant comments:

- Heroin users do not suffer from a disease in the traditional sense but, nevertheless, dependency once established, requires both social intervention and medical intervention (p.121);

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[20] *R. v. Malmo Levine: R. v. Caine (supra)*
[21] *R. v. Schneider (supra)*

- The purpose of the Act was to provide facilities and other means designed to assist in terminating or diminishing a "patients" use or dependency on the defined narcotic (p.128);

- While the illegal trade in narcotics is a federal responsibility the treatment of addicts is a provincial responsibility (p.132);

- The medical treatment of drug addition is a bona fide concern of the provincial legislature under its general jurisdiction with respect to public health (p.137);

- Addiction … is a physiological condition the treatment of which would seem to be a medical concern to be dealt with by the provincial legislature (p.137);

- Addiction is not a crime but a physiological condition necessitating both medical and social intervention. This intervention is necessarily provincial (p.138);

- The British Columbia legislature sought to treat persons found to be in a state of psychological or physical dependence on a narcotic as sick and not criminal. The legislature is endeavouring to cure a medical condition, not to punish criminal activity.

- The court concluded that "narcotic addiction" is not a crime but a physiological condition necessitating both medical and social intervention by the province, and that the problem with heroin addiction had neither reached a state of emergency giving rise to federal competence under the residual power, nor went beyond provincial concern to become by its nature a national concern.

In sum, an addicted person will inevitably commit the offence of possession of the drug to which addicted and needs help, not punishment. Once "sick", the health jurisdiction is with the province.

18. As noted by the Appellants, there is no direct legislative clash between the *Controlled Drugs and Substances Act* s.4 and the provisions of the *Health Authorities Act* that permits the operation of a multi-faceted health facility grounded in a provincial

jurisdiction over hospitals (92(7)). While there is no direct clash, the Appellants have claimed that the provincial law is incompatible with the purpose of the federal legislation [22]. However the Appellants concede that it is not the provincial law itself that produces the clash but the interpretation of the permissible scope of the law by provincial authorities. [23]

19. The purpose of the federal legislation is to not only deter crime, but to prevent harm to the users of the drugs in question and to others affected by them. The purpose of the provincial legislation and its facility is to treat people who have become addicted to these drugs and suffer from the serious illness of addiction. The nature of addiction, as agreed by all parties, is an illness as defined by the Canadian Society of Addiction Medicine that includes impaired control over the use of such substances and continued use despite adverse consequences. [24]

20. The problem or clash is that the federal government in attempting to enforce the federal law against all persons, also attempts to do so in relation to "addicted persons", who by their very nature and definition are persons in relation to whom the deterrent aspect of the federal law has already failed. The result is that instead of preventing harms to the user and others, this approach actually produces further and greater harms to those addicted persons and puts at risk others including other members of the public with whom those addicted persons might interact. The Province, on the other hand, is trying to deal with a public health crisis and to reach those seriously ill addicted persons to prevent harm to themselves and to others and to protect the health of the British Columbia public.

21. It is the federal government's attempt to enforce this law with respect to addicted persons that results in consequences inconsistent with the purpose of the federal law, namely to prevent harm. It causes actual harms and therefore acts inconsistently with the purpose of its own statute. Because the federal Government has decided to not

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[22] Appellant's Factum, p.18, para. 46
[23] Appellant's Factum, p.18, para. 46
[24] see paragraph 10 (supra)

exempt the province from its law, the province has asserted its jurisdiction over health to deal with the public health crisis by reaching out, protecting and offering treatment and detoxification to those most in need, who also present the greatest risk to public health.

(ii) Relationship between the Division of Powers Analysis and the *Charter* Analysis

22. At trial, Pitfield, J. held that the doctrine of inter-jurisdictional Immunity did not apply because "health" involves a "double aspect" and the doctrine of paramountcy applied in favour of the federal criminal law. He went on, however, to find that the application of the law violated s.7 of the *Charter* and was not saved by s.1. The court did not address the interplay between the two issues. In the Court of Appeal, the majority upheld the division of powers argument in favour of the Respondents, applying the doctrine of inter-jurisdictional immunity. It then held it was unnecessary to decide the s.7 *Charter* issue as it was moot. Nevertheless the majority expressed an opinion on the s.7 issue in favour of the Respondents. No further discussion took place with respect to the interplay between the two issues.[25]

23. If the court accepts the submission that the enforcement of s.4 of the *CDSA* in relation to "addicted" persons results in a violation of s.7 of the *Charter* in that it puts at risk the lives, liberty and the security of the person of such persons in a manner that is not in accordance with the principles of fundamental justice, identified as arbitrariness, overbreadth and gross disproportionality in effects, then it follows that Canada has exceeded the limits to its jurisdiction in its use of the criminal law power. Its purpose is spent and it is now contributing to the problem. Further, in the circumstances, when that *Charter* violation causes adverse health consequences (the opposite purpose to what Parliament intended) and does so in such a manner as to interfere with and to prevent or inhibit the province and its agents from carrying out its jurisdiction to protect

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[25] *Record*, Volume I, Reasons for Judgment at Trial, p. 31, para. 121, p. 36, para 152; *Record*, Volume I, Reasons for Judgment of Court of Appeal, p. 106, para. 173-176 (Huddart, J.A. on the question of interjurisdictional immunity) and p. 112, para. 199 (concurring re: s.7), p.59, para. 1 (Rowles, J.A. re: interjurisdictional immunity), p. 76, para 78 (Rowles, J.A. conclusion re: s.7), Smith, J.A. in dissent: p. 125, para. 245 (re: interjurisdictional immunity) and p. 140, para. 304 (s.7 of the *Charter*); Appellant's Factum, paras. 92-93, footnote 139

the health of its citizens, then the limits to the criminal law power must be drawn at the point where the *Charter* infringement begins and at that point the provincial jurisdiction over health also begins. Otherwise the federal government, as here, could simply decline to exercise its jurisdiction by allowing the s.56 exemptions to lapse, causing a regulatory vacuum, and the province would be powerless to address the core issue underlying a health crisis of epidemic proportions within its jurisdiction. Once a person is diagnosed as "addicted", the evidence establishes that the application of the criminal law to such a person results in a violation of s.7 of the *Charter* that is not saved by s.1. Further, the evidence shows that the province in the exercise of its health jurisdiction over the treatment of addicts, can significantly ameliorate the grossly disproportionate effects of the criminal law upon such addicted persons by reaching them through the provision of a safe place for their primary health care, treatment options and detoxification, thereby reducing deaths, disease and the spread and risk of spreading such disease throughout the general population.

24. In *R. v. Malmo-Levine: R. v. Caine* (supra) this court held:

> "If the use of the criminal law were shown by the Appellants to be grossly disproportionate in its effects on accused persons when considered in light of the objective of protecting them from the harm caused by marihuana use, the prohibition would be contrary to fundamental justice and s.7 of the *Charter*. [26]

25. This court further held that "security of the person" is also protected by s. 7 of the *Charter* and includes "serious state imposed psychological stress" referring to its earlier decision in *R. v. Morgentaler* [1988] 1 S.C.R. (SCC). However, because in *R. v. Malmo-Levine: R. v. Caine* the drug in question was cannabis (marihuana), which no one contended was "addictive", the court held that the prohibition against marihuana use or possession would therefore not lead to a level of stress that was constitutionally cognizable. This statement left open the question of circumstances involving addictive drugs or a person being addicted in relation to whom "serious state imposed psychological stress would be encountered in the application of the criminal law

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[26] *R. v. Malmo Levine: R. v. Caine* (supra), para. 169

impacting that person's security of the person" in violation of s.7 of the *Charter*.[27] The 'doctrine of paramountcy' cannot be applied to insulate the exercise of a federal power that violates s.7 of the Charter by threatening the lives, liberty and the security of the persons of sick people being offered or seeking treatment or help.

26. When the Court of Appeal held that the s.7 issue was moot, it was in error because the s.7 violation informs or underscores the limits to the federal criminal law power and marks the beginning of the provincial jurisdiction over health. Provincial jurisdiction over health in the province should be immune from federal incursions that cause or exacerbate health problems and frustrate the provinces' ability to deliver health care to their residents.

B. Does s.4(1) of the *Controlled Drugs and Substances Act,* S.C. 1996, c. 19, infringe the rights guaranteed by s.7 of the *Canadian Charter of Rights and Freedoms* and if so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s.1 of the *Canadian Charter of Rights and Freedoms.* (Constitutional Questions #2 and #3)

27. The Respondent VANDU is the Appellant by way of Cross Appeal on this issue and consequently, VANDU will address this question in its submissions on the Cross Appeal.

C. Does s.5(1) of the *Controlled Drugs and Substances Act,* S.C. 1996, c. 19, infringe their rights guaranteed by s.7 of the *Canadian Charter of Rights and Freedoms* and if so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s.1 of the *Canadian Charter of Rights and Freedoms?* (Constitutional Questions #4 and #5)

28. VANDU did not challenge the constitutionality of s.5(1) of the *CDSA* in its action as evidenced by its Notice of Constitutional Question[28] and the position it has taken throughout the proceedings below. Instead, VANDU sought a declaration that the conduct of the staff in the ordinary course of business at Insite, did not amount to or

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[27] *R. v. Malmo Levine: R. v. Caine* (supra), para. 88
[28] *Record*, Volume II, Notice of Constitutional Question, p.30

involve the commission of any offences at law and, as such, that an exemption from any law under s.56 of the *CDSA* or otherwise was not required or necessary.

29. In support of this position, VANDU submitted that the conduct of the staff at Insite falls under the rubric of "public duty" for an innocent and laudable purpose in accordance with the province's jurisdiction over health and that a blameworthy state of mind did not arise. VANDU submitted that the staff acts no differently than doctors, nurses and other health care professionals and staff in hospitals and in other health care facilities throughout the Province. VANDU submitted that there is a consistent line of authority that persons who held contraband solely for the purpose of turning it over the police commit no crime as such conduct falls under the "public duty" exception to the law of "possession". [29]

30. At trial, Pitfield, J. dismissed VANDU's application for a declaration in relation to staff conduct as it would involve a declaration "in the air" which would have no utility. [30] Nevertheless, the court found that its conclusions in relation to s.4(1) of the *CDSA* applied equally to s.5(1) of that *Act* because an allegation could be made against the staff that their conduct amounted to "trafficking" and that a failure to protect the staff against such an allegation would negative the utility of any determination that s.4(1) was contrary to s.7. [31]

31. The Appellant Canada, in the Court of Appeal and here[32] appears to agree with the position taken by VANDU below and here that the exemption under s.56 for staff working at Insite was not necessary as a matter of law, based on the same consistent line of case authority.

32. Consequently, VANDU and Canada appear to be in agreement that the staff, including members of VANDU, whether paid or volunteering, who work at Insite, do not

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[29] *R. v. Dyck* (1969), 68 W.W.R. 437; *R. v. Kushman* (1949), 93 C.C.C. 231 *Beaver v. R* [1957] S.C.R. 531; *R. v. Christie* (1978), 41 C.C.C. (2d) 282; *R.* v. *York*, [2005] B.C.J. No. 250; *R. v. Hess (No. 1)* (1948), 94 C.C.C. 48; *R. v. Glushek* (1978), 41 C.C.C. (2d) 380; *R. v. Spooner* (1954), 109 C.C.C. 57

[30] *Record*, Volume I, Reasons for Judgment at Trial, pp. 25-26, paras. 90-99; Appellant's Factum, p.35, footnote 141

[31] *Record*, Volume I, Reasons for Judgment at Trial, p. 36, para. 153

[32] Appellant's Factum, paras. 94 – 96

require a s.56 exemption so long as their conduct falls within the "public duty" exception enunciated in the cases and they continue to guide themselves accordingly.

33. However, in the absence of a clear statement from Canada to that effect to PHS as operators of Insite and VANDU having members working and volunteering at Insite, VANDU supports the position of the Respondent PHS and any of the interveners on this issue and supports the findings on this issue in the Courts below in relation to s.5 of the Charter as applied to Insite staff as necessary only to give practical effect to the s.4 exemption.

D. Remedy – VANDU will address this issue at the conclusion of its submissions on the cross appeal.

E. Costs – VANDU will address this issue after its submissions on the Cross appeal.

FILE NO. 33556

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)

BETWEEN:

VANCOUVER AREA NETWORK OF DRUG USERS (VANDU)

APPLICANT FOR LEAVE TO CROSS APPEAL
(Appellants / Cross-Respondents)

- and -

ATTORNEY GENERAL OF CANADA and
MINISTER OF HEALTH FOR CANADA

RESPONDENTS
(Respondents / Cross-Appellants)

- and -

ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT
(Intervener)

-and-

PHS COMMUNITY SERVICES SOCIETY,
DEAN EDWARD WILSON, SHELLY TOMIC and

RESPONDENTS
(Appellants / Cross-Respondents)

APPELLANT'S (BY WAY OF CROSS APPEAL) FACTUM

PART I. OVERVIEW AND STATEMENT FACTS

34. VANDU adopts the Overview and Statement of Facts contained in its Respondent's Factum set out above;

PART II. ISSUES ON THE CROSS APPEAL

b. Does s.4(1) of the *Controlled Drugs and Substances Act* S.C. 1996 c.19, infringe the rights guaranteed by s.7 of the *Canadian Charter of Rights and Freedoms*?

c. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s.1 of the *Canadian Charter of Rights and Freedoms?*

PART III. ARGUMENT

b. Does s.4(1) of the *Controlled Drugs and Substances Act* S.C. 1996 c.19, infringe the rights guaranteed by s.7 of the *Canadian Charter of Rights and Freedoms*? (Constitutional Question #2)

35. VANDU submits that the issue as stated above should be narrowed to recognize that the enforcement of s.4(1) of the *CDSA* may not violate s.7 of the Charter in relation to its enforcement against all persons, but that it does violate s.7 when enforced in relation to persons diagnosed to be suffering from the illness of addiction.

(i) Introduction - S.7 of the *Charter* is engaged

36. Bearing in mind the agreed definition of 'addiction' set out above (see paragraph 10(1) (supra), the trial judge and all judges in the Court of Appeal found that the s.7 interests of those addicted to certain drugs were engaged in the circumstances in the Downtown Eastside of Vancouver, British Columbia and not solely at Insite. All judges

found that the lives, the liberty and the security of the person of such addicted persons are affected or threatened by the enforcement of s.4 of the *CDSA*.[33]

37. The point of departure between the majority and the dissenting judge in the Court of Appeal was in relation to the applicable principles of fundamental justice and the evidence to support that the violations were not in accordance with them.[34] The trial judge focused on 'arbitrariness', but held that on the same analysis the law was 'overbroad' in its application and 'grossly disproportionate in its effects'. The Court of Appeal, *in obiter*, would have found the principles of 'overbreadth' in application and 'gross disproportionality in effects'[35] to be engaged without addressing the 'arbitrariness' principle in any detail. The Court of Appeal judgment on the s.7 issue, in addition, interpreted the trial judge's decision as being limited to the geographical confines of Insite, focusing on the PHS alternative claim and neglecting to consider the broader VANDU claim.[36]

38. VANDU submits that s.7 of the *Charter* is engaged. It further submits that s. 7 is engaged both inside and outside of Insite. All of the evidence at trial that referred to the conduct of addicted persons outside of Insite demonstrated the need for Insite as a health care facility designed to try to ameliorate the consequences of the application of s.4 of the *CDSA* and its arbitrary, overbroad and grossly disproportionate effects on those addicted persons.[37]

39. Those arbitrary, overbroad and grossly disproportionate effects of the enforcement of the law continue outside of Insite. Addicts are still dying, sharing needles, suffering from abscesses, not seeking primary health care and spreading infectious diseases, putting other members of the public at risk. Insite is designed to

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[33] *Record*, Volume I, Reasons for Judgment in Court of Appeal, (Huddart, J.A.), p. 112, para. 199 (concurring re: s.7), p.76, para. 78 (Rowles, J.A. conclusion re: s.7), Smith, J.A. dissent p. 140, para 304 (s.7 of *Charter*)
[34] *Record*, Volume I, Reasons for Judgment in Court of Appeal, Smith J.A. dissent, p. 141, para 307;
[35] *Record*, Volume I, Reasons for Judgment in Court of Appeal, Rowles, J.A., pp.65-76, paras. 27-76
[36] *Record*, Volume I, Reasons for Judgment in Court of Appeal, Rowles, J.A., p.76, para. 76
[37] *Record*, Volume XIX p. 156 – Volume XX pp. 1-43 (Vancouver Drug Use Epidemiology, June 2007 prepared by Jane Buxton, Vancouver Site Coordinator for the Canadian Community Epidemiology Network on Drug Use, (CCENDU) p. 158; Volume XX, (Vancouver Police Department Overdose Response Policy, Vancouver), p.41; Volume II, (Affidavit of Dean Wilson sworn September 1, 2006) p. 47

ameliorate those effects and apparently has been successful in reaching approximately 5% of this hard to reach addicted population in the area that it serves. Moreover, if only Insite geographically was exempt from the law, then the Vancouver Police (for example, and despite that Department's support for Insite itself) could still frustrate its existence by simply detaining, searching and arresting those entering or leaving Insite.

40. The evidence relied upon by the trial court and accepted by a majority of the BC Court of Appeal, extensively refers to the conditions and circumstances of the Downtown Eastside of Vancouver and the origins of Insite. That evidence is that it is the enforcement of s.4 of the *CDSA* that affects the lives, liberty and security of addicted persons in the community outside of Insite and that those effects demonstrate that the law is arbitrary, overbroad, and most importantly, results in the imposition of grossly disproportionate effects by causing many of the very harms that it is intended to prevent. By contrast, there was no evidence before the court of grossly disproportionate effects at Insite but an amelioration of them. [38]

41. Consequently, it is important to recognize the s.7 violations are as a result of the enforcement of the law outside of Insite in order to enable the responsible governments to design policies and practices and laws that can operate without violating the s.7 constitutional rights of these persons anywhere in Canada and not just within the confines of a particular health care facility.

42. In summary, VANDU submits that the enforcement of this prohibition affects the lives, results in threats to liberty and affects the security of the person of those addicted persons by inducing in them a high level of psychological stress. The law is arbitrary, overbroad and grossly disproportionate in its effects and therefore not in accordance with the principles of fundamental justice. The enforcement of this prohibition has the opposite effect from Parliament's intent and objectives and actually results in harm to addicted persons, including death, the avoidance of primary health care and treatment. It imposes serious levels of psychological stress in the addict that are constitutionally

[38] *Record*, Volume I, (Historical and Operating Context A. The Downtown Eastside and the Origins of Insite) pp.12 – 16, paras. 13-34; (B. the Nature of Addiction) pp.18-20, paras. 47-59; (C. Dean Edward Wilson and Shelley Tomic), pp. 20 -21 paras. 60-70; (D. Operation of Insite), pp.21-22, paras 71-77) (E. Assessment of Outcomes) pp. 22-24, paras. 78-89

cognizable. On the other hand, a non-criminal harm reduction approach like Insite prevents deaths or saves lives, provides primary health care, introduces and makes available treatment options and reduces these serious levels of psychological stress that are evident.

(ii) 'Life' and 'Security of the Person' Interests under s.7 and response to Canada

43. The trial judge examined whether any of the three rights mentioned in s.7 of the *Charter* were engaged and in analyzing each one of them separately, correctly decided that it was the law and its enforcement that directly caused addicted persons to engage in unsafe practices in unsafe places, putting their lives at risk and creating within them a level of state imposed psychological stress affecting the security of their persons that is constitutionally cognizable.

44. The State action manifested by the legislative prohibition on the possession and trafficking of Schedule I controlled substances affects the right to life by seeking to deter individuals from having access to substances that can kill. But, also as found by the trial judge, once a person becomes addicted to such substances, that law has the perverse effect of causing such persons to engage in unsafe practices in unsafe places that put their lives and those of others at risk.

45. The trial judge focused on the law's effects because this Court said in *R. v. Malmo Levine,*[39] following its decision in *Suresh v. Canada (Minister of Citizenship and Immigration)*[40] that the means taken by Parliament to achieve an objective can be so disproportionate to the desired ends so as to offend the principles of fundamental justice. In *R. v. Malmo Levine* this Court pointed out that the applicable standard was one of "gross disproportionality" in its effects. [41]

46. It is difficult to understand why the Appellant Canada continues to take the position that it does with respect to the authority of this Court's decision in *R. v. Malmo*

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[39] *R. v. Malmo-Levine; R. v. Caine* (supra)
[40] *Suresh v. Canada (Minister of Citizenship and Immigration)* [2002] 1 S.C.R. 3, para 47
[41] *R. v. Malmo-Levine; R. v. Caine* (supra), para. 169

Levine[42] as if there was no room for differences in the grossly disproportionate effects of the laws between addictive and non-addictive drugs on addicted and non addicted persons.

47. Canada's position underscores the importance of clearly understanding the framework set out by this Court in *R v. Malmo-Levine* analyzing s.4 of the *Controlled Drugs and Substances Act* in relation to different substances and how this Court did indeed differentiate between them. This Court noted, in particular, that in conducting a "gross disproportionality" analysis whether a particular drug is addictive or not is a relevant factor. This Court's analysis suggests that if one is addicted, unlike the case for marihuana, then the individual does not bring the consequences of the criminal justice system onto themselves through civil disobedience. Instead those consequences are a result of their illness of addiction and the grossly disproportionate effects that enforcement of the possession law has on the addicted person.

48. The Appellant Canada has not addressed paragraph 88 of that decision in which the court noted the distinction between addictive and non-addictive drugs in the context of State imposed psychological stress and how the level of stress for non-addictive drugs might not be constitutionally cognizable, but leaving open circumstances involving addictive drugs. The Court only found the law of possession to be constitutionally sound so long as it did not result in grossly disproportionate effects. The health care crisis identified and found to exist in the DTES of Vancouver arises from the unsafe injection of addictive drugs by addicted persons. Such consequences do not arise from the recreational non-addictive use of Cannabis marihuana by the merely civilly disobedient.

49. Consequently, the trial judge correctly accepted the evidence below that the potential for overdose associated with the use of cocaine and heroin and other Schedule I drugs represented a risk to the "life" of users and that the spread of diseases like AIDS and Hepatitis posed a risk to the "life" and "security of the person" interests of such persons and that these effects were attributable to the enforcement of the laws

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[42] *R. v. Malmo-Levine; R. v. Caine (supra),* para. 88

prohibiting possession in particular and were *not* attributable simply to the use of the substances themselves – use was not for recreation.[43]

50. PHS and VANDU did show, and the trial judge found and accepted, that there was a causal link between the enforcement of the law and its grossly disproportionate effects, its arbitrariness and its overbreadth on the addicts life and security of person.[44]

51. Because of the enforcement of the law prohibiting possession, the addicts' use is driven underground. Because it is unlawful to possess the substances to which they are addicted, they consume them secretly and often soon after acquisition, in unsafe places, following unsafe practices out of a fear of the law and its enforcement. There is nothing in the particular substances themselves that induce or cause this type of behaviour. It is the fear of enforcement of the law that does so. Absent the enforcement of that particular law to this particular group of consumers/addicts, they would no longer need to resort to such unsafe places and practices.[45]

52. The Appellant Canada, on this point, fails to distinguish between the initial choice one might make to consume one of these types of drugs and the nature of that choice once one develops the chronic disease or illness of addiction with its characteristic impaired control over the use of these substances and the preoccupation with and the continued use of addictive substances as part of the illness, despite adverse consequences. Addicts make choices (though on a practical level the choice to consume is not one of them) but because of the law and a fear of enforcement leading to the loss of their drugs (often difficultly acquired) they make bad choices about their drug-consuming conduct risking disease, their lives and the lives and health of others.

53. While a few addicts might make good choices, the evidence of the health crisis and epidemic in the DTES of Vancouver speaks for itself about the ineffectiveness and failure of the federal prohibitionist law to accomplish its objectives and purposes and how it contributes to exactly the opposite. The fact that 95% of injections in the DTES

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[43] *Record*, Volume I, Reasons for Judgment at Trial, p. 24, paras. 87-89 and pp. 34-35, paras. 140-147
[44] *Record*, Volume I, Reasons for Judgment at Trial, p. 24, paras 87-89 and pp. 34-35, paras. 140-147
[45] *Record*, Volume II, Affidavit of Dean Wilson sworn September 1, 2006, p. 47

do not take place at Insite merely shows that Insite is only reaching 5% of this "hard to reach" population that distrusts the state out of a fear of law enforcement. The evidence of what continues to go on outside of Insite suggests that Insite, if anything, should be expanded.

54. The Appellant Canada is either naïve or willfully blind to the realities of the conduct of persons engaged in illegal drug use activities and their distrust of government services. The Appellant Canada blindly supports a prohibitionist law while refusing to see the evident consequences of the enforcement of that law in the DTES community and appears to ignore the health context, namely a program driven by the Province of British Columbia health care jurisdiction through the VCHA and by PHS and VANDU, in their efforts to eliminate or at least reduce the epidemic and health crises that they have identified.

55. The case law amply supports the trial judge's conclusions and the obiter opinions of the majority of the Court of Appeal. One need go no further than the decision of this court in *R. v. Malmo Levine.*[46] That case involved the same section of the *CDSA* but in relation to a Schedule II drug, marihuana, that was not alleged to be, and was found not to be, addictive. In finding that prohibition would not lead to a level of stress that was constitutionally cognizable because the use of marihuana was non-addictive, this Court left open the question of whether in the case of addictive drugs the level of stress would be sufficient to fall within the concept of "serious state imposed psychological stress" referred to by Dickson, C.J. in *Morgentaler*[47].

56. The trial judge in these proceedings found that it did, following *Chaoulli v. Quebec (Attorney General)*[48] and *Malmo-Levine (supra)* [49]. The court found the law was also arbitrary because it applied to possession for every purpose without discrimination

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[46] *R. v. Malmo-Levine; R. v. Caine* (supra)
[47] *R. v. Morgentaler* [1988] 1 S.C.R. 30 (SCC) at p.55-57
[48] *Chaoulli v. Quebec (Attorney General)* [2005] 1 S.C.R. 791, 2006 SCC 35 paras 129-130
[49] *R. v. Malmo Levine,* para 135

or differentiation in its effect and by the same analysis was overbroad in its application. *Blencoe* is distinguishable on its facts.[50]

57. Similarly, *Operation Dismantle*[51] is distinguishable because the threat there was too tenuous to engage s.7 of the *Charter*. Here, the Province of British Columbia through VCHA and its agents and investigations, determined that the health crisis and epidemic in the DTES had as its root cause injection drug use and that it was the strong link between the law and its enforcement that caused addicts to engage in unsafe practices in unsafe places, presenting tangible risks to their lives and the security of their persons, that were not simply attributable to their use of the drugs themselves. The Vancouver Police, within whose jurisdiction the safe injection site is located in the DTES of Vancouver, B.C., themselves recognize how law enforcement can contribute to overdose deaths and implemented a policy to try to enforce the law in a way that would not contribute to such deaths.[52]

58. In finding that the "security of the person" interest under s.7 of the *Charter* was engaged, the trial judge did not draw a false dichotomy. He merely accepted the stark reality in the DTES of Vancouver as reflected by the findings of the VCHA and its agents and how those finding demonstrated that not all, but a substantial number of addicted persons inject in unsafe places using unsafe practices, risking disease and their lives and the health of others, and that it is the law that causes (not forces) them to do so and results in these effects. On the facts and in the circumstances before the trial judge, the supervised safe injection site is the only other lawful option available, in the opinion of the VCHA, exercising the health care jurisdiction of the Province of British Columbia, after due investigation, in order to reduce the harms otherwise caused by unsafe injection use in unsafe places using unsafe practices.

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[50] *Blencoe v. British Columbia (Human Rights Commission)* [2000] 2 SCR 307, 2000 SCC 44

[51] *Operation Dismantle Inc. v. The Queen* [1985] 1 S.C.R. 441

[52] *Record*, Volume XIX p. 156 – Volume XX pp. 1-43 Exhibit A (Vancouver Drug Use Epidemiology, June 2007 prepared by Jane Buxton, Vancouver Site Coordinator for the Canadian Community Epidemiology Network on Drug Use, (CCENDU) p. 158; Volume XX, Exhibit B (Vancouver Police Department Overdose Response Policy), p.41; pp. 41-44, Affidavit of Danielle Lukiv, pp. 3626-3629)

59. The addict has a craving or compulsion to inject drugs as part of that person's illness and will not use a new needle, sterilized needle or a needle used only by that person unless those options are presented to the addict in circumstances where the addict does not fear that law enforcement personnel will take away the drugs or injecting equipment. Further, there is more to safe injection than simply using a clean needle. Once again, while the law discourages use in any form or fashion and may not force a user to ingest in a particular way or in the least dangerous manner possible, the reality, as reflected by the evidence in the DTES of Vancouver, discloses that the effects of the law cause a substantial number of addicted persons, out of a fear of the enforcement of the law, while experiencing a high level of psychological stress, to obtain their drugs, often together with others, to go into a dark alley and inject hurriedly, sharing one needle with little or no regard for the potential for overdose and the spread of infectious disease. This has led to the provincial government identifying the health crisis and epidemic. Looking over one's shoulder in fear of law enforcement is the cause of this stress-induced behaviour.[53]

(iii) Liberty Interests

60. *R. v. Malmo Levine* did determine that the law prohibiting possession of a drug, (in that case cannabis (marihuana)) that threatens liberty as a potential penalty is capable of engaging s.7 liberty interests. VANDU represents injection drug users by its very name and nature and was created, as part of several harm-reduction strategies, by the VCHA Chief Medical Health Officer as part of the Vancouver DTES HIV/AIDS action plan in 1997. Dean Wilson is a member, director and former President of VANDU. Persons like Shelley Tomic and all other members of VANDU are at risk of detention, arrest and prosecution for simple possession of Schedule I *CDSA* drugs in the course of their addiction. For VANDU and its members, the risk to liberty arises from the possession offence. VANDU did not attack the trafficking offence, nor seek an

[53] *Record*, Volume II (Affidavit of Dean Wilson sworn September 1, 2006, p. 47; Volume XIX p. 156 – Volume XX pp. 1-43 Exhibit A (Vancouver Drug Use Epidemiology, June 2007 prepared by Jane Buxton, Vancouver Site Coordinator for the Canadian Community Epidemiology Network on Drug Use, (CCENDU) p. 158; Volume XX, Exhibit B (Vancouver Police Department Overdose Response Policy), p.41; pp. 41-44, Affidavit of Danielle Lukiv, pp. 3626-3629)

exemption from it. VANDU agrees that it is doubtful that there is any real risk of prosecution of anyone at Insite for trafficking and that an exemption for staff, including volunteers is unnecessary. It is also doubtful that anyone approaching Insite or at Insite will be charged with "possession" given the jurisdiction of the Vancouver Police, their support for Insite and their Overdose policy.[54].However, this leaves the matter to the individual discretion of the police officer and the enlightenment of the local police force leadership.

61. VANDU does not assert that broader "liberty" interests are engaged beyond those identified in *R. v. Malmo Levine.* The context of this appeal is not about lifestyle decisions, the right to get high or the right to ingest substances of one's personal choice or preference. This appeal is about "addiction", which all parties agree is an illness. This appeal is about the health risks to the lives and health of Injection drug users (IDU's) and others, that arise from the threat to their lives, liberty and the security of their persons from the possession and use of the illicit addictive substance they crave.[55]

iv. The Provisions are inconsistent with Fundamental Justice Principles

62. The provisions of the law are inconsistent with fundamental justice principles. The trial judge found the relevant principles of fundamental justice in issue in this appeal to be "arbitrariness", "overbreadth", and "gross disproportionality in effects". He found violations of these principles and in so doing did not fail to have regard to the nature of the laws in question and the governing jurisprudence, quite the contrary. The majority of the Court of Appeal agreed with the trial judge focusing on 'Overbreadth' and 'Gross disproportionality in effects'.[56]

63. All laws, including criminal laws must comply with our Constitution. This court has identified arbitrariness or irrationality [57] in a criminal law to infringe s.7 of the

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[54] *Record*, Volume XIX p. 158 - XX, p. 44 (Affidavit of Danielle Lukiv, pp. 3626-3629)
[55] *Record*, Volume I, p.35, para 143, p.69, para 47 (Rowles, JA.), p.129, para 262 (Smith, J.A. in dissent)
[56] *Record*, Volume I, Reasons for Judgment in Court of Appeal, (Huddart, J.A.), p. 112, para. 199 (concurring re: s.7), p.76, para. 78 (Rowles, J.A. conclusion re: s.7), Smith, J.A. dissent p. 140, para 304 (s.7 of *Charter*)
[57] *R. v. Malmo Levine*, paragraph 135; *Chaoulli*, paragraphs 129-130 (cited by Trial judge at p. 56, para 151)

Charter. It has also held that criminal laws that are grossly disproportionate[58] in their effects violate s.7 of the *Charter*. This court also held that a law that is overbroad[59] in that it uses means that are broader than necessary to accomplish its objective, is also unconstitutional.

64. Prior to the decision in *R. v. Malmo Levine* the test of the constitutionality of legislation under s.7 of the Charter was one of 'disproportionality'. *Malmo Levine* established the test to be one of 'gross disproportionality' that was broader than that arising under s.12 of the *Charter* and not limited to a consideration of penalty attaching to conviction.[60]

65. With respect to "arbitrariness" and a further statement with respect to "gross disproportionality", it was the same majority in *R. v. Malmo Levine* who said the following at paragraph 135:

> A criminal law that is shown to be arbitrary or irrational will infringe s. 7: *R. v. Arkell*, [1990] 2 S.C.R. 695, at p. 704; *R. v. Hamon*, (1993), 85 C.C.C. (3d) 490 (Que. C.A.), at p. 492. Our colleagues, LeBel and Deschamps JJ., consider the marihuana prohibition to be disproportionate to the societal problems at issue, and, thus arbitrary. This, we think, puts the threshold of judicial intervention too low....These findings of fact disclose a sufficient state interest to support Parliament's intervention should Parliament decide that it is wise to continue to do so, subject to a constitutional standard of *gross* disproportionality, discussed below.[61]

66. If the laws in question adversely affect the right to life, liberty and the security of one's person and do so in a manner that violates any one of the principles of fundamental justice, the court is bound to strike down those laws under s.52 of the *Charter* as being inconsistent with the Constitution.

67. While the facts in *Parker* are different, the principles arising from that decision are equally applicable when addressing the health care of an addict whose illness

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[58] *R. v. Malmo Levine*, paragraph 135 and 169
[59] *R. v. Heywood* [1994] 94 CCC (3d) 481 (SCC) paras 47 and 49
[60] Para 4 supra; *R. v. Malmo Levine (supra)*, para. 169 on this issue and paragraph 88 on the 'security of the person issue.
[61] *R. v. Malmo Levine*, paragraph 135

includes the craving and need to obtain an illicit substance by injection as a material part of that illness.[62]

68. In the past, the laws prohibiting abortion that caused women to abort fetuses in unsafe ways and through unsafe practices was found to violate s.7 of the *Charter* and was struck down[63]. Similarly, when a similar question arose in relation to access by patients to marihuana for medical purposes (cannabis sativa L in schedule II of the *CDSA*), the Ontario Court of Appeal in *R. v. Parker* decided on July 31st, 2000[64] that s.4(1) of the *CDSA* was unconstitutional to the extent that it caused sick persons to choose between their liberty and their health and that this was in violation of s.7 of the *Charter*'s "principles of fundamental justice". The court suspended the declaration of unconstitutionality for a period of 12 months and gave Parliament one year to try to make the law constitutional by filling the gap in the legislative scheme.

69. At the time of the appeal in *Parker*, the government put forward s.56 of the *CDSA* as the solution to exempt those seeking access to medical marihuana and produced a document entitled "Interim guidance document" pursuant to s.56. The Ontario Court of Appeal found s.56 of the *CDSA* to be unconstitutional because it provided an absolute discretion in the Minister with no criteria and therefore similarly did not satisfy the "principles of fundamental justice" where the liberty or security of the person protected by s.7 of the *Charter* were at stake. Ultimately the federal government did not appeal the decision of the Ontario Court of Appeal to the Supreme Court of Canada and instead brought into force, on June 15th, 2001, the *Marihuana Medical Access Regulations* which set out a scheme for authorizations to possess, personal production licences and designated production licences for users and growers of medical marihuana that have the support of their physicians.

70. In *Parker (supra)*, Mr. Parker was suffering from severe epilepsy that was serious and potentially life-threatening. He had suffered from this since he was a child and had undergone various types of surgery and conventional medical approaches that did not

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[62] *Record*, Volume I, Reasons for Judgment, p.34 paras 135 and 136
[63] *R. v. Morgentaler* [1988] 1 S.C.R. 30 (SCC)
[64] *R. v. Parker* [2000] O.J. No. 2787

work. He found that smoking marijuana substantially reduced the incidence of his seizures, but he had no legal source, so he grew for himself and was then charged with production and possession for the purpose trafficking. He argued that the law violated s. 7 of the *Charter* because he faced the threat of imprisonment in order to keep his health, and that this did not comply with "principles of fundamental justice", where liberty and the security of the person are affected. In the Ontario High Court[65], Mr. Justice Sheppard agreed, stayed the charges and granted him a constitutional exemption for "medically approved use". The Crown appealed to the Ontario Court of Appeal. That court agreed that there was a s. 7 violation but disagreed with the remedy of "constitutional exemption". Instead, it declared s.4 of the *CDSA* to be unconstitutional, but suspended the declaration for one year to give the government an opportunity to try to make the law constitutional.

71. The Ontario Court of Appeal agreed that the prohibition against the possession of marihuana in question interfered with Mr. Parker's health and the security of his person and his liberty in that he faced the threat of criminal prosecution, an obvious threat to liberty, and he was also precluded from making a decision of "fundamental personal importance", namely choosing the medication he required to alleviate the affects of his illness that carried with it life threatening consequences.

72. In coming to this conclusion, the Ontario Court of Appeal referred to *R. v. Monney* [66] where this Court ruled that any state action which has the likely effect of impairing a person's health engages the fundamental right under *section 7* to the security of one's person. The Ontario Court of Appeal also referred to the further decision of this Court in *New Brunswick (Minister of Health and Community Services) v. G. (J.)* to similar effect.[67] The Ontario Court of Appeal held that the right to 'security of the person' does protect against serious and profound effects on a person's psychological integrity. The court held that to deprive, by means of a criminal sanction, access to medication reasonably required for the treatment of the medical condition that threatens life or health, constitutes a deprivation of the "security of the person". It also

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[65] *R. v. Parker* (1997), 12 C.R. (5th) 251
[66] *R. v. Monney*, (1999) 133 C.C.C. (3d) 129 (SCC)
[67] *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, (supra)

constitutes a serious interference with both physical and psychological integrity. The court held that to prevent access to treatment by the threat of the criminal sanction constitutes a deprivation of the security of one's person. While the addicted person craves access to the drug as part of their illness and not as treatment, that addicted person is driven to engage in unsafe practices in unsafe places due to law enforcement and is inhibited from accessing health care for the disease of addiction by the enforcement of the same law of possession.

73. Consequently, the trial judge was correct to regard the legal context of the constitutional challenge in this case as warranting an examination of the constitutionality of the law of possession in relation to Schedule I addictive drugs against both the standards of arbitrariness and gross disproportionality. *Malmo Levine's* 'Harm reduction club' involved the recreational use of a non-addictive drug marihuana. The safe injection site, Insite, involves a place where persons addicted to drugs can inject safely under medical supervision and without fear of law enforcement, receive primary health care and assistance in the event of potential overdose, as well as medical assistance to prevent the spread of infectious diseases. In addition, Injection Drug Users (IDUs) are presented with options for treatment and detoxification without delay. The question as to whether or not the enforcement of the possession law is grossly disproportionate in its effects in relation to addictive drugs and addicted persons was open to the court and is an open question in this court. The legal questions are not settled in relation to addicts and addictive substances.

74. The effect of the trial and appeal decisions in the case at bar, is to require Parliament to carve out an exemption to the laws of possession for those diagnosed to be suffering from the illness of addiction, and particularly while undergoing a *bona fide* health care treatment regime endorsed by the province under its health care jurisdiction. Indeed an exemption for all *bona fide* provincial health care programs would be apt.

75. The examples cited by the Appellant Canada in paragraph 74 of its Factum show a profound lack of appreciation of the nature of the problems experienced by those suffering from the disease of addiction. A more appropriate example would be to have

regard to the situation that existed when abortion was illegal and how the effect of that law led some women to seek abortions in unsafe places following unsafe practices in violation of s.7 of the *Charter*.[68]

76. The enforcement of the law prohibiting possession of a Schedule 1 drug in relation to a person suffering from the disease of addiction threatens the life, liberty and the security of the person of such an addicted person and does so in an arbitrary manner because it is irrational in its enforcement in relation to that group and fails to differentiate between the different drugs and their addictive attributes. Its enforcement also results in grossly disproportionate effects on such addicts as it causes them to engage in unsafe practices, putting themselves and others at risk of harm. The law is also overbroad in that it continues to apply to those in relation to whom the law has failed to deter from use who have become addicted and are no longer able to make free choices due to their illness.

c. If s.4(1) of the *Controlled Drugs and Substances Act* infringes the rights guaranteed by s.7 of the *Canadian Charter of Rights and Freedoms*, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free democratic society under s.1 of the *Canadian Charter of Rights and Freedoms?* (Constitutional Question #3)

77. VANDU agrees with and adopts the position of the trial judge below on this issue, namely, that the principles of fundamental justice are among the most important in society and that any law that offends them will not ordinarily be saved by s.1 of the *Charter*.[69] VANDU also adopts the position of Rowles J.A for the majority of the Court of Appeal on this issue that because the law is 'overbroad' it cannot be saved by s.1 because the law fails the 'minimal impairment' test.[70]

78. On the question of whether balancing of societal and individual interests should take place under s.7 or s.1, the decision of the Supreme Court of Canada in *R. v.*

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[68] See paragraph 68 supra
[69] *Record*, Volume I, Reasons for Judgment at Trial, p.37, para 157
[70] *Record*, Volume I, Reasons for Judgment in Court of Appeal, p.76, para 77)

Malmo-Levine is again instructive. The balancing of individual and societal interests within s.7 is only relevant when elucidating a particular principle of fundamental justice, but once the principle of fundamental justice has been elucidated, then "societal interests" are not within the ambit of s.7, but are to be considered, if at all, under s.1.[71]

79. VANDU accepts the statement of the test in *R. v. Oakes* set out by the Appellant Canada at paragraph 116 of its Factum.

80. VANDU accepts that the *CDSA* and in particular the laws of possession and trafficking serve a sufficiently important purpose as enunciated by the Supreme Court of Canada in *R. v. Malmo Levine*[72] to prevent harm and protect vulnerable groups, despite its complete failure and ineffectiveness in relation to at least those who have come to suffer from the illness of addiction. The purpose and intent of the law is to deter people from consuming in the first place and to stop consuming if they have started to do so. It may work to deter some, but obviously not all, leading to the consequences described in the evidence in the Record.[73]

81. Once a person becomes addicted and suffers the disease or illness of addiction, that person's conduct becomes compulsive and based on a craving for the drug in question. As the Supreme Court of Canada said in *Schneider (supra)*[74] : "...dependency once established, requires both social intervention and medical intervention" and "addiction...is a physiological condition the treatment of which would seem to be a medical concern..." and further that "addiction is not a crime but a physiological condition necessitating both medical and social intervention". Regretfully, addicts and particularly poor addicts, because they are involved in illicit activity generally, as evidenced by the situation in the DTES of Vancouver, make bad choices which put their lives and health at risk and the health of others to a point where the laws purpose is frustrated by accomplishing exactly the opposite, namely harm to the users

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[71] *R. v. Malmo Levine,* paragraphs 98, 181, 182
[72] *R. v. Malmo Levine (*supra)
[73] *Record*, Volume XIX, p. 158 – Volume XX 43 (Vancouver Drug Use Epidemiology, June 2007 prepared by Jane Buxton, Vancouver Site Coordinator for the Canadian Community Epidemiology Network on Drug Use, (CCENDU) and *Record*, Volume XX, p.41 (Vancouver Police Department Overdose Response Policy, Vancouver) *Record*, Volume II, p. 47 (Affidavit of Dean Wilson sworn September 1, 2006)
[74] *R. v. Schneider (supra),* p.121

and others. It is the addicts' fear of the law and its enforcement that prevents appropriate social and medical intervention to address the physiological condition or disease.

82. While it may be rational to have as its purpose the prevention of harm and protection of vulnerable groups in order to deter novice users or beginners, once it is determined that the law has the opposite effect when dealing with those who have become addicted, then the purpose of the law becomes irrational in relation to that population and a rational purpose that addresses the harms such as that which the VCHA wishes to implement after due investigation should occur.

83. It follows that the law does not impair rights as little as possible, accepting that the test is one of impairment as little as "reasonably possible".[75] The test is not met once the law is applied to those who are addicted to addictive drugs. While the law may not prevent the possessor from accessing health services, it has the effect of doing so because the addicts, out of this fear of the law, resort to unsafe practices in unsafe places all the while looking over their shoulders worrying about law enforcement approaching and the possibility of being detained, arrested, prosecuted or simply having the drugs taken away and the injection equipment destroyed. The level of State imposed psychological stress is high. Primary health care is neglected. They are engaged in illegal activity and the government or its agents are not to be trusted. While this may not occur amongst addicted professionals and airline pilots, this is the reality in the DTES resulting in a health crisis described by the health authorities as an epidemic with a root cause of injection drug use resulting in a strategy to address these problems. If possession and use of the drug is part of the illness of addiction, then the addicts seeking help for their addiction should be able to do so while suffering from the addiction as opposed to being required to be abstinent before they set foot in the door.

84. With respect to proportionality between the salutary and deleterious effects of the law in achieving its purpose, VANDU adopts the findings of the trial judge as to the negative effects of the laws as increasing the risk of death and disease and how they

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[75] *Canada (Attorney General) v. JTI-MacDonald Corp* [2007] 2 S.C.R. 610, 2007 SCC 30, paragraph 43

were inconsistent with the statute's purpose. The Court's findings were overwhelmingly supported by the evidence in the record put forward by PHS and the evidence of the individuals Dean Wilson and Shelley Tomic that was unchallenged by the Appellant Canada.[76]

85. The net affect of the law when applied to those addicted to addictive drugs is clearly negative. The target population by the Health authority is injection drug users who inject addictive drugs, as that is the nature of their addiction. A person who is ill from the disease of addiction will choose to keep using and will not refrain absent social or medical intervention. The poor or uneducated or addict suffering from additional mental health issues and who may be homeless does not have the same options or choices available to them that the wealthy airline pilot or professional person who is addicted may have. The poor in the DTES after purchasing his or her drugs on the street corner, move quickly out of site to inject in the alley before law enforcement can take the drugs away or detain and arrest them. There they engage in further unsafe practices. That is the reality of the DTES. The negative effects of the law on that population are overwhelming and any positive effects are not apparent.

REMEDY

86. VANDU submits that if this court finds that s.7 of the *Charter* has been infringed by the enforcement of s.4(1) of the *Controlled Drugs and Substances Act* in relation to addicted persons, the court should declare s.4(1) of the *CDSA* to be unconstitutional in that regard pursuant to s. 52 of the *Charter* in relation to persons diagnosed by a physician or other health care practitioner to be suffering from the illness of "addiction".

87. It is not necessary for there to be a further suspension of such a declaration of invalidity as it is not necessary for the federal government to create an elaborate exemption scheme. A written diagnosis from an attending physician ought to be

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[76] *Record*, Volume XIX, p. 158 – Volume XX 43 (Vancouver Drug Use Epidemiology, June 2007 prepared by Jane Buxton, Vancouver Site Coordinator for the Canadian Community Epidemiology Network on Drug Use, (CCENDU) and *Record*, Volume XX, p.41 (Vancouver Police Department Overdose Response Policy, Vancouver) *Record*, Volume II, p. 47 (Affidavit of Dean Wilson sworn September 1, 2006)

sufficient. The law would continue to apply to all others, but once diagnosed in writing by a physician to be suffering from addiction, the law would cease to apply to that person, so long as they are accessing or seeking access to health care. Minor amendments to *Narcotic Control Act Regulation* s.53[77] may be required, making it clear that even the drug to which the patient is addicted may be 'prescribed' by a physician so as to enable the addict to possess that drug while under medical treatment for addiction by that physician or others in support of the treatment regime in place for that addict.[78] If a more elaborate scheme is determined to be required, then VANDU has no objection to a continuation of the suspension of the declaration of invalidity for a period of one year to enable the federal government to promulgate such a scheme.

PART IV. COSTS

88. On the issue of costs, Canada decided it would no longer cooperate with the Province in its efforts to address a *bona fide* health crisis and epidemic by signaling that it would allow the s.56 *CDSA* exemption to lapse, which in turn would result in the grossly disproportionate effects of the enforcement of the law continuing in relation to those "addicted", thereby compelling the commencement of this public interest litigation that "benefits all who suffer from the illness of addiction" and that was conducted "for the benefit of the community as a whole".[79] The Respondents, all non-profit societies without the resources to conduct the litigation[80] and two indigent injection drug users, brought the litigation without financial assistance from the City of Vancouver, Province of British Columbia or anyone else.[81] VANDU's *pro bono* counsel[82] have borne the financial burden of the litigation through all levels of the court process[83] not simply to attempt to facilitate a resolution of this issue between Canada and the Provinces, but to protect the lives, liberty and security of the person of its members, many of whom are

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[77] *Narcotic Control Regulations,* C.R.C., c. 1041
[78] Appellant's Factum, para. 62
[79] *Record*, Volume I, p. 49 (Costs Reasons, paras. 24-25)
[80] *Record*, Volume I, p. 49 (Costs Reasons, para. 26)
[81] *ibid*
[82] *Record*, Volume I, p.50 (Costs Reasons at para. 27)
[83] Pursuant to the *Crown Liability and Proceedings (Provincial Court) Regulations*, SOR/91-604, s. 6(1), the Respondents are not entitled to a certificate of judgment for the costs award until all appeals are exhausted or the Attorney General files a notice stipulating that he does not intend to appeal

addicted persons and to ensure that these rights are not taken away from them except in accordance with principles of fundamental justice.

PART V. NATURE OF THE ORDER SOUGHT

89. VANDU seeks an order dismissing Canada's Appeal, allowing the Cross Appeal and for costs throughout, and answering the Constitutional Questions as follows:

1. Are ss.4(1) and 5(1) of the *Controlled Drugs and Substances Act,* S.C. 1996, c.19, constitutionally inapplicable to the activities of staff and users at Insite, a health care undertaking the Province of British Columbia?

Yes

2. Does s.4(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c.19, infringe the rights guaranteed by s.7 of the *Canadian Charter of Rights and Freedoms?*

Yes

3. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s.1 of the *Canadian Freedom of Rights and Freedoms*?

No

4. Does s.5(1) of the *Controlled Drugs and Substances Act,* S.C. 1996, c. 19, infringe their rights guaranteed by s.7 of the *Canadian Charter of Rights and Freedoms?*

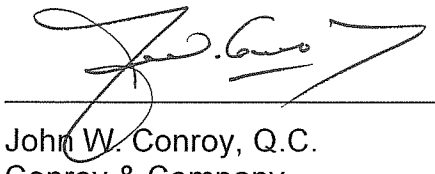
Yes

5. Does s.4(1) of the *Controlled Drugs and Substances Act* S.C. 1996 c.19, infringe the rights guaranteed by s.7 of the *Canadian Charter of Rights and Freedoms.*

No

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Abbotsford, Province of British Columbia, the 3rd day of February, 2011.



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PART VI – TABLE OF AUTHORITIES

PART VII – STATUTES RELIED ON

Controlled Drugs and Substances Act, S.C. 1996, c.19, ss.4, 4(1), 5(1), 56

The Constitution Act, 1982, 1982, c.11, ss.1-34, 52

The Constitution Act, 1867 (The British North America Act, 1867), s. 91(27)

Marihuana Medical Access Regulations, SOR/2001-227

Narcotic Control Regulations, C.R.C., c. 1041, s. 53

Controlled Drugs and Substances Act, S.C. 1996, c. 19

Current version: in force since Nov 25, 2005

Link to the latest version : http://www.canlii.org/en/ca/laws/stat/sc-1996-c-19/latest/
Stable link to this version : http://www.canlii.org/en/ca/laws/stat/sc-1996-c-19/32556/
Currency: Last updated from the Justice Laws Web Site on 2011-01-28

Controlled Drugs and Substances Act

1996, c. 19

C-38.8

[Assented to June 20, 1996]

An Act respecting the control of certain drugs, their precursors and other substances and to amend certain other Acts and repeal the Narcotic Control Act in consequence thereof

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Controlled Drugs and Substances Act*.

INTERPRETATION

Definitions

2. (1) In this Act,

"adjudicator"
« *arbitre* »

"adjudicator" means a person appointed or employed under the *Public Service Employment Act* who performs the duties and functions of an adjudicator under this Act and the regulations;

"analogue"
« *analogue* »

"analogue" means a substance that, in relation to a controlled substance, has a substantially similar chemical structure;

"analyst"
« *analyste* »

"analyst" means a person who is designated as an analyst under section 44;

"Attorney General"
« *procureur général* »

"Attorney General" means

(*a*) the Attorney General of Canada, and includes their lawful deputy, or

(*b*) with respect to proceedings commenced at the instance of the government of a province and conducted by or on behalf of that government, the Attorney General of that province, and includes their lawful deputy;

"controlled substance"
« *substance désignée* »

"traffic"
« *trafic* »

"traffic" means, in respect of a substance included in any of Schedules I to IV,

(*a*) to sell, administer, give, transfer, transport, send or deliver the substance,

(*b*) to sell an authorization to obtain the substance, or

(*c*) to offer to do anything mentioned in paragraph (*a*) or (*b*),

otherwise than under the authority of the regulations.

Interpretation

(2) For the purposes of this Act,

(*a*) a reference to a controlled substance includes a reference to any substance that contains a controlled substance; and

(*b*) a reference to a controlled substance includes a reference to

(i) all synthetic and natural forms of the substance, and

(ii) any thing that contains or has on it a controlled substance and that is used or intended or designed for use

(A) in producing the substance, or

(B) in introducing the substance into a human body.

Interpretation

(3) For the purposes of this Act, where a substance is expressly named in any of Schedules I to VI, it shall be deemed not to be included in any other of those Schedules.

1996, c. 8, s. 35, c. 19, s. 2; 2001, c. 32, s. 47.

Interpretation

3. (1) Every power or duty imposed under this Act that may be exercised or performed in respect of an offence under this Act may be exercised or performed in respect of a conspiracy, or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence under this Act.

Interpretation

(2) For the purposes of sections 16 and 20, a reference to a person who is or was convicted of a designated substance offence includes a reference to an offender who is discharged under section 730 of the *Criminal Code*.

1995, c. 22, s. 18; 1996, c. 19, s. 3.

PART I

OFFENCES AND PUNISHMENT

Particular Offences

Possession of substance

4. (1) Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II or III.

Obtaining substance

(2) No person shall seek or obtain

(*a*) a substance included in Schedule I, II, III or IV, or

(*b*) an authorization to obtain a substance included in Schedule I, II, III or IV

from a practitioner, unless the person discloses to the practitioner particulars relating to the acquisition by the person of every substance in those Schedules, and of every authorization to obtain such substances, from any other practitioner within the preceding thirty days.

Punishment

(3) Every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule I

(*a*) is guilty of an indictable offence and liable to imprisonment for a term not exceeding seven years; or

(*b*) is guilty of an offence punishable on summary conviction and liable

(i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and

(ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Punishment

(4) Subject to subsection (5), every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule II

(*a*) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years less a day; or

(*b*) is guilty of an offence punishable on summary conviction and liable

(i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and

(ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Punishment

(5) Every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule II in an amount that does not exceed the amount set out for that substance in Schedule VIII is guilty of an offence punishable on summary conviction and liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both.

Punishment

(6) Every person who contravenes subsection (1) where the subject-matter of the offence is a substance included in Schedule III

(*a*) is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years; or

(*b*) is guilty of an offence punishable on summary conviction and liable

(i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and

(ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Punishment

(7) Every person who contravenes subsection (2)

(*a*) is guilty of an indictable offence and liable

(i) to imprisonment for a term not exceeding seven years, where the subject-matter of the offence is a substance included in Schedule I,

(ii) to imprisonment for a term not exceeding five years less a day, where the subject-matter of the offence is a substance included in Schedule II,

(iii) to imprisonment for a term not exceeding three years, where the subject-matter of the offence is a substance included in Schedule III, or

(iv) to imprisonment for a term not exceeding eighteen months, where the subject-matter of the offence is a substance included in Schedule IV; or

(*b*) is guilty of an offence punishable on summary conviction and liable

(i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and

(ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Determination of amount

(8) For the purposes of subsection (5) and Schedule VIII, the amount of the substance means the entire amount of any mixture or substance, or the whole of any plant, that contains a detectable amount of the substance.

Trafficking in substance

5. (1) No person shall traffic in a substance included in Schedule I, II, III or IV or in any substance represented or held out by that person to be such a substance.

Possession for purpose of trafficking

(2) No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II, III or IV.

Punishment

(3) Every person who contravenes subsection (1) or (2)

(*a*) subject to subsection (4), where the subject-matter of the offence is a substance included in Schedule I or II, is guilty of an indictable offence and liable to imprisonment for life;

(*b*) where the subject-matter of the offence is a substance included in Schedule III,

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months; and

(*c*) where the subject-matter of the offence is a substance included in Schedule IV,

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding one year.

Punishment in respect of specified substance

(4) Every person who contravenes subsection (1) or (2), where the subject-matter of the offence is a substance included in Schedule II in an amount that does not exceed the amount set out for that substance in Schedule VII, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years less a day.

Interpretation

(5) For the purposes of applying subsection (3) or (4) in respect of an offence under subsection (1), a reference to a substance included in Schedule I, II, III or IV includes a reference to any substance represented or held out to be a substance included in that Schedule.

Interpretation

(6) For the purposes of subsection (4) and Schedule VII, the amount of the substance means the entire amount of any mixture or substance, or the whole of any plant, that contains a detectable amount of the substance.

Importing and exporting

6. (1) Except as authorized under the regulations, no person shall import into Canada or export from Canada a substance included in Schedule I, II, III, IV, V or VI.

Possession for the purpose of exporting

(2) Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II, III, IV, V or VI for the purpose of exporting it from Canada.

Punishment

(3) Every person who contravenes subsection (1) or (2)

(*a*) where the subject-matter of the offence is a substance included in Schedule I or II, is guilty of an indictable offence and liable to imprisonment for life;

(*b*) where the subject-matter of the offence is a substance included in Schedule III or VI,

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months; and

(*c*) where the subject-matter of the offence is a substance included in Schedule IV or V,

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding one year.

Production of substance

7. (1) Except as authorized under the regulations, no person shall produce a substance included in Schedule I, II, III or IV.

Punishment

(2) Every person who contravenes subsection (1)

(*a*) where the subject-matter of the offence is a substance included in Schedule I or II, other than cannabis (marihuana), is guilty of an indictable offence and liable to imprisonment for life;

(*b*) where the subject-matter of the offence is cannabis (marihuana), is guilty of an indictable offence and liable to imprisonment for a term not exceeding seven years;

(*c*) where the subject-matter of the offence is a substance included in Schedule III,

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months; and

(*d*) where the subject-matter of the offence is a substance included in Schedule IV,

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding one year.

8. and 9. [Repealed, 2001, c. 32, s. 48]

SENTENCING

Purpose of sentencing

10. (1) Without restricting the generality of the *Criminal Code*, the fundamental purpose of any sentence for an offence under this Part is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

Circumstances to take into consideration

(2) If a person is convicted of a designated substance offence, the court imposing sentence on the person shall consider any relevant aggravating factors including that the person

(*a*) in relation to the commission of the offence,

(i) carried, used or threatened to use a weapon,

(ii) used or threatened to use violence,

(iii) trafficked in a substance included in Schedule I, II, III or IV or possessed such a substance for the purpose of trafficking, in or near a school, on or near school grounds or in or near any other public place usually frequented by persons under the age of eighteen years, or

(iv) trafficked in a substance included in Schedule I, II, III or IV, or possessed such a substance for the purpose of trafficking, to a person under the age of eighteen years;

(*b*) was previously convicted of a designated substance offence; or

Regulations pertaining to law enforcement under other Acts of Parliament

(2.1) The Governor in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, may, for the purpose of an investigation or other law enforcement activity conducted under another Act of Parliament, make regulations authorizing a member of a police force or other person under the direction and control of such a member to commit an act or omission — or authorizing a member of a police force to direct the commission of an act or omission — that would otherwise constitute an offence under Part I or the regulations and, without restricting the generality of the foregoing, may make regulations

(*a*) authorizing the Minister of Public Safety and Emergency Preparedness or the provincial minister responsible for policing in a province, as the case may be, to designate a police force within their jurisdiction for the purposes of this subsection;

(*b*) exempting, on such terms and conditions as may be specified in the regulations, a member of a police force that has been designated pursuant to paragraph (*a*) and other persons acting under the direction and control of the member from the application of any provision of Part I or the regulations;

(*c*) respecting the issuance, suspension, cancellation, duration and terms and conditions of a certificate, other document or, in exigent circumstances, an approval to obtain a certificate or other document, that is issued to a member of a police force that has been designated pursuant to paragraph (*a*) for the purpose of exempting the member from the application of Part I or the regulations;

(*d*) respecting the detention, storage, disposal or other dealing with any controlled substance or precursor;

(*e*) respecting records, reports, electronic data or other documents in respect of a controlled substance or precursor that are required to be kept and provided by any person or class of persons; and

(*f*) prescribing forms for the purposes of the regulations.

Incorporation by reference

(3) Any regulations made under this Act incorporating by reference a classification, standard, procedure or other specification may incorporate the classification, standard, procedure or specification as amended from time to time, and, in such a case, the reference shall be read accordingly.

1996, c. 19, s. 55; 2001, c. 32, s. 55; 2005, c. 10, s. 15.

Exemption by Minister

56. The Minister may, on such terms and conditions as the Minister deems necessary, exempt any person or class of persons or any controlled substance or precursor or any class thereof from the application of all or any of the provisions of this Act or the regulations if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.

Powers, duties and functions of Minister or Minister of Public Safety and Emergency Preparedness

57. The Minister's powers, duties or functions under this Act or the regulations — and those of the Minister of Public Safety and Emergency Preparedness under the regulations — may be exercised or performed by any person designated, or any person occupying a position designated, for that purpose by the relevant Minister.

1996, c. 19, s. 57; 2005, c. 10, s. 16.

Paramountcy of this Act and the regulations

58. In the case of any inconsistency or conflict between this Act or the regulations made under it, and the *Food and Drugs Act* or the regulations made under that Act, this Act and the regulations made under it prevail to the extent of the inconsistency or conflict.

Offence of making false or deceptive statements

59. No person shall knowingly make, or participate in, assent to or acquiesce in the making of, a false or misleading statement in any book, record, return or other document however recorded, required to be maintained, made or furnished pursuant to this Act or the regulations.

AMENDMENTS TO SCHEDULES

Schedules

60. The Governor in Council may, by order, amend any of Schedules I to VIII by adding to them or deleting from them any item or portion of an item, where the Governor in Council deems the amendment to be necessary in the public interest.

PART VII

TRANSITIONAL PROVISIONS, CONSEQUENTIAL AND CONDITIONAL AMENDMENTS, REPEAL AND COMING INTO FORCE

TRANSITIONAL PROVISIONS

References to prior enactments

61. Any reference in a designation by the Minister of Public Safety and Emergency Preparedness under Part VI of the *Criminal Code* to an offence contrary to the *Narcotic Control Act* or Part III or IV of the *Food and Drugs Act* or any conspiracy or attempt to commit or being an accessory after the fact or any counselling in relation to such an offence shall be deemed to be a reference to an offence contrary to section 5 (trafficking), 6 (importing and exporting) or 7 (production) of this Act, as the case may be, or a conspiracy or attempt to commit or being an accessory after the fact or any counselling in relation to such an offence.

1996, c. 19, s. 61; 2001, c. 32, s. 56; 2005, c. 10, s. 34.

Sentences for prior offences

62. (1) Subject to subsection (2), where, before the coming into force of this Act, a person has committed an offence under the *Narcotic Control*

The Constitution Act, 1982

Citation: *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11

SCHEDULE B

CONSTITUTION ACT, 1982

PART I
CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

Rights and freedoms in Canada **1.** The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

Fundamental freedoms **2.** Everyone has the following fundamental freedoms:

(*a*) freedom of conscience and religion;
(*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(*c*) freedom of peaceful assembly; and

(*d*) freedom of association.

Democratic Rights

Democratic rights of citizens **3.** Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Maximum duration of legislative bodies **4.** (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs of a general election of its members.

Continuation in special circumstances (2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Annual sitting of legislative bodies **5.** There shall be a sitting of Parliament and of each legislature at least once every twelve months.

Mobility Rights

Mobility of citizens **6.** (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(*a*) to move to and take up residence in any province; and

(*b*) to pursue the gaining of a livelihood in any province.

Limitation (3) The rights specified in subsection (2) are subject to

(*a*) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(*b*) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative action programs (4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Legal Rights

Life, liberty and security of person **7.** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search or seizure **8.** Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment **9.** Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or detention **10.** Everyone has the right on arrest or detention

(*a*) to be informed promptly of the reasons therefor;

(*b*) to retain and instruct counsel without delay and to be informed of that right; and

(*c*) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right

(*a*) to be informed without unreasonable delay of the specific offence;

(*b*) to be tried within a reasonable time;

(*c*) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(*d*) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(*e*) not to be denied reasonable bail without just cause;

(*f*) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(*g*) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(*h*) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

(*i*) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Treatment or punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-crimination

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

Interpreter

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Equality Rights

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Official Languages of Canada

Official languages of Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

Official languages of New Brunswick

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

Advancement of status and use

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

English and French linguistic communities in New Brunswick

16.1. (1) The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

Role of the legislature and government of New Brunswick

(2) The role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) is affirmed.

Proceedings of Parliament **17.** (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

Proceedings of New Brunswick legislature (2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

Parliamentary statutes and records **18.** (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

New Brunswick statutes and records (2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

Proceedings in courts established by Parliament **19.** (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

Proceedings in New Brunswick courts (2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

Communications by public with federal institutions **20.** (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

(*a*) there is a significant demand for communications with and services from that office in such language; or

(*b*) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

Communications by public with New Brunswick institutions (2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

Continuation of existing constitutional provisions **21.** Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

Rights and privileges preserved **22.** Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

Minority Language Educational Rights

Language of instruction **23.** (1) Citizens of Canada

(*a*) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(*b*) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

Continuity of language instruction (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

Application where numbers warrant (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(*a*) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(*b*) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Enforcement

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

General

Aboriginal rights and freedoms not affected by Charter

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(*a*) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(*b*) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

Other rights and freedoms not affected by Charter

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

Multicultural heritage

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

Rights guaranteed equally to both sexes

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Rights respecting certain schools preserved

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

Application to territories and territorial authorities

30. A reference in this Charter to a Province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

Legislative powers not extended

31. Nothing in this Charter extends the legislative powers of any body or authority.

Application of Charter

Application of Charter

32. (1)This Charter applies

(*a*) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(*b*) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Exception

(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

Exception where express declaration

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

Operation of exception (2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

Five year limitation (3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

Re-enactment (4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

Five year limitation (5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

Citation

Citation **34.** This Part may be cited as the *Canadian Charter of Rights and Freedoms*.

PART II
RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA

Recognition of existing aboriginal and treaty rights **35.** (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of "aboriginal peoples of Canada" (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

Land claims agreements (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

Aboriginal and treaty rights are guaranteed equally to both sexes (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Commitment to participation in constitutional conference **35.1** The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the "*Constitution Act, 1867*", to section 25 of this Act or to this Part,

(*a*) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and

(*b*) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item.

PART III
EQUALIZATION AND REGIONAL DISPARITIES

Commitment to promote equal opportunities **36.** (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

(*a*) promoting equal opportunities for the well-being of Canadians;

(*b*) furthering economic development to reduce disparity in opportunities; and

(*c*) providing essential public services of reasonable quality to all Canadians.

Commitment respecting public services (2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably

PART VII
GENERAL

Primacy of Constitution of Canada

52. (1) 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. **Constitution of Canada**

(2) The Constitution of Canada includes

(*a*) the *Canada Act 1982*, including this Act;

(*b*) the Acts and orders referred to in the schedule; and

(*c*) any amendment to any Act or order referred to in paragraph (*a*) or (*b*).

Amendments to Constitution of Canada

(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.

The Constitution Act, 1867

(THE BRITISH NORTH AMERICA ACT, 1867)

30 & 31 Victoria, c. 3.

[Consolidated with amendments]

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith.

(29th March, 1867.)

VI. DISTRIBUTION OF LEGISLATIVE POWERS

Powers of the Parliament

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,--

1. Repealed. (44)

1A. The Public Debt and Property. (45)

2. The Regulation of Trade and Commerce.

2A. Unemployment insurance. (46)

3. The raising of Money by any Mode or System of Taxation.

4. The borrowing of Money on the Public Credit.

5. Postal Service.

6. The Census and Statistics.

7. Militia, Military and Naval Service, and Defence.

8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.

9. Beacons, Buoys, Lighthouses, and Sable Island.

10. Navigation and Shipping.

11. Quarantine and the Establishment and Maintenance of Marine Hospitals.

12. Sea Coast and Inland Fisheries.

13. Ferries between a Province and any British or Foreign Country or between Two Provinces.

14. Currency and Coinage.

15. Banking, Incorporation of Banks, and the Issue of Paper Money.

16. Savings Banks.

17. Weights and Measures.

18. Bills of Exchange and Promissory Notes.

19. Interest.

20. Legal Tender.

21. Bankruptcy and Insolvency.

22. Patents of Invention and Discovery.

23. Copyrights.

24. Indians, and Lands reserved for the Indians.

25. Naturalization and Aliens.

26. Marriage and Divorce.

27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

28. The Establishment, Maintenance, and Management of Penitentiaries.

29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.(47)

Marihuana Medical Access Regulations, SOR/2001-227

Current version: as posted between Apr 13, 2010 and Jan 28, 2011

Marihuana Medical Access Regulations

SOR/2001-227

CONTROLLED DRUGS AND SUBSTANCES ACT

Her Excellency the Governor General in Council, on the recommendation of the Minister of Health, pursuant to subsection 55(1) of the *Controlled Drugs and Substances Act* [a], hereby makes the annexed *Marihuana Medical Access Regulations*.

[a] S.C. 1996, c. 19

Registration June 14, 2001

MARIHUANA MEDICAL ACCESS REGULATIONS

INTERPRETATION

1. (1) The following definitions apply in these Regulations.

"Act" means the *Controlled Drugs and Substances Act*. (*Loi*)

"adverse drug reaction"[Repealed, SOR/2005-177, s. 1]

"authorization to possess" means an authorization to possess dried marihuana issued under section 11. (*autorisation de possession*)

"category 1 symptom" means any symptom treated within the context of compassionate end-of-life care or a symptom set out in column 1 of the schedule that is associated with a medical condition set out in column 2 or with the medical treatment of that condition. (*symptôme de catégorie 1*)

"category 2 symptom" means a debilitating symptom that is associated with a medical condition or with the medical treatment of that condition and that is not a category 1 symptom. (*symptôme de catégorie 2*)

"category 3 symptom"[Repealed, SOR/2005-177, s. 1]

"conventional treatment" means, in respect of a symptom, a medical or surgical treatment that is generally accepted by the Canadian medical community as a treatment for the symptom. (*traitement conventionnel*)

"designated drug offence" means

(*a*) an offence against section 39, 44.2, 44.3, 48, 50.2 or 50.3 of the *Food and Drugs Act*, as those provisions read immediately before May 14, 1997;

(*b*) an offence against section 4, 5, 6, 19.1 or 19.2 of the *Narcotic Control Act*, as those provisions read immediately before May 14, 1997;

(*c*) an offence under Part I of the Act, except subsection 4(1); or

(*d*) a conspiracy or an attempt to commit, being an accessory after the fact in relation to or any counselling in relation to an offence referred to in any of paragraphs (*a*) to (*c*). (*infraction désignée en matière de drogue*)

"designated marihuana offence" means

(*a*) an offence, in respect of marihuana, against section 5 of the Act, or against section 6 of the Act except with respect to importation; or

(*b*) a conspiracy or an attempt to commit or being an accessory after the fact in relation to or any counselling in relation to an offence referred to in paragraph (*a*). (*infraction désignée relativement à la marihuana*)

"designated person" means the person designated, in an application made under section 37, to produce marihuana for the applicant. (*personne désignée*)

"designated-person production licence" means a licence issued under section 40. (*licence de production à titre de personne désignée*)

"dried marihuana" means harvested marihuana that has been subjected to any drying process. (*marihuana séchée*)

"licence to produce" means either a personal-use production licence or a designated-person production licence. (*licence de production*)

"licensed dealer" has the same meaning as in section 2 of the *Narcotic Control Regulations*. (*distributeur autorisé*)

"marihuana" means the substance referred to as "Cannabis (marihuana)" in subitem 1(2) of Schedule II to the Act. (*marihuana*)

"medical practitioner" means a person who is authorized under the laws of a province to practise medicine in that province and who is not named in a notice given under section 59 of the *Narcotic Control Regulations*. (*médecin*)

"medical purpose" means the purpose of mitigating a person's category 1 or 2 symptom identified in an application for an authorization to possess. (*fins médicales*)

"personal-use production licence" means a licence issued under section 29. (*licence de production à des fins personnelles*)

"production area" means the place where the production of marihuana is conducted, that is

(*a*) entirely indoors;

(*b*) entirely outdoors; or

(*c*) partly indoors and partly outdoors. (*aire de production*)

"specialist" means a medical practitioner who is recognized as a specialist by the medical licensing authority of the province in which the practitioner is authorized to practise medicine. (*spécialiste*)

"terminal illness"[Repealed, SOR/2005-177, s. 1]

(2) For the purpose of sections 28 and 53, a site for the production of marihuana is considered to be adjacent to a place if the boundary of the land on which the site is located has at least one point in common with the boundary of the land on which the place is located.

SOR/2004-237, s. 29; SOR/2005-177, s. 1; SOR/2007-207, s. 1.

PART 1

AUTHORIZATION TO POSSESS

Authorized Activity

2. The holder of an authorization to possess is authorized to possess dried marihuana, in accordance with the authorization, for the medical purpose of the holder.

Eligibility for Authorization to Possess

3. A person is eligible to be issued an authorization to possess only if the person is an individual who ordinarily resides in Canada.

SOR/2007-207, s. 2(E).

Application for Authorization to Possess

4. (1) A person seeking an authorization to possess dried marihuana for a medical purpose shall submit an application to the Minister.

(2) An application under subsection (1) shall contain

(*a*) a declaration of the applicant;

(*b*) a medical declaration made by the medical practitioner treating the applicant; and

(*c*) two copies of a current photograph of the applicant.

SOR/2003-387, s. 1; SOR/2005-177, s. 2.

Applicant's Declaration

5. (1) The declaration of the applicant under paragraph 4(2)(*a*) must indicate

(*a*) the applicant's name, date of birth and gender;

(*b*) the full address of the place where the applicant ordinarily resides as well as the applicant's telephone number and, if applicable, facsimile transmission number and e-mail address;

(*c*) the mailing address of the place referred to in paragraph (*b*), if different;

(*d*) if the place referred to in paragraph (*b*) is an establishment that is not a private residence, the type and name of the establishment;

(*e*) that the authorization is sought in respect of marihuana to be

(i) produced by the applicant or a designated person, in which case the designated person must be named, or

(ii) obtained under section 70.2 from a licensed dealer producing marihuana under contract with Her Majesty in right of Canada or obtained from a medical practitioner under section 70.4;

(*f*) that the applicant is aware that no notice of compliance has been issued under the *Food and Drug Regulations* concerning the safety and effectiveness of marihuana as a drug;

(*g*) that the applicant has discussed the potential benefits and risks of using marihuana with the medical practitioner providing the medical declaration under paragraph 4(2)(*b*);

(*h*) that the applicant

(i) is aware that the benefits and risks associated with the use of marihuana are not fully understood and that the use of marihuana may involve risks that have not yet been identified, and

(ii) accepts the risks associated with using marihuana;

(*i*) if the daily amount stated under paragraph 6(1)(*c*) is more than five grams, that the applicant

(i) has discussed the potential risks associated with an elevated daily consumption of dried marihuana with the medical practitioner providing the medical declaration, including risks with respect to the effect on the applicant's cardio-vascular and pulmonary systems and psychomotor performance, risks associated with the long-term use of marihuana as well as potential drug dependency, and

(ii) accepts those risks; and

(*j*) that marihuana will be used only for the treatment of the symptom stated for the applicant under paragraph 6(1)(*b*).

(2) The declaration must be dated and signed by the applicant attesting that the information contained in it is correct and complete.

SOR/2003-387, s. 2; SOR/2005-177, s. 3.

MEDICAL DECLARATIONS

6. (1) The medical declaration under paragraph 4(2)(*b*) must indicate

(*a*) the medical practitioner's name, business address and telephone number, facsimile transmission number and e-mail address if applicable, the province in which the practitioner is authorized to practise medicine and the number assigned by the province to that authorization;

(*b*) the name of the applicant, the applicant's medical condition, the symptom that is associated with that condition or its treatment and that is the basis for the application and whether the symptom is a category 1 or 2 symptom;

(*c*) for the purpose of determining, under subsection 11(3), the maximum quantity of dried marihuana to be authorized, the daily amount of dried marihuana, in grams, and the form and route of administration that the applicant intends to use;

(*d*) the anticipated period of usage, if less than 12 months;

(*e*) that conventional treatments for the symptom have been tried or considered and have been found to be ineffective or medically inappropriate for the treatment of the applicant; and

(*f*) that the medical practitioner is aware that no notice of compliance has been issued under the *Food and Drug Regulations* concerning the safety and effectiveness of marihuana as a drug.

(2) In the case of a category 2 symptom, the medical declaration must also indicate

(*a*) if the medical practitioner making the medical declaration is a specialist, the practitioner's area of specialization and that the area of specialization is relevant to the treatment of the applicant's medical condition; and

(*b*) if the medical practitioner making the medical declaration is not a specialist,

(i) that the applicant's case has been assessed by a specialist,

(ii) the name of the specialist,

(iii) the specialist's area of specialization and that the area of specialization is relevant to the treatment of the applicant's medical condition,

(iv) the date of the specialist's assessment of the applicant's case,

(v) that the specialist concurs that conventional treatments for the symptom are ineffective or medically inappropriate for the treatment of the applicant, and

(vi) that the specialist is aware that marihuana is being considered as an alternative treatment for the applicant.

SOR/2005-177, s. 4.

7. [Repealed, SOR/2003-387, s. 3]

8. A medical declaration under paragraph 4(2)(*b*) must be dated and signed by the medical practitioner making it and must attest that the information contained in the declaration is correct and complete.

SOR/2003-387, s. 4; SOR/2005-177, s. 5.

9. [Repealed, SOR/2005-177, s. 6]

PHOTOGRAPH

10. The photograph required under paragraph 4(2)(*c*) must clearly identify the applicant and must

(*a*) show a full front-view of the applicant's head and shoulders against a plain contrasting background;

(*b*) have dimensions of at least 43 mm x 54 mm (1 11/16 inches x 2 1/8 inches) and not more than 50 mm x 70 mm (2 inches x 2 3/4 inches), and have a view of the applicant's head that is at least 30 mm (1 3/8 inches) in length;

(*c*) show the applicant's face unobscured by sunglasses or any other object; and

(*d*) be certified, on the reverse side, by the medical practitioner making the medical declaration under paragraph 4(2)(*b*) to be an accurate representation of the applicant.

SOR/2003-387, s. 5; SOR/2005-177, s. 7; SOR/2007-207, s. 3.

ISSUANCE OF AUTHORIZATION TO POSSESS

11. (1) Subject to section 12, if the requirements of sections 4 to 10 are met, the Minister shall issue to the applicant an authorization to possess for the medical purpose mentioned in the application, and shall provide notice of the authorization to the medical practitioner who made the medical declaration under paragraph 4(2)(*b*).

(2) The authorization shall indicate

(*a*) the name, date of birth and gender of the holder of the authorization;

(*b*) the full address of the place where the holder ordinarily resides;

(*c*) the authorization number;

(*d*) the name of the medical practitioner who made the medical declaration under paragraph 4(2)(*b*);

(*e*) the maximum quantity of dried marihuana, in grams, that the holder may possess at any time;

(*f*) the date of issue; and

(*g*) the date of expiry.

(3) The maximum quantity of dried marihuana referred to in paragraph (2)(*e*) or resulting from an amendment under subsection 20(1) is the amount determined according to the following formula:

$$A \times 30$$

where A is the daily amount of dried marihuana, in grams, stated under paragraph 6(1)(*c*) or subparagraph 19(2)(*d*)(i), whichever applies.

SOR/2005-177, s. 8.

GROUNDS FOR REFUSAL

12. (1) The Minister shall refuse to issue an authorization to possess if

(*a*) the applicant is not eligible under section 3; or

(*b*) any information, statement or other item included in the application is false or misleading;

(*c*) [Repealed, SOR/2005-177, s. 9]

(*d*) [Repealed, SOR/2003-387, s. 6]

(2) If the Minister proposes to refuse to issue an authorization to possess, the Minister shall

(*a*) notify the applicant in writing of the reason for the proposed refusal; and

(*b*) give the applicant an opportunity to be heard.

SOR/2003-387, s. 6; SOR/2005-177, s. 9.

EXPIRY OF AUTHORIZATION

13. An authorization to possess expires 12 months after its date of issue or, if a shorter period is specified in the application for the authorization under paragraph 6(1)(*d*), at the end of that period.

RENEWAL OF AUTHORIZATION TO POSSESS

14. (1) An application to renew an authorization to possess shall be made to the Minister by the holder of the authorization and must include

(*a*) the authorization number; and

(*b*) the material required under sections 4 to 10.

(2) For the purpose of paragraph (1)(*b*), a photograph referred to in paragraph 4(2)(*c*) is required only with every fifth renewal application.

SOR/2003-387, s. 7; SOR/2005-177, s. 10.

15. and **16.** [Repealed, SOR/2005-177, s. 11]

17. Subject to section 18, if an application complies with section 14, the Minister shall renew the authorization to possess for the medical purpose mentioned in the application.

18. The Minister shall refuse to renew an authorization to possess for any reason referred to in section 12.

SOR/2005-177, s. 12.

AMENDMENT OF AUTHORIZATION TO POSSESS

19. (1) An application to amend an authorization to possess shall be made to the Minister by the holder of the authorization when a change occurs with respect to

(*a*) the holder's name;

(*b*) the holder's address of ordinary residence or mailing address; or

(*c*) the daily amount of dried marihuana if the new amount requires an increase in the maximum quantity of dried marihuana, in grams, that the holder may possess at any time.

(2) The application must include

(*a*) the authorization number and, if applicable, the licence number of the licence to produce that has been issued on the basis of the authorization;

(*b*) the requested amendment;

(*c*) in the case of a change under paragraph (1)(*a*), proof of the change; and

(*d*) in the case of a change under paragraph (1)(*c*),

(i) a statement containing the information required under paragraph 6(1)(*c*), signed and dated by the medical practitioner who made the

medical declaration under paragraph 4(2)(*b*), and

(ii) if the new daily amount is more than five grams, the statement required under paragraph 5(1)(*i*), signed and dated by the applicant.

SOR/2005-177, s. 13.

20. (1) Subject to subsection (2), if an application complies with section 19, the Minister shall amend the authorization to possess.

(2) The Minister shall refuse to amend an authorization to possess for any reason referred to in section 12.

SOR/2005-177, s. 13.

21. (1) If an authorization to possess is amended with respect to the name or address of the holder of the authorization, the Minister shall, if applicable, amend the licence to produce that was issued on the basis of the authorization.

(2) If an authorization to possess is amended with respect to the daily amount of dried marihuana, the Minister shall, if applicable, amend the licence to produce that was issued on the basis of the authorization to reflect the change in the maximum number of marihuana plants that the holder of the licence may produce and the maximum quantity of dried marihuana that the holder of the licence may keep.

SOR/2005-177, s. 13.

22. [Repealed, SOR/2005-177, s. 13]

PROVIDING ASSISTANCE TO HOLDER

23. While in the presence of the holder of an authorization to possess and providing assistance in the administration of marihuana to the holder, the person providing the assistance may, for the purpose of providing the assistance, possess a quantity of dried marihuana not exceeding an amount equal to the maximum quantity of dried marihuana the holder is authorized to possess as set out in the authorization to possess, divided by 30.

SOR/2005-177, s. 14.

PART 2

LICENCE TO PRODUCE

PERSONAL-USE PRODUCTION LICENCE

Authorized Activities

24. The holder of a personal-use production licence is authorized to produce and keep marihuana, in accordance with the licence, for the medical purpose of the holder.

Eligibility for Licence

25. (1) Subject to subsection (2), a person is eligible to be issued a personal-use production licence only if the person is an individual who ordinarily resides in Canada and who has reached 18 years of age.

(2) If a personal-use production licence is revoked under paragraph 63(2)(*b*), the person who was the holder of the licence is ineligible to be issued another personal-use production licence during the period of 10 years after the revocation,

SOR/2007-207, s. 4(E).

Application for Licence

[SOR/2005-177, s. 15]

26. (1) An application for a personal-use production licence shall be considered only if it is made by a person who

(*a*) is the holder of an authorization to possess on the basis of which the licence is applied for; or

(*b*) is not the holder of an authorization to possess, but either has applied for an authorization to possess or is applying for an authorization to possess concurrently with the licence application.

(2) If paragraph (1)(*b*) applies, the Minister must grant or refuse the application for an authorization before considering the licence application.

SOR/2007-207, s. 5(E).

27. (1) A person mentioned in subsection 26(1) who is seeking a personal-use production licence shall submit an application to the Minister.

(2) The application must include

(*a*) a declaration by the applicant; and

(*b*) if the proposed production site is not the applicant's ordinary place of residence and is not owned by the applicant, a declaration dated and signed by the owner of the site consenting to the production of marihuana at the site.

(3) The application may not be made jointly with another person.

SOR/2007-207, s. 6(E).

Applicant's Declaration

28. (1) The declaration of the applicant under paragraph 27(2)(*a*) must indicate

(*a*) the applicant's name, date of birth and gender;

(*b*) the full address of the place where the applicant ordinarily resides as well as the applicant's telephone number and, if applicable, facsimile transmission number and e-mail address;

(*c*) the mailing address of the place referred to in paragraph (*b*), if different;

(*d*) if the applicant is the holder of an authorization to possess, the number of the authorization;

(*e*) the full address of the site where the proposed production of marihuana is to be conducted;

(*f*) the proposed production area;

(*g*) if the proposed production area involves outdoor production entirely or partly indoor and partly outdoor production, that the production site is not adjacent to a school, public playground, day care facility or other public place frequented mainly by persons under 18 years of age;

(*h*) that the dried marihuana will be kept indoors and indicating whether it is proposed to keep it at

(i) the proposed production site, or

(ii) the ordinary place of residence of the applicant, if different; and

(*i*) a description of the security measures that will be implemented at the proposed production site and the proposed site where dried marihuana will be kept.

(2) The declaration must be dated and signed by the applicant and attest that the information contained in it is correct and complete.

Issuance of Licence

29. (1) Subject to section 32, if the requirements of sections 27 and 28 are met, the Minister shall issue a personal-use production licence to the applicant.

(2) The licence shall indicate

(*a*) the name, date of birth and gender of the holder of the licence;

(*b*) the full address of the place where the holder of the licence ordinarily resides;

(*c*) the licence number;

(*d*) the full address of the site where the production of marihuana is authorized;

(*e*) the authorized production area;

(*f*) the maximum number of marihuana plants that may be under production at the production site at any time;

(*g*) the full address of the site where the dried marihuana may be kept;

(*h*) the maximum quantity of dried marihuana, in grams, that may be kept at the site authorized under paragraph (*g*) at any time;

(*i*) the date of issue; and

(*j*) the date of expiry.

SOR/2007-207, s. 7(E).

Maximum Number of Plants

30. (1) In the formulas in subsection (2),

(*a*) "A" is the daily amount of dried marihuana, in grams, stated under paragraph 6(1)(*c*) or subparagraph 19(2)(*d*)(i), whichever applies;

(*b*) "C" is a constant equal to 1, representing the growth cycle of a marihuana plant from seeding to harvesting; and

(*c*) "D" is the maximum number of marihuana plants referred to in subsection 21(2) and paragraphs 29(2)(*f*) and 40(2)(*g*).

(2) The maximum number of marihuana plants referred to in paragraph (1)(*c*) is determined according to whichever of the following formulas applies:

(*a*) if the production area is entirely indoors,

$$D = [(A \times 365) \div (B \times 3C)] \times 1.2$$

where B is 30 grams, being the expected yield of dried marihuana per plant,

(*b*) if the production area is entirely outdoors,

$$D = [(A \times 365) \div (B \times C)] \times 1.3$$

where B is 250 grams, being the expected yield of dried marihuana per plant; and

(*c*) if the production area is partly indoors and partly outdoors,

(i) for the indoor period

$$D = [(A \times 182.5) \div (B \times 2C)] \times 1.2$$

where B is 30 grams, being the expected yield of dried marihuana per plant, and

(ii) for the outdoor period

$$D = [(A \times 182.5) \div (B \times C)] \times 1.3$$

where B is 250 grams, being the expected yield of dried marihuana per plant.

(3) If paragraph (2)(*c*) applies, the maximum number of marihuana plants for both periods of production shall be mentioned in the licence to produce.

(4) If the number determined for D is not a whole number, it shall be rounded to the next-highest whole number.

SOR/2005-177, s. 17.

Maximum Quantity of Dried Marihuana in Storage

31. (1) In the formulas in subsection (2),

(*a*) "D" is,

(i) if the production area is entirely indoors or outdoors, the maximum number of marihuana plants that the holder of the licence to produce is authorized to produce, calculated under paragraphs 30(2)(*a*) or (*b*), whichever applies,

(ii) if the production area is partly indoors and partly outdoors, the maximum number of marihuana plants that the holder of the licence to produce is authorized to produce, calculated under subparagraph 30(2)(*c*)(ii); and

(*b*) "E" is the maximum quantity of dried marihuana mentioned in subsection 21(2) and in paragraphs 29(2)(*h*) and 40(2)(*i*).

(2) The maximum quantity of dried marihuana referred to in paragraph (1)(*b*) is determined according to whichever of the following formulas applies:

(*a*) if the production area is entirely indoors,

$$E = D \times B \times 1.5$$

where B is 30 grams, being the expected yield of dried marihuana per plant,

(*b*) if the production area is entirely outdoors,

$$E = D \times B \times 1.5$$

where B is 250 grams, being the expected yield of dried marihuana per plant, and

(*c*) if the production area is partly indoors and partly outdoors,

$$E = D \times B \times 1.5$$

where B is 250 grams, being the expected yield of dried marihuana per plant.

SOR/2005-177, s. 18.

Grounds for Refusal

32. The Minister shall refuse to issue a personal-use production licence if

(*a*) the applicant is not a holder of an authorization to possess;

(*b*) the applicant is not eligible under section 25;

(*c*) any information or statement included in the application is false or misleading;

(*d*) the proposed production site would be a site for the production of marihuana under more than four licences to produce; or

(*e*) the applicant would be the holder of more than two licences to produce.

SOR/2010-63, s. 1.

Expiry of Licence

33. A personal-use production licence expires on the earlier of

(*a*) 12 months after its date of issue, and

(*b*) the date of expiry of the authorization to possess held by the licence holder.

DESIGNATED-PERSON PRODUCTION LICENCE

Authorized Activities

34. (1) The holder of a designated-person production licence is authorized, in accordance with the licence,

(*a*) to produce marihuana for the medical purpose of the person who applied for the licence;

(*b*) to possess and keep, for the purpose mentioned in paragraph (*a*), a quantity of dried marihuana not exceeding the maximum quantity specified in the licence;

(*c*) if the production site specified in the licence is different from the site where dried marihuana may be kept, to transport directly from the first to the second site a quantity of dried marihuana not exceeding the maximum quantity that may be kept under the licence;

(*d*) subject to subsection (1.1), if the site specified in the licence where dried marihuana may be kept is different from the place where the person who applied for the licence ordinarily resides, to send or transport directly from that site to the place of residence a quantity of dried marihuana not exceeding the maximum quantity specified in the authorization to possess on the basis of which the licence was issued; and

(*e*) to provide or deliver to the person who applied for the licence a quantity of dried marihuana not exceeding the maximum quantity specified in the authorization to possess on the basis of which the licence was issued.

(1.1) A holder of a designated-person production licence sending dried marihuana under paragraph (1)(*d*) shall

(*a*) securely pack the marihuana in a package that

(i) will not open or permit the escape of its contents during handling and transportation,

(ii) is sealed so that the package cannot be opened without the seal being broken,

(iii) prevents the escape of odour associated with the marihuana, and

(iv) prevents the contents from being identified without the package being opened; and

(*b*) use a method of sending that involves

(i) a means of tracking the package during transit,

(ii) obtaining a signed acknowledgment of receipt, and

(iii) safekeeping of the package during transit.

(2) [Repealed, SOR/2003-387, s. 8]

SOR/2003-387, s. 8; SOR/2005-177, s. 19; SOR/2007-207, s. 8(E).

Eligibility for Licence

35. A person is eligible to be issued a designated-person production licence only if the person is an individual who ordinarily resides in Canada and who

(*a*) has reached 18 years of age; and

(*b*) has not been found guilty, as as adult, within the 10 years preceding the application, of

(i) a designated drug offence, or

(ii) an offence committed outside Canada that, if committed in Canada, would have constituted a designated drug offence.

SOR/2007-207, s. 9.

Application for Licence

[SOR/2005-177, s. 20]

36. (1) An application for a designated-person production licence shall be considered only if it is made by a person who

(*a*) is the holder of an authorization to possess on the basis of which the licence is applied for; or

(*b*) is not the holder of an authorization to possess, but either has applied for an authorization to possess or is applying for an authorization to possess concurrently with the licence application.

(2) If paragraph (1)(*b*) applies, the Minister must grant or refuse the application for an authorization before considering the licence application.

37. (1) A person mentioned in subsection 36(1) who is seeking to have a designated-person production licence issued to a designated person shall submit an application to the Minister.

(2) The application must include

(*a*) a declaration by the applicant;

(*b*) a declaration by the designated person;

(*c*) if the proposed production site is not the applicant's ordinary place of residence or of the designated person and is not owned by the applicant or the designated person, a declaration dated and signed by the owner of the site consenting to the production of marihuana at the site;

(*d*) a document issued by a Canadian police force establishing that, within the 10 years preceding the application, the designated person has not been convicted, as an adult, of a designated drug offence; and

(*e*) two copies of a current photograph of the designated person that complies with the standards specified in paragraphs 10(*a*) to (*c*), each of which is certified by the applicant, on the reverse side, to be an accurate representation of the designated person.

(3) The application may not be made jointly with another person.

SOR/2007-207, s. 10.

Applicant's Declaration

38. (1) The declaration of the applicant under paragraph 37(2)(*a*) must

(*a*) include the information referred to in paragraphs 28(1)(*a*) to (*d*);

(*b*) indicate the name, date of birth and gender of the designated person;

(*c*) indicate the full address of the place where the designated person ordinarily resides as well as the designated person's telephone number and, if applicable, facsimile transmission number and e-mail address; and

(*d*) indicate the mailing address of the place referred to in paragraph (*c*), if different.

(2) The declaration must be dated and signed by the applicant and attest that the information contained in the declaration is complete and correct.

Designated Person's Declaration

39. (1) The declaration of the designated person under paragraph 37(2)(*b*) must

(*a*) include the information referred to in paragraphs 28(1)(*e*) to (*g*) and (*i*);

(*b*) indicate that the dried marihuana will be kept indoors and whether it is proposed to keep it at:

(i) the proposed production site, or

(ii) the ordinary place of residence of the designated person, if the proposed production site is not the ordinary place of residence of the applicant; and

(*c*) indicate that, within the 10 years preceding the application, the designated person has not been convicted, as an adult, of

(i) a designated drug offence, or

(ii) an offence that, if committed in Canada, would have constituted a designated drug offence.

(2) The declaration must be dated and signed by the designated person and attest that the information contained in it is correct and complete.

SOR/2007-207, s. 11.

Issuance of Licence

40. (1) Subject to section 41, if the requirements of sections 37 to 39 are met, the Minister shall issue a designated-person production licence to the designated person.

(2) The licence shall indicate

(*a*) the name, date of birth and gender of the holder of the licence;

(*b*) the name, date of birth and gender of the person for whom the holder of the licence is authorized to produce marihuana and the full address of that person's place of ordinary residence;

(*c*) the full address of the place where the holder of the licence ordinarily resides;

(*d*) the licence number;

(*e*) the full address of the site where the production of marihuana is authorized;

(*f*) the authorized production area;

(*g*) the maximum number of marihuana plants that may be under production at the production site at any time;

(*h*) the full address of the site where the dried marihuana may be kept;

(*i*) the maximum quantity of dried marihuana, in grams, that may be kept at the site authorized under paragraph (*h*) at any time;

(*j*) the date of issue; and

(*k*) the date of expiry.

SOR/2007-207, s. 12.

Grounds for Refusal

41. The Minister shall refuse to issue a designated-person production licence

(*a*) if the designated person is not eligible under section 35;

(*b*) if the designated person would become the holder of more than two licences to produce; or

(*b.1*) [Repealed, SOR/2009-142, s. 1]

(*c*) for any reason referred to in paragraphs 32(*a*) to (*d*).

SOR/2003-387, s. 9; SOR/2009-142, s. 1.

Expiry of Licence

42. A designated-person production licence expires on the earlier of

(*a*) 12 months after its date of issue, and

(*b*) the date of expiry of the authorization to possess on the basis of which the licence was issued.

GENERAL PROVISIONS

Renewal of Licence to Produce

43. An application to renew a licence to produce shall be made to the Minister by the person who applied for the licence and shall include

(*a*) the licence number; and

(*b*) the material required under sections 27 and 28 or under sections 37 to 39, whichever apply.

44. Subject to section 45, if an application complies with section 43, the Minister shall renew the licence to produce.

45. The Minister shall refuse an application to renew a licence to produce for any reason referred to in section 32 or 41, whichever applies.

Change of Production Site or Production Area

[SOR/2007-207, s. 13(F)]

46. (1) A person who applied for a licence to produce shall submit an application to the Minister to amend the licence if the person proposes to change the location of the production site or the production area.

(2) The application under subsection (1) shall include

(*a*) the licence number;

(*b*) in the case of a proposed change in the location of the production site, the full address of the proposed new site and supporting reasons for the proposed change;

(*c*) in the case of a proposed change in the production area, the proposed new production area and supporting reasons for the proposed change; and

(*d*) the material required under sections 27 and 28 or sections 37 to 39, whichever apply.

SOR/2007-207, s. 14.

47. Subject to section 48, if an application complies with subsection 46(2), the Minister shall amend the licence to produce.

48. The Minister shall refuse to amend a licence to produce for any reason referred to in section 32 or 41, whichever applies.

Change of Site Where Dried Marihuana Is Kept

[SOR/2007-207, s. 15(F)]

49. (1) If the holder of a licence to produce proposes to change the location of the site where dried marihuana is kept, the holder shall apply to the Minister in writing, not less than 15 days before the intended effective date of the change.

(2) The application shall indicate

(*a*) the new site, selected from among those permitted under paragraph 28(1)(*h*) or 39(1)(*b*), whichever applies; and

(*b*) the intended effective date of the change.

(3) On receipt of an application that complies with subsection (2), the Minister shall amend the licence to reflect the change stated in the application.

SOR/2007-207, s. 16(F).

Notice of Change of Information

50. (1) The holder of a licence to produce shall, within 10 days after the occurrence, notify the Minister in writing of

(*a*) a change in the holder's name; or

(*b*) subject to subsection (2), a change in the holder's address of ordinary residence.

(2) If the holder's address of ordinary residence is also the address of the site for the production of marihuana under the licence, the holder shall make an application under section 46.

(3) A notice under paragraph (1)(*a*) must be accompanied by proof of the change.

(4) On receiving a notice under subsection (1), the Minister shall amend the licence accordingly.

SOR/2007-207, s. 17.

51. [Repealed, SOR/2005-177, s. 22]

Restrictions

52. The holder of a licence to produce may produce marihuana only at the production site and production area authorized in the licence.

SOR/2007-207, s. 18.

52.1 The holder of a licence to produce shall not simultaneously produce marihuana partly indoors and partly outdoors.

SOR/2007-207, s. 18.

53. If the production area for a licence to produce permits the production of marihuana entirely outdoors or partly indoors and partly outdoors, the holder shall not produce marihuana outdoors if the production site is adjacent to a school, public playground, day care facility or other public place frequented mainly by persons under 18 years of age.

54. [Repealed, SOR/2003-387, s. 10]

54.1 [Repealed, SOR/2010-63, s. 2]

55. The holder of a licence to produce may keep dried marihuana only indoors at the site authorized in the licence for that purpose.

56. [Repealed, SOR/2003-387, s. 12]

Inspection

57. (1) To verify that the production of marihuana is in conformity with these Regulations and a licence to produce, an inspector may, at any reasonable time, enter any place where the inspector believes on reasonable grounds that marihuana is being produced or kept by the holder of the licence to produce, and may, for that purpose,

(*a*) open and examine any receptacle or package found there that could contain marihuana;

(*b*) examine anything found there that is used or may be capable of being used to produce or keep marihuana;

(*c*) examine any records, electronic data or other documents found there dealing with marihuana, other than records dealing with the medical condition of a person, and make copies or take extracts;

(*d*) use, or cause to be used, any computer system found there to examine electronic data referred to in paragraph (*c*);

(*e*) reproduce, or cause to be reproduced, any document from electronic data referred to in paragraph (*c*) in the form of a printout or other output;

(*f*) take any document or output referred to in paragraph (*c*) or (*e*) for examination or copying;

(*g*) examine any substance found there and, for the purpose of analysis, take samples, as reasonably required; and

(*h*) seize and detain, in accordance with Part IV of the Act, any substance found there, if the inspector believes, on reasonable grounds, that it is necessary.

(2) An inspector may not enter a dwelling-place without the consent of an occupant of the dwelling-place.

(3) An inspector who seizes marihuana shall take such measures as are reasonable in the circumstances to give to the owner or other person in charge of the place where the seizure occurred notice of the seizure and of the location where the seized marihuana is being kept or stored.

(4) If an inspector determines that the detention of marihuana seized under paragraph (1)(*h*) is no longer necessary to ensure compliance with

these Regulations, the inspector shall notify in writing the owner or other person in charge of the place where the seizure occurred of that determination and, on being issued a receipt for the marihuana, shall return it to that person.

SOR/2007-207, s. 19.

PART 3

GENERAL OBLIGATIONS

[SOR/2005-177, s. 23]

Documents

[SOR/2005-177, s. 23]

58. (1) On demand, the holder of an authorization to possess must show proof of their authority to possess dried marihuana to a police officer.

(2) On demand, the holder of a licence to produce must show the licence to a police officer.

SOR/2005-177, s. 24(E).

59. No one may add to, delete or obliterate from, or alter in any other way, an authorization to possess, a licence to produce or any other document provided to the holder of an authorization to possess or a licence to produce as proof of their authorization or licence.

SOR/2005-177, s. 25.

60. (1) If an authorization to possess, licence to produce or any other document provided to the holder of an authorization to possess or a licence to produce as proof of their authorization or licence is amended, the holder of the authorization or licence shall, within 30 days after receiving the amended document, return the replaced document to the Minister.

(2) If an authorization to possess or licence to produce is revoked, the holder of the authorization or licence shall, within 30 days after the revocation, return to the Minister the revoked document and any other document provided to the holder of the authorization or the licence as proof of their authorization or licence.

SOR/2005-177, s. 25; SOR/2007-207, s. 20(F).

Security and Reporting Loss or Theft

61. (1) The holder of an authorization to possess or a licence to produce shall maintain measures necessary to ensure the security of the marihuana in their possession as well as the authorization or licence, or both, issued to them.

(2) In the case of the loss or theft of marihuana or of the holder's authorization or licence, the holder of the authorization or licence shall, on becoming aware of the occurrence,

(*a*) within the next 24 hours, notify a member of a police force; and

(*b*) within the next 72 hours, notify the Minister, in writing, and include confirmation that the notice required under paragraph (*a*) has been given.

Revocation

62. (1) The Minister shall revoke the authorization to possess and any licence to produce issued on the basis of the authorization, if the holder of an authorization requests that the authorization be revoked.

(2) Subject to section 64, the Minister shall revoke an authorization to possess and any licence to produce issued on the basis of the authorization if

(*a*) the holder of the authorization is not eligible under section 3;

(*b*) the medical practitioner who made the medical declaration under paragraph 4(2)(*b*) for the holder of the authorization advises the Minister in writing that the continued use of marihuana by the holder is contraindicated.

(*c*) the authorization was issued on the basis of false or misleading information; or

(*d*) the photograph submitted under paragraph 4(2)(*c*) or section 14 as part of the application for the authorization or renewal is not an accurate representation of the holder of the authorization.

SOR/2003-387, s. 13; SOR/2005-177, s. 26.

63. (1) On request by the holder of a licence to produce, the Minister shall revoke the licence.

(2) Subject to section 64, the Minister shall revoke a licence to produce if

(*a*) the holder is not eligible under section 25 or 35, whichever applies;

(*b*) the holder of a personal-use production licence is found guilty of a designated marihuana offence committed after the date of issue of the licence;

(*c*) the holder of a designated-person production licence is found guilty of a designated drug offence committed after the date of issue of the licence;

(*c.1*) the holder of a licence to produce contravenes section 52;

(*d*) the holder of a licence to produce marihuana outdoors produces marihuana in contravention of section 53;

(*e*) the photograph submitted under paragraph 37(2)(*e*) or section 43 as part of the application for a designated-person production licence or renewal is not an accurate representation of the designated person; or

(*f*) the licence to produce was issued on the basis of false or misleading information.

SOR/2010-63, s. 3.

63.1 Subject to section 64, if a production site is authorized under more than four licences to produce, the Minister shall revoke the excess licences.

SOR/2010-63, s. 4.

64. The Minister shall not revoke an authorization to possess or a licence to produce under any of sections 62 to 63.1 unless

(*a*) the Minister has given the holder of the authorization or licence written notice of the reasons for the proposed revocation; and

(*b*) the holder has been given an opportunity to be heard.

SOR/2010-63, s. 5.

Destruction of Marihuana

65. (1) If an authorization to possess expires without being renewed or is revoked, the holder shall destroy all marihuana in their possession.

(2) If a licence to produce expires without being renewed or is revoked, the holder of the licence shall discontinue production of marihuana and, subject to section 66, destroy all marihuana in their possession.

(3) Within 10 days after destroying the marihuana, the holder of the authorization or the licence shall notify the Minister, in writing, of the amount of marihuana destroyed.

66. (1) If a personal-use production licence expires without being renewed but the holder remains the holder of a valid authorization to possess, the holder is not required to destroy dried marihuana that is not in excess of the maximum quantity permitted under the authorization.

(2) If a designated-person production licence expires without being renewed but the authorization to possess on the basis of which the licence was issued remains valid, the holder of the licence, before destroying marihuana, may immediately transport, transfer, give or deliver directly to the holder of the authorization not more than a quantity of dried marihuana that results in the holder of the authorization being in possession of the maximum quantity permitted under the authorization.

67. (1) If a licence to produce is amended under section 47 or at the time of the renewal to reflect a change in the production area, the holder of the licence must destroy any marihuana plants in production under the licence that are in excess of the maximum number of plants that may be produced under the licence, as amended.

(2) If a licence to produce is amended under section 47 or at the time of the renewal to reflect a change in the production area, the holder of the licence must destroy any dried marihuana kept under the licence that is in excess of the maximum quantity of marihuana that may be kept under the licence, as amended.

SOR/2007-207, s. 21.

Complaints and Communication of Information

[SOR/2005-177, s. 27(E)]

68. (1) An inspector shall receive and make a written record of any complaint from the public concerning a person who is a holder of an authorization to possess or licence to produce with respect to their possession or production of marihuana.

(2) The inspector shall report to the Minister any complaint recorded under subsection (1).

(3) The Minister is authorized to communicate to any Canadian police force or any member of a Canadian police force, any information contained in the report of the inspector, subject to that information being used only for the proper administration or enforcement of the Act or these Regulations.

SOR/2005-177, s. 28.

68.1 The Minister is authorized to communicate any of the following information to a Canadian police force or a member of a Canadian police force who requests the information in the course of an investigation under the Act or these Regulations, subject to that information being used only for the purpose of that investigation and the proper administration or enforcement of the Act or these Regulations:

(*a*) in respect of a named individual, whether the individual is the holder of an authorization to possess or a licence to produce;

(*b*) in respect of a specified address, whether the address is

(i) the place where the holder of an authorization to possess ordinarily resides and, if so, the name of the holder of the authorization and the applicable authorization number,

(ii) the site where the production of marihuana is authorized under a licence to produce and, if so, the name of the holder of the licence and the applicable licence number, or

(iii) the site where dried marihuana may be kept under a licence to produce and, if so, the name of the holder of the licence and the applicable licence number;

(*c*) in respect of an authorization to possess,

(i) the name, date of birth and gender of the holder of the authorization,

(ii) the full address of the place where the holder ordinarily resides,

(iii) the authorization number,

(iv) the maximum quantity of dried marihuana that the holder is authorized to possess,

(v) the dates of issue and expiry, and

(vi) if the authorization has expired, whether an application to renew the authorization has been made prior to the date of expiry and the status of the application; and

(*d*) in respect of a licence to produce,

(i) the name, date of birth and gender of the holder of the licence,

(ii) the full address of the place where the holder ordinarily resides,

(iii) the licence number,

(iv) the full address of the site where the production of marihuana is authorized,

(v) the authorized production area,

(vi) the maximum number of marihuana plants that may be under production at the production site at any time,

(vii) the full address of the site where dried marihuana may be kept,

(viii) the maximum quantity of dried marihuana that may be kept at the site referred to in subparagraph (vii) at any time,

(ix) the dates of issue and expiry, and

(x) if the licence has expired, whether an application has been made to renew the licence prior to the date of expiry and the status of the application.

SOR/2005-177, s. 29; SOR/2007-207, s. 22(E).

69. The Minister may provide, in writing, any factual information that has been obtained about a medical practitioner under the Act or these Regulations to the licensing authority responsible for the registration or authorization of the person to practise medicine

(*a*) in the province in which the medical practitioner is authorized to practise if

(i) the authority submits to the Minister a written request that sets out the medical practitioner's name and address, a description of the information being sought and a statement that the information is required for the purpose of assisting an official investigation by the authority, or

(ii) the Minister has reasonable grounds to believe that the medical practitioner has

(A) contravened a rule of conduct established by the authority,

(B) been found guilty in a court of law of a designated drug offence, or

(C) made a false statement under these Regulations; or

(*b*) in a province where the medical practitioner is not authorized to practise, if the authority submits to the Minister

(i) a written request for information that sets out

(A) the name and address of the medical practitioner, and

(B) a description of the information being sought, and

(ii) documentation that shows that the medical practitioner has applied to that authority to practise in that province.

SOR/2007-207, s. 23(E).

PART 4

SUPPLY OF MARIHUANA SEED AND DRIED MARIHUANA

MARIHUANA SEED

70. The Minister is authorized to import and possess viable cannabis seed for the purpose of selling, providing, transporting, sending or delivering the seed to

(*a*) the holder of a licence to produce; or

(*b*) a licensed dealer.

SOR/2003-387, s. 14; SOR/2005-177, s. 30.

70.1 A licensed dealer producing viable cannabis seed under contract with Her Majesty in right of Canada may provide or send that seed to the holder of a licence to produce.

SOR/2003-387, s. 14; SOR/2005-177, s. 30.

DRIED MARIHUANA

70.2 A licensed dealer producing dried marihuana under contract with Her Majesty in right of Canada may provide or send that marihuana to the holder of an authorization to possess.

SOR/2005-177, s. 30.

70.3 A pharmacist, as defined in section 2 of the *Narcotic Control Regulations*, may provide dried marihuana produced by a licensed dealer under contract with Her Majesty in right of Canada to the holder of an authorization to possess.

SOR/2005-177, s. 30.

70.4 A medical practitioner who has obtained dried marihuana from a licensed dealer under subsection 24(2) of the *Narcotic Control Regulations* may provide the marihuana to the holder of an authorization to possess under the practitioner's care.

SOR/2005-177, s. 30.

70.5 The Minister may sell or provide dried marihuana produced in accordance with section 70.2 to the holder of an authorization to possess.

SOR/2005-177, s. 30.

NARCOTIC CONTROL REGULATIONS

71. [Amendment]

TRANSITIONAL PROVISION

72. If, on the coming into force of these Regulations, a person is, for a medical purpose, exempt under section 56 of the Act from the application of subsection 4(1) and, if applicable, section 7 of the Act in respect of marihuana, the person is, by virtue of this section, exempt from those provisions for a period of six months after the date of expiry for the section 56 exemption, on the same terms and conditions as those contained in the section 56 exemption except for any term or condition pertaining to the expiry date of the exemption.

COMING INTO FORCE

73. These Regulations come into force on July 30, 2001.

SCHEDULE

(Section 1)

CATEGORY 1 SYMPTOMS

Item	Column 1 Symptom	Column 2 Associated Medical Conditions
1.	Severe nausea	Cancer, AIDS/HIV infection
2.	Cachexia, anorexia, weight loss	Cancer, AIDS/HIV infection
3.	Persistent muscle spasms	Multiple sclerosis, spinal cord injury or disease
4.	Seizures	Epilepsy
5.	Severe pain	Cancer, AIDS/HIV infection, multiple sclerosis, spinal cord injury or disease, severe form of arthritis

SOR/2005-177, s. 31.

Narcotic Control Regulations

Regulations Respecting the Control of Narcotics

C.R.C., c. 1041

CONTROLLED DRUGS AND SUBSTANCES ACT

REGULATIONS RESPECTING THE CONTROL OF NARCOTICS

SHORT TITLE

1. These Regulations may be cited as the *Narcotic Control Regulations*.

PRACTITIONERS

53. (1) No practitioner shall administer a narcotic to a person or animal, or prescribe, sell or provide a narcotic for a person or animal, except as authorized under this section or the *Marihuana Medical Access Regulations*.

(2) Subject to subsections (3) and (4), a practitioner may administer a narcotic to a person or animal, or prescribe, sell or provide a narcotic for a person or animal, if

(*a*) the person or animal is a patient under his professional treatment; and

(*b*) the narcotic is required for the condition for which the person or animal is receiving treatment.

(3) No practitioner shall administer methadone to a person or animal, or prescribe, sell or provide methadone for a person or animal, unless the practitioner is exempted under section 56 of the Act with respect to methadone.

(4) A practitioner shall not administer diacetylmorphine (heroin) to an animal or to a person who is not an in-patient or out-patient of a hospital providing care or treatment to persons, and shall not prescribe, sell or provide diacetylmorphine (heroin) for an animal or such a person.

SOR/85-930, s. 7; SOR/99-124, s. 6; SOR/2001-227, s. 71; SOR/2004-237, s. 20.