

FEDERAL COURT

B E T W E E N:

NATHAN KRULJAC

Applicant

-and-

MINISTER OF HEALTH

Respondent



NOTICE OF APPLICATION
(Pursuant to section 18.1 of the *Federal Courts Act*)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of the hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

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

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

July 26, 2021

Issued by:

(Registry Officer)

Federal Court of Canada
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Ottawa, Ontario K1A 0H9
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TO: Nathalie Drouin
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APPLICATION

1. This is an application for a writ of *mandamus* pursuant to sections 18 and 18.1 of the *Federal Courts Act*, R.S.C., 1985, c. F-7 for the Respondent Minister of Health (“**Minister**”) to render a decision on the Applicant Nathan Kruljac’s request for an exemption under s. 56(1) of the *Controlled Drugs and Substances Act*, SC 1996, c 19 (“**CDSA**”) to procure and possess psilocybin for psychotherapeutic treatment.

Background

2. The Applicant is a 40-year-old man who was diagnosed with cancer around the age of 25. Although currently the cancer is in remission, the Applicant suffers from debilitating end-of-life psychological distress including anxiety, depression, post-traumatic stress syndrome, and fear of recurrence.
3. The Applicant has attempted all conventional treatments for his psychological distress, including psychiatry, counselling, group therapy, cognitive behavioural therapy, targeted group therapy, introspective writing, and private journaling. None have brought him freedom from his suffering.
4. Scientific research over the past decade has shown psilocybin-assisted psychotherapy to be a very promising and low-risk treatment for the anxiety and depression from which the Applicant suffers. As such, the Applicant’s psychiatrist has recommended that the Applicant be treated with psilocybin-assisted psychotherapy.

Request for Exemption under s. 56(1) of the CDSA

5. On March 11, 2021, the Applicant submitted an application under section 56(1) of the *CDSA*, requesting the Minister grant him an exemption to procure and possess psilocybin for psychotherapeutic treatment.
6. As of the date of this application, more than 137 days later, the Minister has not rendered a decision on the matter. This is in stark contrast to the 34-day average for prior decisions to be rendered in s. 56(1) psilocybin applications. No prior decision has taken longer than 106 days.

The Applicant makes application for:

- a) An order pursuant to section 18.1 of the *Federal Courts Act* for *mandamus* compelling the Respondent to immediately render a decision on the Applicant's request for an exemption under s. 56(1) of the *CDSA*;
- b) The costs of this application; and
- c) Such further and other relief as counsel may request and this Honourable Court may permit.

The grounds for the application are:

- a) The Minister has a public legal duty to render a decision pursuant to s. 56(1) of the *CDSA* and s. 7 of the *Canadian Charter of Rights and Freedoms*, since the refusal to provide an exemption infringes upon the Applicant's rights to life, liberty, and security of person in a manner that is not in accordance with the principles of fundamental justice.
- b) The duty is owed to the Applicant, as the person who made a request under s. 56(1) of the *CDSA*;
- c) There is a clear right to the performance of the duty, in particular,
 - a. The Applicant has satisfied all conditions precedent giving rise to the duty by submitting his application on March 11, 2021 and providing all requested information; and
 - b. There was
 - i. A demand made for the performance of the duty when the Applicant submitted his request for an exemption on March 11, 2021, and subsequently in emails on, *inter alia*, April 21, 2021, and June 11, 2021;
 - ii. A reasonable time of more than 137 days to comply with the demand, since the average timeframe in which the Minister has responded to s. 56(1) exemption requests is 34 days and no prior decision has taken more than 106 days;
 - iii. A subsequent refusal was implied by the unreasonable delay;
- d) No other adequate remedy is available to the Applicant;

- e) The order sought will have the practical value and effect of compelling the Minister to render a decision on the matter, which will have a substantial effect on the Applicant's health, life, and security of person;
- f) There is no equitable bar to the relief sought;
- g) The balance of convenience favours granting *mandamus* since no harm is caused by a decision being rendered immediately and the Applicant continues to suffer unbearably each day that the decision is not rendered.
- h) Sections 18 and 18.1 of the Federal Courts Act;
- i) Section 7 of the *Canadian Charter of Rights and Freedoms*; and
- j) Section 56(1) of the *Controlled Drugs and Substances Act*, SC 1996, c 19.

The application will be supported by the following material:

- a) A supporting affidavit and exhibits attached thereto; and
- b) Such further and other materials as counsel may advise and this Honourable Court may permit.

July 26, 2021



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