



File No. S065587
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

VANCOUVER AREA NETWORK OF DRUG USERS (VANDU)

Plaintiff

And:

ATTORNEY GENERAL OF CANADA and
MINISTER OF HEALTH FOR CANADA

Defendants

NOTICE OF CONSTITUTIONAL CHALLENGE

(Pursuant to s. 8(2)(a) or (b)
of the *Constitutional Question Act*,
R.S.B.C. 1979 c. 63)

TAKE NOTICE that an action was commenced on the 30th day of August, 2006, in the Supreme Court of British Columbia at Vancouver, British Columbia, seeking the following relief:

- A1. A declaration that the conduct of the staff in the ordinary course of business at the safe injection site (SIF), located at 139 East Hastings Street, Vancouver, British Columbia, does not amount to or involve the commission of any offences at law and, as such, an exemption from any law under s. 56 of the *Controlled Drugs and Substances Act* (CDSA) or otherwise is not required or necessary;
- A2. A declaration pursuant to s.52(1) of the *Constitutional Act, 1982* to the effect that the medical treatment and all related matters necessarily

incidental thereto of persons addicted to a controlled drug falls within the constitutional jurisdiction of the Provincial legislatures under their general constitutional jurisdiction with respect to public health arising from either ss.92(7), (13) and (16) of the **BNA Act** or any combination thereof;

- B. A declaration of constitutional invalidity, pursuant to s.52 of the **Constitution Act, 1982**, as the appropriate and just remedy under s. 24(1) of the **Canadian Charter of Rights and Freedoms** for the breach of s.7 of the **Canadian Charter of Rights and Freedoms**, that the offence of the possession of all addictive drugs as set out in Schedule 1 of the CDSA, their preparations, derivatives, alkaloids or salts, contrary to s. 4(1) of the CDSA, is unconstitutional in that in its effects it imposes a level of state-imposed psychological stress that is constitutionally cognizable, and that is grossly disproportionate relative to its objects and that it therefore violates s. 7 of the **Canadian Charter of Rights and Freedoms** as affecting liberty and the security of the person in a manner that is inconsistent with the principles of fundamental justice. In the alternative, that the aforesaid offences are at least unconstitutional when an injection drug user (IDU) is onsite at the SIF, engaged in seeking *bona fide* medical and social intervention for his or her addiction;
- C. A declaration of constitutional invalidity, pursuant to s.52 of the **Constitution Act, 1982**, as the appropriate and just remedy under s.24(1) of the **Canadian Charter of Rights and Freedoms** for the breach of s.7 of the **Charter**, that s. 56 of the CDSA is unconstitutional to the extent that it vests an unfettered discretion in the Minister, enabling the Minister to deprive an individual of their right to liberty and their right to security of their person in a manner that does not accord with the principles of fundamental justice;

- D. An interlocutory order granting an interim constitutional exemption to the staff and IDUs at the SIF, pending the decision of this honourable Court at the conclusion of these proceedings.

AND TAKE FURTHER NOTICE THAT if this honourable Court determines that some form of exemption from the law is required, either for the staff at the SIF or the IDUs or both, and agrees that s. 56 of the CDSA is unconstitutional as aforesaid, then the Plaintiff seeks a court-ordered constitutional exemption for the staff and/or IDUs at the SIF, to be continued until such time as the Defendants put in place a valid constitutional process for the obtaining of exemptions that will enable the Province of British Columbia to carry out its constitutional health jurisdiction in a manner that is not subject to the unfettered discretion of the Defendant Minister of Health, and will enable IDUs to access such medical interventions without fear of arrest and prosecution, and that s. 56 be declared to be unconstitutional pursuant to s.52 of the **Constitution Act, 1982**, leaving it to the Defendant Minister of Health to enact regulations that will enable a constitutional exemption process to be put in place.

AND TAKE NOTICE THEREFORE that at the trial of this action, the plaintiff will seek relief by way of an appropriate and just remedy pursuant to s. 24(1) of the **Canadian Charter of Rights and Freedoms**, Part 1, Schedule B of the **Constitution Act, 1982**, including declarations of constitutional invalidity on the grounds that:

1. The offence of the possession of all addictive drugs as set out in Schedule I of the **Controlled Drugs and Substances Act**, their preparations, derivatives, alkaloids or salts, contrary to s. 4(1) of the **Controlled Drugs and Substances Act**, is unconstitutional as being in violation of the constitutional rights of injection drug users of these drugs to life, liberty and the security of their person, and the right not to be deprived thereof, except in accordance with the principles of fundamental justice, contrary to s. 7 of the **Canadian Charter of Rights and Freedoms**;

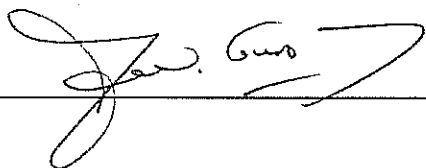
2. That s. 56 of the ***Controlled Drugs and Substances Act*** is unconstitutional and in violation of s. 7 of the ***Charter*** because it vests an unfettered discretion in the Minister of Health for Canada, enabling that Minister to deprive an individual of their right to life, liberty and the security of their person, and the right not to be deprived thereof, except in accordance with the principles of fundamental justice, as set out in s. 7 of the ***Canadian Charter of Rights and Freedoms***;

AND TAKE FURTHER NOTICE THAT in support of the action and the interim motion, the Applicant will refer to:

1. The pleadings and proceedings taken pursuant to the action, including the affidavits of:
 - a. The affidavit of Dr. Gabor Mate, sworn the 31st day of August, 2006;
 - b. The affidavit of Dean Wilson, sworn the 31st day of August, 2006;
 - c. The affidavit of Ann Livingston, sworn the 31st day of August, 2006;
 - d. The affidavit of Dr. Thomas Kerr, sworn the 31st day of August, 2006;
2. The judgments in the case of ***R. v. Malmo-Levine; R. v. Caine***, 2003 SCC 74 and in particular paragraphs 88 and 141 – 143 thereof;
3. The decision of the Supreme Court of Canada in ***Schneider v. British Columbia*** [1982] S.C.R. 112 and [1982] S.C.J. No. 64;
4. The decision of the Supreme Court of Canada in ***R. v. Monney*** [1999] 1 S.C.R. 652 and [1999] CanLII 678 (SCC);
5. The decision of the Supreme Court of Canada in New Brunswick (***Minister of Health and Community Services v. G. (J.)***) [1999] 3 S.C.R. 46 and [1999] CanLII 653;

6. The decision of the Ontario Court of Appeal in *R. v. Parker* [2000] O.J. No. 2787 (Ont. C.A.);
7. The decision of the Ontario Court of Appeal in *Hitzig v. Canada* (2003), 177 C.C.C. (3d) 449 (Ont. CA);
8. Such further and other materials and authorities as counsel deems advisable at the hearing of the matter.

DATED at Abbotsford, British Columbia, this 27th day of August, 2007.



JOHN W. CONROY, Q.C.
Counsel for the Applicant

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