

Amended pursuant to rule 24(1)(a)
Originally filed Jan. 19, 2007



No. S-065587
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

DEFENDANT

AMENDED STATEMENT OF DEFENCE

1. The Defendant Attorney General of Canada ("Canada") admits the allegations contained in paragraphs 2,3,6,8, the first sentence of paragraph 14, and paragraphs 15, 16, 17, 18 and 19 of the Amended Statement of Claim.
2. Canada has no knowledge of the allegations contained in paragraphs 1, 4, 5, 10, 11, 12, 13, 20, 21, 22 and 23a of the Amended Statement of Claim.
3. Except as expressly admitted, Canada denies every other allegation contained in the Amended Statement of Claim.
4. Canada states that on or about September 12, 2003, the Minister of Health Canada provided an exemption to the Vancouver Coastal Health Authority (the "VCHA") pursuant to section 56 of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, to operate a Supervised Safe Injection Facility (the "Site") in order to carry out a research pilot project (the "initial exemption"). The initial exemption permitted the VCHA to carry out the research pilot project in respect of the Site for a period of three (3) years.

5. In answer to paragraph 9 of the Amended Statement of Claim, Canada states that external research scientists from the B.C. Centre for Excellence in HIV/AIDS (the “Centre”) have evaluated effects of the Site on public health, on the health of the users of the Site, and on public Order. The Government of Canada provided funding for such an evaluation to VCHA until September 15, 2006, which in turn mandated the Centre to conduct the research project on its behalf.

6. Canada states that on or about September 12, 2006, the Minister of Health Canada provided a further exemption to the VCHA pursuant to section 56 of the *Controlled Drugs and Substances Act* to operate the Site (the “second exemption”). The final terms and conditions for the second exemption were provided to the VCHA on or about October 31, 2006. According to the terms and conditions, the second exemption will expire on the earliest of the following dates: the date on which the pilot research is terminated or discontinued, December 31, 2007, or the date on which the second exemption is revoked.

7. Canada states that the Amended Statement of Claim raises hypothetical and abstract issues that are not founded in or based upon specific facts in relation to any particular individual. Canada further states that the Plaintiff purports to raise a variety of claims and issues that may or may not apply to any or all users of the Site or to any or all staff that work at the Site, and thus are purely hypothetical.

8. Canada states that the Plaintiff has failed to assert the material facts necessary to found a valid cause of action or claim against Canada.

9. Canada states that the Plaintiff lacks the standing to assert the causes of action and/or to be granted any of the relief claimed in the Amended Statement of Claim.

10. Canada denies that the prohibitions against possessing and trafficking a controlled drug or substance set out in paragraph 4 and 5 of the *Controlled Drugs and Substances Act* violate section 7 of the *Charter*.

11. In the alternative, Canada states that if section 4 and/or 5 of the Controlled Drugs and Substances Act does violate section 7 of the *Charter*, and such violation is justified under section 1 of the *Charter*.

12. Canada denies that section 56 of the *Controlled Drugs and Substances Act* violates section 7 of the *Charter*.

13. In the alternative, Canada states that if section 56 of the *Controlled Drugs and Substances Act* does violate section 7 of the *Charter*, any such violation is justified under section 1 of the *Charter*.

14. Canada further denies that the application of sections 4 and 5 of the *Controlled Drugs and Substances Act* to the staff and users of the Site is *ultra vires* the Parliament of Canada and that the staff and users of the Site are entitled to a constitutional exemption from the same.

15. Canada states that sections 4 and 5 of the *Controlled Drugs and Substances Act* apply to the staff and users of the Site and are within the legislative competence of the Parliament of Canada. Furthermore, Canada states that sections 4 and 5 of the *Controlled Drugs and Substances Act* generally, and in so far as they apply to the activities of staff and users at the Site, fall within the exclusive legislative competence of the Parliament of Canada by virtue of section 91(27) of the *Constitution Act, 1867*, and the preamble to section 91 of the *Constitution Act, 1867*, that authorizes the Parliament of Canada to make laws for the peace, order and good government of Canada.

16. Canada further states that the issues raised in the Amended Statement of Claim raise policy questions that are not appropriate for judicial determination.

17. Canada states that the declaratory relief sought in paragraph 31 of the Amended Statement of Claim is too broad and is improper.

18. Canada relies on Rule 19(24) of the *Rules of Court*.

WHEREFORE the Defendant submits that the action should be dismissed with costs.

Dated: September 24th, 2007.

W McClintock per BC

William McClintock, Senior Regional Director
Department of Justice, B.C. Regional Office
Solicitor for the Defendant

Per: Brenda Carbonell

Business and Regulatory Litigation Section

THIS STATEMENT OF DEFENCE is filed by William McClintock, Senior Regional Director, of the Department of Justice Canada, whose place of business and address for delivery is: 900 – 840 Howe Street, Vancouver, British Columbia, V6Z 2S9, Attention: **Brenda Carbonell** Telephone: (604) 666-0314, Fax: (604) 666-6258.