

**FEDERAL COURT  
SIMPLIFIED ACTION**

**B E T W E E N:**

**THOMAS HARTLE, JANIS HUGHES, JAMES DOSWELL, BRUCE TOBIN,  
SHANNON McKENNEY, KATHERINE MARYKUCA, JESSE MERKS, and JANE  
HARRISON**

Plaintiffs

and

**HER MAJESTY THE QUEEN**

Defendant

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**REPLY**

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**A. Overview**

1. The Plaintiffs repeat and rely on the allegations contained in their Statement of Claim, filed July 27, 2022 (the “**Claim**”).
2. Except where expressly admitted herein, the Plaintiffs deny all allegations of fact contained in the Statement of Defence (the “**Defence**”) of the Defendant, Her Majesty the Queen (“**Canada**”).
3. The Plaintiffs admit the allegations of fact contained in paragraphs 7-9, 12-18, 20-31, 35, 37, and 39-43 of the Defence.

4. The Plaintiffs deny the allegations of fact contained in paragraphs 6, 10, 11, 19, 32, 34, 36, 38, and 44-49 of the Defence.
5. The Plaintiffs have no knowledge of the allegations of fact contained in paragraphs 5 and 33 of the Defence.
6. Capitalized terms used but not defined herein have the meaning given to them in the Claim and the Defence.

**B. Canada's International Obligations are not Prohibitive to the Claim**

7. The Plaintiffs deny that Canada's international obligations pursuant to the UN Conventions prohibit Canada from regulating medical access to psilocybin and psilocin in a constitutionally compliant manner.
8. Each of the UN Conventions identified provides exceptions for the medical regulation of otherwise controlled substances. In particular, the 1971 Convention recognizes that psychotropic substances for medical purposes are indispensable and that their availability for such purposes should not be unduly restricted.
9. In fact, the medical regulation of psilocybin acts in furtherance of the purpose of the 1971 Convention, which is aimed at protecting the health and welfare of mankind.
10. Further, the UN Conventions are not part of Canada's domestic law. If Canada's obligations under the UN Conventions conflict with any Canadian statute, including the *Charter*, the statute prevails.

**C. Suspension of a Declaration of Constitutional Invalidity Should only be Six Months**

11. At paragraph 49 of the Defence, Canada seeks to suspend any declaration of constitutional invalidity or inapplicability for 24 months, in order to permit sufficient time and flexibility to amend the legislation as appropriate.

12. This is an unnecessarily long delay period which will unduly prolong the suffering of many Canadians.
13. In the past five years, Canada has been provided with extensive information on the efficacy of, and options for the regulation of, psilocybin for medical purposes. The Legislature also recently considered the regulation of psilocybin when it reintroduced psilocybin to the SAP.
14. In addition, Canada has, as a reference for legislation, the regulatory system implemented for the medical use of cannabis, and international regulatory schemes for the therapeutic use of psilocybin.
15. Canada does not require 24 months to amend the *CDSA* or the *FDA*. In the past, and without the benefit of fully developed blueprints and without today's experience in regulatory oversight, Canada legislated a medical access system for cannabis in a shorter period of time.
16. The delay period sought by Canada also far exceeds those granted for the regulation of other complex health care matters, including medical assistance in dying and the medical use of cannabis under both the *CDSA* and the *Cannabis Act*, S.C. 2018, c. 16. Canada has demonstrated that it is capable of regulating medical treatments in far less than 24 months. There is no reason to unnecessarily prolong the suffering of Canadians when Canada is capable of legislating access sooner.
17. For these reasons, the Plaintiffs claim that any suspension of a declaration of constitutional invalidity or inapplicability should be granted for a period not exceeding six months.

#### **D. Remedy Sought**

18. The Plaintiffs repeat and rely on their requests for relief set out at paragraph 183 of the Claim.

September 6, 2022

Per: 

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