

**ONTARIO COURT OF JUSTICE
(South West Region)**

B E T W E E N:

HIS MAJESTY THE KING

Respondent

- and -

**SAMER AKILA, YASMYN AMIRY and KADEEM DAMON WILSON
Applicants**

NOTICE OF CONSTITUTIONAL QUESTION

The Applicants, Samer Akila, Yasmyn Amiry and Kadeem Damon Wilson, intend to question whether section 5 of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (the “*CDSA*”), with respect to schedule III substance psilocybin, contravenes sections 2(b) (freedom of thought) and 7 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11a (the “*Charter*”) and should be found to be of no force and effect pursuant to section 52(1) of the *Charter*.

In the alternative, the Applicants claim a remedy pursuant to section 24(1) of the *Charter*.

The constitutional question is to be argued in the Ontario Court of Justice on a date to be determined at the courthouse at 80 Dundas Street, London, Ontario.

The following are the material facts giving rise to the constitutional question:

1. The Applicants are charged with possessing psilocybin for the purpose of

trafficking contrary to section 5(2) of the *CDSA* and trafficking psilocybin contrary to section 5(1) of the *CDSA*. Psilocybin is listed in schedule III of the *CDSA*.

2. Section 2(b) of the *Charter* provides that everyone has the right to freedom of thought. Freedom of thought is a fundamental right that is critical for our democratic, religious, philosophical, spiritual, social, romantic, creative, professional, and medical decisions. Freedom of thought is necessary for the proper exercise of most other rights including freedom of religion, freedom of expression, freedom of belief, freedom of opinion, and the right to vote. It is a foundational right that fosters mental autonomy, dignity and identity. It is a bulwark against tyranny. It is the most important of all rights.
3. Psilocybin enhances thought in many ways. Psilocybin promotes mindfulness, openness, connectivity, creativity, cognitive flexibility, interpersonal closeness, gratitude, well-being, peace, calm, compassion, empathy, awe, spirituality, life meaning, and ego dissolution. Psilocybin is to freedom of thought what the printing press is to freedom of expression, what a church is to freedom of religion or what a passport is to freedom of mobility. It is a critical tool that allows one to experience that freedom in a more fulsome manner.
4. Psilocybin is also a safe substance that is not addictive or toxic and can be safely consumed.
5. The Applicants also allege that section 5 of the *CDSA*, with respect to psilocybin, contravenes section 7 of the *Charter* in that it breaches liberty and security of the person in a manner that is not consistent with the fundamental principles of justice, namely, arbitrariness, overbreadth and gross disproportionality.
6. A constitutional law must permit not just possession of psilocybin, but also

permit a means of legally accessing psilocybin. The right to possess psilocybin is useless without the right to legally access it.

7. The Applicants state that section 5 of the *CDSA* cannot be saved by section 1 of the *Charter* and should be struck down pursuant to section 52(1) of the *Charter*.

DATED at Toronto, ON, this 21st day of November 2023.

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