

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

HIS MAJESTY THE KING

Respondent

- and -

SAMER AKILA

Appellant

NOTICE OF CONSTITUTIONAL QUESTION

The Appellant, Samer Akila, intends to question the constitutional validity of section 5(2) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (the “*CDSA*”), with respect to schedule III substance psilocybin alleging that it 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 Appellant claims a remedy pursuant to section 24(1) of the *Charter*.

The constitutional question is to be argued in the Court of Appeal of Ontario on a date to be determined at the courthouse at 130 Queen Street West, Toronto, Ontario.

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

1. Psilocybin is a freedom of thought tool. Psilocybin is to freedom of thought what the printing press was to freedom of expression, what a church is to freedom of religion or what a passport is to freedom of mobility. It allows one to experience the freedom in a more fulsome manner. In Canada, *Charter* tools have been consistently protected.
2. Psilocybin promotes spirituality, connectivity, cognitive flexibility, ego dissolution, empathy, compassion, and life meaning. A psilocybin experience is for many one of the most personally meaningful and spiritually significant experiences of their lives.
3. Psilocybin can be consumed in a safe manner and is not addictive or toxic.
4. Section 2(b) of the *Charter* provides that everyone has the right to freedom of thought. Freedom of thought is described as a fundamental right. It is critical for 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.

5. The Appellant also alleges that section 5(2) 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 not prohibit possession of psilocybin, but also must not prohibit any practical means of legally accessing psilocybin. The constitutional right to a substance or a procedure is useless without a practical, legal means of accessing it. Laws that prevent such access are unconstitutional.
7. The Appellant states that section 5(2) 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*.
8. At trial the Appellant brought a constitutional challenge under sections 2(b) and 7 of the *Charter* to section 5(2) of the *CDSA*. The application was dismissed. The Appellant is appealing this decision. The Appellant was convicted of possessing psilocybin for the purpose of trafficking contrary to section 5(2) of the *CDSA*. Psilocybin is listed in schedule III of the *CDSA*.

DATED at Toronto, ON, this 23rd day of March 2026.

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**Form 2
BACKSHEET**

COA-26-CR-0047

Court File No. (if known)

M

Motion No. (if known/applicable)

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(specify name)

NOTICE OF CONSTITUTIONAL QUESTION

(specify title of document)

(if an affidavit, specify name of deponent and date sworn/affirmed)

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