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ONTARIO COURT OF JUSTICE

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HIS MAJESTY THE KING

v.

SAMER AKILA

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PROCEEDINGS ON CHARTER APPLICATION

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BEFORE THE HONOURABLE JUSTICE G. ORSINI (VIA ZOOM)

on February 10, 2025, at LONDON, ONTARIO

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APPEARANCES:

V. Mazza / K. Benzakein / A. Pashuk

Counsel for the PPSC

P. Lewin

Counsel for the accused

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Legend:

[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) - Indicates preceding word has been spelled phonetically.

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**R. v. Samer Akila
Preliminary Remarks**

Transcriptionist's Note:

Zoom proceedings present challenges with transcription given that they are recorded on only one channel resulting in an inability to isolate speakers when parties are speaking over one another. This, along with occasional audio glitches, make portions of the proceedings inaudible or indiscernible, which have been noted accordingly.

MONDAY, FEBRUARY 10, 2025

THE COURT: Good morning, everyone.

COUNSEL: Good morning, Your Honour.

THE COURT: So, this is day one of the application, so I just want to make sure that we have all of the materials, so I just want to go through it with counsel. What I have on the application itself is the applicant's notice of constitutional question, it comes in four parts, as well as the applicant's factum. And then I have the Crown responding record, together with its book of authorities and its factum. Is there anything else that I should have? I don't believe I have a book of authorities from you yet - Mr. Lewin, I don't think I have a book of authorities from you, you've referenced all the cases, but I don't have the actual book of authorities.

P. LEWIN: Oh, okay. You know, I thought I had provided one. I was thinking about - and this would be after we finish the evidence portion of this, with Your Honour's permission, I might provide the same materials but with CanLII links, just for Your Honour's convenience, if Your Honour's okay with that.

THE COURT: You mean in the factum itself?

P. LEWIN: Yes.

THE COURT: Yeah, that would be preferable actually, that's fine.

Preliminary Remarks

P. LEWIN: Okay.

THE COURT: So, those are the materials that I have, so that's fine. Now, as we proceed through the evidence, I take it we have Professor Walsh today?

P. LEWIN: Yes.

THE COURT: And do you anticipate filing his affidavit again, Mr. Lewin, on the application itself?

P. LEWIN: Well, we've agreed that the evidence from the qualification hearings can apply to the application proper. So, my question is is that necessary? I mean, I'm certainly happy to do it if Your Honour....

THE COURT: I would prefer we file things separately. What I've done, just so you know, is I have extracted Professor Walsh's CV and affidavit materials into a separate file, and it is my desire to keep track of the exhibits in that fashion so that I can perhaps just have them all on one USB drive at the end of the day, so things aren't too complicated. So, if you're prepared to proceed in that fashion, we'll simply mark, once we have called the witness, we'll mark that affidavit and accompanying materials which will include his CV as exhibit one on the application.

P. LEWIN: Sounds good. Which brings me to my next question, what email should we be forwarding it to? I know I struggled a bit - I seem to keep sending it to the wrong place, and....

THE COURT: Counsel....

COURT CLERK: Counsel, I'm just going to change my name - this is the clerk of the court, I'm just going to change my name on Zoom, you can just copy and paste and send it there.

Preliminary Remarks

THE COURT: Sorry, but in terms of filing materials, I think that's what you're asking generally is where to file them.

5 P. LEWIN: Yes. Where should I forward them? I assume there's an email, an ideal email to send them to.

V. MAZZA: I think, Your Honour, if I can assist...

THE COURT: Mm-hmm.

10 V. MAZZA: ...unfortunately, there's never an ideal email as it turns out.

THE COURT: Yes.

V. MAZZA: I think maybe what we'll do for best practice, with Your Honour's permission, is we can copy Master Clerk and also the trial coordinator and the general OCJ inbox. It's typically what we've been doing with [indiscernible].

15 THE COURT: Yes, as long as we have the three of them on there. Are you going to be my clerk for the whole week?

20 COURT CLERK: I don't know, Your Honour.

THE COURT: Okay. I can make a request, if you'd like that.

THE COURT: That'd be nice.

COURT CLERK: Okay. Sounds good Your Honour.

25 THE COURT: All right, let's do that then. All right.

V. MAZZA: And Your Honour, if I may, just to round out the housekeeping - I'm sorry to interrupt, unless you have any other questions of your own...

THE COURT: No.

30 V. MAZZA: ...round out some housekeeping from our perspective. All right, thank you. So, first of all, I'll reintroduce our team since it's been some time.

Preliminary Remarks

So, Vince Mazza for the PPSC, along with my colleagues Kerry Benzakein and Amber Pashuk.

THE COURT: Yes, good morning.

V. MAZZA: The second item that you heard and that we'll confirm obviously with counsel and PPSC is that we're also looking to have all of the *voir dire* evidence applicable to these proceedings.

THE COURT: Yes.

V. MAZZA: The third was simply to confirm what Your Honour had, we know that now, and it seems like you have everything you need to. The fourth thing I'll ask, did Your Honour receive an updated schedule? We sent one last week after some discussion. If not, I'll [indiscernible] nonetheless.

THE COURT: I do have a schedule, I'm not sure if it's - the schedule that I have - give me a moment here. So, Professor Walsh today and then it says we have some civilian witnesses and I take the evidence of, is it Professor Deol or Dr. Deol to be filed?

V. MAZZA: To be filed, that's right.

THE COURT: All right.

V. MAZZA: And that's tomorrow as well.

THE COURT: All right. And then we'll deal with Professor Swain on Wednesday?

V. MAZZA: Yes.

THE COURT: Then Thursday and Friday continuation, if necessary?

V. MAZZA: That's right.

THE COURT: All right. And then we have the following week that we're sitting on the 24th of February, Professor Nutt for two days and then Professor Rosenblatt - or sorry, Dr. Rosenblatt?

Preliminary Remarks

V. MAZZA: Yes. And I'll offer a bit of a qualification to both if I can.

THE COURT: Mm-hmm.

V. MAZZA: So, I'll start perhaps with Professor Nutt, and Mr. Lewin I'm sure can appreciate that this at least cursory comment was coming. We, in discussion with Mr. Lewin, received quite a large volume of additional studies, over a hundred additional studies that Mr. Lewin is proposing to make use of in some way or another, through Professor Nutt. That's largely why we pushed Professor Nutt to dates of his own and week of his own...

THE COURT: All right.

V. MAZZA: ...because we need to obviously review and consider all of that additional material and the proposed use. We're hopeful that we can proceed as planned. Obviously, it was quite a lot of large and recent disclosure, so we just want the court to know that there may be a need to readjust again both the schedule and potentially to readjust our position as any of those materials become difficult for us to review and consider in time, or are otherwise problematic. That's the only disclaimer I'll provide for Professor Nutt on the 24th and 25th, and where the 26th comes in, Professor - I mean, this is important, Dr. Rosenblatt is available on the 26th, potentially for some time on the 27th, but as Your Honour heard and is aware, he has a busy medical practice. So, I appreciate that the courts are quite busy, quite stacked, but to the extent possible, ask for as much accommodation that Your Honour can provide because

Preliminary Remarks

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Dr. Rosenblatt is available that day and realistically that day only. So, if for whatever reason we're derailed or he's unable to testify it could, again, take the order of operations for a bit of a spin I'll say. And then the 27th and 28th again gives us some buffer for continuation if necessary. We're hopeful that if everything goes according to plan, we may be able to make a third week - I don't know if we should do that yet, but it certainly looks like that's where we're going.

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THE COURT: So, is there a possibility that we won't get to Professor Nutt on the week of the 24th or is that not going to really be an issue?

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V. MAZZA: We're hoping it's still not an issue. We're in continued talks with Mr. Lewin about what - I shouldn't say continued talks, we have sense of what Mr. Lewin wants to do with the additional studies. I don't know that they will be problematic, I'm only raising that for the court because of how much we received and how much we are still reviewing.

THE COURT: All right.

V. MAZZA: We'll obviously need to - I think we'll be in a better position by the end of this week or perhaps next to advise the court if it is a problem, if that's of any assistance.

THE COURT: On the off chance that Mr. Lewin hasn't called all of his evidence, are you prepared to call Dr. Rosenblatt out of order, or do you want to wait until you've heard what Professor Nutt has to say? I would assume the latter, but I don't want to...

V. MAZZA: Probably. The other - I'll be frank, the bigger difficulty is availability for Dr. Rosenblatt.

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THE COURT: Right.

5 V. MAZZA: I'll check on the earlier dates in case there's a possibility he's available the 24th and 25th, but so far, my indication is that the 26th is the day that he's certainly available. The others, I'm not sure.

10 THE COURT: All right. The only reason I ask is because I have another matter that's sort of waiting in the wings that we haven't completed, and it's a dangerous offender application that's going to take some time as well. And so I put that matter to this Wednesday to speak to to see if we could get some further dates in the hopes that we'd know whether that third week that you now have booked is going to be used. So, if you could perhaps turn your mind to that and see if we could get an answer by Wednesday, I can let counsel on that matter know that they can use that third week. So, let's see how things play out by Wednesday then, and we'll go from there. All right?

15 V. MAZZA: Thank you, sir.

20 THE COURT: All right, so - sorry, I don't see your client on the video now, Mr. Lewin. Oh, there he is. Okay.

25 P. LEWIN: Your Honour, a couple more housekeeping things.

THE COURT: Sure.

30 P. LEWIN: So, in terms of where I send it, so I sent it to the email address - the exhibits - I sent it to the one provided in the chat box and I received another email on Friday, and I don't have it in front of me, but my clerk has it, it's not the trial

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coordinator's email. Should I be sending it to the trial coordinator as well?

THE COURT: Yes, you could.

P. LEWIN: Is that what I should...?

THE COURT: If you could, thank you.

P. LEWIN: Oh, okay. And if that should be done now, I should get that now, otherwise if that can wait 'til later, then....

THE COURT: What were you going to be sending?

P. LEWIN: Just the exhibits, so proposed exhibits.

THE COURT: All right. Well, for purposes of the experts' evidence that we already have in, I'm content to simply extract those portions. So, for example, with respect to Professor Walsh, I've already extracted from your materials, I believe it was 62 pages which begins with his affidavit and ends with his CV. So, I've already extracted that and it's my intention to simply have that put on a thumb drive with the other exhibits so that there'll be one thumb drive with all of the materials on it.

P. LEWIN: Okay.

THE COURT: So that's fine then.

P. LEWIN: You don't need to worry about that. I have all of that material. I just didn't want to file the application materials since it includes other materials that obviously aren't going to be relied upon. I'm thinking specifically of the one witness that I didn't qualify. So, let's just proceed in that fashion then. So, we'll start with Professor Walsh then and we'll mark at the appropriate time his affidavit and accompanying materials as exhibit one on the application.

Preliminary Remarks

P. LEWIN: Very good. And one last thing, Your Honour. I'm not going to be relying upon microdosing as part of this application, so....

THE COURT: Okay, sorry, that name again was?

P. LEWIN: Oh, it's microdosing, so it's a way to take psilocybin in which the amount you consume, you don't experience anything at the time, so....

THE COURT: All right.

P. LEWIN: So, there's a few references to it, but those can be ignored.

THE COURT: All right, thank you.

P. LEWIN: Thank you, Your Honour.

V. MAZZA: And Your Honour, just so you're aware, because we know that we have a few counsel and we don't want too many cooks in the kitchen, today will be Ms. Benzakein's assignment.

THE COURT: All right.

K. BENZAKEIN: Good morning, Your Honour.

V. MAZZA: So, I'll turn it over to Ms. Benzakein.

THE COURT: Good morning. All right. So, let's start with Professor Walsh then, Mr. Lewin.

P. LEWIN: Thank you.

THE COURT: Good morning, Professor. You can hear us all?

PROFESSOR WALSH: Yes, I can, thank you. Good morning.

THE COURT: All right, thank you. And do you prefer to be sworn or affirmed, Professor?

PROFESSOR WALSH: I can be affirmed.

THE COURT: All right. Mr. Clerk, if you could affirm Professor Walsh.

ZACHARY WALSH: AFFIRMED

5 THE COURT: So, to expedite matters, Mr. Lewin, I've received the affidavit and accompanying materials of Professor Walsh, you wish that to be marked as exhibit one on the application?

P. LEWIN: Yes, please. Yes.

THE COURT: All right, so that will be exhibit one.

P. LEWIN: And there should be three exhibits to that.

THE COURT: Yes.

10 P. LEWIN: And Exhibit B will be after this exhibit.

THE COURT: Yes, I have those as part of his materials, thank you.

P. LEWIN: Thank you.

15 **EXHIBIT NUMBER 1**: Professor Walsh's affidavit and accompanying materials - produced and marked.

EXAMINATION IN-CHIEF BY P. LEWIN:

Q. Professor Walsh, where are you located right now?

A. I'm in Kelowna, West Kelowna, British Columbia.

20 Q. Okay, and where are you - where is the building that you're in?

A. I'm in my home office.

Q. Okay. And you are alone in that office?

A. Yes, just my cat.

25 Q. Okay. And what do you have with you?

A. I have the affidavit and I have the articles that I'm meant to be familiar with.

Q. Okay. And these would be the articles that you cited in your affidavit?

30 A. Correct.

Q. Okay. Except for the one on microdosing?

A. Yes, I don't have those.

Q. Okay. And I believe you also have one further study we're going to discuss called Lake, Lucas, 2024, is that correct?

A. That's correct.

5 Q. Okay. So, at paragraphs 9 and 10 of your affidavit you refer to the Griffiths, Johnson, Richards 2011 study, and at paragraph 10 you say that in that study 72 participants had a complete mystical experience.

A. Seventy-two percent of the participants.

10 Q. Yes. Do I have that right?

A. Yes, you said 72 participants, it's 72 percent of the participants.

Q. Thank you. What is a mystical experience and how important is it to people?

15 A. So, the mystical experience is, you know, something that's been documented throughout history um, as a profound experience of altered um, cognitive experience an altered thought experience that involves - you know, it can have fuzzy boundaries, but what it - what it refers to is an experience of connection with often a higher spiritual force. It needn't be a specific entity force, 20 it can be an experience of boundlessness, of going beyond one's ego or one's sense of what one's normal limits are cognitively, a sense of oneness, spirituality, often accompanied by positive um, positive feelings and transcendence.

25 So, it's something that has been, you know, part of human history for a long time. These kind of experiences are recounted throughout the great spiritual texts of various cultures, and it's something of great personal significance. People often will talk about it as one of the most important experiences of 30 their lives. Mystical religious experiences are primary for so many individuals and cultures. People go to incredible lengths to experience them, whether it's through practising of, you know,

5 various rituals or pilgrimages. And it's something that is reliably evoked through the use of psychedelics and um, and of great personal significance. Sometimes people will list it amongst the most significant experiences of their life. So, yeah, people do it a lot for mystical experiences. It's been a guiding light of human society endeavour for time immemorial.

Q. And you mentioned, you said goes "beyond one's ego", what do you mean by that?

10 A. Well, one's normal sense of limitations or sense of self, the sense of being, you know, enclosed within an individual entity, so it's called ego dissolution where people feel connection to a broader sense of humanity and being. For religious people it can be a sense of oneness with a religious force or deity. And for people who don't adhere to a specific religion, it's often just a sense of oneness with nature or with all creation or the cosmos or what have you. So, it's a sense of going beyond 15 one's normal limits in terms of their sense of self.

Q. Now, I'm going to take you to the study itself. You discuss this study at paragraphs 9 and 10 of your affidavit?

20 A. Yes.

Q. Okay. But I'll take you to the study, and this is Griffiths, Johnson, 2011, and I'll take you to page three.

A. Okay.

25 Q. And under "Study Design and Overview" about five lines down they set out the number of participants there were. How many participants were there in this study?

30 A. Eighteen volunteers were randomly assigned to receive active psilocybin dose, either ascending or descending sequence, so like 18.

Q. Okay. And what do they mean by ascending or descending dose sequence?

5 A. Some received - so they received a series of doses, some started low and then went higher, others - that would be the ascending dose, and others started at a higher dose and then went down, that would be a descending dose.

Q. I'm going to now take you to the last page of the study, it's called Table 6.

A. Okay.

Q. And there's a series of statements here, what are these?

10 A. These are verbatim comments, self - um, they're written comments about the nature of behavioural changes volunteers attributed to either both of the two highest dose psilocybin session experiences in a retrospective questionnaire. And this is a 14-month follow-up, so this is a year and a bit, year and two months subsequent to the experience.

15 THE COURT: Sorry, Mr. Lewin, is this study part of the materials?

P. LEWIN: It is not. It's cited in the materials but I'm going to ask that be made an exhibit, Your Honour.

20 THE COURT: All right.

P. LEWIN: Q. Professor Walsh, I won't go through all of them but I'm going to take you to three of them. If you can go to volunteer number 205 and read out the statement?

25 THE COURT: Can you tell me first of all, what's the article?

P. LEWIN: Oh, the article is - the name of the article is "Psilocybin occasioned mystical type experiences immediate and persistent dose-related effects".

30 THE COURT: Can you send a copy of that in to the clerk so I can have that? Do you want to mark it as an exhibit?

Zachary Walsh - in-Ch.

P. LEWIN: I do. And it should - if it hasn't arrived, it's arriving momentarily. I'm hoping it's already arrived. Has anything arrived from my clerk?

THE COURT: Mr. Clerk, do you have it?

COURT CLERK: No, not as yet, Your Honour.

THE COURT: All right, let's get a copy of it first so I can follow along, please.

P. LEWIN: If I can have the court's quick indulgence to....

THE COURT: Sure.

P. LEWIN: Oh, I have a message that it was sent six minutes ago.

THE COURT: Was it sent to the clerk?

P. LEWIN: Daniel.N-E-H-M-E @ontario.ca.

COURT CLERK: That's correct, yeah.

THE COURT: Just give us a moment, see if we've received it.

... PAUSE

COURT CLERK: Counsel, did you want to send it again?

P. LEWIN: I'm going to ask my clerk to do that.

COURT CLERK: Okay, thank you.

K. BENZAKEIN: And I beg your pardon, Your Honour.

If my friend could also copy the Crown so we're just all getting the same things at the same time, please?

P. LEWIN: Sure.

THE COURT: Perhaps while we're doing that, if I could just have counsel maybe just in the future whatever documents you're going to be relying on for the day, if you could send them in to the clerk and to the trial coordinator's office, so at least we'll have them on file so they'll be ready to file and they'll be marked when you refer to them. Thank you.

... PAUSE

Zachary Walsh - in-Ch.

COURT CLERK: I can't explain, Your Honour, why it's not coming in.

5 P. LEWIN: Your Honour, if you want, just while we're waiting, there's another housekeeping matter I was gonna deal with at the end, but since we've got a little court time are you content?

THE COURT: Sure.

10 P. LEWIN: So, two of the civilian witnesses who are going to be testifying tomorrow, one of them has concerns, Antonio Cillero has concerns about his name being identified in the judgment and he's hoping that his initials be used in the final judgment, has concerns about his employer finding out about psilocybin use. And the other one, it's a similar request for a different reason, Sarah Van Lang is a - she discusses her father, and it was a problematic relationship, she doesn't want her father seeing that she's been talking about him in a negative way, it just could damage the relationship. So, I'm not sure if Your Honour would be - have any issue about that. I mean, I could get into further details, but that's essentially it.

15 THE COURT: Under what section do I have authority to - I mean....

20 P. LEWIN: I don't have an authority at my fingertips, so I'll put my mind....

25 THE COURT: That's fine. I'll consider it.

P. LEWIN: Okay.

THE COURT: Do you have the exhibit?

30 COURT CLERK: I don't, Your Honour. The other thing I could suggest is Mr. Lewin, perhaps I could send you an email and then you could just reply back to that email?

P. LEWIN: Sure. What I'm going to suggest is that you send it to my assistant.

COURT CLERK: Sure.

P. LEWIN: Oh, I see I just got the email, so I'll give you my assistant's email.

COURT CLERK: Okay.

P. LEWIN: It is Lewin, L-E-W-I-N and Sagara, and that's a full and, A-N-D, and Sagara is S-A-G-A-R-A @ gmail.com. And I just received the - I'm not sure if it's come through to the court.

COURT CLERK: Okay, just sent that now.

P. LEWIN: Okay.

... LENGTHY PAUSE

K. BENZAKEIN: Your Honour, while my friend is looking for that, I wonder - I'm a bit concerned that Mr. Akila's - ah, there we go, that his camera keeps turning off. It's important that for purposes of s. 650 of the Criminal Code that we ensure that Mr. Akila is here during the hearing.

THE COURT: Yes, Mr. Akila, just make sure you have your camera on at all times, all right? Thank you.

K. BENZAKEIN: Thank you, Your Honour.

THE COURT: You got it?

COURT CLERK: Your Honour, I have it, it's just not letting me access the links that are - sorry, I do have it, it's not letting me access the links that have the items in it. Let me just see if I can move it to a different box where it accesses it. Okay, yes, I do have them now. I'll forward them to you now, Your Honour. There's four different files here, which one was marked exhibit two?

Zachary Walsh - in-Ch.

THE COURT: Just send them all to me. I take it they'll all be going in at some point.

COURT CLERK: Okay.

THE COURT: So, which study is this that you're referring to?

P. LEWIN: This would be the Griffiths - it's called "Psilocybin occasioned mystical type experiences", the lead authors are Griffiths, Johnson and Richards and it's 2011.

COURT CLERK: So, Your Honour, that is exhibit two?

THE COURT: Yes, so it's a 2011 Griffiths, Johnson and Richards study. Thank you.

P. LEWIN: Thank you, Your Honour. And that is exhibit two then?

THE COURT: No issue with that, counsel?

(No audible response)

THE COURT: All right, thank you. It'll be marked as exhibit two.

EXHIBIT NUMBER 2: Griffiths, Johnson and Richards study, 2011 - produced and marked. 6

P. LEWIN: Thank you.

Q. Professor Walsh then, if I could take you to Table 6, and I'm gonna ask you to go through three of the volunteer statements, first volunteer 205, three lines down, could you read that into the court record?

THE COURT: Sorry, just let me get there. Table 6? Yes, go ahead.

A. It says, "I have a stronger desire for devotion, have increased yoga practice and prayer. I have better interaction with close friends and family and with acquaintances and strangers. I feel more certain of my career as an author. I eat less food to

Zachary Walsh - in-Ch.

make me full. My alcohol use has diminished dramatically. I consider myself to be better at self-care now than before the study".

Q. Thank you. And then I'm gonna take you down to volunteer number 210.

5 A. "I feel that I relate better in my marriage, there's more empathy, a greater understanding of people and understanding of difficulties and less judgment, less judging of myself too."

10 Q. Thank you. And then finally I'll get you to read volunteer number 211.

A. "I take more time in nature, with art, I feel closer to children and parents, I'm more comfortable with friends and acquaintances. I'm more committed to my career. I eat better and have taken up dance."

15 Q. So, I'll stop you there, we won't read all of them, but they're statements from the participants in this study and they're referring to their effects after the study, is that correct?

A. That's correct.

20 Q. Okay. So, at paragraph 15 of your affidavit, you discuss the Smigielski 2019 study. Are you at paragraph 15?

A. Yes, I am.

Q. Okay. And you are familiar with this study?

A. I am.

25 Q. What was this study about?

30 A. Um, this is a study comparing participants in a mindfulness group retreat, so it's a pretty intensive meditation retreat, and some of the participants received psilocybin, others did not, and it compares the responses of the two, those who did and those who did not receive psilocybin, both of whom completed the meditation retreat.

Q. So, I'll take you to the actual study.

Zachary Walsh - in-Ch.

THE COURT: What paragraph are you at in the affidavit?

P. LEWIN: Paragraph 15.

THE COURT: Thank you.

P. LEWIN: And Your Honour, I'm not making this an exhibit, so it's not one of the things I emailed over. I'm just going to have Professor Walsh discuss a few aspects of the study.

THE COURT: All right.

P. LEWIN: Q. Professor Walsh, you've got the study there?

A. I do.

Q. So, I'll take you to page eight of the study, go to the heading, "Methods, Participants".

A. Yes.

Q. Okay. And I believe at "Methods, Participants" they start out the number of participants in the study?

A. Yes.

Q. How many participants were there?

A. Participants were 39 expert Buddhist meditation practitioners.

Q. And then I'll take you to the next page, under "Study, Procedure and Setting", they discuss how many received a placebo and how many received psilocybin, and this is four, five lines down.

A. "Two or three different times following the same procedure 16, 8 placebo, 8 psilocybin, and the second 23, 11 placebo, 12 psilocybin.

Q. Thank you. So, that's a total of 19 placebo and 20 psilocybin?

A. Correct.

Q. Okay. And you indicate in your affidavit at paragraph 15, that there was a four-month follow-up?

A. Yes.

Q. All right. So, let's go to page five of the study and the bottom paragraph on the page, if you could read that into the record. Read that slowly, please.

A. Sorry, what is the heading?

Q. The very bottom, it's "Changes in behaviour and attitudes", and I'm looking at....

A. Is that the last paragraph?

Q. Yes.

A. "Each participant designated a closely related person with whom he or she had frequent contact since the retreat complete a third-person LCIR with reference - that's the life change index - with reference to participants. Completed questionnaires were received from 39 data participants and 37 significant others. A few participants declared there's no closely related person with whom they have frequent contact. These community observers ratings showed a similar overall pattern of changes. Significant higher scores on self-acceptance and quest for meaning sense of purpose scales in the psilocybin group than in the placebo group."

Q. What's the purpose of getting the feedback from these people close to the participants?

A. Well, so in addition to the participants themselves reporting changes in their life, these are significant others saying yes, these people do seem different.

Q. Is this something that is sometimes used in studies, the psilocybin studies?

A. Ah, yes. You know, it takes a lot of rigour to be able to follow up not just with the participants but with significant others, but there have been other studies that have done this and reported roughly similar responses, that people are more prosocial, more connected, etcetera.

Q. And then if I could take you to page six?

A. Is that the next page?

Q. Yes, please.

A. Okay.

5 Q. Under "Meaningfulness of the study experience", if you could read the first three lines? Read them slowly, please.

A. "At the follow-up participants were asked how personally meaningful the study experience was. A large proportion of participants in the psilocybin group rated their experiences among either the top ten, 50 percent, or top five, 10 35 percent, most meaningful experiences of their life. Whereas the majority of participants in the placebo group rated their experiences meaningful as things that happened once a month, once a year or every five years."

15 Q. Does this surprise you?

A. Um, I mean, based on past research showing how meaningful people find psilocybin, no, it's consistent with other findings that have shown that people consistently rate mystical experiences engendered by psilocybin as among the most 20 meaningful experiences of their life, spiritually, personally.

Q. At paragraph 16 of your affidavit you refer to the Griffiths, Richards, Johnson 2008 study, what was this study about?

25 A. This is a similar panel of - these folks are not in a meditation retreat, um, but similarly, they're administered psilocybin and they find that it's rated regularly amongst the most personally meaningful experiences of their life and among the most spiritually meaningful. So, 58 percent rated it among 30 the top five most personally meaningful experiences and 67 percent rate it amongst the most spiritually meaningful experiences of their life.

Q. I'm gonna take you to the actual study.

A. Okay.

Q. Your Honour, I'm not gonna make this an exhibit, I'm just gonna have Professor Walsh briefly discuss it. And so, if I can take you to page three of the study?

A. Okay.

Q. And under "Study Design" about three lines down, they talk about the number of participants and who received psilocybin, can you just briefly tell us about that?

A. Um, 36 volunteers were randomly assigned to receive either two sessions or three sessions, so 30 got two sessions, six got three. Um, those with two sessions were randomly assigned psilocybin or methylphenidate also known as Ritalin, on the first session and the alternative drug administered on the second session. The third group of six people received methylphenidate on the first two sessions and psilocybin on the third. So, the reason for having a third session was to help control for expectancy effect, so that everyone didn't know going into the second session that perhaps they were still - had equipoise whether or not they would receive psilocybin.

Q. And then if I could take you to the last page of the study, it's marked Table 3?

A. Table 3. Okay.

Q. And if you could tell us what these comments are?

A. These are verbatim written comments about the nature of the spiritual experience for all volunteers who rated the experience at the 14-month follow-up, being among the top five spiritual experiences of their life.

Q. And I'm just going to take you through three of the quotes, volunteer 21?

A. "The experience of death which initially was very uncomfortable, followed by absolute peace and being in the

presence of God. It was so awesome being with God that words cant't describe the experience."

Q. Volunteer 37?

A. "The experience expanded my conscious awareness permanently. It allows me to let go of negative ideas faster. I can accept what is easier."

Q. And then number 46?

A. "The complete and utter loss of self, the sense of unity was awesome. I now truly do believe in God as an ultimate reality."

Q. Okay, thank you, Professor Walsh. Now, at paragraph 12 of your affidavit...

A. Yes?

Q. ...you estimate that the results of the Griffiths, Johnson 2011 study have been replicated several times and are reliable. What do you mean by that?

A. What I mean is that several studies have used a similar methodology when I talk about direct replications, so a similar methodology in which they administer psilocybin in a lab um, and then measure mystical experience subsequent to it and measure the importance of it at some time down the road. So, in that case, ah, it's a pretty close replication meaning they did sort of the same thing with a different group of people and different experimental team and all that, but still replication. So, that has been done several times and reliably across these experiments they demonstrates that a substantial proportion of people have a full mystical experience, and so it's reliable in that sense.

It's also reliable in the sense that other studies are not replication but they use different methodologies, most commonly asking people to retrospectively report because it's

5 much easier to do than to administer psilocybin, so a bunch of surveys and other, you know, cross-sectional studies, interviews in which folks will respond that yes, they too have had mystical experiences using psilocybin and that these were very important experiences. And you know, it's also reliable in the sense that various cultures across time and location have identified psilocybin and psychedelic experience more broadly as being key spiritual importance in their lives. So, it's reliable across context, across methodologies, and this specifically has been replicated.

10 Q. Where did the mystical scale questions and states of consciousness questions come from?

15 A. Well, they come from the study of religion. Um, so the concept of a mystical experience is a concept from the study of religion. Um, and you know, one of the - one of the remarkable things about psychedelics is it allows for a deeper study of religion and understanding of that because whereas mystical experiences without psychedelics are somewhat difficult to predict or to measure, the psychedelics provide an opportunity to reliably engender mystical experience, so an incredible tool for the study of religion and of transcendent experiences.

20 Q. And to what extent are these measures that are used that we see in these studies are they used in other studies? So, such as the mystical experiences - I mean, there are series of questionnaires, to what extent are these tools used in other studies and are they reliable?

25 A. The mystical experience questionnaire has been used in numerous studies and has been found to be reliable and has a reliable factor structure, which is sort of the term of art for the construction of surveys that show that, you know, that things that cluster together in one setting cluster together in other settings, so it's a reliable survey and used widely with many people.

Q. What proportion of people in studies tend to have mystical experiences from psilocybin?

5 A. So, one of the features of the mystical experience questionnaire is it is on a continuum, and this is the same as many surveys, so you can get a continuous score that can be higher or lower, or they also have a cut-off which is a complete mystical experience, which is often used just to for the sake of ease, it's easier to interpret than some continuous score. And across studies we normally see more than 50 percent, in some cases as high as 70 percent of individuals reporting a complete
10 mystical experience subsequent to - subsequent to psilocybin.

Q. You mentioned it was not a continuum, if someone doesn't have a complete mystical experience can the experience still be very significant?

15 A. Yes, absolutely. So, you can still see an increase in mystical experience and, you know, even if someone has features of a mystical experience but not all of it, you may still have ego dissolution, they may still have a change perspective on reality and that parameters of that, so it can still be a very
20 profound experience without being a complete mystical experience.

Q. At paragraph 29 of your affidavit you refer to the *European rating of drug harms*, so if I could first take you to paragraph 29 of your affidavit?

25 A. Yes?

Q. Okay. And so, what are you discussing here in paragraph 29?

30 A. Um, discussing - and you know, it's something that's been done by a few different studies and usually different jurisdictions, but one way to understand the relative harms of drugs is to compare them to one another and then to rank them from least harmful to most harmful and these rankings are typically

constructed based on a combination of harms to the individual and also harms to society.

Q. And you refer to an example of such a ranking is the 2015 article *European rating of drug harms*?

A. Yes.

Q. And that's Amsterdam, Nutt, Phillips, 2015?

A. That's correct.

Q. All right. And you are familiar with that study?

A. I am.

P. LEWIN: Okay. Your Honour, in the affidavit Professor Walsh accepts and adopts the study. I'm going to ask that it be made an exhibit. I'm not gonna have further questions for him on it but it is one of the things that was emailed to you.

THE COURT: Any objection to that being filed, Ms. Benzakein?

(No audible response)

THE COURT: No? All right. Exhibit three will be the study 2015, Amsterdam, Nutt and Phillips.

EXHIBIT NUMBER 3: *European rating of drug harms* 2015, Amsterdam, Nutt and Phillips - produced and marked.

P. LEWIN: Thank you.

Q. Professor Walsh, I'm going to take you to paragraph 36 of your affidavit and I think there might be a typo here. In the first sentence you refer to - you state, "In some numerous clinical trials of carefully monitored adverse events and concluded that with the protocols established by those trials, psilocybin can be consumed in a manner that minimizes the already small risks." In the brackets you reference paragraphs 31 to 33, am I correct in saying that should be 32 to 34?

THE COURT: Sorry, what paragraph are we on, Mr. Lewin?

P. LEWIN: Paragraph 36.

A. Yes.

5 Q. Okay, so in the brackets in the second line, paragraphs 31 to 33 should be 32 to 34?

A. That's correct.

10 Q. Okay. Thank you. Professor Walsh, how easy or hard is it to get into a clinical study?

15 A. Um, a specific clinical study, it's incredibly difficult. You would have to be in the right geographic location where the study is being held, and you would have to have the conditions that are specific to the study, and you'd have to meet the screening criteria. So, it's really almost impossibly difficult to say to yourself, I want to be in a given clinical trial and then find your way in, it tends to be more serendipitous where it looks like there's a trial being held where you're at. And in general, that's the way the clinical trials like it, it's more representative if it's just a random bunch of people as opposed to people who are specifically motivated to be in a given trial. So, it's not something that you could try to do really, effectively.

20 Q. The word "safety" comes up periodically with these issues, how do you interpret the word "safety"?

25 A. Um, well, the term "safety" broadly, you know, in the terms with regards to clinical trials, I think the safety of it refers to, you know, how safe is a drug, and nothing is a hundred percent safe, so it's a question of does it confer risks outside of the risks that one might experience in day-to-day life? Um, so, you know, there's different types of safety and different types or risks. Is it safe to go skiing? You know, it's less safe than it is to not go skiing but it's still considered safe.

30

5 Right now, I have a child that's driving across the Coquihalla, a highway, it's less safe than where she's staying at home to go to regular high school. She's on a field trip but it's still safe. So, it's within a range of things that are considered safe. And within that range there's some variability. You know, cross-country skiing is probably safer than downhill skiing but they're both safe.

Q. What would you say about the safety of using psilocybin in an unsupervised setting?

10 A. There are - I would say that compared to using other substances or doing other things that are considered within the norm of social experience, and again, not to belabour the skiing, but compared to things like that, it's relatively safe. It is safer to have someone supervising you, and that's recommended, very clearly because it can be disorienting. During the experience, 15 one can be quite disoriented, and so that disorientation, even some imbalance could lead to falls or accidents or other things.

Q. I'm gonna direct you to Exhibits B and C of your affidavit.

20 A. Just to return to the articles, you know, compared to other drugs, including drugs like alcohol or legal drugs, it's considered to be quite safer than something like alcohol.

Q. What would you say about the - you talked about a person on psilocybin walking around unsupervised and it'd be quite - how safe is it for someone who is drunk to be walking 25 around unsupervised?

30 A. I mean, it's also unsafe. You know, alcohol is associated with all kinds of assaults and accidents, engaging in violence, being a victim of violence, um, so also less safe to be on alcohol than it is to be sober but still within a relative range of what we consider safe I would say.

Q. So, I'm gonna take you to Exhibits B and C of your affidavit.

A. Yes.

Q. And here you - these are the Oregon psilocybin access rules?

A. Yes.

Q. Okay. Are there certain stipulated reasons that people can access psilocybin in Oregon?

A. Um, well, people are allowed to use it for personal reasons or medical reasons, so it doesn't have to be within specific confines, as long as people are not excluded for medical reasons, they're allowed to - to use it.

Q. And I'm gonna take you to the first page of Exhibit C and it's also marked page 196 of the application record, and this document is called "Client Information Form", you have that in front of you?

A. I do.

Q. So, what is this form?

A. This is the questionnaire that clients must review and complete with a facilitator prior to participating in an administration session of psilocybin.

Q. Okay. And are there situations in which - what's the purpose of this?

A. This is to make sure that it's going to be ah, relatively safe for someone to take psilocybin, whether they're eligible to take it.

Q. And the form indicates that it must be completed with a facilitator, that's correct?

A. Yes.

Q. What is a facilitator?

A. A facilitator is someone who's gone through the process of getting certified as a psilocybin facilitator within the Oregon Health Authority.

Q. And other than completing the form with the applicant, do they have any other ongoing involvement?

A. The facilitator?

Q. Yes.

5 A. Yeah, the facilitator is present, also the person that's present during the session and for I think a - an integration session subsequent to it, if they desire.

Q. And I'll take you to page four of the document...

A. Mm-hmm.

10 Q. ...and this is at page 199 of the application record, and this marked "Facilitator Review and Evaluation". What is this?

A. This is an instruction sheet that directs the facilitator on how to respond to the information in the client information form.

15 Q. And then I'm gonna take you to page two of Exhibit B, and this page 194 of the application record.

A. Okay.

20 Q. And at the top of the page, numbers one and two discuss a preparation session. What is a preparation session?

A. A preparation session is an opportunity for the facilitator and the participant to clarify, answer any questions, to be introduced, you know, if you're gonna be with someone during this experience you don't want it to be the first time you meet them, so it's to create some familiarity between the facilitator and the client, to inform the client of the procedures that will go on, consent to those procedures, and a little bit of education around what to expect because that makes the experience better typically, so it's preparation in that way, and make sure they have a transportation plan for how they're gonna leave the place, um, and answer any questions, and ask questions of course.

Q. How many preparation sessions do you think are necessary for a healthy person using psilocybin?

5 A. I think, you know, with some of the people that I work with who have serious medical concerns and mental health concerns, at least two is expected. So, the healthy person, I think one session could be sufficient enough to create some familiarity between the facilitator and the participant and to answer any questions and to clarify safety and all the rest of the procedures.

10 Q. And I think you said this a moment ago, but just to clarify, does it make a difference if the person has a serious illness, some serious mental health issues?

15 A. Yeah, if there's a serious mental health issue then there should be some - some communication between the person's physician. So, if they have a serious mental health condition, they should be under the care of someone, and so then there would be a consultation and awareness from their primary care provider with the facilitator to ensure that this is a good idea.

20 Q. Does it make a difference if the person has had experiences with psilocybin before?

25 A. For the sake of the Oregon Public Health, I believe the people need an introduction session just as well, but certainly if someone has had the experiences before, it creates less pressure on the facilitator to educate them about the potential features of the experience. They would be familiar with it, so certain things could be perhaps covered more efficiently.

Q. Administration is number three.

A. Mm-hmm.

30 Q. Where would the consumption of the psilocybin take place?

A. In these cases, they take place in a licensed centre that is designed to facilitate the session, so....

Q. In your view, what kind of supervision should there be, if it's a healthy participant?

5 A. A healthy participant there should be someone present throughout the session just so that - and this is again to increase the likelihood of positive experience, so that if someone is to - you know, typically, when someone's in one of these sessions, they'll have a sleep mask on, an eye mask, and headphones, they're listening to some kind of music and they're you know, they're not looking outwards so their attention is directed inwards to facilitate that kind of mystical personal experience. And so, when they take the eye shades off it may be disoriented or they may become distracted and they may want to get up and even just go to the restroom - go to the bathroom, in which case you want the facilitator to be there. So, the person has to be present so that when and if the participant 10 requires assistance, there's someone there right away. And even if they become, you know, concerned they can be calmed down, they can be comforted, they can be directed back in if they get distracted, all of that. So, because you don't know when the person might require assistance, the course of the experience is quite variable, so you want someone to be present so that they can assist when needed, so there needs to be someone there. 15

Q. In terms of how many people should be there, does it change if it's a group?

25 A. Well, you know, if there's - it depends on the - you know, I think if there's several people, because you don't know when um, when someone's gonna be ah needed, you might have to have two people. If it's just one person, then you might want to have someone sort of nearby in case the one person has to use the restroom or get a snack. You know, it takes several hours, so you need one person and ideally one person on standby or, 30 you know, one person with a very large platter.

Q. They reference integration at number four. Here it appears that integration is optional in the Oregon system, is that correct?

A. That's correct.

Q. What do you think about integration?

A. It can be very helpful to, you know, when we talked about those articles earlier we saw people, you know, reporting still very good experiences um, many months after. So, a think and a belief in the practice is that integration can help facilitate those kind of longer term um, influence into normal life beyond - beyond the acute effects of the psilocybin, so integration is quite helpful when we use it in a clinical setting, so to treat mental illness and it's a regular part of the procedure.

Q. So, for a healthy person, how much integration?

A. Like I say, I don't think integration is necessary, it can be beneficial. One or two sessions is typically sufficient, just a chance to talk about the experience, put it into context. A skilled facilitator can draw out parts of the experience and help the participant make more of them in that way.

Q. In your view, should this be different if the psilocybin is for medical use?

A. Well, when the psilocybin is for medical use, it's often combined with an adjunctive psychotherapy. So, in those cases, the adjunctive psychotherapy is often part of the treatment and is delivered during the preparation and integration session. So, in those cases there'll often be two preparation sessions, one that's focused, as I've described, on preparation and practical matters and answering questions, and then one that maybe delivers some of the therapeutic, sort of plant some of the seeds of the therapy, whether it's you know, identifying core values or exploring what mindfulness and freedom from negative

thoughts might look like, how to get a perspective on those thoughts, that type of thing. So, that will be something that's introduced in the preparation and then unpacked in the integration. But that would be for specific indications, depression, anxiety, substance use, things that you're trying to change, whereas in a non-medical session, it may or may not be paired with psychotherapy, it may just be more of a standalone, in which case there's less integration required. So, I would say - the short answer is usually two sessions prep, two sessions integration in a clinical practice, in a non-clinical setting, I would think one preparation session would be minimal.

Q. How would you compare the record-keeping requirements or needs of a clinical trial as opposed to a healthy person using psilocybin for their own purposes?

A. Well, there's much higher levels of need in a clinical trial typically, if the results are gonna be published and open to peer review. Then in many cases it's part of drug development and record-keeping needs to be meticulous for drug development.

Q. Does that impact how much continued involvement there would be with participants?

A. Yeah, absolutely. So, a clinical trial there's gonna be end points and different follow-up points, people are gonna be tracked across time, so we wanna know if someone is feeling better the next day, we wanna know two weeks later, you know, a year later. Often, there'll be three-month, six-month etcetera check-ins, three months, six months, nine months, twelve months, different schedules, and a lot of it depends on the budget and scope of the trial. But in a clinical trial, we're following people up for specific results whereas in personal use, it's really up to the person how they want to track their experience.

Q. Does therapy ever play a role in psilocybin clinical trials?

A. Absolutely. In psilocybin clinical trials it's usually an adjunctive therapy, so there's often a combination of at least some amount of talk therapy. More recent trials have been trying to make it less and less as we try to get psilocybin approved as a drug, it's unusual to combine a drug in a psychotherapy, so um, try to minimize the combination. But yes, in clinical trials psilocybin is typically combined with the psychotherapy, and it's referred to as psychedelic-assisted psychotherapy, so that it's primarily psychotherapy assisted by psilocybin.

Q. So, would it be fair to say for a medical patient, it's primarily about psychotherapy?

A. It's about the combination of the two, yes, it's a combined therapy.

Q. Okay. Would that therapy end or would that be continuing after the psilocybin session? How important is continued therapy?

A. Um, well, it depends on the case. You know, usually patients are instructed to maintain whatever usual therapies they're on, so if they're in ongoing therapy, they would continue therapy afterwards. But in the case of the clinical trials, we try to encapsulate the intervention in a way that could be reproduced, so it will say, you know, two sessions after or three sessions after etcetera, but it's a - it's a specific amount.

Q. But I'm sorry, you said "try to encapsulate", can you repeat that?

A. Well, in a clinical trial you want to say how many sessions of therapy you have combined with the psilocybin so that it can be the same each time. So, when you say it's

continued on after, it's gonna depend on what is being tested in the trial.

5 Q. Are you aware as to the protocols that have been applied in Health Canada approved Special Access Program psilocybin access in Canada?

A. I am, because I've had the opportunity to work on a few of those trials.

10 Q. And how many prep sessions have you seen on those SAP programs?

15 A. Uh, I would say typically we do two prep sessions, you know, one to be introduced and answer questions, another one to explore some potential therapeutic applications, interventions, etcetera, so they add in a little therapy on the second one, and then often we'll have one or two integration sessions after. So, we do that because, you know, it's certainly a lot of work for the team and for the client to qualify for the SAP and to get the psilocybin session, we want them to make the most of it, so it definitely increases the likelihood of positive experiences we believe if we provide an integration session and an extra prep. 20 So, typically, we'd have two prep and one integration, although as I mentioned, you know, a single prep would probably be absolutely minimal, and then a bit of a check-in after, just so you can see how people are doing.

25 Q. And when I refer to Special Access Program psilocybin access, that refers to medical access, is that your understanding?

A. That's right, special access is only available for specific medical conditions as approved by a physician.

30 Q. Do people with treatment-resistant depression get access to medical psilocybin under the Special Access Program?

A. It's possible but it can be quite complicated, but that would be one condition. You know, when we say treatment-

resistant depression, it means that they've tried several treatments and have now received adequate symptom relief following those treatments. So, in those cases, yes, treatment-resistant depression is one condition, but it's difficult to access through the Special Access Program.

I would say the majority of people in the Special Access Program are people with short prognosis uh, for medical conditions, so it's end-of-life anxiety, often people who have already qualified for medical assistance in dying. And those are the people who I would - you know, I don't have the exact numbers in front of me, but my impression is that those are the people that make up the preponderance of Special Access Programs, is people who have received dire medical diagnoses and are grappling with anxiety around those diagnoses so that they can make - you know, have the best quality of life for however long they have left, whether it's a few months or a few years. Knowing that you have those diagnoses can be quite distressing, and psilocybin induced psychedelic experiences have great positive effects for people who are grappling with end-of-life anxiety in large part because it reconnects people with meaning in life, that's what a mystical experience does. So, even in depression where people have often lost their meaning in life, that's where it's also effective. So, it's reconnecting people with spirituality and a sense of meaning in their life, so that works for depression and also for end-of-life anxiety.

Q. Are you aware as to whether people with serious treatment-resistant depression have had Special Access Program access?

A. I believe so. I believe there's been a few. I don't have a list of all the special access approvals. As I say, I think the majority of them have been people with end-of-life related anxiety because those are such dire cases that - those are

Zachary Walsh - in-Ch.

cases where people are eager to go through the procedure, the arduous procedure of getting special access.

Q. I'll change gears a bit and take you to paragraph 20 of your affidavit.

5 THE COURT: Actually, we're going to take the morning recess now. I just want to speak to counsel though, perhaps we can put the witness in a break-out room. We'll return in 20 minutes.

WITNESS: So, I'm off for 20 minutes?

10 THE COURT: Yes.

WITNESS: Okay.

15 THE COURT: All right. So, Mr. Lewin, a couple of things. Number one, your client is repeatedly talking to somebody else and moving about. I appreciate he's got to be on video but he's also got to be paying attention to the court, not having third party conversations while the court is in process, that's number one. And number two, we generally don't allow witnesses to testify with cats in their lap, it's a matter of decorum for me. Can you please ask your witness to get somebody else to take care of his cat or put it in another room. All right? So, we'll stand down for 20 minutes. Thank you.

25 R E C E S S

U P O N R E S U M I N G :

ZACHARY WALSH: PREVIOUSLY AFFIRMED

30 THE COURT: All right. So, ready to continue then?

P. LEWIN: Your Honour, I'll just advise that the cat is out of the room.

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THE COURT: All right.

P. LEWIN: And he was not speaking to anybody.

THE COURT: No, I know. I didn't hear him give evidence, that's fine.

P. LEWIN: All right, thank you, Your Honour.

EXAMINATION IN-CHIEF BY P. LEWIN CONTINUES:

Q. So, Professor Walsh....

THE COURT: I'm sorry, is your client on the screen?

SAMER AKILA: Yeah, just one second. Sorry. Sorry.

THE COURT: There you go. All right, thank you, go ahead.

P. LEWIN: Q. Professor Walsh, if I could direct you to paragraph 20 of your affidavit?

A. Yes.

Q. At paragraph 20 you indicate that psilocybin is the most widely used serotonergic psychedelic. Why do you say that?

A. Um, well, that's what our surveys demonstrate across, you know, multiple cross-sectional surveys psilocybin is by far the most widely used, particularly in North America. Um, it is the most easy to source and the most easy to produce. You know, here in British Columbia certainly it's quite - grows wild in many places, um, so easy to access. And even in places where it doesn't grow wild, it's quite easy to cultivate with minimal space and spore kits seem to be available in a variety of sources. So, it's the most widely accessible and most widely used I think in part also because it has a shorter duration than the second most widely used, which would be LSD, um, but this is much - a few hours shorter, so it is the most widely used.

Q. Psilocybin is a few hours shorter than LSD?

A. Correct.

Q. Okay.

THE COURT: When you say "shorter" you mean in terms of the experience?

A. Yeah, the duration of experiences is a couple of hours less, so that it's more efficient, more accessible.

5 P. LEWIN: Q. So, I'm going to direct you to the Lake, Lucas, 2024 study, and this is one of the ones that was forwarded to Your Honour.

THE COURT: Yes.

Q. Professor Walsh, are you familiar with this study?

10 A. Yes, I am.

Q. All right, what was this about?

A. This a broad survey of consumer characteristics, patterns of use and access of psychedelics around the world, primarily anglophone.

15 Q. And I'll take you to page three which sets out the exact number surveyed, and under "Results" in the first line...

A. Yup.

Q. ...how many were eligible for inclusion in the survey?

20 A. Six thousand three hundred and seventy-nine.

Q. And then I will take you to page four, the next page, and under "Psychedelic Use" on the top right, they discuss the psychedelics that were of interest, and they do discuss psilocybin, what do they say about psilocybin?

25 A. Of the eleven psychedelics of interest specified in the survey, psilocybin was used by the highest number of respondents, 90.8 percent, so about 91 percent.

Q. Okay. And what was the raw number?

30 A. Five thousand, seven hundred and ninety-one.

Q. And then I'll take you a little lower down on that same page, the second paragraph from the bottom on the right,

there is some - the authors discuss motivations for use, how often was personal growth or general wellbeing cited?

A. Um, personal growth is the most cited reason, 85 percent across all regions, um, general wellbeing was the second, um, 69 - 68.9 percent overall, so it's the two top ones.

Q. All right. And what's your view of these findings?

A. Ah, they're not surprising. Those are the main reasons why I think people use psychedelics, is for personal growth. And you know, part of that goes back to what we were discussing with the mystical experience, it can be a transformative experience, so people are looking for better connection with themselves, with their own values, with their sense of spirituality, those are the reasons why people use it.

Q. Okay. And that applies - you said psychedelics but that applies to psilocybin?

A. That applies to psilocybin primarily, yeah.

Q. All right. And then I'm going to finish off by getting you to read a passage as to what the authors found and I'm gonna get you to comment on it. So, I'm gonna take you to page six, and at the bottom beginning with "While 80 percent" and then I'm gonna stop you just before the end on page six.

A. Okay.

THE COURT: Sorry, is this the last page?

P. LEWIN: This is the third-last page. It's mostly a big chart at the top two-thirds of the page.

THE COURT: Give me a moment. Oh yes, okay.

P. LEWIN: Q. So, Professor Walsh, beginning at "While 80 percent of respondents"...?

A. "While 80 percent of respondents reported past year use of psychedelics, the most common frequency reported was once every one to five months, and only 14 percent cited

5 weekly use or more. As opposed to compulsive patterns of use, these findings suggest deliberate and infrequent use as the norm in this population, consistent with past research showing that psychedelic substance use disorders, atypical. Moreover, while recreational use was common, other of that motivation more closely aligning with life enhancement emerged as more prominent. Specifically, personal growth and general wellbeing were the most often reported motivations for use in most regions."

10 Q. Thank you. And then I'm just going to take you to one more sentence, if you could turn the page, and that top sentence beginning with "The frequency"?

A. Sorry, the top sentence....

Q. So, beginning with the words....

15 A. Yeah, okay, I gotcha. "The frequency and motivation patterns captured here suggest that the average surveyed psychedelic consumer engages in highly controlled and intentional use centered around life enhancement."

Q. So, what's your view of these findings?

20 A. Um, not at all surprising. You know, psychedelics are not substances that tend to lead to compulsive use at all. So, they're not things that people use regularly, they're used as very - sometimes only a few times across the lifespan for people to have these mystical experiences and reconnect with their values and then they live according to them. And perhaps
25 they want to be reminded of those or they're, you know, every couple times a year or every few years they want to [indiscernible - audio cuts out] with their values and their spiritual life, but it's not something that people are gonna come home after work
30 and want to use psilocybin.

It can be a challenging experience. It's not - it works on a different set of neurotransmitters, brain systems,

5 than the reinforcement system, so they don't - it's not associated so much with dopamine, which is what we see things like stimulants and alcohol tend to be reinforcing. Anything that's reinforcing really tends to coalesce around that dopaminergic system and this is not where psychedelics have their action, so people don't tend to crave them and they're not used, you know, on a regular basis to help unwind at the end of the day or to make people more gregarious. It's usually an internal and sometimes a somewhat challenging experience. Um, so it doesn't surprise me that people use it infrequently and in an intentional way.

10 P. LEWIN: Thank you, Professor Walsh. The Crown will have some questions for you.

THE COURT: Just give me a moment. Yes, Ms. Benzakein.

15 K. BENZAKEIN: Thank you, Your Honour.

CROSS-EXAMINATION BY K. BENZAKEIN:

20 K. BENZAKEIN: Professor Walsh, my name is Kerry Benzakein, I'm one of the prosecutors on this case, or lawyers for the Crown, I'll have some questions to ask you. I'm gonna start with some background about your preparation for giving your evidence today.

Q. So, first, can you tell me what materials you've reviewed and considered in advance of giving your evidence today?

25 A. Well, I have, you know, in detail my affidavit and the articles that are cited in it.

Q. Okay. So, the materials that you prepared, you reviewed those in advance of giving your evidence today?

A. That's correct.

30 Q. All right. Did you conduct any additional research since you gave evidence on the *voir dire*?

A. Well, I mean, I'm constantly um, updating my understanding of psychedelics, it's my area of primary practice,

so there's certainly a convergence, so I've likely learned more things about psychedelics, but they weren't particularly in preparation for today.

5 Q. All right, let me ask it a different way. After having been examined at the *voir dire*, did you seek to answer any questions that came up during your testimony?

A. I'm not quite sure what you mean.

10 Q. So, you did not reference, for instance, the Lake and Lucas study in advance of the expert *voir dire*, but you now have it as part of your evidence, how did that come to pass?

A. Um, through discussions with - with the attorney, with Mr. Lewin.

15 Q. So, you spoke with Mr. Lewin, and did he identify a gap in your evidence that should be filled?

A. Not so much, no. He said is there anything new or interesting that you've come across that is relevant.

20 Q. All right. And what you came across that was new and relevant was the Lake and Lucas study?

A. That's correct.

25 Q. Okay. Did you have an opportunity - did you take the opportunity I should say, to review any of the materials filed by the respondent in this case?

A. I'm not sure what those - what those would be.

30 Q. Okay. Is there anything that you read from any of the other witnesses?

A. No.

Q. Did you speak to any of the other witnesses?

A. No.

Q. Okay.

A. I don't know who the other witnesses are.

Q. Did you know that David Nutt was a witness?

A. Um, well I heard it - yes.

Zachary Walsh - Cr-Ex.

Q. Okay. Did you speak to him between...

A. No.

Q. ...between giving your evidence at...

A. No, I haven't.

5 Q. Okay, just let me finish the questions. I know you think you know what I'm asking...

A. Right.

Q. ...but sometimes you guess wrong, so.... So, you didn't speak to David Nutt between the *voir dire* and today?

10 A. No.

Q. Okay. In advance of giving your evidence on the *voir dire*, did you speak to Dr. Nutt about this application?

A. No.

Q. Okay. In advance of drafting your affidavit, did you speak to Dr. Nutt about this application?

15 A. No. No, I have had - I don't know Dr. Nutt well at all. I don't have regular communication with him.

Q. All right. Have you had any discussions with, or do you know who the civilian witnesses are in this case?

20 A. No, I don't.

Q. Okay, you've had no discussions with them, I take it?

A. I have not.

Q. Okay. Now, in terms of your discussions with Mr. Lewin, did you make any changes to - well, let me put it this way: Are there any changes you'd like to make based on discussions with Mr. Lewin, either to your evidence or to your affidavit?

25 A. No, I'm comfortable with it as it is. I didn't know that was an option.

30 Q. Did you reconvene with Mr. Lewin after the *voir dire* to discuss how it went or what should be included in your evidence today?

Zachary Walsh - Cr-Ex.

A. Sorry, is the *voir dire* the one where they determined that I was an expert?

Q. Yes.

A. And that I could do it remotely?

5 Q. Yes. Well, those are two different things. So, the *voir dire* is the evidence that you gave back in November or December.

A. Okay.

10 Q. So, did you have discussions with Mr. Lewin about maybe what additional evidence you should give following the first time you gave evidence back then?

A. I've met with him since then, yes.

Q. And did he provide you with sort of guidance on what more evidence you should provide?

15 A. He more had questions for me about - about, you know, what was - fine points of the evidence [indiscernible].

Q. And did he give - I'm sorry, one more time?

A. I wouldn't say he directed me, no.

Q. Okay. And you said he gave you guidance on the fine points of the evidence, did I get that right?

20 A. No, I gave him guidance on the fine points of the evidence. He was curious...

Q. Okay.

A. ...about things in the articles that - yeah.

25 Q. Okay. I'm glad I asked. Okay. So, the next thing I want to ask you about that is your relationship with Dr. Nutt, but I think you've already sort of - you've taken me there already. So, you don't have a professional relationship with Dr. Nutt?

A. No.

30 Q. All right. You cite his research quite heavily in your affidavit, is that just because he's the, you know, world expert on this?

Zachary Walsh - Cr-Ex.

A. Yeah, he's a prominent figure in the literature.

Q. Fair to say then that the opinions that you've developed and you've told us about are based in large measure on Dr. Nutt's research and opinions?

5 A. I wouldn't say necessarily in large measure, but he's prominent so he appears on many, um, many articles that I have reviewed and it would be hard for me to extrude what's specifically from him and just from the broad literature on psychedelics, but he would be part of that literature.

10 Q. I see. Okay, I want to talk a little bit before we get into your new evidence, about the scope of your expert opinion. So, as you know, I'll just remind you, the court has found that you're an expert in the following areas for which you can give opinion evidence: So, the use of psychedelics, right?

15 A. Mm-hmm.

Q. Yes? Psilocybin use, effect and access including the extent of use in Canada, you've given some of that evidence already today, right?

A. Sure. Yes.

20 Q. And it includes an opinion on the prevalence of psilocybin use in Canada, the health risks associated with it and why people consume psilocybin given the value they place on the thought related effects associated with it. You recall that?

25 A. Yes, that all sounds correct.

Q. Okay. And I just want to pause here to ask you or to put to you that that's the reason that you went into detail about the mysticism elements of psilocybin use, is that fair?

30 A. That would fall under the motives and experiences, yeah.

Q. Okay. And then the final point on which you were qualified was to provide an opinion on the health and safety risks

associated with the consumption of psilocybin when consumed under circumstances similar to the protocols established for clinical trials or the Special Access Program, right?

A. Yup. Yes.

Q. And to be clear, you're not a medical doctor, right?

A. No.

Q. Okay.

A. Clinical psychology professor.

Q. I'm sorry?

A. I'm a clinical psychologist and a professor.

Q. Right. So, you're not - you're not an expert on, for instance, the medical need for psilocybin?

A. Well, I'm a clinical psychologist, so um, when it comes to mental health and the treatment of mental health, I am an expert, and those are the contexts where psilocybin is used.

Q. Let me put it a different way: You were not qualified in the medical aspects of psilocybin use, right?

A. I'm not entirely sure what you mean. I'm not a medical doctor.

Q. All right. And the list of qualifications I read out, or the list of approved qualifications I read out, it didn't include your opinion about the medical use of psilocybin, right?

A. Well, for mental health conditions, I've worked on many clinical trials and been a therapist and produced research, all based on the use of psilocybin - or much of it based on the use of psilocybin for mental health.

Q. I see. But one more time, you're not a medical doctor, right?

A. I'm not - I'm not a medical doctor.

Q. And in your capacity as a medical professional who employs psilocybin, it's as a psychotherapist, right?

A. That's correct.

Q. Okay. And in that capacity, you conduct therapy using psilocybin as an assistance to the therapy, have I understood that right?

A. That's correct, yeah.

5 Q. Okay. So - all right, I understand. I want to move on to - I'm just going to get a little bit deeper into your affidavit just for a moment.

A. Sure.

Q. You wrote this affidavit yourself?

10 A. I did.

Q. Okay. And just to be clear, I understand you probably consulted with Mr. Lewin to ensure it covered all the points that he wanted covered, right?

A. Yes, he laid out some questions that I respond to in the affidavit.

15 Q. But the content is all yours?

A. The content is mine, yes.

Q. Okay. And you've sort of already addressed this but just to put a fine point on it, you continue to stand by the content of that affidavit?

20 A. Yes.

Q. All right. And I think you'll agree with me that there are two exceptions to the content of that affidavit you might want to change, okay? The first is that you indicated in your affidavit that you had received a thousand dollars in compensation for your work on a project and during the expert *voir dire* you indicated to my colleague that oh, it turned out that you never collected that money, you put in the affidavit just to be safe, you remember that?

25 A. That's correct.

30 Q. Okay. So, that's one change you would make - and you agree with me that's a change you would have made?

A. [Indiscernible - audio cuts out] medical life sciences in three.

Q. Right. So, that's one change....

A. Yeah, that's the thousand dollars and it's been nothing.

Q. Right. So, that....

A. So, technically it's less than a thousand but it's zero.

Q. And I think what you explained to us at the *voir dire* is that you just wanted to be safe, just in case you got paid in the meantime, right, have I got that right?

A. [Indiscernible] some consultation, I wouldn't want to err - yeah.

Q. All right. Do you now understand though that whatever's in a sworn statement has to be true at the time you swear the statement?

A. Yes.

Q. Okay. And there was one other fact that my colleague drew out and that was that when you indicated that you had given evidence before, what it turned out you had done was to file an expert report, do you recall that?

A. Sure. I mean, it sounds right. I'm not quite - I'm not - what are you referring to?

Q. It's - it's not that important, Professor, I just want to sort of ensure that we've got the full scope of what, if anything, the changes - sorry, let me start that sentence again, what changes, if any, should be made to your affidavit. You'll recall that you indicated that you'd given evidence, it was in your CV, but it turned to - you turned out to correct yourself and say that really what you'd done was written a report, do you recall that?

A. Sure.

THE COURT: And I think in fairness, the witness indicated that his understanding of what evidence was may have been the issue. Is that fairly stated, Professor?

A. Yes.

THE COURT: All right, thank you.

K. BENZAKEIN: And thank you, Your Honour, that's quite right.

Q. So, Professor, what I'd like to start with is the use of psychedelics, the preponderance of use of psychedelics by Canadians, that's one of the areas you've been qualified in as an expert?

A. Sure. Yes.

Q. And in fact, this is really your specialty, right, drug use by Canadians?

A. Sure, it would be one of them, yeah.

Q. This is something that you are employed to study, right? You get grants for this?

A. Mm-hmm. Yes.

Q. And you swear in your affidavit at paragraph 23 - I'll give you a moment to get there.

A. Okay, yeah.

Q. You indicate "The most recent national statistics pertaining to the numbers of individuals in Canada who consume psilocybin from an unregulated source are drawn from the 2019 edition of the *Canadian Alcohol and Drugs Survey*", right?

A. Correct.

Q. Okay, I want to show you that - I'm going to show you that - moment's indulgence, please?

THE COURT: Yes.

K. BENZAKEIN: Because now I'll have to share my screen, which I am notoriously terrible at.

THE COURT: So, we'll just have to give you access.
One moment.

K. BENZAKEIN: Oh, sorry.

COURT CLERK: You now have access.

K. BENZAKEIN: Thank you. Is it doing it?

A. Yup, [indiscernible]

THE COURT: Yes.

K. BENZAKEIN: Wonderful. Thank you.

Q. All right, is this what you were referring to,
the Canadian....

A. Yeah, it looks like the website for the report.

Q. Okay.

A. Yeah.

Q. So, I'm going to take you through a few - just a
few small elements of that. The first is that - and if you want,
I can take you to it in the report, I'm just wondering if you may
know it offhand, you indicate that based on this report that the
current numbers as of 2019 are that approximately 587,000 Canadians
used hallucinogens, you agree with that?

A. Yeah.

Q. And that we didn't have - in this survey there
were no specific numbers with respect to psilocybin, right?

A. That's correct.

Q. Okay. And you go on to say in your affidavit,
you say - and I'm quoting here, "Our more recent survey indicates
that of all users, 80 percent used psilocybin."

THE COURT: What are you referring to there?

K. BENZAKEIN: I'm sorry, Your Honour?

THE COURT: What paragraph are you referring to?

K. BENZAKEIN: This is in paragraph 23, it's about
halfway down the page, "That survey did not report

specific numbers regarding psilocybin, however our more recent survey of psychedelic users indicated that psilocybin was the most widely used psychedelic relative to other substances" etcetera. Is everyone there?

THE COURT: Yes.

K. BENZAKEIN: Thank you.

Q. Just before I go on, Professor Walsh, what is "our survey", what are you referring to?

A. Um, well, I refer to it in um - oh, where is this? It's in here, it's um, the number - yes, number 13. So, it's a study that we've done with the University of Toronto and with other researchers across Canada, um, looking at psychedelic users.

Q. Okay, so this is the 740 adult users of psychedelics?

A. Yes. Yes.

K. BENZAKEIN: Your Honour will find that at paragraph 13 of the affidavit.

THE COURT: Yes.

K. BENZAKEIN: Q. And to be clear, Professor, you haven't provided a copy of this survey, right?

A. That's correct, I have not.

Q. And maybe you can correct me, but I went looking for it and I couldn't find it. Is it available for anyone else to review at this point?

A. It is not. We're preparing it for publication. There's another paper that's come from that survey, um, so we have published something from it, which was about caregiver communication with psychedelics, but these numbers were not in it.

Q. So, there's no way for us to look at the data or to sort of dig into the conclusions that have been drawn at this point?

A. No, the 80 percent. But I will say that the Lake and Lucas and other studies find similarly that psilocybin,

you know, among psychedelic users, psilocybin is by far the most widely used [indiscernible].

Q. Fair enough.

A. So, I would say 80 percent is low, I think it was closer to 90 in Lake and Lucas.

Q. Okay, moving back to your affidavit, again in paragraph 23, you use the data that's in the 2019 edition of the *Canadian Alcohol and Drugs Survey* to conclude that approximately 500,000 Canadians have used psilocybin, and I think you indicate this past year, right?

A. Ah, yeah.

Q. Okay. Professor, the 2019 edition of the *Canadian Alcohol and Drugs Survey* is not the most recent survey, it was repeated more recently, did you know that?

A. I don't know that the results are accessible yet.

Q. How did you access the 2019 survey? Did you do it using that page that I showed you?

A. Yeah, I believe so, yeah.

Q. Okay, I'm gonna show you another page. Moment's indulgence, please. Can you see that now?

A. 2023 report, yeah.

Q. Did you know that there was a 2023 report?

A. I don't think that was there when I looked, no.

Q. Well, when did you swear this affidavit?

A. Uhm, I don't - I think - it should say - it's stamped somewhere isn't it?

Q. Yeah, I'm gonna suggest the 4th day of June, 2024.

A. Sure, that sounds right.

Q. Does that sound right? And you're a drug researcher, right?

A. I am.

Q. And as a drug researcher, you ought to be up to date on the most recent data about drug use by Canadians, wouldn't you agree?

5 A. Yeah, certainly. I mean, it's a big - it's a big topic, I can't be aware of everything, but I would say I try to keep pretty up to date. I teach a course in it and try to have the most up-to-date stuff, absolutely.

Q. But before you swore this affidavit you didn't check to see if there was a more updated survey of drug and alcohol use by Canadians?

10 A. I think I did. Um, so perhaps the 2023 wasn't um, presented when I swore it, that may not have been up there. When did this....

Q. Um - oh, I lost that page obviously, but we just had it. You swore your affidavit on....

15 A. On June 4th, 2024, is what you said.

Q. Yes. So, did you double-check to see if the statistics had been updated?

A. I would think I would've, yeah. So, it looks there like....

20 THE COURT: Modified 2025?

A. Yeah, modified 01, 2025.

K. BENZAKEIN: That's the date I modified it...

THE COURT: Okay.

25 K. BENZAKEIN: ...to say that the - the website indicates that the page was last updated 2024/12/27.

THE COURT: Sorry, are you giving evidence or did you have that...?

K. BENZAKEIN: Fair enough, Your Honour. All right.

A. That would have been still after I swore this.

30 Q. Okay, moving on from when and where you became aware of it, you don't - you've not seen this report yet, right?

A. I haven't seen the 2023, no.

Q. Okay. Would you like to before giving evidence about the prevalence of psilocybin use by Canadians?

A. I'm not [indiscernible].

THE COURT: Sorry, let's just clarify one thing. First of all, the report that you're referring to, Ms. Benzakein, was published after the witness's affidavit was sworn, correct, or do we know?

K. BENZAKEIN: I don't know. All I know is what's on the internet.

THE COURT: All right. But we don't know when it hit the internet, or do we?

K. BENZAKEIN: I don't think I have the expertise to give that evidence.

THE COURT: All right.

K. BENZAKEIN: If the witness could just be excused for one moment, Your Honour? I just want to....

THE COURT: Sure. All right, we're just going to put you in a waiting room just for a brief moment, Professor.

WITNESS: Okay.

... WITNESS EXCUSED

THE COURT: All right. So, I apologize. I thought you had said it was published afterwards but I may be mistaken there. Obviously, if it is then I think Mr. Lewin will agree to put that in as an admitted fact, but if you're not sure then we should clarify that or just leave it blank.

K. BENZAKEIN: Um....

THE COURT: Clearly, the witness hasn't seen it, so if you want him to refer to it, I suppose you're entitled to put it to him either way. Do you have any issue....

K. BENZAKEIN: Yeah, but....

THE COURT: Go ahead.

K. BENZAKEIN: Thank you, Your Honour. I don't want to put it to him blind, I want him to read it.

THE COURT: Sure.

K. BENZAKEIN: So, if he does want to review it to give his evidence, I'd like to give him an opportunity to do that.

THE COURT: Sure.

K. BENZAKEIN: But I have a few more questions about - very briefly about what he knew when he swore the affidavit but not excessively. I can move on and give him the lunch recess to read the report, that might be the most efficient use of our time, but....

THE COURT: Why don't we do this: Mr. Lewin, do you have any issue with just continuing on with the cross-examination, providing him a copy of the report, assuming he wants to review it, to update his knowledge base, and then we can continue with the cross-examination after lunch as well.

P. LEWIN: Yeah. I mean, this is what I was thinking, Your Honour, is - I mean, I do believe that if something's put to the witness and the witness isn't familiar with it then that kind of ends it. Could he review it at lunch? They're statistics, so I suppose he could review it at lunchtime, Your Honour. I guess it can't....

THE COURT: Well, let's ask him. Let's ask him and then if he wants to do that you can provide it to him, Ms. Benzakeine. All right, let's have the witness back.

K. BENZAKEIN: Yes, thank you.

Zachary Walsh - Cr-Ex.

THE COURT: All right, thank you, Professor. We'll continue then.

K. BENZAKEIN: Thank you.

Q. Would you like to have an opportunity to review this more recent data before continuing your evidence?

A. Um, sure.

Q. All right. In that case, I'll move on to another area and I can provide you with the report through Mr. Lewin over the lunch hour.

A. I'm not sure if it's essential. I imagine there hasn't been dramatic changes. Are there dramatic changes that I need to consider?

Q. I will have some questions for you about what it says about psilocybin. It's not a lengthy report. Maybe we'll - subject to the court, I'm gonna suggest we play it by ear. I'll send it to you and we can resume this questioning after lunch, if that's agreeable, Your Honour.

THE COURT: I'm content with that if you have time to review it over lunch, Professor Walsh. It doesn't sound like it's terribly long, but we'll move on, just a few more questions on this area before we go somewhere else, Ms. Benazkein.

K. BENZAKEIN: I'm ready to move on, Your Honour, to another area.

THE COURT: All right, go ahead.

K. BENZAKEIN: Thank you.

Q. I'd like to return to your affidavit now. I suppose I keep saying that, really we're deep into it. So, beginning at paragraph 24 where you provide some information about the risks of psilocybin. Are you there?

A. Yup.

Q. You reference in this section of your affidavit an article called "Adverse Effects of Psychedelics", you're familiar with that article?

A. I am.

Q. Do you agree with the conclusions drawn by the the authors in that article?

A. I would say so, yeah, in general.

Q. You think the - sorry?

A. Yeah, I would say in general I think it's a good article.

Q. And for instance, you think the methodology is sound, the conclusions make sense?

A. In general, yeah. I mean, I'd have to go bit by bit, but in general I think it's a good article, yeah.

Q. Consistent with your knowledge of information and the science in the field?

A. I would say yeah, in general.

Q. So, in that case, do you agree with - I'm gonna ask you about some of the conclusions that are drawn by the authors and ask if you agree with them, okay?

A. Should I get the article?

Q. Yes, that would be helpful.

A. Okay. Got it.

Q. Excellent. Of course, I've lost it. Moment's indulgence, please. First of all, what's an abstract? Like, what's the value of an abstract in an article like this?

A. Well, you know, when you're browsing - there's so many - the scientific literature is so big that, you know, when you're browsing through articles you want to know if it's gonna be useful to you, so it gives you a quick summary so that you don't have to read through the whole article to figure out what it's about.

Q. Is it usually written by the authors of the article?

A. Oh, yeah.

Q. Okay. So, not by an editor or anything like that?

A. No.

Q. So, if it says it in the abstract, we can take it to be part of the article as though it were written by the authors, is that fair?

A. I mean, it doesn't do justice to the nuance of it, but it's mostly just - it's almost like um, a table of contents so someone could know is this something that I need to read more or, you know, is there somewhere where I want to find out what it actually says. So, it doesn't contain the meat of it, it's not a substitute for it, but it's more like, better than the title in terms of trying to figure out what the article is about.

Q. I'll give you a more specific example what I want to ask you about. In the abstract the authors say, "Many but not all of the risks of use of psilocybin are unsupported by the science". So, I mean, apart from the fact that it's a bit of a double negative, it looks like the authors are saying that some of the risks of psilocybin that have been reported are unsupported by the science, but some of them are supported by the science, right?

A. "Many, albeit not all of the persistent negative perceptions of psychological risks are unsupported by currently available scientific evidence."

Q. Many but not all, right? So, some remain....

A. It says, "Many albeit not all of the persistent negative perceptions" of the risks is what it says.

Q. Okay.

A. So not the risk but the perceptions of the risk.

Q. I see.

A. So, I think what they're trying to say there is that, you know, due to stigma and the war on drugs over the years and the information that's come out, the perceptions of the risks are not related to the actual risks, although some of them may have some basis.

Q. You agree with me that the authors also indicate that the potential range of risks remain to be fully understood?

A. Where does it say - what's the phrase that you're referring to?

Q. Well, the way that this is written - printed makes it very, very difficult to say.

A. Mm-hmm.

Q. I'll skip that one, maybe because I haven't - I'll come back to it, I haven't identified it very well in my own notes. I'll take you now to page 128 of the application record, do you have....

A. Are we still on this article? Sorry, we're on the article or...?

Q. We're still on the article but the article is embedded in the application record. I just want to give you a pinpoint that is helpful.

A. Sure....

Q. [Indiscernible]

A. My page numbers are different, so my page would be from the - our journal.

Q. Okay, no problem. So, it's at page....

A. If you give me the header, it would be easier for me to find, I think.

Q. Sure. It's at page 262 of the journal.

A. That I can use. Okay.

Zachary Walsh - Cr-Ex.

K. BENZAKEIN: And Your Honour, are you ready for the quotes?

THE COURT: Sorry, I just want to know where I can find it. Go ahead.

5 K. BENZAKEIN: Yes, thank you. It's page 128 of the application record, it's in the first column, at the top of the page.

10 THE COURT: Sorry, page 128 is that in the second volume? Oh, no, it's 139, it's got to be in the first. Give me a moment. This would be in the materials that haven't yet been marked as an exhibit, at least in this matter, but the article Schlag et al, is that the one you're referring to?

K. BENZAKEIN: Yes.

15 THE COURT: All right. Go ahead.

K. BENZAKEIN: Thank you.

Q. So, Professor, on the sixth line in the lefthand column...

A. Yeah?

20 Q. ...you'll see the authors write, "In unprepared individuals and/or in unsafe settings, effects of psychedelics may have the potential to escalate into dangerous behaviours", you see that?

A. Yes, I do.

25 Q. Do you agree with that?

A. Well, you know, it says "may have the potential" so, you know, I think certainly there's some potential, it may have the potential. [Indiscernible]

Q. You indicated - sorry, go ahead.

30 A. Um, in unsafe settings, you know, if someone is - definitely there's substantial disorientation, so that can be dangerous. Someone could - yeah...

Q. There's also....

A. [Indiscernible] fall or an accident.

Q. Well, the authors say, "has the potential to escalate into dangerous behaviours", so is your evidence that the danger is sort of limited to people falling down?

A. Um, you know, so it says in unsafe settings, so if someone were to go out and, you know, try to cross a busy street or go into a place that required a lot of coordination, that kind of thing, that would escalate it.

Q. What if a person happened to acquire a weapon, would that be a dangerous situation that...?

A. I mean, I suppose weapons can be dangerous if someone were disoriented. I don't know of cases where someone's - um, I mean, anything is possible, sure.

Q. Well, let's go back to the text here. "In unprepared individuals and/or in unsafe settings, effects of psychedelics may have the potential to escalate into dangerous behaviours", we already went over that. "Although very rare", I'm reading on now, "there are reports of individuals jumping from buildings and ending their lives". You're familiar with the research into those kinds of situations?

A. Those reports, I'm not aware of specific examples where that - where that's happened, but sure, any - any kind of psychoactive drug that has people, um, disoriented or confused can lead to dangerous situations.

Q. Are you familiar with the Carbonaro - the 2016 Carbonaro study that's cited in this article? It's cited....

A. I am not.

Q. Okay, it's cited in the last paragraph in this right before the heading "A Challenging Experience".

A. Yeah.

Q. And that's....

A. [Indiscernible]

Q. You see that? And you're not familiar with this study, I think you just said?

5 A. I don't know that study well, no. I mean, I - no, I don't - I'm not familiar with that study.

Q. All right. But you are familiar with this article, right?

A. Yes, this article I'm familiar with.

10 Q. And you indicated that you more or less agree with the conclusions, right?

A. Yeah.

Q. Okay. So, the authors refer back to Carbonaro who found that eleven percent of users reported putting themselves in harms way. You'll find this, as I said, it's in the first column, right before....

A. Yeah, I see the paragraph now.

Q. Okay. So, do you have anything with which to challenge that assertion by Carbonaro and their group?

20 A. I mean, when you say challenge it, um, I'm not sure what they mean by putting themselves at risk of physical harm, there's lots of areas in normal life where one could be at risk of physical harm, but I don't challenge it. I'm sure that it's an accurate reporting of what was found in that study.

25 Q. And....

A. Or I trust that it was.

Q. I'm sorry?

30 A. I trust that it's an accurate reporting of Carbonaro.

P. LEWIN: Your Honour, sorry to - I'm gonna jump in here. He's familiar with the Schlag study and

5 so he can comment on what it says in Schlag, but he indicated he's not familiar with Carbonaro, so I mean, to ask him does he agree with what was found in Carbonaro, I mean, that's not a fair question for the witness.

10 THE COURT: Well, if he agrees with the study that he's being referred to overall and it cites in it other studies, isn't it by implication? I don't know, we can ask the witness, I suppose it might be the easiest way. But generally, when you're endorsing an article, Professor Walsh, which are based on other studies, do you not accept that the other studies are reliable?

15 A. There's - there's many studies um, I don't know the exact number, but there's a really extensive literature review in this article, so I can't say about all - you know, if I had Carbonaro - if I was looking at Carbonaro, I'd be able to assess it and see if there's some limitations or something in it, but I'm sure that, you know, this is a pretty direct report. It says, "In the online survey eleven percent of users reported putting themselves or others at risk of physical harm". I'd want to know what those risks are etcetera, but I'm sure that Schlag is accurate in his re-reporting of Carbonaro.

20 THE COURT: All right. All right, go ahead.

25 K. BENZAKEIN: Thank you, Your Honour.

30 Q. And just the last line of that paragraph adds that - it says, "This was often related to greater estimated dosage, difficulty of the experience, and lack of physical comfort and social support", do you see that?

A. Yeah.

Q. And you agree that those are conditions that tend to affect the nature of the psilocybin experience, right?

A. Um, I mean, it's in Carbonaro that it was related to a greater dosage, difficulty of the experience, lack of physical comfort and social support, all of which can be controlled under clinical conditions. So, certainly as I said earlier, it is best to have someone to support it and to be in a safe spot, absolutely.

Q. Okay. So, let's just break that up a little bit. You agree that it is best to control the environment, right, when somebody is...

A. Yeah.

Q. ...engaging in psilocybin use, right?

A. That's right.

Q. Okay. And you'll also agree with me, I think, that that's pretty much the consensus among the researchers, scientists, doctors that work in this field, right?

A. Yes.

Q. That in order....

A. Yes [indiscernible] is important.

Q. Set and setting is important. And that includes where the psilocybin is consumed, right?

A. Yes.

Q. The mindset of the person consuming the psilocybin, right?

A. Yes.

Q. Having adequate supports from people with adequate training, right?

A. Yes.

Q. Ensuring that there's no co-consumption with other intoxicants, right?

A. Yes.

Q. Ensuring the purity of the psilocybin consumed, right?

A. All of those are important things, yes.

Q. Right. So, when....

5 A. But I will say that a lot of the time when we do it in a clinical setting, it's not just to ensure safety but to enhance the likelihood of positive outcomes as well, so it's not truly [indiscernible].

10 Q. Of course. But you'll also agree with me that there's a higher likelihood of harm coming to someone who's having a negative psilocybin experience, right?

A. If they're unsupervised.

Q. Exactly.

15 A. The negative experiences or the difficult experiences are often the ones in a clinical setting where people have the most benefit because they sort of face their fears or they're able to gain a perspective on some of the challenging things that have happened in their life. So, you know, often it'll be about recovery from trauma, so people may revisit parts
20 of those difficult experiences and that will be a challenging experience, but it's a very positive challenging experience. So, I think it's important that we don't conflate a challenging experience with a dangerous experience.

25 Q. Understood, but those challenging experiences are all about - let me start that sentence again. In the context of a challenging experience, the presence of trained attendants is important to bring the person sort of around full circle, is that fair?

30 A. Yeah, just so that they'll not become overly distracted or sort of stuck in a negative mindset, but that they'll move through it in a positive way that leads to a good resolution.

Q. And I'm gonna suggest to you that if a challenging experience is frightening and the person is unsupervised or unassisted, that could also lead to a negative outcome?

5 A. I mean, most of the negative outcomes come not from a challenging experience but just I would imagine from being disoriented. So, it's a simple case of being disoriented would be what I'd worry about. I think people, when they use psilocybin unsupervised, they might still have positive outcomes from a challenging experience, it's not required.

10 Q. I understand. All right. We'll just move on from that distraction I caused. You agree with me that the authors of this article indicate that the reasons for adverse effects are still not well understood, do you agree with that?

15 A. Where do they say that? Can you draw me to what they're saying is not well understood?

Q. Well, maybe before I take you right to the article, do you agree that the reasons for adverse effects are still not well understood?

20 A. I mean, you know, as a scientist we're in the habit of always saying there's more to understand, there's more to understand. So, when we say things are not well understood, usually it's often as a rationale so that we can continue our work and continue to refine our understanding. But I wouldn't say that they're not well understood compared to many things. 25 Um, so I mean, it's a relative case. There's more to understand certainly, but I don't know - I don't know what the - sort of what the standard would be for well understood or not well understood. I think we have a reasonable understanding.

30 Q. And the reasonable under....

A. Mostly I would say they come from disorientation during the acute effects.

Zachary Walsh - Cr-Ex.

Q. And by "disorientation" you mean disorientation to time and place?

A. Yeah, more or less, the time and place, or just sort of feeling a bit confused because you're having a pronounced psychoactive experience. I'm sorry, I wonder if I could use the restroom at some point? It doesn't have to be urgent, but I would appreciate a break if I could sometime soon.

THE COURT: All right.

K. BENZAKEIN: Your Honour, should we just take the lunch recess early maybe?

THE COURT: Let's take an early lunch recess and we'll return at, let's say 2:15.

P. LEWIN: Your Honour, just - our little discussion without Professor Walsh present - actually, I'd like to revisit that. Just as we were proceeding I thought a little bit more about it and I'd like to make just a few more submissions on that, if I may.

THE COURT: All right, do you want me to exclude the witness then?

P. LEWIN: Yes, please.

THE COURT: All right. So, Professor Walsh, we'll see you back at 2:15 then, please.

WITNESS: So, in 35 minutes?

THE COURT: No, 2:15.

WITNESS: Okay.

THE COURT: All right? Thank you.

WITNESS: So that's 11:15 my time, yes.

THE COURT: Oh, yes, sorry.

WITNESS: Okay.

THE COURT: Sorry. Thank you.

WITNESS: No worries. Thank you. Bye.

... WITNESS EXCUSED

Zachary Walsh - Cr-Ex.

THE COURT: Yes, I'm sorry. So, Mr. Lewin, you wanted to address...

P. LEWIN: [Indiscernible]

THE COURT: ...the study within the study?

5 P. LEWIN: Oh, no, not that but rather - actually, it's kind of along the lines of that but mainly about the further global statistics or the Canadian statistics that my friend wanted to put to Professor Walsh. So, if an expert isn't familiar with a study or a document, you ask them if they know about it, if he doesn't know about it then really he's gonna say, 'Well, these things seem to say these things'. I mean, there is nothing to be gained from it and really he shouldn't be - something that he's not familiar with shouldn't be put to him. It's not....

10 THE COURT: No, I don't think anybody disagrees with that, Mr. Lewin, but he was asked whether he wanted to familiarize himself with it so he could respond to it, so I don't see why - I mean, unless he turns around and says, 'I really don't want to', but I'm not sure - well....

15 P. LEWIN: But what he's gonna do is he's gonna come back and say, 'Okay, I read it, it seems to say these things'. Like, he's not gonna say, 'Oh, now I remember reviewing it.' Like he had....

20 THE COURT: Well, we don't know. We don't know. I mean, we'll wait and see. I mean, that may very well be his response but how do we know? He said he'll review it, so I'm assuming he'll do that once it's sent to him. And if he's able to answer the questions, he is, if he's not then I'm sure he'll tell us. He's already done that previously where he's unsure, so....

25

30

5 P. LEWIN: Okay. All I would ask if he comes back and says like, 'I am not familiar with this', I think we're kind of at a wall here, would be my submission. And just in terms of direction, should I be sending that to him or...

THE COURT: Probably....

P. LEWIN: ...[indiscernible]

THE COURT: Ms. Benzakein, I'll hear from you on that.

10 K. BENZAKEIN: Thank you. I'll send it to Mr. Lewin which is what I indicated to the witness I would do and then I'll ask Mr. Lewin - I just don't have Professor Walsh's contact information. I'd be happy to do it myself but if I could just impose on my friend to do that. And I'll just - well, I'll hold my fire on the larger submission about what to make of it.

15 THE COURT: All right, that's fine. All right, thank you. So, we'll return then at 2:15, all right?

K. BENZAKEIN: Thank you, Your Honour.

20 R E C E S S

U P O N R E S U M I N G :

ZACHARY WALSH: PREVIOUSLY AFFIRMED

25 THE COURT: All right, so it looks like everybody's back, so - just give me a moment. All right, Ms. Benzakein, when you're ready.

K. BENZAKEIN: Thank you, Your Honour.

CROSS-EXAMINATION BY K. BENZAKEIN CONTINUES:

30 Q. So, perhaps I'll start, Professor, by going back to that Canadian Substance Use Survey, did you have an opportunity to read it over the break?

Zachary Walsh - Cr-Ex.

A. Yes, I did, thanks for sending it. And it looks like it was put out in December, so I didn't - I didn't miss it. I wasn't - you had me worried for a minute there, but yeah, it was December that it was put out, so I didn't miss it in June.

5 Q. Well, that's excellent. Do you have any comments to make with respect to the content? Does it accord with your research generally?

A. Well, you know, with our research generally we don't - we don't typically survey a broad swath of the population, so it's very difficult based on our research to establish these kind of base rates. So, it was interesting because it looks like with their new methodology, they were able to identify much higher rates of psilocybin use, than what I had suspected. It looks like it's closer to two million than half a million.

15 Q. It does look that way. Do you accept this as an authoritative source?

A. Yeah, I think so.

Q. Would you rely on this in your research going forward?

20 A. Yeah, if I were to ask - I mean, I'm not typically asked to estimate base rates because I'm not sort of a public health epidemiologist, but yeah, I don't think we're going to get much more reliable because all of our other studies when we try to - you know, when we try to find people who use psychedelics to ask these questions [indiscernible - audio cuts out] psilocybin, we're really getting an over-representation of people who use. So, I advertise, you know, if you've used psilocybin, and that doesn't give us a sense of how many people are using it in the general population, so this is about as good as we're gonna get.

25 Q. So, would you adopt then, these numbers as being accurate?

30 A. Sure. Yes.

Zachary Walsh - Cr-Ex.

Q. Okay. All right, so that's helpful.

P. LEWIN: Your Honour, I'm gonna jump in. I'm not - like - and I'm not sure if you want Professor Walsh to be excused for a moment, Ms. Benzakein.

5 THE COURT: Well, if there's an objection, yes, we'll put the witness in a breakout room, so just bear with us, Professor.

WITNESS: Sure.

... WITNESS EXCUSED

10 THE COURT: So, he says he adopts the numbers.

P. LEWIN: Yeah. Like, I mean, essentially it's a document that looks like it's from the Government of Canada and I'm not suggesting that it's not, he has no way of knowing it's from the Government of Canada, he's just saying well, this - like, I'm not clear on the basis for him believing that this is reliable. It's just he was shown this, all he knows is this is what the numbers seem to show and it seems to be from the Government of Canada. Like, I don't think he really - I think he's assuming that this is what it is, but it hasn't been established, I guess maybe that's the best way to put it.

15 THE COURT: Isn't that an issue for re-examination? I don't know, what's your position, Ms. Benzakein?

20 K. BENZAKEIN: Well, my friend proposed this witness as an expert in the prevalence of use of psilocybin in Canada. The witness produced as support for his position a previous report from this same government entity, and now he's accepted that that's the authoritative view and that it accords with his experience. So, given that he's been qualified to

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give this opinion evidence, this is the most recent evidence of the prevalence of use and he accepts that it's consistent, even with what he understands to be the numbers. I'd like to ask him some questions about it, and I think perfectly within the realm of his experience and the usefulness to this court.

P. LEWIN: I guess my final word, Your Honour, is nobody's established that this is what it is. He's just kind of accepting it at face value.

10
THE COURT: Well, he's told us about a previous report that he has reviewed. It's shown on the - well, I've seen on the screen under 2019, this is a 2023 report, so it looks like it's the next in time, so do you want Ms. Benzakein to produce the report and show it to him, or has he reviewed it? My understanding is he's reviewed it, right?

15
P. LEWIN: I believe he has reviewed it. I mean, it was sent to him.

20
THE COURT: Right. So, I don't see the issue, quite frankly. I think he says he's reviewed it, he's adopted it in much the same way as he's reviewed and adopted the findings of the previous report, so he's simply updating himself on it. I don't think that's improper. So, I'll permit you to go further Ms. Benzakein as you wish. So, let's bring the witness back.

25
K. BENZAKEIN: Thank you, Your Honour. And I'll indicate Mr. Mazza is going to help me with this because of my inability to use technology.

30
... WITNESS RETURNS

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K. BENZAKEIN: But I see Professor Walsh is back, I'll just continue. I'm going to ask that this be made the next exhibit, please, the *Canadian Substance Use Survey: summary of results 2023*.

THE COURT: So, this is exhibit five then, is that correct?

COURT CLERK: I believe it's four. Did we make....

THE COURT: No, exhibit four was....

COURT CLERK: Oh, sorry.

10
THE COURT: Just give me a second. Did we make the Lake, Lucas study exhibit four or not? I thought we had, but.... Mr. Lewin?

P. LEWIN: Oh, I did, yes, that was made an exhibit.

THE COURT: That was exhibit four.

COURT CLERK: Okay.

15
EXHIBIT NUMBER 4: Lake, Lucas study, 2024 - produced and marked

THE COURT: So, exhibit five will be the next study, and I'm sorry, can you send us a copy of it, Mr. Mazza?

20
V. MAZZA: Yes, I have, and I'll send it now for ease of reference.

COURT CLERK: I have it, Mr. Mazza. It's the *Canadian Alcohol and Drugs Survey*?

25
K. BENZAKEIN: No, it's not, it's the *Canadian Substance Use Survey: summary of results 2023*.

COURT CLERK: All right, thank you. And Your Honour, I'm forwarding it to you right now.

30
THE COURT: All right. Just give us a moment for us to receive it. Did you send it?

COURT CLERK: I did send it, Your Honour.

THE COURT: Okay.

COURT CLERK: Did you receive it yet, Your Honour?

THE COURT: No. It'd quicker to mail it.

COURT CLERK: I'll forward it again, Your Honour.
There's quite a lot of attachments in this, maybe
that's why.

... PAUSE

THE COURT: All right, so the *Canadian Alcohol and
Drugs Survey: summary of results*, this would be 2023,
is that the one you're referring to, Ms. Benzakein?

K. BENZAKEIN: Ah, yes. I just want to make sure
Your Honour is referring to the right one because
the one I've tried to make exhibit five is called
Canadian Substance Use Survey. There's a different
one...

THE COURT: Oh, okay.

K. BENZAKEIN: ...called *Canadian Alcohol and Drugs
Survey*, this replaces that. Professor Walsh looks
like he wants to say something.

WITNESS: It may be confusing because the tab - the
tab when I look at and open it, it still says
Canadian Alcohol and Drugs Survey even though it's
called the *Canadian Substance Use Survey* now.

K. BENZAKEIN: Ah, I see.

THE COURT: I've got one that says *Canadian Substance
Use Survey*. Let me just double-check and see what
this shows. Yes, *summary of results 2023*?

K. BENZAKEIN: Yes.

THE COURT: All right. So, that will be exhibit
five then.

EXHIBIT NUMBER 5: *Canadian Substance Use Survey:
summary of results 2023* - produced and marked.

Zachary Walsh - Cr-Ex.

K. BENZAKEIN: Thank you.

THE COURT: All right, go ahead.

K. BENZAKEIN: Thank you.

5 Q. Now, Professor, I'm hoping you can help me because I want to make sure I'm understanding what the data shows here.

A. Certainly.

Q. In Figure 2 which describes a prevalence of use of illegal substances - lifetime and past 12 months...

A. Mm-hmm.

10 Q. ...there's a table that has, like, a bar graph, you see that?

A. Yup, with figures.

Q. Okay. So, if we look at the bar graph describing psychedelics, does this bar graph show that six percent of adult users used psychedelics in the last 12 months?

15 A. Six percent of the general population of adults, yeah.

Q. Okay, thank you. I've been puzzling over that for some time. And does it also represent that 16 percent of adults in the general population have used psychedelics over their lifetime, is that correct?

A. Yes, that's correct.

Q. Okay. And by "correct", I mean I'm interpreting it correctly, right?

25 A. Yes, you are.

Q. Okay, thank you.

THE COURT: Sorry, just let me understand that. So, you said six percent have used it in their lifetime?

K. BENZAKEIN: I believe it's in the last 12 months.

30 THE COURT: Oh, in the last 12 months, right, I see that, yes. And then the other six percent you were talking about?

Zachary Walsh - Cr-Ex.

K. BENZAKEIN: Q. I believe it represents that 16 percent...

THE COURT: In their lifetime?

K. BENZAKEIN: Q. ...is that right, Professor?

A. Yes...

THE COURT: Understood.

A. ...16 percent last 12 months.

THE COURT: All right.

K. BENZAKEIN: Q. All right. And then moving on to the bottom half of the page - actually, I don't need your assistance with that, thank you. And I want to ask you the same questions for the bar graph on page five.

A. Page five. Okay, yeah.

Q. And again, just to understand it, when we look at the second bar graph, the use of psychedelics, this bar graph tells us that 12 percent of youth and young adults used psychedelics in the last 12 months, is that correct?

A. That is correct. [Indiscernible]

Q. And that's - sorry, I interrupted you.

A. Yes, that's correct, that's what it says.

Q. Okay.

THE COURT: Sorry, which - I'm trying to follow along here. Which bar graph - are we on the same bar graph or a different one?

K. BENZAKEIN: The one on page five, Your Honour.

THE COURT: All right, just let me get to that.

All right, and so you were saying?

K. BENZAKEIN: Q. So, this is Figure 4...

THE COURT: Yes.

Q. ...prevalence of illegal substance use by youth and young adults, and it shows that 12 percent of the general public - sorry, moment's indulgence, please - 12 percent of the

general public of youth and young adults have used psychedelics in the last 12 months, that's what it says, Professor?

A. Well, it's not the general public, it's youth and young adults, but yes, 12 percent.

5 Q. Yes, sorry, I thought I had made that clear. Yes, you're quite right. Okay. And then in terms of overall use in lifetime, this bar chart indicates that 17 percent of the general population of youth and young adults have used psychedelics in their lifetime, right?

10 A. Yeah. Yes.

Q. Okay. And I think you indicated - well, I know you indicated actually, before lunch or rather right after lunch, that you found these numbers surprising. Can you explain what you mean by that?

15 A. Well, um, you know, I would have thought the original ones from the previous years would have been a bit of an underestimate but this is more - they were more of an underestimate than I expected. So, I would have thought it was closer to three percent instead of six percent, but - I mean, I'm not shocked because I suspected the other ones were low. But it looks like 20 this new methodology that they've done, which is quite a renovation, which is why they say - they actually said don't compare this to previous years, this should be stand-alone. If you look under the sampling redesign, it says "Due to these changes, we 25 do not recommend comparing results. CSUS 2023 results are stand-alone." So, the new - the new methodology is probably more accurate. If you look at - they detail all the changes they made, um, so yeah.

30 Q. And just to round that out a little, you reviewed the methodology that is described in here and you agree that it seems to be more robust, is that fair?

A. Better than the old one, yes, they've improved it.

Q. Wonderful. Okay. And in your view - sorry, let me ask this a different way. Does that give you more confidence in the results as reported in the study?

A. I have more confidence in the new one than in the old ones, yes.

Q. All right.

K. BENZAKEIN: Your Honour, if I could make....

A. I'm sorry, it doesn't really impact any of my conclusions, other than just that the prevalence is higher.

K. BENZAKEIN: I understand. All right, so we've already made that Exhibit 5.

COURT CLERK: Yes.

K. BENZAKEIN: Q. Before the break - this time I mean it, we were talking about the article "Adverse Effects of Psychedelics"?

A. Yes.

Q. I wonder if you could help me understand another table...

A. Sure, I can try.

Q. ...which is at - court's indulgence, please - page 131 of the application record.

A. It's more helpful for me if you can give me the numbers or the heading, 'cause I don't have this in the context of the application record.

Q. Yes, and you know what, we'll put a pin in that until I can put my finger on it because....

A. Well, if you look at the page on the top of the article page, that one I can find. Or if you give me the header, I can find it.

Q. Yes, why don't I do that. All right, it's on - that was very helpful, thank you, made it much easier. You must be a teacher. All right, it's page 265 in the Schlag article.

A. Okay.

Q. Let me know when you have that.

A. I have it.

Q. Do I understand correctly that this table identifies adverse events related to overdose and toxicity?

A. Yes.

Q. Okay. Do you know if this is the only study relating results of this kind of investigation?

A. Sorry, the only review study?

Q. Yes.

A. The study is a review, so it reviews all the other studies prior to it.

Q. Okay.

A. And...

Q. Yes?

A. ...um, I'm not - I would have to check when they stopped reviewing, but um - so this is not the only study of its type, no. I'm not sure what the question is.

Q. Well, that was the first question. I wanted to know what the sort of parameters or breadth of the study was. My second question is are you aware of any other studies that deal with serious adverse effects like this one does?

A. Well, there's the studies that are reviewed in this article, so those would be studies that deal with adverse effects. Um, there may have been a few subsequent to it, so I can't categorically say that there are [indiscernible].

Q. All right. So, if we look at what's reported, in Table 3, on the second line, "Van Amsterdam et al, 2011"?

A. Yeah.

Q. So, it says - again, I just need your help understanding it for the time being. It says, "Design", "Case Studies", right?

A. Yeah.

Q. Okay, what does that mean?

A. So, a case study - you know, so on most - there's different designs for different research methods. You know, there's an experiment in which people are randomized to different conditions, there's cross-sectional studies where you ask a lot of people survey type questions, and then there are case studies which are most often conducted by physicians, and they involve one case, so they're anecdotal in that way, they're, like, one case study, this happened to one individual. So, it's hard to generalize but they can be noteworthy in other ways.

Q. Okay. So, in this Van Amsterdam et al, 2011, report that's at line two of Table 3, it indicates that the design is case studies. There are....

A. Mm-hmm.

Q. Right? Is that right?

A. Ten [indiscernible], yeah.

Q. Okay. So, that's ten individual cases reviewed by the authors?

A. Yes.

Q. Okay.

A. I would guess so, that's what it looks like to me.

Q. All right. And you know, you engage with these kinds of studies regularly, right, as part of your work?

A. Mm-hmm.

Q. All right. We don't, so that's why we need your help.

A. Sure. No, I'm happy to help.

Q. And then it gives the information about the subjects, eight males and two females, right?

A. Mm-hmm.

Zachary Walsh - Cr-Ex.

Q. Yes?

A. Yes.

Q. And the substance that was tested, which is magic mushrooms?

A. Yes.

Q. And then it provides a list of very serious events, I think you'll agree, three deaths from jumping off high buildings, right?

A. Yes.

Q. Three deaths by overdose?

A. That's what it says.

Q. One from cold temperature after large consumption of psilocybe, of magic mushrooms, right?

A. Yes.

Q. One presumed heroin overdose?

A. Yes.

Q. And one death after consuming approximately 50 mostly raw magic mushrooms?

A. Yes.

Q. So, you'll agree....

A. I would imagine where it says three by overdose, I would assume - and I'd have to look at this Van Amsterdam itself, but I assume that would be overdose on another drug.

Q. Why would you assume that?

A. Because it's very difficult to frankly overdose on psilocybin mushrooms, they're very low toxicity. So, it would be hard to eat enough magic mushrooms for one to have an overdose wherein the toxicity of the mushrooms itself. Just as where it says, "three deaths from jumping off high buildings", it would be the fall, so you know, took mushrooms and then they jumped, but it wasn't the mushrooms that killed them, it was the fall obviously. In this case the overdose by something else.

Zachary Walsh - Cr-Ex.

THE COURT: It wasn't the fall, it was the landing.

WITNESS: Yes.

5 K. BENZAKEIN: Q. All right. Well, you were aware of this - you're aware of this study right, before you gave your evidence today?

A. Yeah. So, I'm aware of the Schlag et al, I haven't reviewed Van Amsterdam in detail.

Q. Right. But this study was contained within the Schlag et al study, right?

10 A. Yeah. I mean, the Schlag et al study is a review, so it includes, I would guess, probably over a hundred articles, so I can't know all the details of every article that's reviewed in here, I'm more able to comment on the specific conclusions of the review rather than the conclusions of the specific articles that are reviewed within it. But I can - I can try.

15 Q. That's a helpful clarification, but you'll agree with me that at least within this article Schlag et al, they've identified occasions in which adverse effects of mushrooms include death, right?

20 A. Well, you know, people have died while on magic mushrooms. There are many people who jump from high buildings not on magic mushrooms too. Um, so, when we look at those numbers, like, especially these new numbers, what was it, about two million Canadians in the past year using psilocybin, so some of those people would have had accidents anyhow. Whether or not it's due to the mushrooms, it's hard to attribute.

THE COURT: Can I ask you this though, Doctor?

They're calling them "relevant findings", right?

30 A. The relevant findings, yes, so that they would have found that someone had - had jumped while on magic mushrooms. That's not to say that they might

5
not have had suicidal intentions otherwise, but this was under - while they were on the magic mushrooms. It's just like "one from cold temperature after large consumption of psilocybe", so in this case someone might have been disoriented and went outside and - and had hypothermia while on mushrooms. Um, so yes, these would be associated if not attributable to. Under the cause of death, I imagine there would have been a list of possible contributing factors, and perhaps psilocybin would have been listed amongst the potential contributing factors, just as with the jumps.

10
K. BENZAKEIN: Q. I don't mean to keep laughing about the jump, but I keep thinking of the same thing. You'll agree with me, Professor, that in your affidavit you highlight really the remoteness of the risks in the consumption of psilocybin, right?

15
A. Can you clarify what you mean by "the remoteness of the risks"? That the risks are not - that the risks are not direct to psilocybin but due to things that could happen while someone is disoriented under the effects?

20
Q. Well, that's one example.

A. Or do you mean the small risks of them? I'm just trying to understand what you mean by "remote"?

25
Q. I'll use a different word, low incidence.

A. Yes.

Q. You highlight the low incidence of risk, right?

30
A. Yes, they're low risk relative to other drugs, and that's not me, that's based on the various surveys that have compared them to other drugs, and then the absolute risk as well.

Q. Let's talk about the relationship to other drugs for a moment then. You adopt the multicriteria decision matrix

5 - that's not the right phrase, is it? Moment's indulgence, please. Sorry, I have a stutter, so sometimes when I'm not speaking that is why. All right. So, you've included in your affidavit reference to the scale of drug risk compared to other drugs that are consumed recreational, right?

A. Correct.

Q. And so that one of them is the *European Ranking [sic] of Drug Harms*, right?

10 A. Yes, and they're outlined quite nicely in Schlag as well, I think, those relative [indiscernible].

Q. And the other one is the *Drug Harms in the UK*, right?

A. I don't think I did the *Drug Harms in the UK*, I think it's just that European one is the one that I....

15 Q. Just the European. All right. And you'll agree with me that when we look at the European one about drug harms, it emphasizes the fact that a score of anything more than zero means that there are some harms or some risks of harm with the drug, right?

20 A. Yes.

Q. And so, while psilocybin gets a rating of five on one of the scales and six on another, that's - I mean, to state the obvious, that's not a score of zero, right?

A. That's correct.

25 THE COURT: Five or six out of what?

K. BENZAKEIN: Well, that's a more complicated question to answer. Let me see if I can ask that.

Q. So, the rating is made out of 100, right?

30 A. Ah, yeah, it looks like the scale maxes out at 80, um, if you look at Figure 2 in the *European Ratings of Drug Harms*.

Q. Are you familiar with the weighting system that they designed in the study?

A. Um, I mean, I'm aware of it, I don't know if I could testify to it exactly.

Q. So, would you agree with me that there's some complexity to how they weighted and rated those drugs?

5 A. Oh, certainly it's a complex - it's a very refined rating scale.

Q. So, I just want to get you to answer His Honour's question more completely. It wasn't as simple as saying the worst one is a hundred and the least one is zero, right?

10 A. Well, they rank them on a scale from zero to it looks like a possible 80, so I mean, I think it is interpretable in terms of lower is lower and higher is higher, and the highest looks like it's about 75 and the lowest, mushrooms, looks like - I'm just looking at Figure 2...

15 Q. Yes.

A. ...is very low, it's under 10, looks like - what did you say it was?

Q. I'm going to suggest it's five.

A. Okay.

20 Q. But is that your....

A. Yeah, that seems right. It's certainly under - under, you know, the bars are 10, it looks like maybe a little lower than five to me, but I don't know if it gives the actual numbers, I'm just looking at it on the bar.

25 Q. All right. And just to be perfectly clear, it's more than zero, right?

A. It is more than zero, yes. I imagine anything would be more than zero because nothing is completely without risks, even - yeah.

30 Q. Well, the authors say that on this scale zero means no harm.

A. Yes, if that's what they say. I'm trying to -
if you could bring me to where they say that, but I believe you.

THE COURT: Ms. Benzakein, where is this scale
located in the materials, or is it?

K. BENZAKEIN: Moment's indulgence. It's in the
application record.

THE COURT: Page?

K. BENZAKEIN: 105...

THE COURT: Okay.

K. BENZAKEIN: ...is where this reference is.

THE COURT: This is in the *Drug Harms in the UK*?

K. BENZAKEIN: Yes.

WITNESS: The *European Ratings of Drug Harms*, not
the UK one.

THE COURT: So, where is that, because this is -
105 is the UK.

P. LEWIN: It would be one of the documents filed
this morning as an exhibit.

THE COURT: Oh, all right, thank you. So, let me
just see if....

P. LEWIN: Exhibit 3.

THE COURT: Ah, I see. All right. Thank you.

K. BENZAKEIN: Could I ask for a 15-minute recess,
please? I'm having some technical issues that have
led me to lose my documents.

THE COURT: All right, that's fine. We'll stand down
for 15.

K. BENZAKEIN: Thank you very much.

THE COURT: ...afternoon recess, thank you.

K. BENZAKEIN: Thank you. I apologize for the
inconvenience.

U P O N R E S U M I N G :

ZACHARY WALSH: PREVIOUSLY AFFIRMED

5 THE COURT: Yes, all right, you're ready to continue,
Ms. Benzakein?

K. BENZAKEIN: Yes, just as soon as I can get my
audio to work.

THE COURT: There you go. All right.

10 K. BENZAKEIN: Thank you for that indulgence, Your
Honour.

CROSS-EXAMINATION BY K. BENZAKEIN CONTINUES:

15 Q. And Professor, I want to apologize, the reason
I couldn't find what I was looking for is because I was looking
in the wrong report.

A. Okay.

20 Q. So, I apologize if I left you confused, I
certainly left myself confused. Rather than hunt for the same
reference you have, I'm just going to show you - I'm going to
share my screen with you. Again, this is just on the subject
of what a rating of zero means on that European drug harms study.
You'll recall I suggested it meant no harm, you recall that?

A. Sure.

25 Q. And you just asked me where I got that from, so
I'm just going to show you...

A. Sure.

30 Q. ...because I can't produce a better version
right now.

A. Can we talk a little bit about the question -
there's something I wanted to add to your comment about the
people jumping off buildings, if I might?

Zachary Walsh - Cr-Ex.

Q. Why don't we let me ask the questions...

A. Okay, sure.

Q. ...and then if there's something you want to add that can be done....

A. I wasn't gonna ask a question, I was just gonna add to my response.

K. BENZAKEIN: I'm in Your Honour's hands.

THE COURT: Well, there was some talk about - is it this study that we were talking about? I can't recall, but there was a study talking about a certain percentage of people jumping off buildings as a result of....

WITNESS: Yes.

THE COURT: ...presumably. Go ahead.

WITNESS: The comment was that under the toxicity there was the - the Crown directed me to the jumping from high buildings.

THE COURT: Right, and this was the Schlag report.

WITNESS: Yes, but also in the Schlag report, I just want to note that it references the Johansen and Krebs study which found that there was no increase in suicidal behaviours among people who'd used psychedelics. So, there may be these case reports of people jumping off buildings, when you look at larger studies of people who take psychedelics, there's no evidence of increase in suicidal behaviour.

THE COURT: All right, thank you.

K. BENZAKEIN: Q. So, I'm just going to show you - again, this is just on the question of what a zero on the scale might mean. Share my screen - oops. Mr. Clerk, could you re-allow me to share my screen again, please.

COURT CLERK: You now have the ability.

K. BENZAKEIN: Thank you.

Q. All right, do you see my cursor here?

A. Yes.

Q. I'll just highlight that.

A. I do see what you're talking about.

5 Q. You see what I'm talking about. So, do you agree....

A. Zero is defined as no harm.

Q. Sorry, one more time?

10 A. It says, "A score of zero is defined as no harm, hundred is the most harmful drug."

Q. All right. So, I just wanted to round that out. That accords with your recollection of how the study was designed?

15 A. It makes sense to me, yes. And with the note that zero is sort conceptually no harm, but it's hard to imagine a drug that has no harm yet has some activity, so things like aspirin would have substantially more than zero harm.

Q. Because all drugs carry risk of harm, right?

A. Essentially, yes, some risk, not zero risk. I mean, all activity would have some risk of harm, more or less.

20 Q. But focusing on drugs for the moment.

A. [Indiscernible] yeah.

Q. I'm sorry?

25 A. Driving would have some harm, taking an aspirin would have some harm. So, I think the zero harm is a conceptual - it's a useful idea but it's not that some drugs might have a zero harm.

Q. Okay.

A. Just as no drug would probably have a hundred harm either.

30 Q. Right, I understand. So, moving on in your affidavit, at paragraph 25 you talk - you say - you write, "The health risks of consuming psilocybin are very low", right?

A. Uhhmm, yes.

Q. And you sort of tether that to the incidence of hospital visits and hospital admissions, right?

A. Um, well, it's - I think I go into some detail talking about the risk of addiction and misuse, the use of acute adverse events with hospitalization. Yeah, I try to go - long-term health impact, so I try to be pretty comprehensive, much as the Schlag article is as well.

Q. Well, I'll suggest to you that - go ahead, sorry.

A. No, it's all right. You go ahead.

Q. I'm gonna suggest to you that there are lots of risks of using psilocybin that sort of aren't detailed here, right? I'll be more specific. You agree with me that it's well-documented that using psilocybin can raise your blood pressure, right?

A. Some transient risk of raising blood pressure similar to like, say, exercise or sexual activity or any number of things.

Q. You agree with me that there are ample studies showing that it can create a state of high blood pressure, right?

A. Yes, there's a - I mean, it depends on how you define high blood pressure. There's an increase in blood pressure typical with any kind of stimulating activity. It's not - it's not unique in its ability to raise blood pressure but it's something that does happen in studies.

Q. The risk of high blood pressure with the use of psilocybin is so acute that blood pressure is checked during psilocybin trips, right, that are medically supervised?

A. You know, I think it's more for monitoring as we come to understand the acute effects of psilocybin, it's not so much that there's a need for an acute intervention. But it's one of the vitals that people take, heart rate and blood pressure throughout the measure, just to track it, yeah.

Q. And that's also because high blood pressure can be dangerous to people who have cardiovascular concerns, right?

A. Yeah, high blood pressure can be dangerous but not specific to psilocybin, I mean, high blood pressure is - is a danger regardless of the cause of it.

Q. And the circumstances - or sorry, the consequences of high blood pressure will vary with the individual, right?

A. Yeah. Yes.

Q. For some people it could be very serious, right?

A. For some people high blood pressure precedes a serious event, yeah.

Q. Right. Okay. And I take it you'd also agree with me that the research has indicated that the following unpleasant or negative effects have also been observed. So, I'm gonna make a list, you tell me if you agree or not, okay?

A. Sure.

Q. Okay. Headaches?

A. There have been headaches observed in trials, yeah.

Q. Gastrointestinal distress?

A. Yes, they can - particularly raw mushrooms can cause upset stomach.

Q. And sometimes the consumption of psilocybin, even under the best of circumstances, can cause people to vomit or to experience lower gastrointestinal distress, is that fair?

A. Yes, particularly if people are using raw mushrooms, they can become nauseous.

Q. Okay. What about migraine headaches?

A. Well, a migraine headache is usually part of a profile of migraines, so it wouldn't cause someone to become a migrainer, but if you're susceptible to migraines, uh, any kind of disruption can cause migraine. I have a migraine right now

because I was up earlier than I meant to be, so a lot of things can cause migraines amongst people who are - who are susceptible.

Q. I'm sorry to hear that. Are you feeling well enough to continue?

5 A. Yeah. Yeah, I'm a bit migrainey but I'm okay, I have medication that helps.

Q. Okay, let us know if that changes, especially let His Honour know.

A. I appreciate that.

10 Q. Of course. Unwelcome visual or auditory hallucinations are experienced sometimes with the use of psilocybin?

A. Yeah, I mean, those are more - those are sort of a feature of the experience, is some visual distortions.

15 Q. But for some people that could be a negative experience, right?

A. Sure. It's usually not entirely negative or positive. People during their psilocybin experiences will go through parts that are more or less pleasant as they experience it, so they may have difficult parts, and the resolution of some of those difficult perceptions is often quote positive. So, I wouldn't say that - it would be some negative, but it could be negative during parts of it could be troubling.

20 Q. All right. Some people experience difficulty sleeping, right?

25 A. During the effects of psilocybin?

Q. Following the ingestion of psilocybin, yes.

A. Um, I don't know if that's - if that's a substantial concern.

30 Q. Okay.

A. It might be difficult - it's difficult to sleep under the effects of psilocybin.

Q. All right. So, you don't endorse prolonged period of sleeplessness as a possible side effect?

A. I suppose it depends on what time of day someone would ingest psilocybin. If you took it right before bed and have a strong effect, then you would miss that night's sleep.

Q. Of course. All right. And do you agree that sometimes these negative side effects can last for days?

A. That is not my experience.

Q. Okay. There are also rare but serious side effects that have presented themselves in the data, right, like seizures?

A. I'm not aware of seizures directly attributable to psilocybin.

Q. Okay. What about attempts to leave the study area and cause harm to oneself? You're aware that that's a risk? Do you agree that that's a risk?

A. It's not one I've encountered. Typically, if people say they want it to stop or they wish the experience would diminish, then they can be - you know, that's why we have someone there who can say, you know, you remember you agreed to stay and this is all just part of the journey that you signed up for and, you know, we do encourage you to stay. So, I've never - I haven't talked to someone or had the experience of someone persisting in wanting to be sort of leaving - leaving during the experience. There could be - I mean, in medical studies sometimes people wanna be discharged before their treatment is done, but I don't think it's particular to psilocybin where people try to - try to dash out of the setting or something like that.

THE COURT: Leaving aside the trials though, are you aware of any of this in the literature?

5 A. Of people trying to leave the session before -
I mean, that would be the only time, it would have
to be in a trial because otherwise there might not
be a formal type of session that people could leave,
they would just be taking the drug in their own -
under their own supervision and so they - it's hard
to know what they would be leaving. Maybe I could
get a clarification on the question.

10 K. BENZAKEIN: Um....

THE COURT: So, you're referring to potential
negative side effects from ingestion of psilocybin,
Ms. Benzakein, are you asking generally whether that's
noted in the literature, whether it's seen in trials?

15 K. BENZAKEIN: Well, I expect we'll hear from another
witness that those are observed side effects.

THE COURT: All right.

K. BENZAKEIN: I wanted to give Professor Walsh an
opportunity to comment on that.

20 THE COURT: So, you're talking about observed side
effects that he's aware of. All right.

K. BENZAKEIN: Yes.

THE COURT: Thank you.

K. BENZAKEIN: Thank you.

25 WITNESS: And wanting to leave the session would be
one of the side effects?

30 K. BENZAKEIN: Q. Well, somebody being determined
to leave - let me put it a different way. I asked you earlier
today about the Carbonaro study that talked about 11 percent of
people putting themselves in harm's way. Are you - relatedly,
are you aware of any reports of people leaving a psilocybin dosing
session and causing harm to themselves, put it that way?

5 A. Not that I have a firsthand account of or that I'm aware of in the literature. It's likely to have happened at some point with the many people that have - that have used it, but it would depend on - you know, what do you mean by wanting to leave a session? What kind of agreement do they have to stay and at what point would that be a problematic choice, I don't know. It's hard for me to answer that question, I think.

10 Q. That's fair enough. So, I think now you agree that there are risks of harm with all drug use, including psilocybin use, right?

A. Sure.

15 Q. Okay. And in paragraph 26 of your affidavit, you say as follows: "In cases where individuals have engaged in harmful behaviours under the influence of psilocybin, psilocybin was usually consumed together with other substances such as alcohol, which have known potential to have increased risk for harmful behaviours", right?

A. Yes, I do say that.

20 Q. And so, you agree that where psilocybin is mixed with other substances, the risk of harm goes up, right?

A. The risk of psilocybin associated harm goes up, yes. Whether psilocybin increases the risk of alcohol when it's consumed with alcohol - adding alcohol to anything increases the risk.

25 Q. The risk of - so....

A. The risk of alcohol [indiscernible] nothing, alcohol with psilocybin, alcohol with anything, alcohol is very - it can enhance the risk of any kind of drug that you add it to because it is in and of itself risky.

30 Q. You say in your affidavit that it's more parsimonious to attribute that harmful behaviour to alcohol, right?

A. Yes.

Q. And I think that's what you're getting at here, right, because alcohol raises all risks?

5 A. The risks - the association between alcohol is so clear that if somebody is consuming alcohol and they engage in risky behaviour, you wouldn't say they had alcohol and they also had - you know, you don't need psilocybin to explain the risk associated with alcohol. If someone's drinking a lot of alcohol, then they've elevated their risk.

10 Q. But when you use the phrase, it's more parsimonious to attribute that risk to alcohol, you're making a judgment call, right?

A. Yes.

Q. But the truth is we don't know, right?

15 A. Well, I mean, you know, if you drank a bunch of alcohol and did something that was relatively less harmful, then you might say it's probably the alcohol that did it.

Q. You can't determine whether the alcohol alone or alcohol mixed with psilocybin created that adverse result, right?

20 A. No, but given what I know about alcohol, it would be more parsimonious for me to understand it as being driven by alcohol.

Q. You'll agree with me that within the literature that you've reviewed, the literature that you've cited here, the literature that you've produced, polysubstance use is identified as a major risk factor for harm when it comes to psilocybin, right?

A. Adding something risky to psilocybin increases the risk of a given event.

30 Q. That's not what the research says. At least that's not what's reported here. What it says is that risk of harm is increased when psilocybin is mixed with something else, right?

5 A. I think it's a fine point, but it's a question of whether psilocybin is mixed with something else or something else is mixed with psilocybin. So, I don't know if psilocybin adds to the risk of alcohol on its own. I do know that alcohol adds to the risk of psilocybin on its own.

Q. You're not an expert....

10 A. [Indiscernible] ingesting multiple substances it's very difficult to say you're engaging in risky behaviour. It's just the one behaviour. To use the example of the jump, it's hard to know - if somebody drank a lot of alcohol and jumped off a building and they also consumed psilocybin, it's hard to know how much of the alcohol contributing to the fall versus the psilocybin, except for we know the fact that a huge proportion of suicides involve alcohol, and people who drink alcohol regularly are more likely to commit suicide. We don't see that with psilocybin. So, when you say is it the alcohol or the psilocybin, one of these ingredients we know leads to suicide and one doesn't appear to lead to suicide, when they're combined, um, it makes more sense to me to attribute it to the drug that we know is associated with suicide, which is alcohol. So, that's what I'm trying to say. And that whether being on psilocybin increases the risk of alcohol, I don't know that to be the case. But I think we can say quite clearly that adding alcohol to psilocybin increases the risk. Whether adding 15 psilocybin to alcohol increases the risk is another question that I don't think we can state as clearly.

20 Q. We saw from the drug survey that has now been made Exhibit 5 in these proceedings that....

A. And is that the *European Rating of Harms*?

30 THE COURT: No.

K. BENZAKEIN: It's the *Canadian Substance Use Survey*.

A. Okay, gotcha, yes.

5 Q. And we saw.... Are you there, sorry? Or are you just getting - I'm getting it too. Did you review the part that indicated that there was considerable polysubstance use - or I shouldn't say considerable - I'm going to take you right to it instead of being so vague, bottom of page five.

A. Bottom of page five. Yes, that's the young adults and then at three with everyone. Page three is everyone polysubstance.

10 Q. Yes. I want you to look at page five, please.

A. The youth.

Q. The youth. And right at the bottom of the page on the lefthand side...

A. Mm-hmm.

15 Q. ...it indicates that the most common combinations of polysubstance use were alcohol when using cannabis, cannabis when using alcohol, and then - this is what I want to ask you to comment on, followed by psychedelics when using cannabis, eight percent, and psychedelics when using alcohol, seven percent. So, I'm going to suggest to you that whatever the mechanism, we're looking at a seven percent prevalence rate of young people mixing alcohol and psilocybin, right?

20 A. Well, is that seven percent of the twelve percent that are using psychedelics in general, I guess?

Q. I mean....

25 A. [Indiscernible]

Q. ... [indiscernible] that information?

A. That's what I would think that would mean.

30 Q. Yes. Well, assuming it's seven percent of the youth and young adults using psychedelics are mixing it with alcohol, right?

A. No, but it's a big difference if it's seven percent of the twelve percent or if it's seven percent of a

hundred percent, those are very different. So, if it's of the twelve percent that are using psychedelics, seven percent of them are mixing it with alcohol, that's roughly one percent.

5 Q. If seven percent of the youth and young adults using psychedelics are mixing it with alcohol, you say what, that it's only one percent of the - all of the....

10 A. Seven percent of the - is it seven percent of the twelve percent? So, twelve percent total used psychedelics in the last year, are we saying that seven percent of that twelve percent or is it seven percent of all? I doubt if it's seven percent of all, but it could be. I'm just not clear on what - what exactly that seven percent refers to, because they're very different. Or is it seven percent of alcohol use, which would be seven percent of 73 percent. So, I don't know what it's seven percent of.

15 Q. Okay, I understand your response. I think that's the most assistance we can get from you on this question, is that fair?

20 A. Yeah, I just don't know what the seven percent refers to, yeah.

Q. I understand. And there's nothing.... Sorry?

A. I could try to answer the question, but I don't know what the seven percent means.

25 Q. Okay. No, I appreciate that, so there's a gap in knowledge and you can't provide us with any more assistance, is that fair?

A. I'd say that's fair. I don't know what the seven percent refers to.

30 Q. Okay.

A. Seven percent of alcohol use involves psilocybin, seven percent of psychedelics um, and we can guess that psychedelics

80 percent of that is psilocybin, but it's hard to parse based on these numbers, and especially with not much time to look at it.

Q. I understand. Thank you. I appreciate that there are gaps there, so we only want you to tell us what you're sure of, so if you're not sure, we'll move on.

A. [Indiscernible]

Q. All right.

THE COURT: All right, I'm just going to take a brief recess now because my computer has frozen on me, which happens from time to time. So, let's just take - well, we'll stand down 'til recalled, I don't think it'll be more than 10 minutes.

R E C E S S

U P O N R E S U M I N G :

ZACHARY WALSH: PREVIOUSLY AFFIRMED

THE COURT: All right, let's make sure we've got everybody back, first of all. Mr. Akila back?

There we go. All right, we just need Ms. Benzakein, and Mr. Mazza. There we go. All right, we're ready to continue, my computer is now unfrozen.

K. BENZAKEIN: Mine was spinning this morning, I think frozen is superior to spinning.

THE COURT: When you open too many documents it doesn't like it, but in any event.... Go ahead.

K. BENZAKEIN: Thank you.

CROSS-EXAMINATION BY K. BENZAKEIN CONTINUES:

Q. I'm wrapping up here, Professor, so we're getting near the end which unfortunately means things will be even less organized than they've been to-date. In paragraph 26 of your

5 affidavit, you indicate - we went over this already, where you talk about harmful behaviours and how they can be limited, and you go on to say that these risks can be eliminated with proper procedure - proper safety procedures, and later you refer to the procedures that are engaged in the Oregon recreational psilocybin industry? Are those the procedures you meant? Oh, you're on mute.

10 A. I can't believe that was the first time I did that. The Oregon procedures are typical of the kind of - I mean, I don't think they would need to be followed to the note, but they're typical of the type of procedures that are important. I mean, most important is to have someone present and attending and to make sure that it's in a safe environment, you know.

Q. That does seem to be part of the Oregon....

A. Yes.

15 Q. ...protocol but there are other things, and I'd just like to ask you about some of them, all right?

A. Sure.

20 Q. Okay. So, you're familiar with this document, right? It's Exhibit B to your affidavit, Exhibits B and C, I believe, to your affidavit?

A. Yes. Yes.

25 Q. And you agree with me these represent best practices when it comes to supervising psilocybin use and ensuring safety?

A. Yeah, they're good practices.

30 Q. Okay. And some of the practices that are adopted, you also adopt in your affidavit. So, you say, for instance - well, you say, "The best practices for use are articulated in this article." And in paragraph 33 you say, "That's consistent with the formal programs of US states such as Oregon", right?

A. Yes.

Q. Okay. So, those practices I'm gonna suggest include the following: Number one, screening, right?

A. Yes.

Q. And you screen potential psilocybin users to ensure that there are no sort of red flags for dangerous behaviour, right?

A. Yes.

Q. Okay. The second is preparation, right?

A. Mm-hmm.

Q. Dosing is the third?

A. Yes.

Q. Setting is the fourth?

A. Yes.

Q. And integration is the fifth, right?

A. Correct.

Q. Okay. So, I want to get a little bit more in detail in just a couple of those elements, and the first and most important is screening. Effectively, certain people aren't allowed to access psilocybin through this Oregon program as a result of the screening process, right?

A. Yes.

Q. For instance, people who are using Lithium aren't allowed to receive psilocybin through this program, right?

A. Yes.

Q. Why is that?

A. You know, I have some questions myself about Lithium, it seems like an odd choice. I'm not sure. I don't believe that it would be direct interactions with the Lithium, rather that Lithium is typically used to treat bipolar disorder and people with bipolar disorder - it may be a roundabout way of screening for bipolar disorder. That's the one I was the most surprised by really...

Q. Right.

A. ...why Lithium is the marker.

Q. Right. You don't think it's a drug interaction, you think it's a signal of some other underlying risk factor, is that fair?

A. Perhaps. Perhaps, I'm not sure. I really am not sure. That's curious to me why they chose Lithium.

Q. Okay. Another factor that could disentitle you to psilocybin in Oregon is a history of mental illness and violence, right?

A. Which one is that?

Q. That's question 3J.

A. Yeah, history of harm or wanting to cause harm to self or others, 3I.

Q. Correct. And that's because we don't want - if someone's done that before, there's a risk that they might do it again while intoxicated with psilocybin, right?

A. Yes, I suppose so.

Q. Okay. A history of....

A. So, it says - 3I, "a history of causing harm or wanting to cause harm to self or others, encourage the client to consult with a medical or clinical provider", so that would be a case of kicking it back to their doctor.

Q. But 3J - in 3J, the....

A. Yes.

Q. And what's 3J?

A. Active psychosis.

Q. So, persons in psychosis cannot access psilocybin in Oregon, right?

A. That's correct.

Q. And that's because there's a risk that they might harm themselves or someone else, right?

5 A. Yeah. Or that it would exacerbate the psychosis which in and of itself is a risk for harm. So, you want to - if someone is in active psychosis you want them to avoid all kinds of potentially stressful situations. It's a bit of a debate because, you know, there's other advocates, I'm not one, but there's some evidence that people find some relief from some of their psychotic distress using psychedelics, but I would really think that that's - that's the last people that we would want to be testing it on. It's a new - it's a new field, so there's really an abundance of caution, and for any kind of psychological intervention people at risk of psychosis would be the first ones to avoid because they are in a fragile state in many ways.

10 Q. Question 3H asks if the client has thoughts of self-harm or harm to others, and if they answer yes, they're excluded, right?

15 A. Yes.

Q. And that's because, I'm gonna suggest, there's a risk that someone who consumes psilocybin in that state might do harm to themselves or others?

20 A. I - I think that it's - I mean, I think that's the generous interpretation. I think another potential is that the people who are advocating for the psilocybin program wanna be sure that no - um, that nothing bad happens that can be associated with the psilocybin program given the stigma that surrounds these medicines, so they wanna be sure that - you know, they wanna protect - partially, it's to protect the people but I think it's also to protect the program because they would hate to have someone who's at high risk of hurting themselves engage in the program and then hurt themselves and people would attribute it wrongly to the program. So, I think there's a sense of protecting the program as well that you don't want people who

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are at high risk because it would cast the program in a negative light if something were to happen to them, even if it wasn't due to the psilocybin. Those are people at high risk of having self-harm happen temporally close to the psilocybin session. So, it's a mixture of truly protecting them and also protecting the program from people who might cause negative attention as this is a new thing. And you know, as we see here, there is widespread concern due to stigma, due to, you know, the years of prohibition, so I think it's to protect the program as much as the participants.

Q. And in terms of the Canadian clinical trials I'm gonna suggest that people who have a history of certain mental illness, either themselves or in their family, are also excluded, do you agree?

A. Yes. Yeah.

Q. And that's for the same reasons, right?

A. Same reasons, yes, is that first of all we don't want anything to happen to our participants, but also we don't want anything to distract from the potential benefits of the medicine. So, if we're looking at people who are very ah, sick ah, very mentally unwell, they may not be good candidates to benefit from the treatment. So, it's not just out of safety, it's also to enhance our ability to identify the benefits of the treatment, and people who are actively psychotic may not benefit. So, it's not solely for safety purposes, it's also to you know, facilitate good outcomes from the trial.

Q. I understand. It may go without saying, but this kind of screening is unlikely to take place if people use psilocybin on their own, right?

A. Well, I mean, it's hard to say. If people use psilocybin without going through a screening, then they won't go through a screening.

Q. Right. Okay. The next - so at paragraph 32 of your affidavit, we went over it, screening, we've done that, preparation, so, what do you mean by preparation?

5 A. Preparation, you know, helps people to develop realistic expectancies of what might happen. So, you know, knowing that there might be times where you feel anxious or worried but that often if you move into that - you know, one of the things that we say a lot in preparation is in and through. So, if you have a difficult experience, you want to sort of lean into it, try to ask why am I - why am I re-experiencing this trauma right now? Maybe it's because that's something that I need to resolve in order to move forward. So, we encourage people to both be prepared, that there may be anxious or challenging experiences and that they should be willing to move in and through those so that they're not surprised and think 'Oh, my goodness, I'm anxious. I shouldn't be anxious.' No, it's fine, this is part of it. So, it's like anything that you - you know, any kind of novel or, you know, intense experience, and it certainly can be intense, you wanna know what's gonna happen, what's it gonna be like? So, we tell people that, and that way they can go it with their eyes open and be ready to have the best experience they can have.

15 Q. And again, that won't necessarily happen if a person is using on their own in a recreational....?

20 A. Correct. If someone is not prepared, they don't have the benefits of preparation, although you know, there are some good resources now available online, but there are also some not so good ones, so it's hard to know.

25 Q. The next criterion you identified in this section of your affidavit was setting. You indicate basically it's best to have a patient attended to by a trained assistant in a controlled environment, right?

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A. Yes. And "trained" can mean a lot of things. You know, there's a high range of what it means to be trained, but someone who knows what to expect is definitely - I would say that's one of the most important ones is the setting.

5 Q. And again, that can't be guaranteed in a recreational context, right?

A. No. You know, as it is now with psilocybin being illegal it's very - you know, it's a challenge. If there was - the example I sometimes use for people is, you know, I live here
10 in Kelowna on the side of a mountain, but no one goes skiing in my backyard because there's good safe places where they can ski so they don't need to ski off the side of a cliff. So, I think it would be similar with psilocybin if there was a nice safe place where people could access this, then that would - that
15 would do a lot for the setting. Right now, it's hard to find the best setting, people have to improvise.

Q. The next criterion is dosing, right?

A. Yes.

20 Q. And I'm gonna suggest that's for two reasons. The first is that the higher the dose the higher the risk of adverse events, right? You're nodding yes?

A. Yes. Yup.

25 Q. Right. And I'm gonna suggest a second factor to that is the purity of the substance that's consumed, right?

A. Yeah, it has a lot to do with just predictability. So, it's also like, this - like the preparation session, here's what you can expect, although it's hard to know what you are meant to expect if you don't know what dose you're taking. So,
30 it's not just the adverse experience, they also find more mystical experience at higher doses.

Q. Hmmm.

A. It's just more experience. But you wanna know what your - what to expect and that's difficult with - you know, without proper dosing information.

5 Q. And there could be adulterants, right, in substances acquired outside the clinical context?

A. Outside of a regulated context, yeah, where there's no available testing. I mean, one of the fortunate things about psilocybin it is, you know, it is a mushroom, it's not a white powder, so we're not as worried as with some things that it could be adulterated. You know, if you see it's a mushroom, it's not the same as just a white powder that could be anything from fentanyl or cocaine or heroin, we don't know, but you still wanna make sure that it's pure and that it's not dirty in some way or - yeah.

15 Q. I'm gonna point though - Professor, you'll agree with me that in the recreational context, psilocybin takes all kinds of different forms when it's purchased outside the regulated context, right?

A. Yes. Most commonly it's - it's mushroom.

20 Q. When you say "most commonly" do you have statistical information about that?

A. Um, it's very, very rare to get synthesized psilocybin outside of a clinical trial, just because it's so much easier for people to collect mushrooms. I don't have exact numbers, but it's quite rare. Most psilocybin that's used outside of clinical settings is mushroom material.

25 Q. Would you agree that....

A. But nonetheless, it could be adulterated in different ways.

30 Q. Would you agree - let me ask you this - this is a different question. Have you been - have you taken the time to attend at illegal psilocybin dispensaries around you?

A. There aren't many around me, I'm in Kelowna, but I've seen them, I'm aware of them.

Q. And where have you seen them?

A. I've seen them in Vancouver.

5 Q. Okay. And would you agree with me that when you go into the illegal psilocybin dispensaries in Vancouver that a good proportion of the psilocybin products are capsules?

A. Yes, they can be [indiscernible].

Q. I'm sorry?

10 A. Yes, they sometimes they're encapsulated, sometimes they're mushrooms.

Q. Right. So, those don't look like mushrooms, right, those look like pills, right?

A. Sure. They look like capsules filled with ground up plant material.

15 Q. They look like capsules filled with ground up material, right?

A. Sure.

Q. You can't tell that it's plant material, right?

20 A. Fair enough. Yeah.

Q. Okay. And there are chocolates and other edible products [indiscernible].

A. Yeah, you're right, totally. There's times where you can't see any mushroom at all, you're right.

25 Q. All right. You agree with me that the research and science, scientific development - try a different way again. The development of research into psilocybin was stymied by its status for decades, do you agree with that?

30 A. Yes.

Q. And it had a bad reputation, right?

A. Certainly.

Q. And so, would you agree with me that the science is sort of now catching up?

A. Um, catching up to what?

Q. Well, I'll put it a different way. We're still in the early days of running things like controlled experiments with respect to psilocybin, right?

A. You know, it's both because this is such an ancient substance, it's been used since time immemorial, there's certainly records going back a very long time. So, in some ways, in terms of the risks and other things, we do have a very long record of human use without indications of very severe risk. So, in some ways, we know more about it than we know about some new pharmaceuticals that maybe have gone through a clinical trial process but are relatively recent. So, yes, in some ways it is, you know, people call it the renaissance and there is new material coming out using the latest approaches to science, but on other ways, we do know a lot from a long history of use in various places around the world, so it's not - sometimes the novelty I think is a little exaggerated when we really think about the centuries if not millennia of psilocybin use amongst humans compared to say something like Prozac or Ritalin, which really don't have centuries of use.

Q. Right. But you'll agree with me, I'm sure, that the gold standard for establishing safety is a double-blind placebo-controlled study, right?

A. Yes and no. If you look at say, fentanyl or oxycontin, those have all gone through double-blind placebo-controlled trials, and you know, the follow-up on those is often brief and, you know, um, it is - the double-blind clinical trial is the gold standard in some cases, particularly if someone has a physical ailment and it's an unknown new drug, then you know, you can have a placebo-controlled, people don't know who got what,

5 and you can tell whether or not it reduces your blood level of a given index. With something like mental health and psychedelics, first of all the measure of mental health is less precise than the measurement of, say, blood levels. Um, the double-blind clinical trial is a difficult one for psychedelics because people often are able to tell if they're in a blinded condition or not, unlike they might be in a medicine that has purely physical effects, because it's psychological. People can say, 'Boy, I'm not in the placebo condition because I'm having a mystical experience'.

10 So um, you know, I think it's an active debate, and I don't want to get too philosophical about it, but I'm not sure if it has the same weight as - as it does in purely physical ah, ailments and developments of novel molecules. I think we have to use a lot of different ways of understanding psychedelics in order to really get a hold of what [indiscernible] and some of that I think has to come from the traditional knowledge from groups who've been using it for centuries and millennia. So, I think it's more complex than just to say a double-blind randomized controlled trial is the gold standard for psilocybin. It might be the gold standard for treatment of diabetes or other things, but for mental health and for psychedelics, I think we need a bunch of different ways of understanding.

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25 Q. I'm just making a note. (Pause) Professor, you were also qualified as an expert into the reasons that people use psychedelics?

A. I believe so, yes.

30 Q. I just want to quickly ask you, have you reviewed - you've reviewed this Lake and Lucas study that you presented this morning...

A. Yes, of course.

Q. ...that was made an exhibit?

A. Yup. Yes, I have.

Q. And you'll agree with me, and I can take you to it if you need me to, but Lake and Lucas - Lake and Lucas find in their study that 61 percent of users identified recreation as the reason that they used psilocybin, remember that?

A. Yeah, I'm just looking at it right now.

THE COURT: Sorry, what was that again, Ms. Benzakein? Can you just repeat that?

K. BENZAKEIN: Yes. The Lake and Lucas study found that 61 percent of users of psilocybin identified recreation as the reason that they use psilocybin.

A. It's worth noting in that study that few were allowed to identify more than one reason.

Q. Yes, I understand, but you agree with me that they found 61 percent identified recreation as a reason, right?

A. As one of the reasons.

Q. Right. Sorry, go ahead.

A. Because 85 percent said personal growth, so we have to assume that a sizable portion of the recreation might be - it's a shame that they didn't ask people what the primary reason perhaps, but recreation would be one of the reasons. People do enjoy it. But yeah, that's what it says.

Q. And that's not something you put in your affidavit, right?

A. Uhm, if you say not. Let me see where - I think this study was added in after my affidavit.

Q. Okay. All right, that's fair enough.

A. [Indiscernible] I do have a review of the main reasons the - there's the meta-analysis of reasons. Let's see if I can find that one. Hang on. There is a study that looked at all the reasons. Uhhmmm, yes in 20, "*Motives for the use of*

serotonergic use of psychedelics: A systematic review", at paragraph 20. [Indiscernible]

Q. Paragraph 20 of....

A. Of my - of my....

5 Q. Paragraph 20 of your affidavit? And in that paragraph 20 do you identify recreation as one of the uses - one of the motivations for people to use psychedelics?

A. No, I highlight that expansion is the primary motive.

10 Q. Right.

A. Yeah.

Q. Okay.

A. Recreation is such a - it's such a difficult construct because sometimes you think of recreation as perhaps anything that's non-medical, so there's medical versus recreational is one dichotomy. There's also the observation that personal growth can be enjoyable. So, people might say, 'Why do you go to church?' Well, I go for spirituality, also for recreation.' People may enjoy it. So, recreation doesn't foreclose on spiritual growth or the other reasons.

20 ... PAUSE

K. BENZAKEIN: Your Honour, sorry for the silence, I'm just going through my notes to see what's left.

25 ... PAUSE

Q. All right, just before we wrap up, Professor, I just want to just confirm that materials that you relied on and are adopting and have those filed as exhibits. So, in paragraph - sorry, this requires me to switch between documents which will no doubt cause problems. At paragraph 14 of your affidavit...

30 A. Yes? Do you want me to go through them all? I can list them all for you 'cause I have them set up in that way.

Q. Well, I'll just ask you about the ones I have on my list...

A. Okay.

Q. ...and then I'll leave it at that. So, paragraph 14 you cite a study by Mason et al entitled *Spontaneous and deliberate creative cognition during and after the psilocybin exposure*?

A. Yes.

K. BENZAKEIN: Your Honour, if that could be marked the next....

Q. sorry, you relied on that affidavit in giving your evidence today?

A. Yes.

K. BENZAKEIN: If that could be made the next exhibit, please?

THE COURT: Exhibit 6?

COURT CLERK: Yes, Your Honour.

EXHIBIT NUMBER 6: *Spontaneous and deliberate creative cognition during and after the psilocybin exposure* - produced and marked.

Q. And at paragraph 15 of your affidavit, you reference a report entitled *Characterization and prediction of acute and sustained response to psychedelic psilocybin in a mindfulness group retreat*. That article is by Smigielski. For the reporter, that's S like Sam, M like Mary, I, G like George, I-E-L-S-K-I. You relied on that report - that study in preparing your affidavit?

A. Yes.

K. BENZAKEIN: If that could be made the next exhibit, please, Your Honour.

THE COURT: And that was at paragraph where in the affidavit?

K. BENZAKEIN: Fifteen.

Zachary Walsh - by the Court

COURT CLERK: I'm sorry, Your Honour, this was the *Psychedelics not linked to mental health?*

THE COURT: Yes.

COURT CLERK: Thank you, Your Honour. That's exhibit seven.

WITNESS: That one's *Characterization and prediction of acute and sustained response....*

K. BENZAKEIN: Yes.

EXHIBIT NUMBER 7: *Characterization and prediction of acute and sustained response to psychedelic psilocybin in a mindfulness group retreat - produced and marked.*

THE COURT: All right, thank you.

K. BENZAKEIN: Thank you, Your Honour, those are all the questions from the Crown.

THE COURT: All right. Mr. Lewin, do you have any questions in re-exam?

P. LEWIN: No, Your Honour.

THE COURT: All right, just give me one moment.

... PAUSE

EXAMINATION BY THE COURT:

Q. I just have one question, Professor, and that is obviously different people have different experiences consuming this particular substance. Is there any way of controlling or predicting what their response is going to be emotionally or psychologically?

A. Uhm, you know, I'd say there's similarities and differences. So, the details of everyone's journey I think are quite different. But when we look at some of the data on mystical experience and things like that, there's a certain predictability to

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having those kind of intense autobiographical, ego dissolution type experiences and those are quite widespread. So, I don't know if there is - I would say the details, the narrative is quite different for everyone but the end result is quite similar in that most people feel, you know, in the proper set or setting, have those kind of mystical type experiences, it's actually quite remarkable how similar and how predictable it is, given how idiosyncratic the details are, but people tend to have this common experience of the transcendent type experience.

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Now, if someone has, I would say more trauma in their history, there is going to be more likelihood that some of that will come up and people are usually prepared for that, and perhaps they're struggling with it. So, if someone has childhood abuse, for instance, they might be concerned that they're gonna re-experience memories of that, and that would be something that they would come in for, where that might not be - and they may very well have that come up, but that's not gonna be something that would come up in someone that doesn't have those experiences.

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One of the interesting things in a recent study of mystical experience um, that we didn't really discuss in any detail here, was that looking at personality variables - so it's a great question you asked, does personality really predict how someone's gonna respond, and what they found was that it was pretty consistent, the mystical experience, regardless of personality. But people who are higher in a trait called neuroticism ah, who are more anxious, nervous, depressed, were more likely to have more difficult experiences.

Zachary Walsh - by the Court

Q. When you say "difficult experiences" what are we talking about?

A. Challenging, so that it's not all lights and unicorns, they have to walk through hell before they get to the lights and unicorns.

Q. For example, paranoia?

A. I would say anxiety more than paranoia. Paranoia usually comes as a consequence of anxiety in the wrong situation, so if someone gets anxious and there's not someone there to comfort them it may turn into paranoia. But sure, paranoia could be there, but those are the same folks I would say who are more likely to become anxious and paranoid on an aircraft, you know, they might be the same people who say, 'Oh, I saw the way the flight attendants were talking to each other and there's something wrong'. So, if you're highly neurotic, you're more likely to attend and devalue negative aspects of any experience or troubling aspects. I hope that gets to your question.

Q. Sure. No, I understand. But as a hallucinogenic, you're potentially exposing yourself to the risk of seeing things or perceiving things that are not actually true or at least present?

A. With psilocybin it's not - I mean, the class is hallucinogen but it's not likely to lead to frank hallucinations of seeing things that are not there. You're more likely to have closed - so, in a classic psychedelic session people have a sleep mask on and so they may have internal visions that are dreamlike, or when their eyes are open, they may see patterns or movement, but to see a full hallucination, a dragon or an entity is very unusual.

Zachary Walsh - by the Court
- Re-Ex. by P. Lewin

Q. All right.

A. So, they're more perceptually distortion than actual hallucinogens and you'll find that there's a lot of resistance in the field to the category of hallucinogens. There are other things, like drugs like Datura or other dissociatives that cause vivid hallucinations but not as much with the classic psychedelics, you're more likely to see patterns or distortions, closed eyes visions. So, when people say they see things they're usually afraid of what they see with their eyes closed in the form of a sort of a visionary experience.

Q. Right. But it certainly, I think to use your words, changes perceptions of reality?

A. Yes.

THE COURT: All right. Thank you. Any questions arising out of mine from either counsel? Ms. Benzakein.

K. BENZAKEIN: No, not from the Crown, Your Honour. Thank you.

THE COURT: Mr. Lewin?

P. LEWIN: Your Honour, perhaps actually a quick question.

THE COURT: Sure.

RE-EXAMINATION BY P. LEWIN:

Q. Do these challenging experiences, do they end badly or can they end very well?

A. They typically - they're usually a marker of a good growth in the session. You know, one of the things when I've worked on clinical trials, we don't know if someone necessarily has placebo or the active - the active psilocybin and we're always, you know, despite trying to stay blind, we're also curious,

and one thing that you might look for is to see if someone's having a little bit of a tear or some crying because it usually means that they're processing some of that emotional material and that leads to a better resolution.

5 So, difficult or challenging experiences is - it needn't - it's not necessary for benefit but it's often a part of a very positive experience, um, and it's almost always resolved within the session. So, it's sort of this experience of coming through something, um, like a journey, like a film or a narrative work, there's often, you know, some peril and some challenging experiences along the way of a narrative, but that leads to a more fulsome resolution and more meaning in the end and that's how the psychedelic psilocybin journey often proceeds too. There's often some rough patches but that really enriches the final culmination of the experience.

15 P. LEWIN: Thank you.

THE COURT: All right, thank you very much, Professor.

WITNESS: Oh, thank you, it was a pleasure.

THE COURT: Have a good day.

20 WITNESS: I can go now?

THE COURT: Yes, thank you.

WITNESS: Okay thanks. Bye.

25 THE COURT: All right, so before we recess, so tomorrow we're going to have the evidence of - I apologize, is it Professor or Dr. Deol, or both?

P. LEWIN: Well, it's Ms. Deol, she's a pharmacist, but that's just gonna be filed.

THE COURT: All right.

30 P. LEWIN: So, there's gonna be three civilian witnesses and I'm gonna, with Your Honour's permission, come back to that issue I mentioned earlier.

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5 THE COURT: Sure. Sure. I scrambled a bit over
lunch to try and put my mind to this a bit more. I
mean, I thought about a publication ban which could
prohibit identifying the witness, and that just seems
like overkill. Like, there are already affidavits
10 filed with their names on it, and of course, someone,
if they knew the court processes, could get the
transcripts with their names. If a journalist wants
this information, what I'm proposing they could
still get the information. So, the effect of what
I'm requesting doesn't impact freedom of the press,
restricting the media access I'd suggest that's a
serious matter, but we don't have to get into that,
and that's not - that's not what this is all about.
15 What I really want is I want the casual observer to
be prevented from reviewing it. That if there's a
decision and it's very prominent and many people
look at it, a person who just looks at the decision,
they don't see the names of these two people, but
journalists aren't prohibited from accessing anything.
20 And it's not about journalists, it's really just
about a very small civilian population that with
the case of Ms. Van Lang, she discusses her father
and difficulties with her father, she doesn't want to
aggravate the relationship. It was kind of necessary
25 for her to discuss the relationship with her father
to explain herself, but she just doesn't want to
aggravate the relationship. And with Mr. Cillero,
he doesn't want to impact his job by discussing this.

30 So, I would point to the court's power to control
its own process. I had a little bit of a look at

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Fercan Developments where the Ontario Court of Appeal talked about this in 2016.

THE COURT: Do you have the citation for that?

P. LEWIN: Oh, my apologies. Shoot. I thought about it too and....

THE COURT: What's the name of the case?

P. LEWIN: *Fercan F-E-R-C-A-N Developments* and that's 2016.

THE COURT: All right, I'm sure I can find it.

P. LEWIN: And paragraph 45 is the paragraph where they say well, if there isn't anything else specifically contemplated, and they also talk - there's a few different situations this could happen. They talked about the mandate for the court and I looked up the mandate, or tried to when I saw fair and accessible justice, and I'd say encouraging witnesses to come forward, especially when it's a test case involving broad issues involving someone - we want to encourage to be able to come forward and we don't have those special concerns when the publication ban is in issue. I don't think there's a tool, and this is what *Fercan* thinks about, do we have some other tool that could do this, and I don't think there's a precise scalpel-like tool as what I'm proposing, Your Honour.

THE COURT: All right. Anything to add to that, Ms. Benzakein?

K. BENZAKEIN: I'll leave that to Ms. Pashuk on this issue.

THE COURT: Ms. Pashuk?

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A. PASHUK: Well, as I understand Mr. Lewin, he's not asking for any kind of non-disclosure or publication order which would require notice to the media, and I think probably would not be met. I don't really know what the basis is. I mean....

THE COURT: Well, they just don't want to have their name published. But at the end of the day, if somebody is listening to it, that - I mean, it's one thing just to use their initials in a decision...

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A. PASHUK: Mm-hmm.

THE COURT: ...but it's another thing when somebody is listening to the proceedings and clearly they're going to hear their name and see them presumably hear about the materials that they filed. So, I mean, it's not a complete blanket protection, um, anybody listening to the proceedings including the media is going to hear their names, I'm not going to refer to them by initials, nor I think can we in terms of swearing them. So, it's only an issue of how I reflect their identities in a judgment.

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A. PASHUK: And I think if that - I had some communication with my friend prior to today's appearance and communicated exactly this that we didn't really take a position on whether Your Honour refers to them by initials, but anything more than that would certainly require an application, I think, and one we would oppose, so....

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THE COURT: Yeah. I mean, the case arises in a different context in Gladue court where - and this is not with respect to - it's more with respect to the information contained in a Gladue report which we don't often refer to explicitly on the record

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for privacy reasons. It's not a sealed exhibit to the extent that the media has access to it, but as with all exhibits, Court Services has a policy whereby access to the exhibits is controlled by the presiding judge, or a judge presumably if the judge is no longer sitting. So, somebody can't just walk in and say 'Let me look at an exhibit', they would still have to come back presumably to me in this case, or if it was in a Gladue case, they would have to come back to me. Now, in that case I would want the input of counsel and I'd probably direct the matter back into court. It doesn't sound like that's really going to be required here since their names are going to be reflected on a transcript anyways. So, I think it's just more of a formality if I wish to give some consideration to their personal circumstances, which I would intend to do so after hearing from them, Mr. Lewin, so unless there's anything further, that's how I intend to handle the issue. I'll deal with it by way of initials in my written decision at the end of the day, but certainly their names will be on the record, they'll be there for a transcriptionist to record. Fair enough?

A. PASHUK: Yes. Thank you, Your Honour.

THE COURT: All right.

P. LEWIN: Thank you, Your Honour.

THE COURT: So, we'll return then tomorrow morning? All right. And again, if there are any exhibits to be referred to, just send them to the clerk beforehand so that we can look them up as we go, all right? I appreciate it.

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Closing Remarks

A. PASHUK: Do we know if it's the same clerk - does he know his schedule yet?

THE COURT: He's saying yes. He's saying yes.

A. PASHUK: Excellent.

THE COURT: I put in a special request, they actually listened to me.

A. PASHUK: Excellent. We'll send anything we intend to refer to in cross-examination in the morning, but perhaps just on the understanding it won't be shared with the witnesses...

THE COURT: All right.

A. PASHUK: ...before we examine them on it.

THE COURT: All right. And are you going to be handling the matters tomorrow, Ms. Pashuk?

A. PASHUK: I will be, yes, with three civilians.

THE COURT: All right, excellent.

A. PASHUK: Thank you.

THE COURT: All right, we'll see you all tomorrow then.

... PROCEEDINGS ADJOURNED TO FEBRUARY 11TH
FOR CONTINUATION

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