

END

File Number: T-1073-09
Vancouver Registry

IN THE FEDERAL COURT OF CANADA – TRIAL DIVISION

BETWEEN:

CHRISTOPHER BENNETT

and

**THE ATTORNEY GENERAL FOR CANADA and
THE MINISTER OF HEALTH FOR CANADA**

Respondents

FEDERAL COURT COUR FÉDÉRALE		
FILED	JUN 30 2009 JUN Applicant B. BOUCHIR	DEPOSEE
VANCOUVER, B.C.		

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Vancouver, British Columbia.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

June 30, 2009

**B. BOUCHIR
REGISTRY OFFICER**

Issued by: _____
(Registry Officer)

B. Bouchir

Address of local office:

Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

TO: ATTORNEY GENERAL FOR CANADA
MINISTER OF HEALTH FOR CANADA

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____

day of _____ A.D. 20 _____

Dated this _____ day of _____ 20 _____

**B. BOUCHIR
REGISTRY OFFICER**

File Number: _____
Vancouver Registry

IN THE FEDERAL COURT OF CANADA – TRIAL DIVISION

BETWEEN:

CHRISTOPHER BENNETT

Applicant

and

THE ATTORNEY GENERAL FOR CANADA and
THE MINISTER OF HEALTH FOR CANADA

Respondents

APPLICATION

This is an application for judicial review in respect of a decision of the Minister of Health for Canada who, by letter of May 29, 2009 through her designate Ronald Denault, Acting Director, Office of Controlled Substances, Health Canada, denied Applicant Christopher Bennett's request for an exemption from the applications of sections 4 and 7 of the *Controlled Drugs and Substances Act* as they apply to cannabis (marihuana) possessed and produced for his own personal consumption for religious and spiritual purposes.

The applicant makes application for:

1. An order in the nature of *mandamus* compelling the Minister of Health to issue Applicant an exemption, pursuant to section 56 of the *Controlled Drugs and Substances Act*, from the application of sections 4 and 7 of the *Controlled Drugs and Substances Act* as applied to cannabis (marihuana) as set out in Schedule 2(1), so long as that cannabis is produced and possessed for Applicant's personal use.
2. A declaration that sections 4 and 7 of the *Controlled Drugs and Substances Act* as applied to cannabis (as set out in Schedule 2(1) to that Act) are invalid and violate the rights guaranteed by sections 2, 7 and 15 of the *Canadian Charter of Rights and Freedoms* (the "Charter").

The grounds for the application are:

Introduction

1. Applicant Christopher Bennett has used cannabis for religious and spiritual purposes since

he experienced a profound epiphany in 1990, coming to the belief that cannabis is the Biblical Tree of Life. He makes this application on his own behalf.

2. This application for judicial review is brought by Mr. Bennett to challenge the decision of the Minister of Health (the "Minister") on May 29, 2009 refusing to issue Mr. Bennett an exemption from the applications of sections 4 and 7 of the *Controlled Drugs and Substances Act (CDSA)* 1996, c.19, as they apply to cannabis (marihuana) produced and possessed for his own personal consumption for religious and spiritual purposes.
3. The Minister's stated reason for denial was that issuing the requested exemption would not be in the public interest. The Minister did not provide any additional explanation of the basis for the decision, nor did the Minister indicate what, if any, criteria were used to come to the Minister's conclusion.
4. The effect of the Minister's decision and the lack of any viable legislative or regulatory exemption scheme for the production and possession of cannabis for spiritual and religious purposes is to deny Mr. Bennett the ability to lawfully undertake his religious and spiritual practices and to place him in the constitutionally untenable position of being forced to choose between his religious and spiritual convictions and his liberty and security of the person. It also subjects Mr. Bennett to a distinction in treatment that both denies him a benefit and imposes upon him a burden that violates his essential human dignity as a result of his religious and spiritual beliefs and practices.

Parties

5. The Minister is the authority tasked with issuing exemptions from the application of the *CDSA* pursuant to section 56 of that Act.
6. The Attorney General is also a responsible party because he is tasked with the administration of the *CDSA* in the criminal courts of Canada.
7. Mr. Bennett is a citizen of Canada and the Applicant herein.

Mr. Bennett's Religious and Spiritual Convictions

8. Mr. Bennett holds the freely and deeply held conviction that cannabis use provides him with the ability to foster his connection with the divine and to explore his own spiritual faith.
9. He came to this belief and conviction during a cannabis-induced epiphany in 1990.
10. Since that time he has researched and published extensively on the issue of cannabis use and religion and spirituality. His convictions have deepened in the years since his epiphany as a result of that research and his continued cannabis use.

The Legislative Context

11. The possession and production of cannabis is subject to a near-absolute prohibition as set out in the *CDSA* and various regulations promulgated pursuant to the *CDSA*.
12. The *CDSA* has two means of obtaining exemptions from its provisions. Section 56 of the *CDSA* provides that the Minister of Health “may, on such terms and conditions as the Minister deems necessary, exempt any person or class of persons or any controlled substance or precursor or any class thereof from the application of all or any of the provisions of this Act or the regulations if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.”
13. Persons may also obtain exemptions from the provisions of the *CDSA* as it applies to cannabis by virtue of licenses issued by the Minister pursuant to the *Medical Marijuana Access Regulations*, SOR/2001-227 (“*MMAR*”) as amended. Canadian residents may obtain Authorizations to Possess (ATP) dried cannabis and Personal-Use Production Licenses (PPL) allowing the possession of specified quantities of cannabis and production of cannabis plants. The permitted quantities are determined by a calculation based on the individual’s daily consumption. In the application process, a person seeking an exemption must identify the purpose of the exemption, the security measures that will be taken in respect of the production site and storage site and must acknowledge that the applicant understands that using cannabis may carry with it certain health risks. In the view of the Government of Canada, the *MMAR* scheme maintains an appropriate balance between providing seriously ill persons with compassionate access to marijuana, on the one hand, and the need to regulate marijuana, a controlled substance and unapproved drug product, on the other.
14. Other than section 56, there exists no legislative or regulatory means by which a person, like Mr. Bennett, can obtain an exemption from the *CDSA* in order to lawfully produce and possess cannabis for spiritual and religious purposes.

The Request and Denial

15. Mr. Bennett sought an exemption pursuant to section 56 of the *CDSA*. He provided the Minister with a Statutory Declaration outlining his religious and spiritual convictions, including a description of the historical role of cannabis and religious practice and his own experiences with cannabis. The Declaration also provided the Minister with all of the information and declarations (except those related to medical use of cannabis) required by the Minister before issuing an ATP and PPL pursuant to the *MMAR*.
16. The Minister of Health, acting through her designate Ronald Denault, an employee of Health Canada, denied Mr. Bennett’s request for an exemption by letter dated May 29, 2009 on the grounds that granting the exemption was not in the public interest. This denial constituted an error of law and an action contrary to law.

The Charter Values at Stake

17. Mr. Bennett's spiritual and religious practices are unlawful, as a result of the near-absolute prohibition on cannabis production and possession set out in the *CDSA* and the Minister's refusal to issue an exemption to Mr. Bennett, in violation of the provisions of section 2 of the *Canadian Charter of Rights and Freedoms*.
18. Mr. Bennett is forced to choose between practicing his spiritual and religious beliefs and his liberty in violation of the provisions of section 7 of the *Canadian Charter of Rights and Freedoms*. This also has the effect of infringing on Mr. Bennett's protected security of the person interest in violation of section 7 of the *Canadian Charter of Rights and Freedoms*.
19. Mr. Bennett is subjected to a distinction in treatment that results in him being denied the benefit of an exemption and subjected to a burden that violates his human dignity on the basis of his religious and spiritual beliefs and practices contrary to the provisions of section 15 of the *Canadian Charter of Rights and Freedoms*.

Conclusion

20. Mr. Bennett seeks an Order compelling the Minister to issue him an exemption from the *CDSA* that would permit Mr. Bennett to produce and possess cannabis for his personal spiritual and religious use along the same lines and with similar restrictions as exemptions issued pursuant to the *MMAR*.
21. Alternatively, Mr. Bennett seeks a declaration that sections 4 and 7 of the *CDSA* as applied to cannabis produced and possessed for spiritual and religious purposes are invalid and in violation of sections 2, 7 and 15 of the Charter and are not saved by section 1 of the Charter.

This application will be supported by the following material:

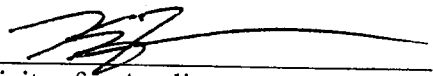
1. Statutory Declaration of Christopher Bennett dated 11 August 2008;
2. Letter from Ronald Denault, Health Canada, denying Mr. Bennett's request for a *CDSA* section 56 exemption dated May 29, 2009;
3. Affidavit of Christopher Bennett;
4. Copy of *Green Gold the Tree of Life: Marijuana in Magic and Religion*, Bennett, Chris (Access Unlimited 1995);
5. *Marihuana Medical Access Regulations*, SOR/2001-227 including Regulatory Impact Analysis Statement issued in conjunction with Regulations;
6. *Regulations Amending the Marihuana Medical Access Regulations*, SOR 2003-387 including Regulatory Impact Analysis Statement issued in conjunction with Regulations;

7. *Regulations Amending the Marihuana Medical Access Regulations*, SOR 2005-177 including Regulatory Impact Analysis Statement issued in conjunction with Regulations;
8. *Regulations Amending the Marihuana Medical Access Regulations*, SOR/2009-142 including Regulatory Impact Analysis Statement issued in conjunction with Regulations;
9. Health Canada *MMAR* Application Guide and *MMAR* Application Package;
10. Report of the Special Committee on Illegal Drugs, *Cannabis: Our Position for a Public Policy*, Senate of Canada 2002.

The applicant requests (name of the tribunal) to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the (tribunal) to the applicant and to the Registry:

1. Any document(s) outlining the criteria used by the Minister of Health (or her delegate) in deciding applications for exemptions pursuant to section 56 of the CDSA;
2. Any document(s) referring or relating to Mr. Bennett's request for an exemption;
3. Any document(s) referring or relating to section 56 exemption(s) granted to any person or group to the extent that such exemptions were sought and/or granted for religious, spiritual and/or cultural purposes.

30 June 2009



Solicitor for Applicant

Kirk I. Tousaw

Law Office of Kirk I. Tousaw

142-757 West Hastings, Suite 211

Vancouver BC V6C 1A1

(ph) 604.684.1420

(f) 1.866.310.3342

(e) kirk tousaw@gmail.com