

Application for a Section 56 Exemption under the *Controlled Drugs and Substances Act*  
S.C. 1996, c. 19

January 19, 2020

By email - confidential

TO:

The Honourable Minister, Patty Hajdu  
Minister of Health  
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Dear Honourable Minister,

**Re: Master Corporal Scott Atkinson's s. 56 application**

I am counsel for Master Corporal Scott Atkinson and Field Trip Health. Master Corporal Atkinson is applying for an exemption under s. 56(1) of the *Controlled Drugs and Substances Act* S.C. 1996, c.19 ("*CDSA*") from section 4 of the *CDSA* to permit him to possess psilocybin mushrooms for psilocybin-assisted psychotherapy and related medicinal uses. His application is attached along with a letter of support from his physician, Dr. Michael Verbora of Field Trip Health.

Master Corporal Atkinson served in the Canadian military for 25 years. His active duty service in Yugoslavia and Afghanistan took a toll on his health. He made great sacrifices in the name of Canada and world peace. It should be no surprise that active duty service in war zones can be a violent and traumatic experience. He now suffers from Post Traumatic Stress Disorder, Treatment Resistant Depression, Treatment Resistant Generalized Anxiety Disorder, Panic Disorder with Agoraphobia, and Chronic Pain Syndrome.

Master Corporal Atkinson has tried all conventional treatments and medications to treat

his health issues without success. In March-April 2019, he tried psilocybin. It provided him with significant relief from both anxiety and depression. It dramatically improved his outlook. He feels peace and happiness now for the first time since he was young. His relationship with his wife and children (now adults) is “100% better.” His relationship with the other veterans with whom he works is much better. His quality of life is tremendously improved. It has been a miracle for him.

The supporting letter from Dr. Michael Verbora sets out the long list of medications and treatments that have been tried. Dr. Verbora confirms that Master Corporal Atkinson has exhausted conventional treatments and is deemed treatment resistant. Dr. Verbora indicates that Master Corporal Atkinson meets the inclusion criteria for psilocybin-assisted psychotherapy and does not have any contraindications. Dr. Verbora states that psilocybin-assisted psychotherapy would be not just safe and efficacious treatment for Master Corporal Atkinson, but failure to access this exemption could jeopardize his health. Dr. Verbora advises that for Master Corporal Atkinson psilocybin-assisted psychotherapy is medically necessary. The test under section 56 is that the exemption be medically necessary. Master Corporal Atkinson meets the test.

The decision to grant a s. 56(1) exemption must be made in a manner consistent with the *Charter of Rights and Freedoms* (the “*Charter*”). As the Supreme Court of Canada has said,

The discretion vested in the Minister of Health is not absolute: as with all exercises of discretion, the Minister's decisions must conform to the *Charter*: *Suresh v. Canada (Minister of Citizenship & Immigration)*, 2002 SCC 1, [2002] 1 S.C.R. 3 (S.C.C.). If the Minister's decision results in an application of the *CDSA* that limits the s. 7 rights of individuals.<sup>1</sup>

Section 7 of the *Charter* protects the right to liberty and security of the person and not to be deprived thereof except in accordance with the principles of fundamental justice. Liberty protects Master Corporal Atkinson’s right to make fundamental personal choices free from state interference.<sup>2</sup> The liberty right entitles Master Corporal Atkinson to direct the course of his own medical care.<sup>3</sup>

Security of the person protects Master Corporal Atkinson’s personal autonomy in matters concerning his physical or psychological integrity.<sup>4</sup> It also protects Master Corporal Atkinson from having to choose between his health and the law. In *R. v. Smith*, the Supreme Court of Canada said that

<sup>1</sup> *PHS Community Services Society v. Canada* 2011 SCC 44, at para. 117.

<sup>2</sup> *Carter v. Canada (Attorney General)*, 2015 SCC 5, at para. 64.

<sup>3</sup> *Carter, supra*, at para. 67; *Manitoba v. C. (A.)*, 2009 SCC 30, at para. 40.

<sup>4</sup> *Carter, supra*, at para. 64; *New Brunswick (Minister of Health & Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46, at para. 58.

“forcing a person to choose between a legal but inadequate treatment and an illegal, but more effective choice, the law infringes security of the person: *Morgentaler; Hitzig v. R.* (2003), 231 D.L.R. (4th) 104 (Ont. C.A.).”<sup>5</sup>

By granting a section 56 exemption, not only is the Minister proceeding in a humane and compassionate manner, but also the Minister is making the *CDSA* constitutionally viable. The Supreme Court of Canada explained this in *PHS v. Canada* where a s. 56 exemption had been refused and the applicants attacked the constitutionality of the *CDSA*.<sup>6</sup> The Court said that the s. 56 exemption can act as a safety valve to ensure that the *CDSA* is constitutional. The Court recognized that there are people who must be exempted from the *CDSA* or else the drug laws become unconstitutional. By granting this s. 56 exemption in these circumstances the Minister is ensuring the *CDSA* is constitutional.

Master Corporal Atkinson has sacrificed a lot for Canada, more than any human should have to. This trauma has caused him suffering. We ask that he not be made a criminal because he finds relief with psilocybin. We ask that he not be made to choose between his health and the law. We ask the Minister to exemplify the high principles that Master Corporal Atkinson defended. We ask that he be granted s. 56(1) exemption from s. 4 of the *CDSA* permitting him to possess psilocybin mushrooms for medicinal use including psilocybin-assisted psychotherapy with a licensed psychotherapist. For Master Corporal Atkinson, it is medically necessary.

Thank you for consideration. Please advise if you have questions.

Yours truly,



Paul Lewin

Enclosures

cc clients

<sup>5</sup> *R. v. Smith*, [2015] 2 S.C.R. 602, at para 18.

<sup>6</sup> *PHS*, *supra*, at paras. 112-114.