

Federal Court



Cour fédérale

Date: 20190221

Docket: T-2060-18

Ottawa, Ontario, February 21, 2019

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

CHRISTIAN BERMAN

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER

UPON motion by the Plaintiff seeking an Order for interim relief in the nature of a personal constitutional exemption to start growing marijuana pursuant to the conditions in the application until Health Canada delivers the needed permit under the *Access to Cannabis for Medical Purposes Regulations*, SOR/2016 230, or in the alternative, an Order of *mandamus* that Health Canada immediately do its duty not to violate the Plaintiff's right to life by issuing the requisite permit, and other relief;

AND UPON reading the pleadings and proceeding;

AND UPON considering the following:

1. Health Canada received the plaintiff's application for initial registration to produce cannabis for his personal medical use on August 24, 2018.
2. Both the former *Access to Cannabis for Medical Purposes Regulations* ("ACMPR") and the current *Cannabis Regulations* provide that the Minister must refuse an application for registration to produce cannabis if the proposed site for production would be a production site under more than four registrations. In addition, the *Cannabis Regulations* permit the Minister to refuse a registration where the registration is likely to create a risk to public health or public safety, including a risk of diversion to the illicit market.
3. As the proposed production site in this case was already associated with four active registrations, the Minister issued a Notice of Intent to refuse on October 18, 2018. The Notice invited the plaintiff to provide written reasons why the refusal was unfounded within 30 days. The letter also set out options available to the plaintiff to obtain cannabis for medical purposes, including through a licensed producer, and/or by applying for registration to produce cannabis at a production site with fewer than four registrations.
4. Health Canada has no record of receiving any response to the Notice of Intent to refuse including the November 30, 2018 or January 20, 2019 letters contained in the plaintiff's motion record. However, Health Canada did receive an amendment application from another individual registered at the plaintiff's proposed

production site seeking to move to a new production site, which amendment was granted on December 12, 2018. As there were no longer four registrations for the proposed production site, Health Canada resumed its review of the Plaintiff's application on December 20, 2018. In the course of this review, Health Canada became aware of information that suggests the plaintiff's registration may pose a risk to public health and safety. Health Canada is reviewing this information and anticipates either making a registration decision or issuing a Notice of Intent to refuse in the coming weeks;

AND UPON considering that Health Canada has not provided a timeline for its investigation;

AND UPON concluding that the Applicant's motion if it is to succeed at all is at this time premature but that the Plaintiff should have the right to reapply if the Defendant does not make a decision whether to issue a permit or a Notice of Intent to refuse within 30 days of the date of this Order;

THEREFORE THIS COURT ORDERS that the Plaintiff's motion be and the same is hereby dismissed, with leave to the Plaintiff to reapply if the Defendant does not make a decision whether to issue a permit or a Notice of Intent to refuse within 30 days of the date of this Order.

"Henry S. Brown"

Judge