

Federal Court



Cour fédérale

Date: 20260717

Docket: T-1961-25

Citation: 2026 FC 963

Ottawa, Ontario, July 17, 2026

PRESENT: Madam Justice Pallotta

BETWEEN:

COMPANIONSHIP OF THE SACRED
VINE INC.

Applicant

and

MINISTER OF HEALTH CANADA, AND
ATTORNEY GENERAL OF CANADA

Respondents

REASONS AND JUDGMENT

I. Introduction

[1] The applicant (CSV) brings this application for judicial review to challenge a decision by the Director General of a branch of Health Canada, revoking an exemption under section 56(1) of the *Controlled Drugs and Substances Act*, SC 1996, c 19 [CDSA] that allowed CSV members to import and use ayahuasca. Ayahuasca is a plant extraction that contains three controlled substances. It is illegal to possess ayahuasca without an exemption.

[2] CSV alleges that the decision to revoke the exemption was unlawful, unreasonable, and procedurally unfair. Its central allegation is that the Director General did not have jurisdiction to revoke the exemption. CSV states that section 56(1) of the *CDSA* authorizes the Minister of Health or her delegate to grant or deny an exemption, but there is no statutory power to revoke an exemption once it is granted.

[3] CSV's section 56(1) exemption was time-limited, and it expired before this application was heard. Because the exemption expired, the parties agree that the issues in the application are moot. They submit that the Court should exercise its discretion to decide at least the jurisdiction issue, despite mootness.

[4] In my view, the Court should not exercise discretion to decide the moot issues. The application is therefore dismissed.

II. **Background**

[5] CSV applied for a section 56(1) exemption for religious purposes. In the exemption application, founder Allan Finney described CSV as a congregation of individuals practicing a Shipibo religion, Axeti Nete, with sacred rituals that include ingesting an Amazonian ayahuasca brew.

[6] In July 2023, Health Canada granted an exemption that allowed CSV, through designated members, to import, possess, provide, and administer ayahuasca when carrying out ceremonies or rituals at CSV's Quebec facility. The exemption was subject to a number of terms and

conditions, one being the period of validity. This term stated that the exemption would expire on the earliest of three dates:

- the date it was replaced by another exemption;
- the date of revocation; or
- December 23, 2025.

[7] Health Canada replaced the July 2023 exemption with an amended one in November 2023. The only difference between them was a change to the permitted ayahuasca supplier—a change made at CSV’s request. Like the July 2023 exemption, the period of validity for the November 2023 exemption was until the date of a replacement exemption, the date of revocation, or December 23, 2025 at the latest.

[8] CSV requested a second change to the permitted ayahuasca supplier, but this second amendment request was never processed. The amendment request was overtaken by the events that led to the revocation.

[9] In November 2024, Health Canada gave notice of its intent to revoke CSV’s exemption (Notice). The Notice stated that Health Canada had seen commentary in YouTube videos (by Mr. Finney and by CSV member Jamie Larkin) and website content that was inconsistent with the stated religious purpose of the exemption and misrepresented the scope of the exemption. The Notice gave CSV an opportunity to respond to concerns that the public interest no longer supported the exemption.

[10] CSV demanded disclosure and particulars of: (i) the statutory provision that grants the Minister authority to revoke a section 56(1) exemption; (ii) the internal policies and procedures outlining what the Minister and her delegates at Health Canada consider when making a decision to revoke a section 56(1) exemption; and (iii) any and all investigative materials in existence before or after the Notice was issued to CSV.

[11] Health Canada responded that: (i) the terms and conditions for an exemption are set out in the exemption letter, and decisions to revoke are made in a manner consistent with section 56(1) and in consideration of the CDSA's purposes, namely, the protection of public health and maintenance of public safety; (ii) Health Canada's Compliance and Enforcement Policy for Controlled Substances and Precursors speaks generally to the approach to compliance and enforcement, which can include revocation of authorizations to protect public health and public safety; and (iii) Health Canada's rationale and the materials supporting its intent to revoke CSV's exemption were set out in the Notice.

[12] In its written submissions to Health Canada, CSV argued that revocation was unavailable for two reasons: first, the Minister had no statutory authority to revoke the exemptions issued in July 2023 and November 2023, and second, the doctrines of estoppel, *res judicata*, *functus officio*, and abuse of process prohibited her from revisiting the decisions to grant and amend the exemption.

[13] CSV also argued that, assuming revocation was available: the revocation process triggered a *Charter*¹ analysis and required a consideration of CSV members' liberty interests (section 7), freedom of religion (section 2(a)), and freedom of expression (section 2(b)); the process arising from the Notice did not accord with principles of procedural fairness and fundamental justice or provide sufficient protection of the *Charter* rights at issue; and the Minister could not reasonably revoke CSV's exemption based on the facts of the case and the *Charter* rights that were engaged.

[14] The Director General revoked CSV's exemption in May 2025. The notice of revocation states that the YouTube videos and website content suggested that CSV intended to use the exemption for purposes other than the religious practice of Axeti Nete, and to advance goals that were "incongruent with the specific religious purposes for which the exemption was granted." It states that Health Canada decided to revoke the exemption because the circumstances supporting the exemption had changed, and allowing the exemption to continue in light of the change in circumstances and inconsistencies with CSV's exemption application would be inconsistent with the public health and safety objectives of the CDSA.

[15] As noted above, CSV argues that the decision to revoke the exemption was unlawful, unreasonable, and procedurally unfair.

[16] CSV's central allegation on judicial review mirrors its submission to Health Canada that there is no statutory authority to revoke a section 56(1) exemption once it is granted. CSV also

¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

maintains that the doctrines of estoppel, *res judicata*, *functus officio*, and abuse of process prohibited the Minister or her delegate from revisiting the decision to grant CSV an exemption.

[17] CSV contends that the term in the exemption that defines its period of validity, which says the exemption expires on the day it is revoked, cannot create jurisdiction that the CDSA does not confer. In CSV's submission, the Minister could not bootstrap a revocation power by inserting a term that purports to reserve such a power. In a similar vein, CSV contends Health Canada was wrong to replace the July 2023 exemption with the November 2023 exemption, because the Minister's power with respect to the July 2023 exemption was spent and she could only grant or deny exemptions made further to the original exemption. Instead of replacing the original exemption with a new one that substituted the new supplier for the old supplier, CSV says Health Canada should have continued the July 2023 exemption and issued a second one that simply added the new supplier as another permitted supplier.

[18] CSV submits that, if it is wrong and the Minister does have authority to revoke a granted exemption: (i) the Minister's decision to revoke its exemption in this case was unreasonable in view of the facts and the *Charter* rights that were engaged; and (ii) the revocation process was unfair and the revocation decision was made in violation of procedural fairness principles.

[19] The respondents contend that the Minister's power to revoke a granted exemption is inherent in the broad discretionary powers afforded by CDSA section 56(1) itself, and the doctrines of estoppel, *res judicata*, *functus officio*, and abuse of process do not prevent her from revisiting a discretionary decision to grant an exemption. The respondents say the language of

CDSA section 56(1) signals Parliament’s intent to give the Minister a great deal of flexibility—she may grant an exemption if, in her opinion, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest, and she may do so on any terms and conditions she considers necessary. The respondents state that the Minister is empowered to provide equitable, discretionary relief from the ordinary application of the *CDSA*, and were she precluded from revoking an exemption, the “flexibility contemplated by s. 56 of the *CDSA* would be lost”: *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 149.

[20] The respondents also say that the decision to revoke CSV’s exemption on the basis of changed circumstances was both reasonable and procedurally fair.

III. **Mootness**

[21] In *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, 1989 CanLII 123 (SCC), the Supreme Court of Canada set out a two-part test for deciding whether to dismiss a proceeding for mootness.

[22] The first part of the test asks whether there is a live controversy between the parties. The live controversy must exist not only when the proceeding is started, but also when the Court is called upon to reach a decision: *Borowski* at 353.

[23] If there is no live controversy, the second part of the test is whether the Court should exercise discretion to hear the matter despite its mootness. In determining whether to exercise

discretion to hear a moot application, the Court will consider: (i) whether there is an adversarial context between the parties; (ii) the concern for judicial economy; and (iii) the Court's proper adjudicative function and whether hearing the application may intrude into the role of the legislative branch: *Borowski* at 358, 360, 362.

[24] In this case, the parties agree that the issues are moot (the first part of the test). By the time of the hearing, the July 2023 and November 2023 exemptions were no longer valid because the latest expiry date had passed. Even if the Director General had not issued the revocation decision, CSV could not rely on any prior exemption. To benefit from an exemption, CSV must reapply.

[25] Despite mootness, the parties ask the Court to exercise discretion to decide at least the central issue of the Minister's jurisdiction to revoke an exemption issued under section 56(1) of the *CDSA*.

[26] CSV states that an adversarial context remains because it intends to reapply for an exemption, and the unresolved legal question of whether the Minister has jurisdiction to revoke an exemption is likely to arise again. CSV accepts that the typical judicial review remedy—an order quashing the decision and remitting the matter for reconsideration—is not available for the revocation decision because the matter is moot. However, CSV states that the Minister and her delegates need guidance on whether they are permitted to revoke or revisit a granted exemption absent an express statutory mechanism to do so.

[27] Similarly, the respondents submit that a ruling on whether the Minister has jurisdiction to amend, reconsider, or revoke an exemption will provide useful guidance and may avoid future litigation on the same issue.

[28] CSV submits that the Court should also decide the reasonableness, procedural fairness, and *Charter*-related issues, because it believes the impugned decision will continue to affect any future application for an exemption. The respondents do not oppose a ruling on these issues, but they maintain that the primary issue is the jurisdictional one.

[29] In my view, the Court should not exercise discretion to decide the moot issues.

[30] I am not persuaded that an adversarial context remains. The central issue on this application relates to whether the Minister had the power to revoke, amend, or revisit CSV's granted exemption, and no aspect of that controversy remains. The parties agree that both of CSV's prior exemptions are now spent, independently of any action by the Minister or her delegate to revoke, amend, or revisit them.

[31] CSV's intention to apply for another section 56(1) exemption does not, in my view, provide an adversarial context. CSV states that the Director General's decision to revoke the past exemption will have a major impact on a new application, the concern being that a new exemption will be refused. However, CSV's concern does not give it "a stake in the outcome" of the moot issue on this application: *Borowski* at 359. CSV concedes that the Minister has jurisdiction to refuse an exemption request. If the Minister refuses CSV's request for another

exemption, any challenge to that decision will not engage the issues I am being asked to decide on the lawfulness, reasonableness, and fairness of a decision to revoke a granted exemption.

[32] The respondents say that a ruling on the jurisdiction issue may avoid future litigation on the same issue. But again, the jurisdiction issue in this case is the Minister’s authority to revoke a granted exemption. In my view, the possibility of future litigation between the parties on the same issue—revocation of a granted exemption based on changed circumstances—is too speculative and remote to ground an adversarial context that would justify deciding the moot issue.

[33] The parties contend that the Court’s ruling will provide guidance. I am not satisfied there is a need for guidance that would warrant deciding a moot issue in the absence of an adversarial context. As part of the request for relief in the notice of application, CSV asks for a declaration that the Minister’s decision to revoke the exemption was *ultra vires*. But a declaration should only be granted if it will have practical utility, that is, if it will settle a “live controversy” between the parties: *Daniels v Canada (Indian Affairs and Northern Development)*, 2016 SCC 12 at para 11. Here, I am not satisfied that a declaration would settle a live controversy.

[34] Furthermore, providing guidance by answering the jurisdictional question risks overstepping the Court’s proper adjudicative role. *Borowski* warns that the Court should be sensitive to its role as the adjudicative branch in our political framework, since pronouncing judgments in the absence of a dispute affecting the parties’ rights may be seen as intruding into the role of the legislative branch: *Borowski* at 362. In my view, an application for judicial review

may call for greater sensitivity about the Court's proper role. When reviewing an administrative decision, the Court should generally refrain from deciding the issue itself: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 83. This principle applies to jurisdictional questions, which are not a distinct category attracting correctness review: *Vavilov* at para 65. In my opinion, the third *Borowski* factor also militates against deciding the moot issues.

[35] Concerns about judicial economy are partly answered if the Court's decision will have some practical effect on the parties' rights, notwithstanding that it does not determine the controversy that gave rise to the proceeding: *Borowski* at 360. In this case, I do not see the practical effect a decision would have on the parties' rights. That said, I do not think that concerns of judicial economy are a particularly strong factor against deciding the moot issues of this application. Both sides want the Court to decide the issues (especially the central jurisdictional issue), and I view the parties' agreement as a factor that favours deciding the moot issues. Furthermore, I did not decide mootness at the hearing. The parties made their arguments on the merits of the application.

[36] However, the fact that the parties agreed on mootness and argued the issues are not sufficiently influential factors. A court does not fetter discretion to decide the question of mootness by reserving on it and hearing argument on the merits: *Borowski* at 363-64. What I see as a relatively small impact on judicial economy does not outweigh the other *Borowski* factors. The need for caution in deciding issues outside an adversarial context is a more significant factor in this case, particularly when it seems unlikely that the parties will find themselves facing the

same issue (soon, or even at all) and I do not have concerns that the issue would otherwise evade judicial review.

IV. **Conclusion**

[37] The issues on this application for judicial review are moot, and I decline to exercise my discretion to decide them despite mootness. The application is therefore dismissed.

[38] While the respondents asked that the application be dismissed with costs, I find that each side should bear its own costs of the application.

JUDGMENT IN T-1961-25

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. Each side shall bear its own costs.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1961-25

STYLE OF CAUSE: COMPANIONSHIP OF THE SACRED VINE INC. v
MINISTER OF HEALTH CANADA, AND
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: FEBRUARY 10, 2026

JUDGMENT AND REASONS: PALLOTTA J.

DATED: JULY 17, 2026

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