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FOOD AND DRUGS

Application for judicial review by applicants, a neurologist (Dr. Davenport) and his patient (Mr. Lance) suffering from debilitating cluster headaches, of Health Canada's refusal to authorize access to psilocybin under Special Access Program (SAP) — Mr. Lance had found relief using non-hallucinogenic doses of psilocybin¹ — SAP request was supported by Dr. Davenport's account of Mr. Lance's medical history and experience of different treatments, current literature concerning use of psilocybin for medical purposes, and legal submissions addressing Mr. Lance's rights pursuant to *Canadian Charter of Rights and Freedoms*, s. 7 — Minister of Health's delegate denied request on basis evidence of psilocybin's efficacy in treating cluster headaches not established, alternative conventional treatments not ruled out — Decision did not address Charter arguments — At issue was whether Minister's decision was reasonable and if not, what was the appropriate remedy — Minister's delegate's refusal to approve SAP request lacked the requisite degree of justification, intelligibility and transparency — He failed to meaningfully grapple with key issues and central arguments raised by applicants — In particular, Minister's delegate's conclusion that there was insufficient information respecting use, safety, and efficacy of psilocybin to treat cluster headaches was inconsistent with his acknowledgment to Dr. Davenport that safety and efficacy of psilocybin to treat Mr. Lance's cluster headaches were established — He also did not address the patient's positive response to psilocybin, nor did he meaningfully grapple with the impracticality of clinical trials or the inaccessibility or ineffectiveness of alternative treatments — The refusal of the SAP request was therefore unreasonable — Minister's delegate also wholly disregarded the legal submissions respecting Mr. Lance's right under Charter, s. 7 to be granted access to psilocybin — These were squarely raised in SAP request, and it was incumbent on decision maker to meaningfully grapple with them — His failure to do so further rendered his decision unreasonable — Applicants asked that Minister's delegate be ordered to grant SAP request — Court may order outcome of an administrative decision in only limited circumstances, such as when remitting matter for reconsideration would prevent timely and effective resolution of matter; and when particular outcome is inevitable — These circumstances did not apply here — The matter was remitted to a different delegate for redetermination within 14 days — Application allowed.

LANCE V. CANADA (ATTORNEY GENERAL) (T-1881-23, 2024 FC 787, Fothergill J., reasons for judgment dated May 24, 2024, 35 pp.)

¹ Psilocybin, compound found in many species of mushrooms, classified as drug under *Food and Drugs Act*, R.S.C., 1985, c. F-27, listed in *Controlled Drugs and Substances Act*, S.C., 1996, c. 19, Schedule III. Possession and sale of psilocybin prohibited in Canada.