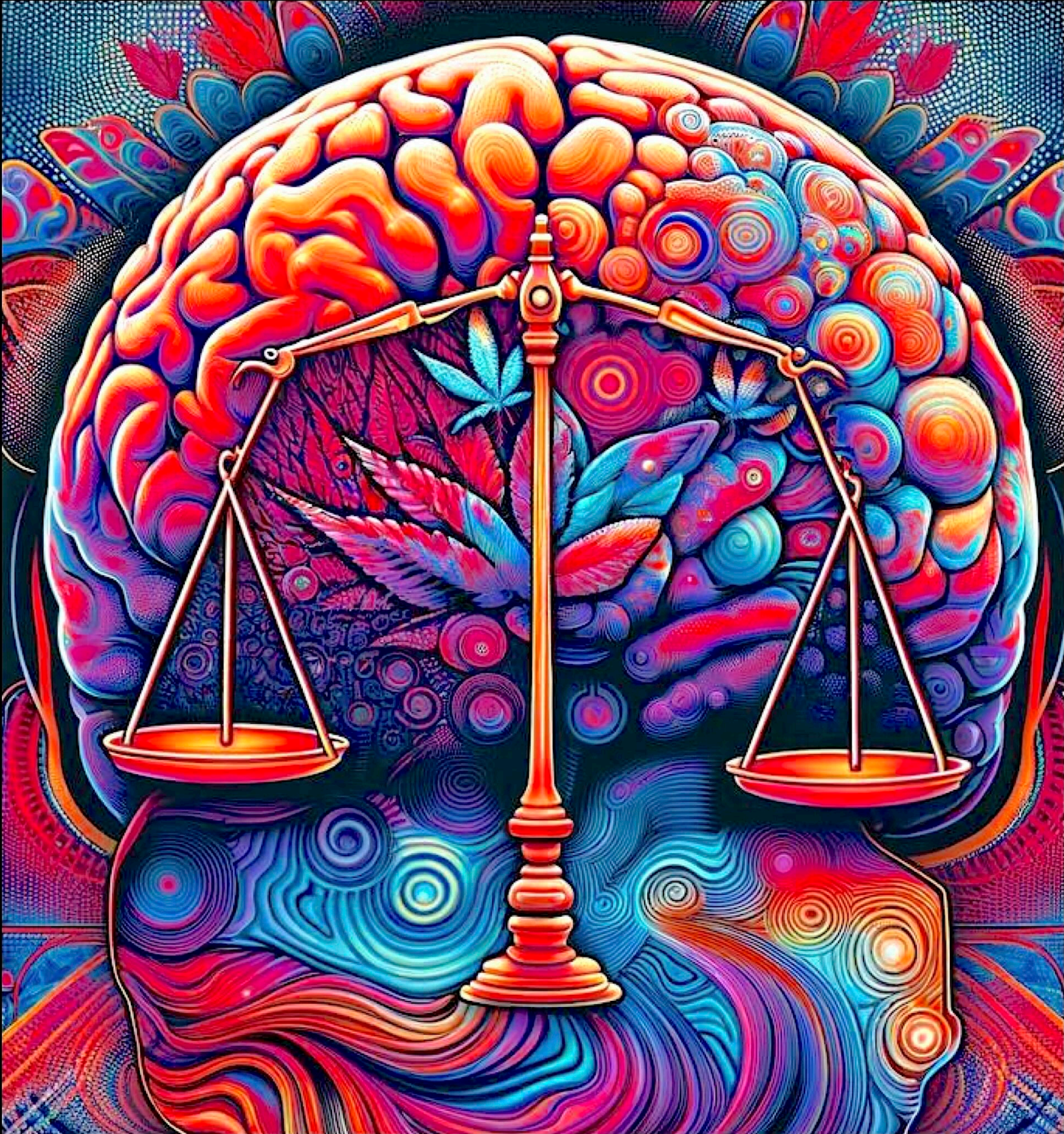


# State of Canadian Psychedelic Law 2024 Report





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# Two Steps Forward, One Step Back

Canadian psychedelic law made astonishing advancements between 2020-2022, but 2023 was something of a step backward due to:

- The lack of meaningful legal or regulatory changes aimed at making psychedelics more accessible for medical, wellness, or recreational use;
- The failure of a *Charter* challenge arguing for a health practitioner right to undergo experiential psychedelic therapy training outside the context of clinical trials; and
- Various high-profile psychedelic commercial ventures being forced to downsize or shutter operations.

Conversely though:

- Canadian cities like Vancouver and Toronto experienced a veritable outbreak of illegal psychedelic dispensaries which law enforcement largely ignored; and
- Canada's Senate published a report strongly advocating for proactive exploration of psychedelic-assisted therapy's potential for veteran treatment.

Before we explore these developments in detail though, a brief round of congratulations for our American friends. Although legalization efforts also experienced something of a slowdown south of the border, there were some significant developments. Most notably, Oregon recently began operating the first state-level legal psilocybin wellness program,<sup>1</sup> and Colorado is getting ready to launch its medical psychedelics access program next year.<sup>2</sup>

In California, a state bill passed that will allow doctors to prescribe psilocybin and MDMA if and when they are federally re-scheduled. Another bill to decriminalize possession of psilocybin, mescaline, DMT, and ayahuasca passed both houses of the state legislature, only to be vetoed by Governor Gavin Newsom. In a written statement, Governor Newsom said he couldn't support decriminalization but would support medical legalization legislation should it arrive on his desk.<sup>3</sup>

In Washington, D.C., Congress members proposed a bill called the *Validating Independence for State Initiatives on Organic Natural Substances Act of 2023* (VISIONS Act) to prevent application of federal funds to obstruct state or local policies regarding the “use, distribution, sale, possession, research, or cultivation of psilocybin.”<sup>4</sup> The bill seems unlikely to go anywhere in the near term, but it at least demonstrates benevolent federal interest in the subject matter.

## What Is and Isn't Legal in 2024

Psychedelic substances are largely governed by three federal laws in Canada: the *Cannabis Act*, the *Controlled Drugs and Substances Act* (CDSA), and the *Food and Drugs Act* (FDA).<sup>5</sup> These laws determine which substances are permitted or prohibited for possession, cultivation, distribution, import, and export.

Due to inconsistent enforcement of these laws over time and across jurisdictions, there's considerable confusion about what exactly is legal and what is not in Canada. For clarity, we've outlined the legal status of some popular psychedelic substances below:

- **Cannabis** is legal for adult recreational use pursuant to the *Cannabis Act* and applicable provincial regulations.
- **Psilocybin** (“magic mushrooms”) is illegal under Schedule III of the CDSA, unless permitted by Health Canada via the Special Access Program (SAP) or pursuant to a s. 56 exemption under the CDSA.

- **LSD** (“acid”) and **DMT** (the active psychedelic agent in ayahuasca) are illegal under Schedule III of the CDSA, unless permitted pursuant to a s. 56 exemption under the CDSA.
- **MDMA** (“ecstasy”) is illegal under Schedule I of the CDSA, unless permitted by Health Canada via the SAP or pursuant to a s. 56 exemption under the CDSA. Additionally, personal possession of up to 2.5 grams of MDMA was decriminalized in British Columbia effective January 31, 2023.<sup>6</sup>
- **Ketamine** is legal and regulated for medical but not recreational use pursuant to Schedule I of the CDSA and applicable regulations.
- **Mescaline** is prohibited under Schedule III of the CDSA, but peyote (which contains mescaline) is legal for personal possession.
- **5-MeO-DMT** (“bufo”), **ibogaine**, and **iboga** (the shrub from which ibogaine is derived) are legal for personal possession. However, distribution and other activities involving these substances are illegal unless specifically authorized under the FDA or permitted via the SAP.

## Illegal Dispensaries

Although psilocybin remains illegal under Schedule III of the CDSA (subject to limited exemptions), aboveground stores openly selling a wide variety of “magic mushroom” products in sleek packaging have been popping up all over Canada, effectively daring local authorities to shut them down.

Vancouver is both the springboard and centre of this defiant trend. Legendary cannabis and drug law reform activist Dana Larson launched the first magic mushroom dispensary online in 2019, and has since opened three physical stores (or “cafes”) in the city.<sup>7</sup> In addition to psilocybin products, his stores offer for public sale LSD, DMT, 5-MeO-DMT, kratom, and peyote. As of January 2023, there were at least seven other psychedelic dispensaries operating in Vancouver – sufficient for a cheerful guide reviewing each location to be produced.<sup>8</sup>

Similar dispensaries selling primarily psilocybin products have since opened in Toronto, Ottawa, Winnipeg, and Montreal, as well as in smaller cities such as Hamilton, Kingston, and London in Ontario.<sup>9</sup>

### Law Enforcement’s Reaction

Law enforcement’s reaction to these stores has been extremely inconsistent, varying considerably across jurisdictions. Whereas Vancouver police announced in February 2023 that “magic mushroom sales are not a priority,”<sup>10</sup> police in Toronto, Montreal and Hamilton have raided shops, seized thousands of dollars’ worth of psychedelic products, and arrested employees.<sup>11</sup> Vancouver police also recently raided three of Larsen’s shops, leaving many puzzled as to what prompted the sudden crack-down (Larsen’s stores began reopening almost immediately).<sup>12</sup>

In another concerning development, recent incidents of stolen trucks crashing into Shroomyz storefronts in Barrie and Toronto have prompted rumours of a turf war between stores.<sup>13</sup> Local law enforcement is likely to make shutting down dispensaries a greater priority should such incidents continue.

### Legalization Advocates’ Reaction

The rapid proliferation of psilocybin dispensaries across Canada has prompted ambivalent reactions among legalization advocates.

While some believe these stores normalize psychedelics for the public and make near-term legalization more likely, others worry the existence of “rogue stores” might make it more difficult for psychedelics “to gain widespread acceptance among lawmakers and citizens.”<sup>14</sup>

More concerning is the all-too-common belief among customers and even some store employees that psilocybin dispensaries are operating in a “grey area” of the law. This leads many people to misapprehend the potential legal consequences of buying and selling substances that remain unambiguously subject to criminal prohibition throughout Canada.<sup>15</sup>

## The Drugs Store

However relaxed Vancouver police may (or more recently, may not) be about stores openly selling psilocybin products to the public, they are apparently ready and willing to swiftly crack down on attempts to openly sell harder drugs.

Jerry Martin, who opened The Drugs Store “selling heroin, meth, cocaine and MDMA,” was arrested within 24 hours of launching his business in May 2023.<sup>16</sup> Martin’s stated aim was to provide safe, fentanyl-free drugs to those addicted. He was reportedly concerned that even though limited possession of certain hard drugs has been decriminalized in BC, insufficient effort is made to ensure provision of safe supply for those in need. To bolster his claim of good intent, the amount each customer could buy from him was ostensibly limited to that legally permitted for possession in the province.<sup>17</sup>

Martin’s ultimate stated goal was, in fact, to be arrested. He said he intended to challenge existing drug laws, which – as his lawyer Paul Lewin put it – “prevent a safe supply and result in death by poisoning.”<sup>18</sup> As there is no legal way to buy hard drugs in Canada, buyers must turn to the illegal market where they risk fentanyl lacing, which substantially increases the possibility of overdose. Lewin alleged that Canada’s laws prohibiting sale of these substances therefore contravene section 7 of the *Charter*, which guarantees all persons in Canada the right to life, liberty, and security of the person.<sup>19</sup> Unfortunately, as Martin died of suspected fentanyl overdose in July 2023, his intended constitutional challenge is unlikely to come to fruition.

It is worth noting the contrast between Vancouver law enforcement's near-instantaneous move to shutter Martin's shop - which sold substances legal to possess in BC, if not to sell - and their seeming indifference (for the most part) to numerous illegal psychedelic dispensaries which sell substances that are illegal to both possess *and* sell. The disparity in prosecutorial discretion may be explained by the theory that some Canadian law enforcement authorities simply operate by means of a silent "psychedelic exceptionalism" policy.<sup>20</sup> That is, they regard psychedelics as socially unproblematic whereas the scourge of addiction and criminal issues relating to fentanyl and other hard drugs' use and sale are identifiably a far greater problem. Certain persons working in the Canadian judicial system have suggested this is the case to us in conversation.

## Psychedelic Sector Comedown

In 2023, the psychedelic industry entered the "bust" phase of the boom and bust cycle that nascent industries typically experience. Some of the more notable examples of impacted companies include:

- Toronto-based Field Trip Health, which owned a chain of ketamine clinics across North America, collapsed in March 2023 after having "burned through nearly CA\$100 million in investor money."<sup>21</sup> It was forced to lay off most of its staff and seek protection from creditors; it sold all of its clinics, as well as a research and cultivation laboratory in Jamaica.<sup>22</sup>
- Vancouver-based Numinus Wellness remains active, but announced in September 2023 it was closing its research lab and some clinics to reduce expenses and improve cash flow.<sup>23</sup>



- Synthesis Institute, which ran psychedelic retreats in the Netherlands and offered Oregon-registered psychedelic facilitator training, declared bankruptcy in March 2023. A drop in retreat sales, as well as “a wave of training program refund requests” toward the end of 2022, were cited as likely reasons for the company’s demise.<sup>24</sup> Initially, it appeared that all of its 200+ students would be left in bankruptcy limbo. However, while the Dutch branch of the company could not be saved, the training program operated by its American sister company (as well as associated branding) was acquired by Resurgence Training Institute, a wholly-owned subsidiary of Nelson, BC-based Retreat Guru Enterprises.<sup>25</sup>

The sector’s contraction can likely be pinned on two principal factors: lack of sufficient psychedelic legalization progress and rising interest rates. Regarding the latter, with debt more attractive as an investment option, the value of equities has broadly fallen across the market from pandemic highs. And speculative investments with a long payoff horizon – the case with most psychedelic investments – have been most vulnerable to this market downturn.<sup>26</sup>

## Psychedelic Litigation

In 2023, one major Canadian psychedelics-focused legal challenge resulted in defeat while another remains ongoing.

In *Toth v Canada (Health and Addictions)*, 2023 FC 1283, the Federal Court of Canada rejected the application of 96 health care professionals (as well as the psychedelic-assisted therapy advocacy group TheraPsil) seeking to overturn decisions by Health Canada denying them s. 56 exemptions to train with psilocybin.<sup>27</sup>

The *Toth* applicants requested exemptions to take part in experiential psilocybin-assisted therapy programs run by TheraPsil. They told the court it was necessary for them to personally experience psilocybin to properly use and understand it in the context of the therapy they intended to provide.<sup>28</sup> Health Canada, however, refused to grant the practitioners' sought s. 56 exemptions on the basis that they were not necessary for any medical, scientific or other public interest purpose, given that "there was an alternative option available," namely receiving authorization to obtain psilocybin as part of a clinical trial.<sup>29</sup>

The applicants accordingly argued that this was unreasonable and impractical for various reasons, including the fact that pursuing a clinical trial would be unethical, cause delay, and interfere with training objectives.<sup>30</sup> The presiding judge, however, held that the Minister of Health acted with proper discretion, as "no peer-reviewed clinical evidence" showed experiential training to be necessary and other therapists offer psychedelic-assisted therapy without having any personal experience with psilocybin (including several trained by TheraPsil).<sup>31</sup> She therefore dismissed the application.

Whatever the legal merits of the ruling, it leaves those seeking to provide and receive psilocybin-assisted therapy in something of a ridiculous position: fighting through Health Canada's bureaucratic hoops for legal access to the same substance they could obtain by simply strolling into their nearest illegal neighbourhood dispensary. If nothing else, the current combination of legal prohibition, limited exemptions, and lax enforcement practically invites people to ignore the law. [Nicholas Pope](#) of Hameed Law, the lawyer for the applicants in *Toth*, noted the "absurd" nature of this situation as part of his motivation to appeal the decision "all the way to the Supreme Court of Canada if necessary."<sup>32</sup>

In the meantime, *Hartle et al v HMTK* is still being litigated in Federal Court.

Represented by Nicholas Pope, Paul Lewin, and several other notable litigators and psychedelic lawyers, the *Hartle* applicants allege that the federal government’s failure to allow reasonable legal access to psilocybin for patients by personal doctor prescription amounts to a *Charter* violation.<sup>33</sup> Progress, however, appears to be slow: “like a glacier” according to Thomas Hartle, who is both the first named plaintiff in the case and first person in Canada to obtain a s. 56 exemption to engage in psychedelic-assisted therapy outside of a clinical trial.<sup>34</sup>

The outcome of this case is eagerly awaited, as it could result in courts mandating that the Canadian government establish an individualized psilocybin-assisted therapy framework like the medical cannabis legislation established in the early 2000s, following a similar *Charter* challenge regarding medical cannabis use.<sup>35</sup> As for when we can expect a judgment, Pope recently advised us by email that “the time will be measured in years, not months, but likely not measured in decades.”

## Senate Report

On November 2, 2023, the Canadian Senate’s Subcommittee on Veterans Affairs published a report entitled *The Time is Now: Granting Equitable Access to Psychedelic-Assisted Therapies*, which recognizes the potential of psychedelic therapies involving psilocybin and MDMA to treat PTSD and other mental health problems afflicting Canadian military veterans.<sup>36</sup>

While the report acknowledges the lack of suitable data and sufficiently-trained mental health practitioners necessary to recommend that psychedelic-assisted therapy be made broadly available on an immediate basis, it builds a strong case for a substantial and speedy expansion of psychedelic research in Canada, supported by testimony from health professionals and academics, as well as veterans who claim to have greatly benefited from psychedelic therapy (one of whom credits it with saving her life).

The report - notably the first publication by Canada’s government clearly advocating for medical psychedelics’ use - concludes by calling on Veterans Affairs Canada to “immediately launch and fund a large-scale research program on psychedelic-assisted psychotherapy” in collaboration with relevant stakeholders.

# Psychedelic Sector Legal Services

Are you operating in or adjacent to Canada's nascent legal psychedelics industry, or thinking about starting a psychedelic enterprise? Green Economy Law Professional Corporation can help ensure your legal bases are covered, from regulatory compliance to incorporation, governance, contracts, IP, and licensing applications. We also offer a flat-fee Psychedelic Integration Coaching Legal Starter package.<sup>37</sup> **For more information regarding legal services, please contact the firm at 647-725-4308 or via email at [info@greeneconomylaw.com](mailto:info@greeneconomylaw.com).**

*Read last year's [State of Canadian Psychedelic Law: 2023 Report](#)*

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## **Green Economy Law Professional Corporation does not offer criminal law services and will not perform work for parties engaged in illegal activities.**

<sup>1</sup> Oregon Psilocybin Services (*accessible at* <https://www.oregon.gov/oha/ph/preventionwellness/pages/oregon-psilocybin-services.aspx>). It should be noted, however, that this program – psilocybin in general – remains illegal under federal law.

<sup>2</sup> Colorado Department of Regulatory Services, Division of Professions and Occupations (*accessible at* <https://dpo.colorado.gov/NaturalMedicine>).

<sup>3</sup> Hannah Wiley, *California Moves to Decriminalize Use of Magic Mushrooms and Other Natural Psychedelics*, LOS ANGELES TIMES (September 7, 2023). California voters might get the opportunity to voice their opinions directly on the issue of legalization next year – two initiatives are in the works for the November 2024 ballot, one to legalize magic mushrooms and the other to invest in psychedelic research. *See* Dani Anguiano, *California Nearly Decriminalizes Psychedelics – But Governor Hits Brakes*, THE GUARDIAN (October 8, 2023).

<sup>4</sup> Press Release, *Congressman Robert Garcia Introduces the VISIONS Act to Prohibit the Use of Federal Funds to Prosecute Legal Psilocybin (Magic Mushroom) Usage* (September 21, 2023) (*accessible at* <https://robertgarcia.house.gov/media/press-releases/congressman-robert-garcia-introduces-visions-act-prohibit-use-federal-funds>).

<sup>5</sup> *See* Cannabis Act (S.C. 2018, c. 16); *see also* Controlled Drugs and Substances Act (S.C. 1996, c. 19); *see also* Food and Drugs Act (R.S.C., 1985, c. F-27).

<sup>6</sup> *Personal Possession of Small Amounts of Certain Illegal Drugs in British Columbia (January 31, 2023 to January 31, 2026)*, HEALTH CANADA (May 5, 2021) (*accessible at* <https://www.canada.ca/en/health-canada/services/publications/drugs-health-products/fact-sheet-exemption-personal-possession-small-amounts-certain-illegal-drugs-british-columbia.html>).

<sup>7</sup> Dana Larson, Medicinal Mushroom Dispensary, *Our Story* (*accessible at* <https://mushroomdispensary.com/about/>).

<sup>8</sup> Amanda Siebert, *A Guide to Vancouver's Magic Mushroom Dispensaries*, HEALINGMAPS (January 19, 2023) (*accessible at* <https://healingmaps.com/vancouver-magic-mushroom-dispensaries-guide/>).

<sup>9</sup> Eric Stober, *'Magic Mushrooms' Are Still Illegal in Canada. How Can Stores Be Opening?* GLOBAL NEWS (September 4, 2023).

<sup>10</sup> Mike Hager, *Magic Mushroom Stores Are Popping Up in Vancouver, Hoping to Open the Doors To Legalization*, THE GLOBE AND MAIL (February 24, 2023).

<sup>11</sup> *Ibid*; *see also* Saira Peesker, *Magic Mushroom Store Previously Shut Down by Police Is Back Open in Hamilton's East End*, CBC NEWS (June 1, 2023).

<sup>12</sup> Sarah Grochowski, *Why Raid Now, Ask Supporters of Vancouver Magic Mushroom Shops*, VANCOUVER SUN (November 4, 2023). Nono Shen, *Vancouver magic mushroom stores reopening after police raids*, CBC (November 2, 2023).

<sup>13</sup> *See* Phil Tsekouras, *Pickup Truck Crashes into Toronto Magic Mushroom Dispensary*, CTV NEWS (November 3, 2023); *see also* Kevin Lamb, *Stolen Vehicle Smashes Through Window of Downtown Barrie Shop*, ORILLIAMATTERS.COM (September 6, 2023)

<sup>14</sup> Canadian Press Staff, *Experts Doubt Whether Illegal Magic Mushroom Stores Will Advance Drug Policy*, CTV NEWS (July 13, 2023).

<sup>15</sup> Bruce Deachman, *COLUMN: We Need to Talk About Illegal Magic Mushroom Shops*, THE LONDON FREE PRESS (July 10, 2023).

<sup>16</sup> Manisha Krishnan, *Man Arrested After Opening Heroin, Cocaine, and Meth Store in Canada*, VICE NEWS (May 4, 2023).

<sup>17</sup> Kaija Jussinoja, *B.C. Man Who Opened Store Selling Tested Hard Drugs Died of an Overdose, Family Says*, CTV NEWS VANCOUVER (July 3, 2023). It should also be noted that if law enforcement took Mr. Martin's purported cause at face value and allowed him to operate openly on moral or harm reduction grounds, drug dealers of a less benevolent and more firmly criminal persuasion could simply claim they were doing the same.

<sup>18</sup> *Ibid*.

<sup>19</sup> *Ibid*. There are, however, numerous safe injection sites across Canada operating pursuant to a *Charter* decision regarding the subject matter. *See* Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44, [2011] 3 S.C.R. 134.

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<sup>20</sup> See Sean Lawlor, *Psychedelic Exceptionalism and Reframing Drug Narratives: An Interview with Dr. Carl Hart*, PSYCHEDELICS TODAY (accessible at <https://psychedelicstoday.com/2020/02/18/psychedelic-exceptionalism-and-reframing-drug-narratives-an-interview-with-dr-carl-hart/>).

<sup>21</sup> Marc Gunther, *The Collapse of Field Trip Health*, LUCID NEWS (June 1, 2023)

<sup>22</sup> *Ibid.*

<sup>23</sup> Ben Glickman, *Numinus Wellness Will Close Research Lab, Consolidate Clinics*, MARKET WATCH (September 18, 2023).

<sup>24</sup> Josh Hardman, *Inside Synthesis Institute's Implosion*, PSYCHEDELIC ALPHA (March 7, 2023).

<sup>25</sup> This information was provided directly to the authors by Cameron Weinaus, CEO of Retreat Guru Enterprises, Inc.

<sup>26</sup> See *Rising interest rates and inflation have upended investing*, THE ECONOMIST (December 8, 2022); see also Tiffany Kary, *The Psychedelics Stock Universe is Shrinking, Despite the Hype*, BLOOMBERG NEWS (July 31, 2023).

<sup>27</sup> *Toth v Canada (Health and Addictions)*, 2023 FC 1283. Section 56(1) of the CDSA allows the Minister of Health to grant an exemption from the general prohibition on controlled substances – including psychedelics – provided such exemption “is necessary for a medical or scientific purpose or is otherwise in the public interest.” See s. 56(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c.19 (accessible at <https://laws-lois.justice.gc.ca/eng/acts/c-38.8/page-7.html>).

<sup>28</sup> *Ibid* at para 59.

<sup>29</sup> *Ibid* at para 14.

<sup>30</sup> *Ibid* at para 54.

<sup>31</sup> *Ibid* at paras 17 and 58-60.

<sup>32</sup> Canadian Press, *Federal Court Ruling Sets Back Health Workers Seeking Psilocybin Mushroom Access*, VICTORIA NOW (September 30, 2023).

<sup>33</sup> *Hartle et al v HMTK*, Statement of Claim (July 27, 2022) (accessible at <https://static1.squarespace.com/static/601dd5fc10894c548327a294/t/62ed6421fe9eba2d050a8436/1659724834627/Hartle+et+al+v.+Canada+%28T-1560-22%29+-+Statement+of+Claim.pdf>).

<sup>34</sup> *Ibid*; see also “APPROVED”, THERAPSIL (August 4, 2020) (accessible at <https://therapsil.ca/4-palliative-canadians-approved-for-end-of-life-psilocybin-therapy-through-section-561-first-legal-medical-exemptions-for-psilocybin-in-canada-since-1970s/#>).

<sup>35</sup> *R. v. Parker*, 2000 CanLii 5762 (ON CA).

<sup>36</sup> REPORT OF THE SUBCOMMITTEE ON VETERANS AFFAIRS, THE TIME IS NOW: GRANTING EQUITABLE ACCESS TO PSYCHEDELIC-ASSISTED THERAPIES (November 2023) (accessible at [https://sencanada.ca/content/sen/committee/441/SECD/Reports/VEAC\\_TimeisNow\\_Report\\_e.pdf](https://sencanada.ca/content/sen/committee/441/SECD/Reports/VEAC_TimeisNow_Report_e.pdf)).

<sup>37</sup> See *Psychedelic Integration Coach Package*, PSYCHEDELICLAW.CA (accessible at <https://www.psychedeliclaw.ca/psychedelic-integration-coach-legal-package>).