

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Case Name,
Citation Number

Date: 202511??
Docket: 36605
Registry: Vancouver

Rex

v.

Jeremy Kalicum and Eris Nyx

Before: The Honourable Madam Justice Murray

Oral Reasons for Judgment

Counsel for the Crown:

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O.L. Bick

Counsel for the Accused:

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K. Unrau

Place and Dates of Trial:

Vancouver, B.C.
October 7–10, 14–15, 2025

Place and Date of Judgment:

Vancouver, B.C.
November 7, 2025

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INTRODUCTION

[1] Jeremy Kalicum and Eris Nyx are charged that, on or about, October 25, 2023, they possessed cocaine, heroin and methamphetamine for the purpose of trafficking ("PPT"), contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 ["CDSA"].

[2] The facts are not in dispute; in fact, the Crown's case went in entirely by admissions of fact.

[3] There is no issue that the Crown has proven the essential elements of the offence of PPT: knowledge of the presence of the drugs; some measure of control (possession) and an intention to traffic to others. However, this case is not that straight forward.

[4] Mr. Kalicum and Ms. Nyx are the co-founders of the Drug Users Liberation Front, commonly known as DULF, a coalition of community-based drug user organizations and concerned community members. DULF's goal is to reduce harms caused by toxic drugs.

[5] Mr. Kalicum and Ms. Nyx argue that they were exempt from the prohibition under s. 5(2) of the CDSA in respect of drugs seized at the time of the police search and seizure.

[6] Throughout these reasons references to DULF are references to Mr. Kalicum and Ms. Nyx as co-founders and directing minds of the organization.

THE FACTS

[7] It is necessary to go into the facts in some detail.

The Toxic Drug Crisis in BC

[8] At the root of this case is the toxic drug crisis in BC which began in about 2013 when fentanyl was first detected in the illicit drug supply.

[9] The downtown east side of Vancouver (the “DTES”) is the epicentre of the illicit drug crisis in Canada. It is where the crisis has been the most acute. According to Dr. Mark Lysyshyn, deputy chief medical health officer with Vancouver Coastal Health (“VCH”), the DTES has the highest overdose mortality rate by a factor of more than 10.

[10] On April 14, 2016, British Columbia declared the toxic drug crisis a public health emergency. It was the first time a BC Public Health officer had exercised their emergency powers under the *Public Health Act*, S.B.C. 2008, c. 28. On December 9, 2016, the BC Minister of Health ordered that overdose prevention sites (“OPS”) be established in any place there is a need to monitor people who are at risk of overdose and to provide rapid intervention if need be.

[11] In addition to OPSs, there are safe consumption sites (“SCS”) in operation in the VCH region. While OPS and SCS provide similar services there are several key differences. OPSs are operated by peer workers, can be set up within a matter of weeks as they do not need federal authorization and are not exempted under the *CDSA*. Whereas SCSs are operated by healthcare workers, involve a lengthy approval process and are exempted from criminal liability under s. 56.1 of the *CDSA*.

[12] Section 56.1 is one of the safety valve mechanisms in the *CDSA* that allows an exemption from prosecution for otherwise illegal activities. Section 56(1), another safety valve mechanism in the *CDSA*, authorises the federal Minister of Health (the “Federal MOH”) to issue exemptions for medical, scientific, and other public interest purposes, as follows:

Exemption by Minister

56 (1) The Minister may, on any terms and conditions that the Minister considers necessary, exempt from the application of all or any of the provisions of this Act or the regulations any person or class of persons or any controlled substance or precursor or any class of either of them if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.

Exception

(2) The Minister is not authorized under subsection (1) to grant an exemption for a medical purpose that would allow activities in relation to a

controlled substance or precursor that is obtained in a manner not authorized under this Act to take place at a supervised consumption site.

[Emphasis added]

The Drug Users Liberation Front

[13] According to its Constitution, Mr. Kalicum and Ms. Nyx co-founded DULF “in response to the ever-mounting overdose deaths in British Columbia and across Canada”. DULF’s purpose, as taken from its Constitution, is three-fold:

- a) To provide “tangible solutions to the devastating crisis of prohibition”;
- b) to “prevent overdose death through radical safe supply initiatives”; and
- c) to “work to change policy so that anyone using substances can have access to a safe and regulated supply of said substances”.

[14] In the summer of 2021, Mr. Kalicum and Ms. Nyx began developing a proposal to form a Compassion Club to deliver safe drugs to drug users. Compassion clubs, as a model, are typically utilized to distribute drugs that are illegal or otherwise inaccessible to communities these clubs have deemed to be in need. Mr. Kalicum and Ms. Nyx, on behalf of the DULF Compassion Club, planned to seek a s. 56(1) exemption in order to avoid prosecution for their safe supply model.

[15] On August 19, 2021 Mr. Kalicum and Ms. Nyx met with Inspector Phil Heard and Staff Sergeant Jason Chan of the Organized Crime Section of the Vancouver Police Department (the “VPD”) to present their initiative and seek VPD’s support for their application for a s. 56(1) exemption. In the meeting, Mr. Kalicum and Ms. Nyx set out their proposed project in detail using a power point. In their conversation with the officers, Mr. Kalicum and Ms. Nyx advised the police officers of the following:

- a) The mission of DULF is to save lives by offering a safe supply of drugs. Safe supply being defined by DULF as users knowing what is in the drugs and how strong the drugs are;

- b) They are not criminals. Nor are they trying to make money. They just want to save lives;
- c) They are aware that they need an exemption in order to operate legally;
- d) They understand that they are in an uncomfortable place: pushing the boundaries of civil disobedience to move forward public discourse;
- e) They are willing to risk getting arrested.

[16] While Insp. Heard voiced support for their reasoning and motivation, he advised Mr. Kalicum and Ms. Nyx that the VPD could only support what was legal. If DULF was able to obtain an exemption from Health Canada, then VPD would try to work with them. Insp. Heard cautioned them that even giving a substance to someone is trafficking and that if there were complaints, VPD would investigate.

[17] On August 31, 2021 (International Overdose Awareness Day), Mr. Kalicum, Ms. Nyx and the Executive Director of the Vancouver Area Network of Drug Users submitted a proposal to the Federal MOH for an exemption under s.56(1) of the CDSA to operate the DULF Compassion Club and Fulfillment Centre (the "CC&FC" or the "Compassion Club"). The written proposal described how the CC&FC would operate:

- a) Heroin, cocaine and methamphetamine would be procured on the dark web, as sourcing them from a supplier licenced under the CDSA was not possible under the current regulatory framework;
- b) the drugs would be stored at the DULF site in a secure safe;
- c) the drugs would be tested for fentanyl, benzodiazepines and other impurities;
- d) the tested drugs would be packaged and labelled with information about their contents as well as health warnings; and

- e) the tested, packaged drugs would be distributed to members of the CC&FC.

[18] Members would be screened to determine if they met the minimum requirements: over 18 years of age and currently using illicit drugs. The Compassion Club would need to be financed by donations and potentially membership fees. DULF would work with researchers to evaluate the efficacy of the program.

[19] Among the letters of support attached to the exemption request was a letter from Dr. Lysyshyn, the Deputy Chief Medical Health Officer for VCH. In his letter Dr. Lysyshyn noted that:

- i. The “major driver of the ongoing crisis is the unregulated illicit drug market that supplies people who use drugs with dangerous drugs of highly variable potency.”
- ii. “...Dr. Patricia Daly, VCH’s Chief Medical Health Officer, has recommended developing a safer supply of drugs and the piloting of novel forms of drug distribution such as via compassion clubs.”
- iii. DULF’s proposal “would increase access to drugs that have been tested...” and “has the potential to reduce harm associated with drug use for club members since we believe that knowing the composition of drugs prior to use can reduce the risk of overdose.”

[20] Notably, Dr. Lysyshyn was fully aware of DULF’s plan to distribute drugs which he outlined it in his letter of support:

DULF’s proposal involves acquiring illicit drugs, testing them through existing community drug checking programs, labelling them, and distributing them to members of the club.”

[Emphasis added.]

[21] In a letter dated April 21, 2022, Health Canada advised DULF that it “intended to refuse [its] current request” for exemption under s. 56(1) on the grounds that acquiring drugs on the dark web was not a “viable option for advancing the

objectives of the CDSA, namely the protection of public health and the maintenance of public safety". Health Canada invited DULF to respond to these concerns.

[22] DULF responded on May 3, 2022, emphasising the need for an urgent response to the toxic drug crisis and stressing that, while they do not want to procure drugs from the dark web, there were no legal options for obtaining them. DULF summed up the paradoxical situation in this way:

Given the aforementioned lack of support, collaboration, and direction from Health Canada with respect to a licit supply, we have no other choice but to proceed with [acquiring the drugs on the dark web] at this time. To that end, we are seeking a short-term exemption to prevent our actions from being illegal until we have a legal route of access to substances. We need to save lives now.

[Emphasis in original.]

[23] DULF concluded its letter with an urgent plea:

After waiting **245 days** and witnessing **1,333 British Columbians die** since we first requested this exemption, we ask that you act with urgency to do the right thing - the thing that will actually protect the health and safety of Canadians: follow the evidence, follow the recommendations of countless experts including BC's Coroner and work with us instead of against us to enable a safe supply for those at risk of dying from the toxic supply.

[Emphasis in original.]

[24] Dr. Lysyshyn wrote another letter of support to append to DULF's response to Health Canada, essentially mirroring his first but adding information to emphasize the magnitude of the crisis:

- i. "... 2021 was the worse year yet for overdose-related deaths in BC and in 2022 the death rate continues to rise. Preliminary data in 2022 has found there has been a greater number of cases with extreme fentanyl concentrations [which] coincides with February 2022 being the deadliest February on record";
- ii. "In the absence of a legal regulated drug supply, risks such as increased fentanyl concentration, highly potent fentanyl analogs and

novel contaminants such as benzodiazepines make access to drug checking services essential”; and

- iii. “Vancouver Coastal Health considers DULF’s community Compassion Club to be an overdose prevention service as we believe that it has the potential to decrease the risk of overdose without significantly increasing risks to the broader community”.

[25] On July 29, 2022, Health Canada denied DULF’s application for an exemption. DULF applied for Judicial Review of that decision which was heard in Federal Court in March of 2024. The judgment of the Federal Court was still on reserve at the time of this trial.

[26] On July 8, 2022, in further response to the urgent drug crisis, the Federal MOH issued a s. 56(1) class exemption empowering provincial and territorial Ministers of Health to designate Urgent Public Health Need Sites (“UPHNS”) which would be exempted from some provisions of the *CDSA*, including s. 5(2), in respect of certain activities associated with drug testing/ checking and safe consumption. The class exemption, which was initially set to expire on September 30, 2025, but was extended to September 30, 2026, is subject to many terms and conditions.

[27] The conditions pertinent to this decision read as follows:

The exemption applies only if the following conditions are met:

....

6. The provincial or territorial Minister of Health is responsible for ensuring that each UPHNS has policies and procedures in place to prevent unauthorized drug trafficking activities within the UPHNS and during transportation;

.....

16. Designated persons and staff members may only transfer an illegal substance for the purposes of drug checking or disposal. The transfer cannot involve any exchanges for financial compensation, goods or services; ...

[Emphasis added.]

[28] I will return to these conditions.

The DULF Compassion Club

[29] In early July 2022 DULF started putting together the CC&FC. On July 28, 2022, Dr. Lysyshyn, on behalf of the BC Minister of Health (the "BC MOH"), designated the CC&FC storefront (the "DULF site"), which the BC MOH supplied to DULF at no cost, as an overdose prevention site. In his letter of designation, Dr. Lysyshyn stated: "I am satisfied that the Drug User Liberation Front (DULF) has met the requirements for providing drug checking, packaging and labelling and supervised consumption services as overdose prevention services at the DULF Compassion Club located [in the DTES of Vancouver]". He defined those services as follows:

Drug checking refers to the use of testing methods to assist in the identification of illicit substances in order to reduce harms such as overdose. Packaging and labelling refers to the use of materials to enclose and clearly identify substances using information obtained through drug checking in order to reduce harms such as overdose. Supervised consumption refers to the provision of a space for people to consume drugs under the supervision of people trained in overdose prevention and response in order to reduce harms such as overdose and death.

[30] It should be noted that this designation as an OPS is a provincial designation which did not exempt DULF (or any other site that received such a designation) from any provisions of the *CDSA* or prosecution under any of its provisions. Dr. Lysyshyn testified that the BC MOH designates OPSs with the awareness that this designation does not act as an exemption under the *CDSA* and OPSs and relies on the province's and police forces' discretion not to enforce the *CDSA* against them. Dr. Lysyshyn testified that, to his knowledge, until the DULF case, there had been no enforcement of the *CDSA* against OPSs in BC.

[31] DULF began operating its CC&FC in August 2022.

[32] In October of 2022, Dr. Lysyshyn, on behalf of the BC MOH, also designated the DULF site to be an UPHNS, and granted it a s. 56(1) exemption for the collection, storing and testing of illicit drugs. This exemption did purport to exempt DULF from some of the provisions of the *CDSA*, unlike the OPS designation. It is this exemption that Mr. Kalicum and Ms. Nyx argue applies in this case.

[33] On December 1, 2022, VCH entered into a “Community Health Services Agreement” with DULF, under which VCH would provide DULF up to \$200,000 in annual funding to support its drug checking program and overdose prevention services.

[34] DULF's pilot project worked. In its first year there were no overdoses involving the substances provided at their consumption site. According to Dr. Lysyshyn, that was a promising sign as it showed that the Compassion Club members were not overdosing when using the safe drugs supplied by DULF.

[35] DULF's CC&FC was heralded as a success. It was the subject of considerable media attention.

The Economist Article

[36] On September 8, 2023, The Economist magazine published an article entitled “The Ethical Drug Dealers of Vancouver”, describing DULF's CC&FC and containing photos of Mr. Kalicum and Ms. Nyx and the interior of the DULF site.

[37] The article ignited a maelstrom of activity.

[38] The drug section of VPD, which was previously aware of DULF and the Compassion Club but claims to not have been aware of the DULF site, commenced an investigation. Backbench politicians voiced concern about the government funding an organization that was sourcing drugs on the dark web.

[39] Pierre Poilievre, leader of the Conservative Party of Canada, told an interviewer that it was a “disgrace” that the BC NDP would “give hundreds of thousands in tax dollars to illegal drug dealers in addition to decriminalizing hard drugs.” I pause to note that the VCH funding given to DULF was to support the overdose prevention site and the drug checking services. In interviews with the media, Mr. Kalicum and Ms. Nyx advised that they purchased the drugs with funds they received from concerned individuals, not with the funds they received from the government.

[40] In the face of the public outcry, the BC MOH directed VCH to terminate its funding to DULF, as well as the lease of the DULF site, effective October 31, 2023. In a letter dated October 3, 2023, VCH confirmed DULF's commitment to "utilize the period between now and the Termination Date to transition the contracted care of DULF members over to new supports".

October 25, 2023

[41] On October 25, 2025, six days before the Compassion Club was to cease operations, VPD executed a search warrant at the DULF site.

[42] Only Mr. Kalicum was present on site at the time of the search. The doors to the site were locked. No Compassion Club members were present. Drugs were seized from two locked safes in the office section of the site. No drugs were found anywhere else. In total, 192 grams of cocaine, 237 grams of heroin, and 364 grams of methamphetamine was seized from inside the two safes, most of it packaged in small quantities of 0.1, 0.5 or 1.0 grams, with DULF labels on them. The drugs were what they were labelled to be – cocaine, heroin and methamphetamines – and did not contain fentanyl or its analogues or benzodiazepines. Also seized were documents showing pricing of drugs and records of distribution to DULF members.

[43] In his evidence at trial Sgt. Mike Cheah, who headed up the VPD investigation, testified that he did not speak with VCH about DULF, even though the funding agreement was mentioned in the Economist article and the media attention focussed on it. Nor did he consider the exemptions granted to DULF by VCH. In fact, Sgt. Cheah claimed to be unaware of the exemptions despite them being mentioned in the Economist article and being posted on the wall in plain view in the office where the safes were in the DULF site.

THE ISSUE

[44] As set out above, it is not in issue that Mr. Kalicum and Ms. Nyx possessed cocaine, heroin and methamphetamines and that they had and were intending to sell the substances to the members of their Compassion Club. Nor is it in issue that

DULF had been granted an exemption for the testing, storage and packaging of drugs at the DULF site under the UPHNS exemption and that it was in effect on October 25, 2023.

[45] The issue is whether the exemption covered the possession of the drugs on October 25, 2023.

ANALYSIS

[46] Mr. Kalicum and Ms. Nyx do not deny that they operated the Compassion Club and did so by purchasing heroin, cocaine and methamphetamine on the dark web, testing it, using the best available methods at the University of British Columbia and the University of Victoria, labelling it, storing it, and distributing it, at cost, to their 43 members. They have always been openly and publicly forthright about their activities and their impetus for doing so. They spoke to police, politicians and health officials about their activities. They copied police and public officials on correspondence and invited them to their meetings. They held public drug giveaway events in the DTES to draw attention to their cause. They regularly issued public statements through press releases and on social media, including on their website and X (formerly Twitter) page. They spoke to the press. They did interviews with the media, including news shows and high-profile magazines like Macleans and, of course, The Economist.

[47] There is no question that their intentions were and are good. They want to save lives. But were they exempt from criminal liability?

[48] The defence argues that at the time of the seizure on October 25, 2023, the drugs were simply being stored. And storage was exempted from criminal liability by the s. 56(1) exemption granted by Dr. Lysyshyn. They argue that the exemption clearly applies to the drugs at the moment they were seized because, at the time they were seized, these drugs were being stored before or after they were tested. They say that this engages the exemption in that this possession was “to fulfill their functions and duties in connection with the operation of the UPHNS.” They further say that this possession was not “carved out” of the exemption by virtue of the

prohibited activities specifically not included in the exemption per the Terms and Conditions and that, therefore, this possession was exempt. It is irrelevant that Ms. Nyx and Mr. Kalicum later intended to distribute these drugs.

[49] There are two problems with this argument. The first is that it ignores all the evidence of DULF's activities. And DULF's reason for being: to save lives by providing safe drugs. Without distribution, DULF's Compassion Club model would be pointless. The second is that there is no requirement that to be found guilty of PPT the offender must be in the process of trafficking at the time of their arrest. All that is required is an intention to traffic the drugs at some point: *R. v. Kernaz*, 2019 SKCA 37, aff'd 2019 SCC 48. The definition of traffic in the *CDSA* includes selling and giving away.

[50] Mr. Kalicum and Ms. Nyx are agitators. They want to make change. The evidence shows that Mr. Kalicum and Ms. Nyx were acutely aware that their actions were not sanctioned and that they ran the risk of criminal prosecution for trafficking. They made that clear in their applications to Health Canada in which they noted that the exemption must allow for the procurement, storage and distribution of the drugs in order for the Club to operate in a sanctioned manner stating: "It is necessary then that the exemption extends to all relevant provisions of the *CDSA* (i.e. possession, possession for the purpose of trafficking, trafficking, etc.) ...". The emphasis is mine.

[51] As pointed out above, VCH knew that DULF was distributing tested drugs when they granted the exemption, gave them funding and provided them the storefront in the DTES. Dr. Lysyshyn testified that, using the class exemption, he exempted what he could – storage, testing and labelling/ packaging. He also testified that procurement and distribution were not covered by that exemption. It could not be based on the parameters of the class exemption dictated by Health Canada.

[52] To focus my analysis on a single point in time – the time that police executed the search warrant – and ignore everything else would, in my view, be an error. The Court must consider all the evidence to determine the purpose for which the drugs

were possessed. There is no doubt, that at all times, DULF possessed the drugs for one purpose – to distribute to its members.

[53] Any purpose of the possession that would fall under the exemption, for example, storage for drug checking, was secondary and clearly subservient to this ultimate purpose and therefore cannot decriminalize the possession. To say that, at the moment the drugs were seized the only purpose of their possession was to fulfill the functions and duties associated with the UPHNS (where that means the functions that were sanctioned by the exemption: drug checking, packaging, labelling) would be disingenuous. The drugs were intended to be sold later that day. At the time they were seized, they were not owned by anyone who intended to use the drugs therefore distribution to a drug user or users was necessary before drug testing had any benefits.

[54] I return to the conditions of the exemption granted by Dr. Lysyshyn which are set out above. Condition 16 explicitly prohibits the transfer of illegal substances for financial compensation. Accordingly, if the possession is ultimately for the purpose of distribution (which I find it was) then possession is not covered by the exemption.

CONCLUSION

[55] There is no doubt that all DULF's actions were for one purpose: to distribute safe drugs to its members. While portions of DULF's CC&FC proposed model were exempt under the authorizations granted by Dr. Lysyshyn – namely drug checking, packaging/labelling and supervised consumption – these exemptions did not extend to Mr. Kalicum and Ms. Nyx selling the tested drugs to members of the CC&FC. These exempted activities cannot serve as a shield over the possession of the drugs when the possession was, admittedly, for the ultimate purpose of distribution.

[56] I find Mr. Kalicum and Ms. Nyx guilty of PPT cocaine, heroin and methamphetamine.

[57] The entering of the conviction will be suspended pending the Constitutional challenge.

The Honourable Madam Justice Murray