



Court File No. T-2362-22

FEDERAL COURT

PHYSICIANS FOR A SMOKE-FREE CANADA

Applicant

- and -

MINISTER OF MENTAL HEALTH AND ADDICTIONS

Respondent

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**NOTICE OF APPLICATION**

Pursuant to sections 18 and 18.1 of the *Federal Courts Act*

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**TO THE RESPONDENT:**

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard in Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

November 14, 2020

Issued by: **ORIGINAL SIGNED BY**  
**ALINE LONGIN**  
~~A SIGNÉ L'ORIGINAL~~  
(Registry Officer)

Federal Court of Canada  
Thomas D'Arcy McGee Building  
5<sup>th</sup> floor - 90 Sparks Street  
Ottawa, ON K1A 0H9

TO:                   **The Honourable Carolyn Bennett**  
**Minister of Mental Health and Addictions**  
**Health Canada**  
Address Locator 1801B  
Ottawa, ON K1A 0K9

AND TO:           **François Daigle**  
**Deputy Attorney General of Canada**  
284 Wellington Street  
Ottawa, ON K1A 0H8  
Tel: (613)957-4998  
Fax: (613)941-2279  
Solicitor for the Respondent

## APPLICATION

This is an application for a writ of *mandamus* pursuant to sections 18(1)(a) and 18.1(1) of the *Federal Courts Act* directing the Respondent Minister of Mental Health and Addictions to discharge her statutory duty pursuant to s. 60.1 of the *Tobacco and Vaping Products Act*, SC 1997 c 13 (the “TVPA” or the “Act”) by tabling a report before Parliament regarding the mandatory review of the provisions and operation of the Act.

The Applicant, Physicians for a Smoke-Free Canada (“PSC”), is a national health organization of physicians. Founded in 1985, the Applicant is a federally registered charity whose purpose is to lower rates of tobacco-related illness by reducing smoking and exposure to second-hand smoke. In fulfilment of its mandate, PSC engages in public education and health policy debates and shares its expertise with governments when they legislate and regulate with respect to tobacco and vaping products.

In 2018, the *Tobacco Act* was amended, becoming the *Tobacco and Vaping Products Act*. The amended Act expanded the legislative scheme regulating vaping products, allowing their sale as consumer products. The Applicant made submissions before the House of Commons Standing Committee on Health, recommending certain amendments to the Bill. Since 2018, the Applicant has made several submissions to Health Canada about various regulatory changes that concern vaping products.

The TVPA requires Health Canada to undertake a review of the “provisions and operation” of the Act and requires the responsible Minister to table a report on the mandatory review before each House of Parliament. Section 60.1 of TVPA includes mandatory language, directing that the report be tabled “no later than” four years after the section comes into force.

Section 60.1 came into force on May 23, 2018, which started the clock on the statutory review and reporting timelines. In accordance with s. 60.1 of the Act, the Minister was required to table a report in Parliament by no later than May 23, 2022.

While the statutory review process has apparently been initiated, the Minister has not yet tabled her report.

On June 6, 2022 a member of the House of Commons' Standing Committee on Health (the "SCH") asked Assistant Deputy Minister of Health Kendal Webber (the "ADM") about the status of the Minister's three-year review and was told it had been launched "earlier this year." The ADM did not provide a timetable for tabling the report.

On June 7, 2022, another member of the SCH asked Deputy Minister of Health Dr Stephen Lucas (the "DM") the same question. The DM responded that the review "has been initiated" and is "aimed for completion later this year." When pressed to offer a timeline, Dr Lewis undertook to follow up and provide a specific time frame.

Also on June 7, 2022, in the Senate's Question Period, Senator Judith Seidman asked the Government Representative in the Senate, Senator Mark Gold, when the Minister's report would be published. Senator Gold was unable to provide an answer and undertook to inquire and report back.

Frustrated that the Minister apparently viewed her statutory reporting obligation as a suggestion rather than a mandatory legislative direction, the Applicant took action. On September 12, 2022, four months after the statutory deadline had passed, the Applicant sent a letter to the responsible Minister, the Honourable Carolyn Bennet, Minister of Mental Health and Addictions, demanding that she comply with her statutory duty within 60 days. In the letter, the Applicant highlighted the importance of the statutory review given the evidence of industry non-compliance with legislation and regulations and the risks to the health of Canadians, particularly young Canadians. The Applicant noted that as an organization of Canadian physicians concerned with tobacco use, PSC has a right to the performance of the Minister's public legal duty.

The Minister's office acknowledged receipt of the Applicant's letter but the Minister did not choose to respond. She has still not fulfilled her mandatory statutory duty. The Minister's report to Parliament is now almost six months overdue.

The *TVPA* is important public health legislation targeting tobacco and vaping products which are known to have serious deleterious health effects. Over 45,000 Canadians die due to tobacco smoking every year. Effectively regulating the consumption and commercial distribution of these products is an urgent public health matter. It is critical that Health Canada complete its review of the *TVPA* and for the Minister to table her report so that any gaps can be identified and addressed at the earliest opportunity.

**The Applicant makes application for:**

- (a) A declaration that the Minister of Mental Health and Addictions has breached her duty under s. 60.1 of the *Tobacco and Vaping Products Act*, SC 1997 c 13, to undertake a mandatory review of the provisions and operation of the Act and table a report to Parliament no later than May 23, 2022;
- (b) A writ of *mandamus* requiring the Minister of Mental Health and Addictions to table a report on the statutory review within 14 days of the Court's order;
- (c) The costs of this Application; and
- (d) Such further and other relief as counsel may request and this Honourable Court may permit.

The grounds for the application are:

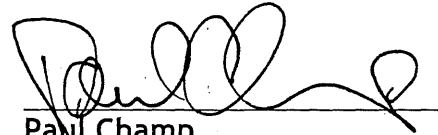
- (a) Section 60.1 of the *Tobacco and Vaping Products Act*, SC 1997 c 13, places a statutory duty on the responsible Minister to table a report before Parliament on Health Canada's review of the provisions and operation of the *Act* by no later than May 23, 2022;
- (b) Pursuant to Order In Council PC 2022-0549, May 26, 2022, the Minister of Mental Health and Addictions is responsible for discharging the statutory obligation under s. 60.1 of the *Act*;
- (c) The Minister failed to table her report by the statutory deadline;
- (d) On September 12, 2022, the Applicant Physicians for A Smoke-Free Canada formally requested that the Minister perform her legal duty pursuant to section 60.1 of the *TVPA* within 60 days;
- (e) The Minister failed to perform her legal duty in response to the Applicant's request and has still not tabled a report before either House of Parliament;
- (f) Order In Council PC 2022-0549, May 26, 2022;
- (g) Section 60.1 of the *Tobacco and Vaping Products Act*, SC 1997 c 13; and
- (h) Sections 18(1)(a) and 18.1 of the *Federal Courts Act*.

The application will be supported by the following material:

- (a) The Affidavit of Cynthia Callard, or some other employee of the Applicant; and

(b) Such further and other materials as counsel may advise and this Honourable Court may permit.

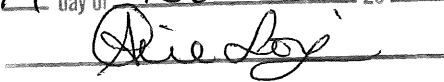
Dated November 14, 2022



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Solicitors for the Applicant

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the 14 day of NOV A.D. 20 22  
Dated this 14 day of NOV 20 22



**ALINE LONGIN  
REGISTRY OFFICER  
AGENTE DU GREFFE**