

In the matter of an Application for Judicial Review

The Queen on the Application of

CASEY WILLIAM HARDISON

Claimant

– v –

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

GROUND FOR RENEWING THE APPLICATION – FORM 86B

1. Hardison claims that the October 13th 2006 decision by the SSHD in Cm 6941 “not to pursue a review” is illegal because the Government does not have the power to ignore relevant new objective evidence which indicates that their current administration of the Misuse of Drugs Act 1971 flouts the intent, purpose and text of the 1971 Act, the constitutional principle of equal treatment, and the Human Rights Act 1998.

Abuse of Power – Substantive legitimate expectation

- a. A legitimate expectation was created by the SSHD when, on January 19th 2006, he promised Parliament that he would “publish a consultation paper with suggestions for a review of the drug classification system”. In so doing the SSHD said:

“The more that I have considered these matters the more concerned I have become about the limitations of our current system. Decisions on classification often address different or conflicting purposes and too often send strong but confused signals to users and others about the harms and consequences of using a particular drug and there is often disagreement over the meaning of different classifications”.

- b. More, on June 14th 2006, current Home Office Minister Vernon Coaker, created an additional legitimate expectation when he told the 2006 Parliamentary Science and Technology Committee:

“with respect to the consultation document which is in draft form in the department, the view is that we will need to wait until such time as we decide how to proceed with respect to the review of the classification system and also, similarly, wait for the report of this Committee – which we want to take into account in determining the best way forward”.

- c. But, both expectations were dashed when the SSHD reneged on his January 2006 promise in Cm 6941. This is unfair and an abuse of power.

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Irrationality – failed to take into account relevant matters

2. Both the 2006 Parliamentary Science and Technology Committee (HC 1031) and the Advisory Council on the Misuse of Drugs (ACMD) called for a review with the former concluding that the classification system is “not fit for purpose”:
 - a. HC 1031 (2006) – “In light of the serious failings of the ABC classification system that we have identified, we urge the Home Secretary to honour his predecessor’s commitment to review the current system, and to do so without further delay”
 - b. ACMD’s *Pathways to Problems* (2006) – “[t]he current system for classifying and controlling drugs in the UK has a number of shortcomings and should be reviewed”.
3. Thus, the new decision ‘not to review’ is irrational in light of the significance of new evidence published in HC 1031 on July 18th 2006 and in the ACMD’s *Pathways to Problems* on September 14th 2006 which established four material facts not taken into account or improperly weighted in reaching the new decision:
 - a. Alcohol and tobacco are drugs analogous to those controlled under the 1971 Act in terms of their purpose of use, their pharmacological action on the brain and their health effects on individuals and society. They are thus within the scope of the 1971 Act.
 - b. Some drugs controlled by the 1971 Act as the most harmful are significantly less harmful than alcohol and tobacco. So, regulations and sanctions are not proportionate to harm.
 - c. The legal difference in treatment between alcohol and tobacco and drugs controlled under the 1971 Act is arbitrary and not justified by consistent and objective evidence.
 - d. Those persons who “use [drugs] responsibly” are in a different situation to those persons who use drugs irresponsibly (misuse) so equal treatment of the two groups is “unacceptable”, inappropriate and not justified by the intent or text of the 1971 Act.
4. These material facts trigger the SSHD’s powers, add significantly to the initial “concerns” the SSHD presented as the basis for the review and thus greatly increase the public interest in the promised review. Crucially, these facts establish that the current administration of the Misuse of Drugs Act 1971 flouts the intent, purpose and text of the 1971 Act, the constitutional principle of equal treatment, and the Human Rights Act 1998.

Irrational/Illegality – Error of Law

5. The reasons offered by the SSHD in Cm 6941 for reneging on the promised review are irrational due to contradictory statements and illegal in that they demonstrate a failure to properly understand the SSHD’s powers and duties under the 1971 Act.
 - a. Government repeatedly claims that classifications decisions are based on objective evidence of harm and that “[t]he current 3-tier classification system allows for clear and meaningful distinctions to be made between drugs. Its familiarity and brand recognition amongst stakeholders and the public is not to be dismissed. There is a wide understanding that Class A drugs are the most dangerous substances, and therefore carry the heaviest criminal penalties”.
 - b. This conflicts with Government’s explicit acknowledgment in Cm 6941 “that alcohol and tobacco account for more health problems and deaths than illicit drugs” and contradicts the assertion of HC 1031: “The classification system purports to rank drugs on the basis of harm associated with their misuse but we have found glaring anomalies in the classification system as it stands and a wide consensus that the current system is not fit for purpose”.
 - c. Government then says the distinction between alcohol, tobacco and controlled drugs is based in large part on the attitude of a “vast majority” claiming that “[a] classification system that applies to legal as well as illegal substances would be unacceptable to [this] vast majority”.
 - d. Nowhere does the 1971 Act grant power to exclude the two most dangerous drugs.

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Irrationality – substantive unfairness, apparent bias and bad faith

6. Thus, in making the new decision, Government has overweighted less relevant subjective factors and underweighted relevant objective factors. Not only does the weighting more heavily of subjective factors contradict the SSHD's assertion on page 22 of Cm 6941 that "the harms caused to an individual and to society are the predominant and defining ones", it takes into account only the majoritarian view point.
7. Accordingly, Hardison asserts substantive unfairness due to apparent bias towards a majority the Government belongs to *versus* a minority with differing "cultural preferences" which Hardison belongs to.
8. This is bad faith in that the SSHD must exercise his powers in the public interest of all.

Irrationality – Improper purpose

9. Thus, it appears to Hardison that Government is more concerned about majoritarian public opinion and "brand recognition" than whether the legitimate aims of the 1971 Act are being fulfilled, i.e. public assurance that "all is OK" is more important than evidence showing that all is not OK.
10. This demonstrates the criticism found in HC 1031 that there is "a regrettable lack of consistency in the rationale used to make classification decisions":
 - a. HC 1031 stated "we have expressed concern at the Government's proclivity for using the classification system as a means of 'sending out signals' to potential users and society at large – it is at odds with the stated objective of classifying drugs on the basis of harm".
11. This underinclusive policy amounts to a use of legal power in an abusive way, i.e., for an improper purpose, and allows Government to maintain majoritarian political power by not having to accept the political cost of confronting squarely what it is doing to minorities.

Illegality/irrationality – fettering of executive action against the public interest

12. Hence, Hardison challenges Government policy **only** inasmuch as it cannot be lawful for a neutral Act of general applicability to be implemented in an inherently arbitrary, irrational and unequal manner based upon a predetermined 'policy' which Government admits – on page 24 of Cm 6941 and repeats in para 7 of their 'Summary Grounds' – is a policy of unequal treatment "based in large part on historical and cultural precedents".
13. This is a fettering of executive action contrary to the public interest which has a severely disproportionate impact on minorities who have other histories and cultures.
14. In *Railway Express Agency, Inc v New York* (1949) 336 U.S. 206, 112-113, United States Supreme Court Justice Jackson nailed the crux:

"[T]here is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected".

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15. Thus, Government “policy” amounts to a failure to discriminate legal power and duty from political power and is thus discrimination contrary to Article 14 on the ground of ‘power’, an ‘other status’ rooted in the concept of suspect class, i.e., those classes:

“... relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process: *San Antonio School District v Rodriguez* (1973) 411 U.S. 1, 29; *R(Carson) v SSWP* [2005] UKHL 37 para 55-56.

The Requests

16. Hardison appeals to a higher power, the Rule of Law, and requests permission for a Judicial Review of the SSHD’s decision in Cm 6941 ‘not to pursue a review’ of the drug classification system.

17. Should this Court decline Mr. Hardison’s request for permission he requests robust reasoning from this Court on the following points of law relevant to whether the SSHD should honour the promise to review:

- a. Is the Misuse of Drugs Act 1971 neutral and of general applicability?
- b. Does Government have the power to exclude from the scope of the 1971 Act the two drugs which cause the most harm to individuals and society – alcohol and tobacco?
- c. Has Government unlawfully fettered itself to a predetermined policy contrary the public interest of *all* persons?
- d. Does Government have the duty, under the Act, to discriminate between reasonably safe use and unreasonably safe use, i.e., use and misuse? Or, is blanket prohibition the least restrictive means of accomplishing the legitimate aims of the 1971 Act?
- e. Does the current administration of the Act disproportionately impact Human Rights?

18. If any of these are answered in the affirmative then should the January 19th 2006 promise to review the drug classification system be honoured?

– *vitam impendre vero, fiat lux!*

Signed
Casey William HARDISON – POWd (Civ)

Dated