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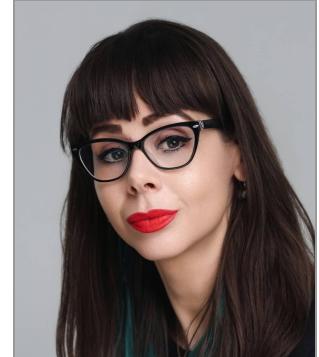
DULF constitutional challenge keeps sentencing on hold in B.C. trafficking case

By **Molly Shamess**

Law360 Canada (January 23, 2026, 1:07 PM EST) -- Sentencing in the high-profile prosecution of members of the Drug User Liberation Front (DULF) remains on pause as the Supreme Court of British Columbia considers constitutional arguments that could have lasting implications for drug trafficking cases across the country, as well as for public health efforts to reduce the harms of the ongoing toxic drug crisis.

What DULF is being prosecuted for and what's happened so far

DULF is a coalition of community-based drug-user organizations and concerned community members whose goal is to reduce the harms caused by toxic drugs. Last November, Supreme Court Justice Catherine Murray found its two co-founders guilty of possessing heroin, cocaine and methamphetamine for the purpose of trafficking contrary to s. 5(2) of the *Controlled Drugs and Substances Act*: *R. v. Kalicum*, 2025 BCSC 2225.



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The prosecution is based on a compassion club DULF ran in Vancouver in 2022-2023, at the height of the toxic drug crisis. DULF bought drugs on the dark web, then worked with Vancouver Coastal Health to test the drugs for purity and potency and accurately label them. DULF then sold the drugs at cost to their compassion club members, all with the goal of reducing the harms and fatalities caused by the unregulated street-drug supply. As Justice Murray found, DULF operated the

compassion club publicly and transparently, speaking with police, politicians and health officials about their activities before and throughout the club's operations.

As Justice Murray wrote, "there is no question that [DULF's] intentions were and are good. They want to save lives. But were they exempt from criminal liability?"

DULF argued at trial that they were allowed to buy, test and sell the drugs under a Health Canada exemption that let public health officers operate drug testing and overdose prevention sites. Justice Murray ruled that, despite DULF's good intentions, the Health Canada exemption only covered the storage, testing and packing of drugs — not the selling or distribution of them. Because of that, DULF violated the CDSA when they distributed the drugs to members of their compassion club, and Justice Murray found the pair guilty of all three of the possession for the purpose of trafficking offences as charged.

How s. 7 and s. 15 Charter arguments work in criminal cases, and what DULF is arguing

In criminal proceedings, sentencing is typically the next step after a finding of guilt. Here, though, sentencing and the formal entering of the convictions are being held in abeyance while the court hears DULF's constitutional challenge to the CDSA provisions that made the compassion club illegal in the first place.

DULF's constitutional challenge is based on both ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms*.

Section 7 says that everyone has the right to life, liberty and security of the person, and the right not to be deprived of those things except in accordance with the principles of fundamental justice. Previous s. 7 challenges to criminal laws have succeeded where the laws were found to increase risks to life or health without sufficient justification, most notably in cases involving supervised consumption sites like the legal victory won by Insite at the Supreme Court of Canada in 2011: *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44.

Though the exact provisions being challenged are different, DULF draws on similar reasoning to Insite's in their s. 7 argument that criminalizing their conduct amid a public health emergency undermines the very same public health and safety objectives that the CDSA is meant to advance. More specifically, they say that, to the extent that it prohibits the compassion club, s. 5(2) of the CDSA is arbitrary and overbroad, and that the impact of the prohibition — denying compassion club members access to a regulated, predictable supply of the drugs they depend on, and exposing them to the severe risks of the street supply — is grossly disproportionate to any benefits of shutting down the club. They say all of this violates the liberty interests of the DULF co-founders being prosecuted and violates the life and security of the person interests of the club's members, all contrary to s. 7.

Section 15 guarantees everyone equality before and under the law, and the right to the equal protection and equal benefit of the law without discrimination. Section 15 arguments are less common in criminal cases but can arise where a particular law, most often a sentencing provision, disproportionately burdens or denies a benefit to a marginalized or protected group.

DULF's equality argument centres on the effect that prohibiting compassion clubs has on people who use drugs. DULF says that s. 5(2) of the CDSA draws a distinction based on the prohibited ground of disability because prohibiting compassion clubs forces members with serious addictions to turn to the toxic street supply for the substances on which they depend. They say this distinction is discriminatory because it perpetuates disadvantage for the club members and treats them as less worthy of concern and respect, therefore breaching s. 15.

What a ruling could mean for future prosecutions

Justice Murray began hearing evidence in DULF's constitutional challenge late last year and the hearing resumed this week.

If the court finds that the CDSA infringes on ss. 7 or 15 or both, the analysis will not end there. The court will then need to consider whether the infringement can be justified under s. 1 of the Charter as being a reasonable limit in a free and democratic society.

A ruling in favour of DULF on either s. 7 or s. 15 grounds would not automatically legalize drug trafficking. Justice Murray could make a narrow ruling that s. 5(2) of the CDSA does not apply to the DULF co-founders in this one circumstance, essentially making their charges go away but leaving the legislation otherwise intact. This could still significantly alter how trafficking-type offences are prosecuted in the context of harm-reduction initiatives and may invite similar challenges from accused persons engaged in similar activities, where evidence shows an intent to reduce overdose risk rather than profit from distribution.

Justice Murray could also find the CDSA provisions broadly unconstitutional but suspend the declaration of their invalidity for a period of time in order to allow the federal government to amend the legislation. Suspensions of invalidity are typical in challenges like this.

If DULF loses its constitutional challenge, then sentencing proceedings would take place, and it is likely that DULF would ask Justice Murray to consider their genuine good intent as a significant mitigating factor.

Either way, the losing side is likely to appeal the decision to the Court of Appeal, and ultimately to the Supreme Court of Canada.

More broadly, the case reflects the tension between criminal law enforcement and public health responses to the overdose crisis. How the courts resolve that tension in this case will be closely watched by prosecutors, defence counsel and policymakers alike.

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