

Sept. 13, 2018

**Steven Simons and Canadian HIV/AIDS Legal Network et al v. Minister of Public Safety et al**

- *Ms. Hucal, Mr. Gorham and Mr. Law* for Respondents /Moving Parties
- *Ms. Stoltz, Ms. Evans and Ms. Telford* for the Applicants
- *Mr. Sheppard* for Intervenors Pivot Legal, West Coast Prison Justice and Vancouver Network
- *Ms. Wadsworth and Mr. Cameron* for Intervenor B.C. Civil Liberties Assoc.
- *Ms. King and Ms. Fisher* for Intervenor Canadian Public Health Assoc.
- *Mr. Urquhart* for Intervenors Nursing Coalition
- *Ms. Kasper and Mr. Varrette* for Intervenor Aboriginal Legal Services

This constitutional challenge to federal statutes and regulations denying federal prisoners reasonable and effective access to sterile injection equipment in some 43 federal penitentiaries was filed in 2012 and is scheduled to be heard by me on the merits the week of Sept. 24. In June, 2018 the federal government implemented a Prison Needle Exchange Program ("PNEP") in two federal prisons, with a commitment to complete the national roll-out (to all 43 institutions) by August, 2020. The respondents move to dismiss the application on the ground of mootness, or alternatively, to adjourn the application until August, 2020 when the full roll-out of the PNEP has been completed.

**Decision – the matter is adjourned for one year to a date in or after September, 2019.**

- (1) **Mootness** - The respondents' recent introduction of the PNEP does not make this matter moot. The PNEP roll-out may falter or fail; and the prisoner's constitutional entitlement to such a program as well as the program's constitutionally-required design remain live issues.
- (2) **Adjournment** – Given the specific findings and declarations being sought in the Amended Application - see s. 1(a) ["failure" or "refusal" to make available] and s. 1(b) ["prevent inmates from possessing"] and given the respondents' recent commitment to a 43-penitentiary rollout of the PNEP that will make injection equipment available (albeit under an allegedly deficient model), any meaningful adjudication of this constitutional challenge must consider and cannot ignore the PNEP. This being so, I adjourn the hearing on the merits for one year – until September, 2019 - by which time the PNEP may be operational in a significant number of penitentiaries and as a result there may be measurable/sufficient evidentiary basis about the workings (and alleged deficiencies) of the PNEP model that is currently being implemented. I also note that in the applicants' Settlement Offer (that pre-dated the commencement of the PNEP), the applicants would have been content with a September, 2019 implementation/challenge date.
- (3) If the national roll-out of the PNEP fails to proceed, or is otherwise diluted or cancelled by the respondents so that the adjournment to September, 2019 is no longer reasonable, the applicants may attend before me on short notice to obtain a more expedited hearing date.
- (4) Any costs issues from today are reserved to the hearing on the merits.



Justice Edward P. Belobaba