Court File No. CV-24-00732861-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE NEIGHBOURHOOD GROUP COMMUNITY SERVICES, KATHARINE RESENDES and JEAN-PIERRE AUBRY FORGUES

Applicants

and

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Respondent

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

REPLY FACTUM OF THE APPLICANTS

March 21, 2025

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8

Rahool P. Agarwal LSO#: 54528I
ragarwal@lolg.ca

STOCKWOODS LLP
Suite 4130, 77 King Street West
Toronto, ON M5K 1H1

Carlo Di Carlo LSO #: 62159L
carlodc@stockwoods.ca
Spencer Bass LSO#:75881S
spencerb@stockwoods.ca
Olivia Eng LSO #: 84895P
oliviae@stockwoods.ca

NANDA & COMPANY
10007 80 Avenue NW
Edmonton, AB T6E 1T4

Avnish Nanda LSA #: 18732
avnish@nandalaw.ca
Tel: 780 916 9860

Lawyers for the Applicants

TO: **THE ATTORNEY GENERAL OF ONTARIO**
Constitutional Law Branch
720 Bay Street – 4th Floor
Toronto, ON M5G 2K1
Email: clbsupport@ontario.ca

S. Zachary Green LSO #: 48066K
zachary.green@ontario.ca
Tel: 416 992 2327

Andrea Bolieiro LSO #: 60034K
andrea.bolieiro@ontario.ca
Tel: 437 551 6263

Emily Owens LSO #: 80144G
emily.owens@ontario.ca
Tel: 416 937 3687

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PART I - INTRODUCTION

1. This reply factum combines the Applicants' reply to Ontario and response to the facta of the interveners, in particular the factum of the Leslieville Neighbours for Community Safety and Niagara Neighbours for Community Safety (the **"Leslieville/Niagara Group"**).[1]

2. Ontario and the Leslieville/Niagara Group's treatment of the evidence in this matter gives rise to a kaleidoscope of evidentiary issues. Both facta rely on hearsay, contain misstatements of fact, are rife with unsupported assertions, and simply disregard evidence they disagree with. Ontario, in particular, ignores issues with the evidence of their experts, including concessions that their experts made on cross-examination, and evidence given by some of their experts that strayed outside of their area of expertise (on which Ontario nonetheless relied).

3. Ontario and the Leslieville/Niagara Group's convoluted presentation of the evidence seeks to muddy the waters and give the impression that the only sensible action for this Court is to defer to the legislature without applying the reasoned scrutiny that our *Charter* demands. Their treatment of the legal issues follows a similar theme.

4. The drug crisis in Ontario is a complex societal problem that requires an all hands-on deck approach, but the issues on this Application are much more straightforward. Contrary to what Ontario suggests, determining them does not require this Court to wade into scientific debates and pick a side. Ontario's affidavits from *some* of the residents of *some* of the neighbourhoods that have SCSs are of limited relevance to this Application. These affiants are unable to speak to why these things are occurring in their neighbourhood, just as they are unable to speak to whether their experience is any different from what occurs in places that do not have an SCS. Ontario focuses heavily on these anecdotal accounts to obfuscate from the fact that it has not led evidence on some

[1] Capitalized terms in this factum bear the meaning set out in the Applicants' March 5, 2025 factum.

of the most critical issues to determine at least the Applicants' s. 7 *Charter* arguments and to meet its own burden under s. 1.

5. In order to address the issues on this Application, what will be critical is a focus on the different constitutional tests, and what evidence is actually needed to address those issues. In its reply and response to the facta of Ontario and the Leslieville/Niagara Group, this factum aims to provide that guidance. This is in addition to several other issues that it will deal with in reply/response. Specifically, this factum will address the following issues:

(a) clarity on what question this Court needs to answer in order to address the Applicants' s. 7 *Charter* claim;

(b) how Ontario's treatment of the purpose of the *CCRA* is circular and contravenes Supreme Court jurisprudence;

(c) why Ontario's treatment of the effects of the *CCRA* elevates form over substance and is inconsistent with the Supreme Court's treatment of constitutional law issues;

(d) issues with the evidence on which Ontario and the Leslieville/Niagara Group rely;

(e) why Ontario's argument that the Applicants have no standing to challenge s. 3(1) of the *CCRA* is flawed;

(f) why an interim injunction remains appropriate; and

(g) why Ontario's request that any order of invalidity be suspended for one year is inappropriate and without any basis.

PART II - LAW & ARGUMENT

A. Clarity On the Test at Section 7

6. Ontario's treatment of the s. 7 *Charter* analysis—with its references to "buffer zones", deference to the legislature, "reasoned apprehension of harm", prohibitions with penal sanctions, and whether Ontario has proven to a scientific standard that SCSs cause crime—risks distracting

attention and focus from the actual issues that this Court needs to address to resolve the Applicants' s. 7 *Charter* claim. Below, the Applicants will attempt to bring clarity to the specific questions that this Court needs to consider as part of its assessment of the Applicants' s. 7 Claim.

(i) All that is needed to establish a deprivation is a reasonable inference of an increased risk to health

7. At the deprivation stage of the s. 7 analysis, Ontario's concerns that led it to enact the legislation are not the focus of this part of the test.[2] Ontario's calls for deference have "no role at this stage of the analysis" and only come into play at the principles of fundamental justice stage.[3]

8. Instead, the court is to assess whether the claimant has shown that the impugned provision will cause (or has caused) a deprivation to their life, liberty or security of the person, based on the flexible standard of a "sufficient causal connection". Applying too onerous a standard at this first stage (such as requiring a "necessary link", which the Court rejected in Bedford) would prematurely stifle the analysis of whether a claimant's *Charter* rights were infringed and "risks barring meritorious claims".[4] Ontario's insistence that there is no deprivation as long as the *CCRA* does not prohibit relocation is effectively an insistence that the *CCRA* must be the sole, direct, and necessary cause of the deprivation, and sets the bar far too high.

9. The only question at this stage is whether, based on the flexible "sufficient causal connection standard", a claimant can show that the state action at issue:

(h) creates an increased risk of death (which constitutes a deprivation of life);[5]

(i) interferes with their physical or psychological integrity (which constitutes a deprivation of liberty or security of the person);[6] or

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[2] Contrary to what may be suggested from Respondent's Factum, at para 150.
[3] *Canada (Attorney General) v. Bedford,* 2013 SCC 72, para 90.
[4] *Canada (Attorney General) v. Bedford,* 2013 SCC 72, paras 77-78.
[5] *Carter v. Canada (Attorney General),* 2015 SCC 5, at para 62.
[6] *Carter v. Canada (Attorney General),* 2015 SCC 5, at para 64.

(j) interferes with their fundamental personal choices, including important and personal medical decision-making (which again constitutes a deprivation of liberty or security of the person).[7]

10. A total denial of access to healthcare services is not required; security interests are engaged if the state action creates barriers to access that result in an interference with physical or psychological integrity. In *Chaoulli*, the Court held that s. 7 was engaged because the impugned provision delayed access to health care services, which created a risk to health.[8] The deprivation need not be experienced by everyone affected by the law; an impact on a single person's life, liberty, or security of the person is sufficient to trigger a deprivation under s. 7.[9] Whether SCSs cause public disorder, or whether they are effective in ameliorating it, is simply not relevant to whether the impugned provision creates a deprivation.

11. That losing access to SCSs would result in an interference with life and security of the person is not substantially in dispute. The Applicants and Ontario both agree that the risk of death and disease is reduced when someone consumes under the supervision of a health professional. Ontario's expert Dr. Nathaniel Day conceded that SCSs reduce the risk of death for those who consume within the sites.[10] Ontario's expert Dr. Robert Platt noted that "SCS have been shown to reduce the transmission of blood-borne infectious diseases such as HIV and hepatitis C, and prevent local accidental overdose".[11] The same finding was made in *PHS*.[12] It follows that impairing the ability of SCS clients to access safety-enhancing measures engages their life and security interests under s. 7.

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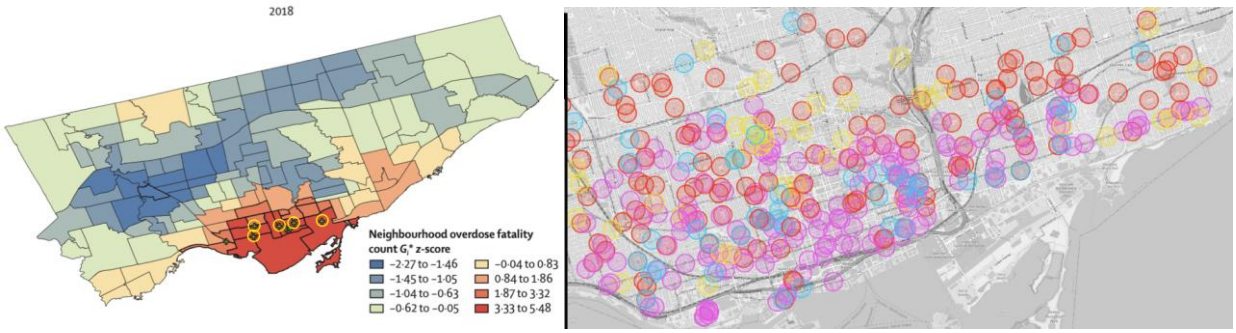
[7] *Carter v. Canada (Attorney General),* 2015 SCC 5, at para 65.
[8] *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, at paras. 38, 50, 123, 191, 200.
[9] *Canada (Attorney General) v. Bedford,* 2013 SCC 72, para 123.
[10] Dr. Day Transcript, p 51-52, qq 203-204.
[11] Dr. Platt Affidavit, para 17, RR, Tab 34, p 1966.
[12] *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, at para 131. See also: *Harm Reduction Nurses Association v. British Columbia*, 2023 BCSC 2290, at para. 69.

12. Ontario seeks to avoid the application of s. 7 by arguing that there is no evidence that "SCS clients cannot reasonably access locations within a city that are at least 200m from a school or daycare." [13] This asks the wrong question. It implies that SCSs slated for closure will simply be able to move down the street to a conveniently available building 201m away. Such a suggestion flies in the face of the practical effect that the *CCRA* will have, particularly in Toronto, where the restricted zones overlap to cover most of the city. The reality is that it will be extraordinarily unlikely, if not impossible, for any of the Toronto SCSs slated for closure to open anywhere nearby where they were formerly located. (This assumes that the SCSs could even obtain another *CDSA* exemption without support of the municipality that they are located within or its public health board, which is prohibited under s. 3(1)(3) of the *CCRA*.)

13. The Applicants' evidence is that SCS clients will be farther from SCSs than what they currently are if the *CCRA* goes into effect.[14] This is also a reasonable (if not an undeniable) inference to draw. Compare the map on the left, showing overdoses in Toronto in 2018[15] to the map on the right of restrictions caused by the *CCRA*. The two essentially overlap:



[13] Respondent's Factum, at para 156.
[14] Dr. Bayoumi Affidavit, Ex A, at para 101-106, 108, AR, Tab 11, p 689.
[15] Dr. Werb Affidavit, Ex A, AR, Tab 12, p 927. The deeper the shade of red, the higher the rate.

14. Ontario suggests that the fact that SCS clients will be farther away from clinics amounts to a mere inconvenience. It analogizes SCS clients to the spouses of medical professionals (*Tanase*) or family members of persons who were transferred to an out-of-town long-term care home (*Ontario Health Coalition*).[16] Both analogies are misguided.

15. The interests at stake for the claimants in the *Tanase* and *Ontario Health Coalition* decisions are vastly different than of SCS clients. There was no evidence in *Tanase* that the spouses of medical professionals would effectively be denied access to health care services; there was no discussion at all about how the decision would affect their access other than a statement that "travelling for health care treatment would constitute an inconvenience". Indeed, the Court even noted that there was an exception for care required on an emergency basis.[17] Similarly, in *Ontario Health Coalition*, there was no dispute in the evidence that the individuals in the long-term care homes were receiving access to the required level of medical care.[18]

16. In contrast, SCS clients are among the most marginalized in society: 90.5% of the users of these services were experiencing homelessness or were unstably housed.[19] These are individuals who face real structural barriers in accessing transportation.[20] SCS clients struggle with their ability to control their opioid use.[21] Indeed, in *PHS* the Supreme Court rejected the notion that individuals who utilize SCSs were making a choice to consume substances.[22] Adding all of this together leads to the reasonable inference that moving SCSs farther from SCS clients is not an

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[16] Respondent's Factum, para 163.
[17] *Tanase v. College of Dental Hygienists of Ontario*, 2021 ONCA 482 at para 51.
[18] *Ontario Health Coalition and Advocacy Centre for the Elderly v. His Majesty the King in Right of Ontario,* 2025 ONSC 415 at 222.
[19] Dr. Bayoumi Affidavit, Ex A, para 74, AR, Tab 11, pp 682.
[20] Dr. Bayoumi Affidavit, Ex A, paras 80, 103-104, AR, Tab 11, pp 683, 688-689
[21] Dr. Bayoumi Affidavit, Ex A, paras 20, 22, AR, Tab 11, p 672.
[22] *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, at para 106.

inconvenience; it effectively deprives them of a service that reduces the risk of death and disease.[23] To compare these individuals to the spouses of medical professionals or individuals who have the ability to travel to visit loved ones is to blindly apply the *Charter* absent any context.

17. For municipalities with comparatively fewer swaths of restricted territory, the fact that their SCS could, in theory, eventually open elsewhere does not mean there is no s. 7 deprivation. Beyond the ability to relocate being illusory (discussed below), relocation necessarily involves a significant disruption to services as the SCS finds a new lease or purchases a new building, and more importantly, has to go through the *CDSA* exemption process all over again, with no guarantee that the new facility will be approved. There is a real risk of increased death and serious bodily harm for any period of time that these cities have no SCSs. At the s. 7 stage courts are to apply a qualitative assessment, not a quantitative one (which is reserved for the s. 1 stage).[24] The fact that the deprivation would only last for a period of time, even if it only affected one person, is sufficient.

(ii) For the arbitrariness analysis, the focus must be on evidence that demonstrates why the closure of SCSs will advance the purpose of the CCRA

18. The burden remains with the claimant at the second stage of the s. 7 analysis. Given Ontario's submissions, it bears reflecting on the guidance on the test a claimant must meet to demonstrate that the infringement does not accord with principles of fundamental justice.

19. As the Supreme Court made clear in *Bedford*, the justification, or public goal, of the law plays no part in this stage of the s. 7 analysis. Nor does its effectiveness. [25] This again reflects the

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[23] In his affidavit, Mr. Forgues describes opioid withdrawal as feeling "like my skin was being ripped off my body" and how "I would want to die and ask others to kill me to relieve the pain". Even without a total *denial* of services, barriers and delay in accessing services prolong suffering and will result in many SCS clients simply being unable fight their cravings for long enough to make it to the SCS. Forgues Affidavit, para 13, AR, Tab 5, p 301.
[24] *Canada (Attorney General) v. Bedford,* 2013 SCC 72, para 127.
[25] *Canada (Attorney General) v. Bedford,* 2013 SCC 72, para 125.

Supreme Court of Canada's awareness that as between the state and the individual claimant, the former will be better placed to bear the burden under s. 1 of demonstrating the efficacy of the law:

> By contrast, under s. 7, the claimant bears the burden of establishing that the law deprives her of life, liberty or security of the person, in a manner that is not connected to the law's object or in a manner that is grossly disproportionate to the law's object. The inquiry into the purpose of the law focuses on the nature of the object, not on its efficacy[…] To require s. 7 claimants to establish the efficacy of the law versus its deleterious consequences on members of society as a whole, would impose the government's s. 1 burden on claimants under s. 7. That cannot be right.[26]

20. Instead, at s. 7, the question is solely whether the law's purpose, taken at face value, is connected to its effects and whether the negative effect is grossly disproportionate.

21. Below, the Applicants deal with Ontario's erroneous treatment of the purpose of the *CCRA*. Once the purpose is correctly understood, it is apparent that the Applicants are the only party that led evidence relevant to the arbitrariness assessment that takes place at s. 7.

22. The focus at this stage is whether a claimant can show that the effects of the act either undermine or have no connection to the purpose (applying the flexible standard to causation). The Applicants are the only party that led evidence about the likely effects of the *CCRA*. Their experts – who are epidemiologists based in Ontario, are familiar with the data regarding the operation of SCSs in Ontario, and (in one case) drafted the seminal report leading to the establishment of SCSs in the province – both concluded that the *CCRA* will result in increased public drug use and public intoxication (among other things).[27] Neither was cross-examined on these opinions.

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[26] *Canada (Attorney General) v. Bedford,* 2013 SCC 72, para 127.
[27] Dr. Bayoumi Affidavit, Ex A, para 111, AR, Tab 11, p 690; Dr. Werb Affidavit, Ex A, AR, Tab 12, pp 933-935.

23. This opinion aligns with common sense, reasonable inferences. If private, controlled spaces that allow individuals who experience homelessness and SUD to consume substances are shut down, those individuals will continue to consume substances, but will now do so in public.

24. Ontario did not lead any evidence about the likely effects of the *CCRA* in Ontario. Although it retained six experts, and a fleet of 31 private investigators, it did not retain a single epidemiologist to review data from Ontario and opine on what is likely to occur if the *CCRA* comes into effect. This choice is telling. Given Ontario's lack of evidence, it is not clear how it can prevent the Applicants from meeting their burden.

25. Instead, Ontario elected to rely on evidence from some individuals who live in *some* of the neighbourhoods that host SCSs.[28] This evidence is not determinative of this s. 7 analysis. None of these affiants purport to say what will happen if the *CCRA* goes into effect, which is the central issue on this analysis. At most, these affiants describe their observations (some of which may be true, some of which raise serious questions, as discussed below).

26. Ontario tries to rely on this anecdotal evidence from these individuals to say that the evidence establishes that "public disorder is concentrated in the immediate vicinity of SCSs".[29] Ontario seems to want to draw the negative inference that if the SCSs are closed, the public disorder would somehow be alleviated. This cannot be enough to prevent the Applicants from meeting their burden. There are several problems with this evidence:

- This implies that the SCSs cause this disorder or at least cause an increase in it. This is something that even Ontario acknowledges it could not prove. It is also contrary to the evidence that the neighbourhoods in which the SCSs were located always had higher incidence of public drug use and homelessness. In fact, this is why the SCSs were

[28] On the low end, Ontario adduced evidence from one such affiant for Kingston; on the high end, it adduced evidence from eight such individuals for South Riverdale. These affidavits are rife with evidentiary issues.
[29] Respondent's Factum, at para 175.

located in those neighbourhoods in the first place.[30]

- "Concentration of disorder" necessarily implies a social science comparison between neighbourhoods (or parts of neighbourhoods) or areas of a city. This type of conclusion requires expert evidence. In fact, this is precisely the evidence that one of the Applicant's experts, Dr. Werb, gave. It is improper for Ontario to rely on the observations of these individuals to draw such a conclusion. These are not conclusions that are available to persons of ordinary experience.[31] Witnesses can testify to facts they observe; they cannot testify about the inferences or opinions that they drew from those facts.[32] This approach is also contrary to the preference expressed by the Supreme Court for "social science evidence to be presented through an expert".[33]

- The lay witnesses noted what they observed where they lived. They did not travel to other parts of the city or their neighbourhood (where there were no SCSs) to make any comparisons. Indeed, in many cases, they did not even note if what they were observing happened within 200m of the SCS in their neighbourhood.

- Finally, for as many lay witnesses from whom Ontario led evidence, the Applicants led observational evidence from a comparable number of lay witnesses from the same neighbourhoods.[34] They painted a different picture of what those neighbourhoods were like both before and after the SCS, suggesting that the neighbourhoods remained largely the same. To the extent the Applicants' lay witnesses noticed changes, those corresponded with impacts from the COVID-19 pandemic.[35] Ontario chose not to cross-examine those witnesses. This leads to the inevitable question of what this Court can do with Ontario's evidence when the same number of people, who were not cross-examined, had different views? This is precisely the danger of relying on anecdotal evidence from lay witnesses instead of objective expert evidence.

27. At the end of the day, if Ontario wanted to make an argument about disorder, it was open to it to call an expert. The data exists and can be analyzed. Having chosen not to, it cannot not now try to fill in that lacunae by using the evidence of lay persons. This Court should draw an adverse inference as to why Ontario made the strategic choice to not adduce this evidence.

28. The Applicants accept that Ontario does not need to prove to scientific certainty that SCSs

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[30] TOSCA Report, p 182, Dr. Bayoumi Transcript, Ex 1, JSAR, Tab 2(1).
[31] *R v Moreira*, 2023 ONCA 807, para 38; *R. v. Graat*., [1982] 2 S.C.R. 819, at p 840.
[32] *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, para 13.
[33] *Canada (Attorney General) v. Bedford,* 2013 SCC 72, para 53.
[34] Helwig Affidavit, Au Affidavit, Russel Affidavit, Death Affidavit, Kastner Affidavit, Rajakovic Affidavit, Ritcey Affidavit, Rynard Affidavit, Starling Affidavit, Stubbings Affidavit, Fish Affidavit, Ramsey Affidavit, Restituto Affidavit, Parsons Affidavit, Hunter Affidavit, Kempster Affidavit, Price Affidavit, Stretch Affidavit, Chaplin Affidavit, Bannerman Affidavit, Burley Affidavit, McClemont Affidavit, RAR, Tabs 2-23, pp 36-285.
[35] See, for example: Affidavit of Dominique Russell, sworn February 7, 2025, RAR, Tab 4, pp 74-81.

cause social disorder. However, in the face of the Applicants' compelling evidence that the *CCRA* will actually undermine its public safety purpose, Ontario needed to provide evidence that shutting down all SCSs within 200m of schools and childcare centres would actually alleviate the problem it is claiming to address, or risk a finding of arbitrariness. It has not done so.

B. Ontario's treatment of the purpose of the *CCRA* is circular and problematic

29. This Court should reject Ontario's articulation of the purpose of s. 2 of the *CCRA* as being to "reduce the exposure of children and youth to the public disorder that is concentrated near SCSs". The Applicants do not disagree that reducing the exposure of children and youth to public disorder is the object of the provision. However, in tying the purpose specifically to public disorder "that is concentrated near SCSs", Ontario conflates the *object* of the provision with the *means* by which it seeks to achieve it. This directly contradicts clear guidance from the Supreme Court.

30. In *Moriarity*, the Supreme Court specifically warned that if the purpose is articulated in too specific terms, "then the *distinction between ends and means may be lost* and the statement of purpose will effectively foreclose any separate inquiry into the connection between them".[36] Instead, the appropriate level of generality is somewhere between the statement of an "animating social value" and a narrow articulation that is merely a repetition of the challenged provision.

31. Ontario's narrowing of the purpose to phenomena "concentrated near SCSs" renders the rest of the legal analysis fundamentally flawed. Allowing the purpose of the provision to simply assume that SCSs do in fact increase public disorder in their vicinity begs the question. It would "effectively foreclose any separate inquiry" into the questions at ss. 7 and 1 of whether prohibiting SCSs from operating near schools and child care centres is rationally connected to that purpose.

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[36] *R. v. Moriarity*, 2015 SCC 55, at para. 28. [emphasis added]

32. The difficulty with Ontario's framing is that it suggests that even if s. 2 results in children and youth being exposed to even *more* public disorder than before, it would still be rationally connected to its objective, because the public disorder they are experiencing is no longer "near" an SCS. Of course, Dr. Guerra acknowledged that the harm to children is the same whether or not the public disorder they are regularly being exposed to is happening near an SCS or elsewhere.[37]

33. By conflating the purpose with the means, Ontario has essentially created a purpose that immunizes the *CCRA* from s. 7 scrutiny.

C. Ontario's treatment of the effects of the *CCRA* elevates form over substance

(i) Characterization of the law as a mere "zoning" provision is a red herring

34. Ontario's attempts to mischaracterize the *CCRA* as a mere zoning provision are a red herring that this Court should ignore. There is no constitutional magic to describing a law as dealing with zoning. Such laws do not escape constitutional scrutiny.[38] The court still needs to examine those laws, in their context, to assess whether they violate the *Charter*.

35. Similarly, Ontario's argument that the Applicants have not identified any decision specifically holding that a zoning law infringed s. 7 because "it regulated the location at which a health care facility could be located",[39] is meaningless. None of the zoning rules that Ontario cites in support of this proposition would, on their face, effectively restrict access to health care for an identifiable group (or anyone at all). But, if any level of government designed a zoning law that prevented access to healthcare services and gave rise to a risk of death or disease, there can be no doubt that it would attract constitutional scrutiny. No one can seriously doubt that a law with a

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[37] Guerra Cross-examination, at pp. 27-30, 40.
[38] See, for example, *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, a seminal freedom of religion case, where the Supreme Court of Canada struck down a by-law for violating the right to freedom of religion.
[39] Respondent's Factum, at para 144.

blanket prohibition that prohibited any buildings in Toronto from providing abortion care or medically-assisted dying would engage s. 7 of the *Charter*.

36. Ontario relies on a decision from the British Columbia Court of Appeal, *Weeds Glass*, to support its argument regarding zoning laws. This decision does not suggest that zoning laws somehow escape constitutional scrutiny. It is also readily distinguishable from the present matter. It dealt with a bylaw regime that required a cannabis dispensary to relocate. The evidence demonstrated that customers frequented "multiple dispensaries"; obtained cannabis through the mail; and had others obtain cannabis on their behalf. Although there was some evidence that some clients would not be able to travel to a new location, none of these clients provided their last names and the court noted "there is no explanation why those clients would not be able to obtain their medication elsewhere".[40] In light of this evidence, the trial judge made a factual finding that medical cannabis remained accessible through other means, despite the bylaw.[41]

37. As with *Tanase* and *Ontario Health Coalition*, the nature of the interests at stake are vastly different than in the present matter. There was no evidence in *Weed Glass* that individuals would be denied health services. As noted above, that is not the case for SCS clients. The difference in the nature of the services in the two cases is also critically important. The health benefits for consumers of medical cannabis arise from the consumption of cannabis – which they may do at a time and place of their choosing, as needed – and not the act of acquiring it from the dispensary. In contrast, there is an immediacy to the needs of SCS clients. The main health benefit to them lies in the ability to travel to the SCS when they need to consume drugs, and have that consumption take place on the premises, under direct supervision.

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[40] *Vancouver (City) v. Weeds Glass and Gifts Ltd.*, 2020 BCCA 46, at para 50, 51, 53.
[41] *Vancouver (City) v. Weeds Glass and Gifts Ltd.*, 2020 BCCA 46, at para 82.

(ii) SCSs will, necessarily, shut down as a result of the CCRA

38. Ontario's suggestion that the *CCRA* will not, in fact, "require any closures"[42] is untrue. Ontario's own press release announcing the incoming legislation refers to sites slated for "closure".[43] If the *CCRA* comes into effect on April 1, 2025, ten out of Ontario's twenty-three existing SCSs will be required to close immediately. This is an objective reality that cannot be ignored (as discussed in the Applicants' initial factum). There are real people, including the Applicants, who will suddenly lose all access to a critical means of protecting themselves against accidental overdose and potentially death.

39. It is also not accurate to say that the *CCRA* does not prevent any SCS from relocating, as long as their new location complies with s. 2. Subsection 3(2)2. prohibits SCSs operated by municipalities and local boards from relocating without provincial approval. Ontario's claim that there is "no evidence that any municipality or local board has ever applied for provincial approval under s. 3(2) and been denied" is an incredible submission to make for legislation passed just over three months ago. By the same token, there is no evidence that Ontario has ever granted a municipality or local board approval under s. 3(2) – and there is evidence that it has no intention of ever doing so.[44]

40. The *CCRA* imposes even more barriers to SCSs relocating through s. 3(2)3. (which was inadvertently left off the Applicants' Order Requested in their initial factum, but which the Applicants also request to be struck), which prohibits municipalities and local boards from even providing "support" to any person applying to the federal government to operate an SCS (which

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[42] Respondent's Factum, at para. 233.
[43] Sinclair Affidavit, Ex W, AR, Tab 3, p 255.
[44] Costoff Affidavit, para 9, Ex G, 22:25, AR, Tab 10, p 624.

any relocating site will have to do) without provincial approval. A proper assessment of the effects of s. 2 must take into account how its adverse impacts on access to supervised consumption services are exacerbated through its interaction with ss. 3(2)1. and 3(2)3.

41. Further, Ontario's claim that s. 3(2) does not impact the three Applicants because they are not municipalities or local boards misses the point, which is the deprivation of life, liberty, and security of the person for SCS *clients*. Mr. Forgues will be immediately affected by the combined operation of s. 2 and 3(2), which will both close the only SCS currently available to him and impose a direct legal barrier on that SCS' ability to relocate to somewhere else in Kitchener.

D. Ontario and the Interveners Misstate the Evidence

42. To the extent that this Court believes it is necessary to resolve certain matters of fact, it should view Ontario's and the Leslieville/Niagara Group's factual assertions with caution.

(iii) Ontario mischaracterizes and overstates the expert evidence

43. Throughout its factum, Ontario's references to the expert evidence often bear little relation to the actual evidence from the experts. Ontario regularly seeks to rely on its experts for statements that are admittedly well beyond their actual expertise.

44. The most egregious example of this is Ontario's repeated reliance on Dr. Guerra as a criminologist. In particular, Ontario seeks to rely on Dr. Guerra's statements regarding the concentration of crime and disorder in specific locations in neighbourhoods, the practices of drug dealers, the utility of crime statistics, and the fact that the presence of SCSs will increase the likelihood that children will witness social disorder.[45] While Dr. Guerra did seem very eager to

[45] Respondent's Factum, at paras. 34, 77, 83, 89, 203-204.

make these statements, the problem is that they are well outside her expertise. Dr. Guerra is a developmental psychologist with expertise in child psychology.[46] She is not a criminologist. She readily admitted that she has no expertise to opine on whether SCSs result in an increase in criminal or anti-social behaviour where they are located, or whether children are "guaranteed" to see this behaviour near an SCS. She did not conduct any analysis on these questions. Not only has she never studied or published on the topic of SCSs, she did not cite a single report in her affidavit that related to SCSs specifically.[47] Further, Dr. Guerra only reviewed Ontario's evidence and assumed it was true, without ever reading the Applicants' evidence.[48]

45. Nevertheless, Ontario seeks to rely on Dr. Guerra's evidence for the precise question that she said she was not qualified to answer: whether the presence of an SCS actually increases the likelihood of children being exposed to social disorder.

46. Another example relates to Dr. Koivu, a specialist in addictions medicine. Ontario cited to her affidavit to support the notions that: (i) reported crime is not an accurate measure of people's experience of crime, and (ii) the existence of a social phenomenon called "reporting fatigue".[49] These opinions are clearly outside of the expertise of Dr. Kovu. Ontario's reliance on Dr. Koivu's evidence is particularly surprising given that on cross-examination Dr. Koivu acknowledged that she was not a criminologist and had no expertise on bias and the reporting of crime. She went to say that although she did not have this expertise, she nonetheless understood her duty as an expert as providing this opinion evidence (that was based only on her personal experience).[50] Dr. Koivu clearly did not understand her obligations as an expert. Nevertheless, Ontario is relying on the very

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[46] Guerra Cross-examination, at p. 9
[47] Guerra Cross-examination, at pp. 12, 12-13, 18, 22, 30, 31, 41, 46-47.
[48] Guerra Cross-examination, at pp. 32, 96-98.
[49] Respondent's Factum, at para. 82.
[50] Dr. Koivu Transcript, p 107, q 411, p 108, q 414.

evidence that ought to have disqualified her from testifying.[51]

47. Ontario also treated the evidence of the Applicants' experts in a manner that is unfair and not reflective of the truth. To provide one example, it says that Ontario's expert, Dr Wyman, admitted that she was not aware of any data showing a visit to an SCS increased likelihood of being connected with a care provider (para 110). This is true. However, what Ontario did not mention is that the reason that Dr. Wyman provided for this lack of awareness is that she is not "a research methodologist or epidemiologist". Ontario also did not tell this Court that Dr. Wyman did testify to her experience as an addictions specialist treating individuals and that "individuals using [SCSs] are often connected to the adjacent community health centres for care".[52]

48. Ontario also places great reliance on the claim that the efficacy of SCSs has never been proven in a randomized control trial ("**RCT**").[53] In doing so, Ontario disregards the evidence that there would be serious ethical issues with conducting an RCT on SCS. It would require randomizing participants into different groups and then denying the control arm access to health benefits that even Ontario's experts recognize prevent the risk of death. It would also mean that the control arm would not receive observation or emergency medical aid.[54] Despite making this criticism regarding the lack of RCTs, none of Ontario's experts gave the opinion that it would be safe and ethical to conduct an RCT to test SCS.

49. RCTs are not the *only* methodology that can establish causality. Dr. Werb notes that the scientific consensus is that observational research *can* establish causality.[55] Ontario did not cross-

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[51] This is not the first time there has been an issue about Dr. Koivu and her understanding of the role of an expert. See *Black v. Alberta*, 2023 ABKB 123, at para 52, where the Court noted that allegations that Dr. Koivu was partisan, and based her evidence on "anecdotal observations and her personal experience" rang "true".
[52] Dr. Wyman Transcript, ASJR, Tab 4, p 734-735.
[53] Respondent's Factum, at para. 105.
[54] Dr. Hyshka Affidavit, para 59, RAR, Tab 27, p 412; Dr. Werb Reply Affidavit, Ex A, para 17, RAR, Tab 24, p 297.
[55] Dr. Werb Reply Affidavit, Ex A, para 18, RAR, Tab 24, p 297.

examine Dr. Werb on this opinion. Dr. Bayoumi noted that the focus on causation by one of Ontario's experts (Dr. Day) was "unsophisticated" as "observational data should be evaluated according to its quality, not dismissed out of hand because it is observational".[56] Ontario did not cross-examine Dr. Bayoumi on this opinion. Nor did it cross-examine Dr. Bayoumi on his conclusion that the authors of every systematic review of SCS that he cited concluded that the evidence base supporting SCSs was "robust for decision making".[57]

50. Third, there is no evidence to suggest that RCTs are required for public health interventions, like SCSs. A large portion of public health interventions are based on observational studies.[58] Dr. Hyshka's uncontested evidence was that complex public health interventions are "often not evaluated using RCTs".[59] On cross-examination, Dr. Somers agreed that it was not necessary to conduct an RCT to have empirical confidence in an area of science and this is something that often happens when dealing with public health.[60]

51. Ontario also misleadingly repeats its experts' criticism of a study co-written by Dr. Bayoumi and Dr. Werb comparing overdose rates in Toronto before and after SCSs opened on the basis of the two 3-month periods they studied.[61] There are several flaws with these critiques:

(k) they ignored the fact that to take seasonal effects into account, the comparator period needed to assess the same three-month period as the pre-SCS period;[62]

(l) they ignore the fact that extending the analysis into 2020 and beyond would includ post-COVID data as well, where (i) SCS sites were not operating at full capacity,

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[56] Dr. Bayoumi Reply Affidavit, Ex A, para 63, RAR, Tab 26, p 377.
[57] Dr. Bayoumi Reply Affidavit, Ex A, para 19, RAR, Tab 26, p 369.
[58] Dr. Bayoumi Reply Affidavit, Ex A, para 21, RAR, Tab 26, p 369-70.
[59] Dr. Hyshka Affidavit, para 58, RAR, Tab 27, p 412.
[60] Somers Transcript, p 48, qq 151-154. One of Ontario's experts, Dr. Nathaniel Day, conceded that as the Medical Director of Recovery Alberta he implemented a public health intervention known as the Virtual Opioid Dependency Program, despite the fact that no RCT had been conducted to assess the efficacy of this program: Day Transcript, p 77, q 307-10, p 78, q 311
[61] Respondent's Factum, at paras. 113-116.
[62] Dr. Werb Reply Affidavit, Ex A, para 31, RAR, Tab 24(a), p 304.

(ii) people at risk of overdose were moved from Toronto and housed in outlying neighbourhoods, and (iii) the effects of COVID more generally made it difficult for observational data to be interpreted;[63]

(m) they failed to acknowledge that two of the three months in the comparator period (May and June) overlapped with a period when carfentanil was introduced into the Ontario drug supply and that May 2019 was a period of increased mortality;[64]

(n) none addressed the fact that the Applicants' experts' spatial study also compared the decrease in mortality to neighbourhoods that did *not* have SCSs. If the drop in overdose mortality was related to a non-SCS factor – as Ontario seems to suggest – one would presumably see similar reductions in those neighbourhoods as well. However, there was "no statistically significant difference in these neighbourhoods".[65] Ontario did not cross-examine Dr. Werb on this point; and

(o) none of the critiques addressed the fact that the Applicants' experts also conducted a second analysis which looked at all data from 2018 and 2019 and used a geographically weighted regression to analyze the association between overdose mortalities and the location of the SCS site. This second analysis confirmed the conclusion reached on the first, namely, that the location of SCS was associated with a drop in overdose mortality.[66]

(iv) Over-reliance on weak lay evidence

52. Both Ontario and the Leslieville/Niagara Group place undue reliance on the lay evidence of residents of some of the neighbourhoods with SCSs and describe social disorder that they (or others) have witnessed. Ontario in particular criticizes the Applicants for pointing out that this evidence is anecdotal and is narrow in its scope.[67] However, the Applicants highlighted numerous evidentiary flaws with this evidence, namely:

- Firstly, both Ontario and the Leslieville/Niagara Group completely ignore the ample competing evidence from other residents in the record, as mentioned above. Ontario did not cross-examine any of these witnesses. Instead, its approach appears to be to simply pretend that they do not exist and continue to rely on their own witnesses.
- Secondly, the affidavits and testimony of Ontario's lay witnesses suffer from serious evidentiary issues. They are rife with speculation and lay opinion evidence. This Court

[63] Dr. Werb Reply Affidavit, Ex A, para 31, RAR, Tab 24(a), p 304; Day Transcript, p 32, q 134, p 101, q 390.
[64] Dr. Werb Reply Affidavit, Ex A, para 32, RAR, Tab 24, p 305.
[65] Dr. Werb Reply Affidavit, Ex A, para 33, RAR, Tab 24, p 306.
[66] Dr. Werb Reply Affidavit, Ex A, para 36, RAR, Tab 24, p 307.
[67] Respondent's Factum, at para. 13.

should resist Ontario's and Leslieville/Niagara Group's to use this evidence to argue that SCSs led to an increase in disorder in their vicinity.

- Thirdly, Ontario and the Leslieville/Niagara Group seek to rely on inadmissible hearsay from these witnesses for the truth of its contents. While far from the only instances, perhaps the most egregious examples come from the Leslieville/Niagara Group factum, where they seek to rely on incidents reported by unnamed individuals in an unsecured online spreadsheet for the truth of their contents.[68] The affiant who created this Google sheet – and appended it to her affidavit – does not even swear to her own belief that the information is true.[69] Further, the Leslieville/Niagara Group also seeks to rely on hearsay allegedly from children in the neighbourhood, identified only as "Boy, age 11" and "Boy, age 13".[70] This hearsay from unnamed and unidentified sources offends Rule 39.01(5) and is therefore inadmissible and entitled to no weight.[71]
- Finally, Ontario provides misleading descriptions of their own evidence. For example, Ontario heavily relies on the experience of Ms. Benoit, who closed her daycare "located near three SCSs in Ottawa".[72] What Ontario deliberately declines to mention is that Ms. Benoit's daycare was 380m, 490m, and 590m from the SCSs – outside the "buffer zone".[73]

(v) SCS incident reports are inadmissible or worth little weight

53. Throughout its factum, Ontario relies on SCS incident reports for the truth of their contents. Ontario introduced these reports through Dr. Guerra's affidavit.[74] Dr. Guerra had no involvement whatsoever with the production or even collection of these reports. She was just provided with these reports by Ontario's counsel, and given some basic details about them by a "manager" at the Ontario Ministry of Health.[75] Dr. Guerra had no idea whether they were a comprehensive set, or merely an unrepresentative sample. Further, Dr. Guerra could not speak to their accuracy, or even their production in any way. In fact, Dr. Guerra has never even been inside an SCS.[76]

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[68] Leslieville/Niagara Group Factum, at para. 11. These incidents were collected through a Google sheet that anyone with access could post to and posts were not independently verified: Finkle Cross, at pp. 65-66.
[69] Affidavit Andrea Nickel, sworn January 21, 2025, at para. 51, RR, Vol. 2, Tab 13, p. 752.
[70] Leslieville/Niagara Group Factum, at para. 12. On its face, the language used in these statements raise serious questions as to whether these were actual verbatim quotations from young children, as they are presented to be, or whether they were written by adults.
[71] *Gordon v. Gordon et al.*, 2022 ONSC 550, at paras. 12-14.
[72] Respondent's Factum, at para. 92.
[73] Affidavit of Pam Benoit, sworn January 23, 2025, at para. 11, RR, Vol. 3, Tab 22, p. 1406.
[74] Guerra Affidavit, Ex. C, RR, Vol. 5, Tab 36, pp. 2203-2299.
[75] Guerra Affidavit, para. 29, RR, Vol. 5, Tab 36, pp. 2169-2170, p. X.
[76] Guerra Cross-examination, at p. 84; Guerra Cross-examination, at pp. 56-57.

54. While it never says so explicitly, presumably Ontario is seeking to rely on the hearsay evidence from these incident reports on the basis of the business records exception. However, as Ontario has not provided any notice of this intention under s. 35(3) of the *Evidence Act*,[77] the statutory exception is unavailable to them and the reports are inadmissible for their truth.[78]

55. In any event, the lack of an ability of any of Ontario's witnesses to speak to either the making of the records or the underlying events seriously detracts from the weight to be accorded to these reports.[79] The circuitous route through which Ontario has sought to adduce these reports has deprived the Applicants of any reasonable basis to challenge or test the accuracy of the reported events in any way. As such, this Court must be cautious before placing too much reliance on them.

E. An Interim Injunction is Appropriate

56. In arguing against a brief interim injunction in this case, Ontario has misstated the evidence and the law. This is a rare case where an injunction preventing the *CCRA* from coming into force until this Court can render its decision is appropriate.

57. Ontario alleges that the Applicants have not demonstrated irreparable harm because, according to Ontario, TNG has not provided evidence of steps taken to relocate to another location.[80] There are a number of flaws with this argument:

- Firstly, it has no basis in law. The test for an interim injunction does not require the Applicants to prove that they have attempted futile steps to avoid the law's harms. Ontario provides no support for such a proposition.
- Secondly, it completely disregards the compelling evidence of irreparable harm to SCS clients. This includes the individual applicants, Ms. Resendes and Mr. Forgues, who have

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[77] R.S.O. 1990, c. E.23.
[78] The common law business records exception is also unavailable to Ontario because it has adduced no evidence that the declarants had personal knowledge of the events recorded: *McCabe v. Roman Catholic Episcopal Corporation*, 2019 ONCA 213, at para. 23.
[79] *Evidence Act*, R.S.O. 1990, c. E.23, s. 35(4).
[80] Respondent's Factum, at paras. 234-235.

sworn to the irreparable harm they will experience if the *CCRA* comes into force. Due to their SUDs, compulsion to use drugs, and possibility of relapse, they face the risk of a fatal overdose, and returning to unsafe injection practices.[81]

- Thirdly, it ignores the direct evidence of Mr. Sinclair regarding the impossibility of simply relocating KMOPS, as Ontario suggests. Mr. Sinclair explained that TNG lacks the financial capacity to move KMOPS to a site that is compliant with the *CCRA*, and cannot reasonably rent or purchase a new space given the uncertainty mandated by s. 2(4) of the Act.[82] Despite Ontario's assertions, TNG could not take steps to avoid the irreparable harm of the *CCRA* on its clients, regardless of how many months it had.[83]

58. Ontario claims that this Court should view Mr. Sinclair's evidence "with skepticism" on this point.[84] However, Ontario chose not to cross-examine Mr. Sinclair on this issue. As a result, his evidence regarding KMOPS' inability to relocate is unchallenged. Ontario's attacks on Mr. Sinclair's credibility here are a clear violation of the rule from *Brown v. Dunn*, as they afforded him no opportunity to respond.[85]

59. Contrary to Ontario's arguments, this is an appropriate case for a brief interim injunction, regardless of any presumption that validly-enacted legislation serves a public interest. Ontario incorrectly treats this presumption as an automatic trump to any injunction application targeting legislation. In this regard, this case is directly analogous to *Harm Reduction Nurses Association*.[86] That case involved British Columbia's decriminalization of possession of certain drugs and the provincial government's legislation to essentially re-criminalize drug use in prescribed locations. The plaintiffs challenged the law as violating the s. 7 rights of people who use drugs. Chief Justice Hinkson granted the plaintiff's request for an injunction prior to the law coming into force.

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[81] Resendes Affidavit, at paras. 51-52; Forgues Affidavit, at paras. 32-33.
[82] Sinclair Affidavit, AR, Tab 3, paras 129-131.
[83] The *CCRA* only received royal assent on December 4, 2024. This is really the operative date, not the date when Ontario notified the media of its proposal to introduce new legislation.
[84] Respondent's Factum, at para. 19.
[85] *Browne v. Dunn*, 1893 CanLII 65 (FOREP); *R. v. Quansah*, 2015 ONCA 237, at para. 79.
[86] *Harm Reduction Nurses Association v. British Columbia*, 2023 BCSC 2290, leave to appeal ref'd 2024 BCCA 87.

60. The BC Supreme Court recognized that irreparable harm needed to be considered in the context of the ongoing public health emergency and opioid crisis.[87] Unlike in this case, the impugned law did not directly prohibit or restrict the locations of harm reduction services. Nevertheless, the Court still found irreparable harm on the basis that the law would push some drug users to consume in less safe ways (*i.e*. on their own in private). The Chief Justice also noted that "the *Act* may result in its members being limited in their ability to provide life-saving care to their clients rendering their members' otherwise legal and mandated work potentially more dangerous, and may lead to death of clients, family, and friends that could cause its members serious psychological harm".[88]

61. If there was irreparable harm in *Harm Reduction Nurses Association*, then such harm must surely exist in this case where the *CCRA* explicitly prohibits the delivery of supervised consumption services in certain locations.

62. Chief Justice Hinkson concluded that the balance of convenience favoured the plaintiffs, despite assuming that the law would advance a public good. The BC law did seek to reduce the public safety harms associated with drug use, including in spaces frequented by children.[89] However, the Court rejected the Province's argument that the case was simply a request by drug users to be able to use drugs "nearly wherever they want".[90] When weighing the balance of convenience, the Court concluded:

> [103] Ultimately, I accept that the instant circumstances in British Columbia – a Public Health Emergency – are exceptional. In these circumstances, the applicable balance is as between the public benefit in suspending legislation that I am satisfied will cause irreparable harm, and allowing the legislation to persist and militate

[87] *Harm Reduction Nurses Association v. British Columbia*, 2023 BCSC 2290, at paras. 65-72.
[88] *Harm Reduction Nurses Association v. British Columbia*, 2023 BCSC 2290, at para. 84.
[89] *Harm Reduction Nurses Association v. British Columbia*, 2023 BCSC 2290, at para. 99.
[90] *Harm Reduction Nurses Association v. British Columbia*, 2023 BCSC 2290, at para. 100.

> public benefits in diverting drug use from certain areas. In light of the evidence and in the instant circumstances, the balance must fall in the former direction.
>
> [104] I am satisfied that the suspension of the *Act* – as the plaintiff proposes – can be properly characterized as a substantial public benefit.[91]

63. This conclusion applies equally to this case. In light of the public health emergency and the opioid crisis (which exists in Ontario as well as BC), the balance "must" fall on the side of suspending legislation that will cause irreparable harm to drug users, not on "allowing the legislation to persist and militate public benefits in diverting drug use from certain areas" (even if one accepts Ontario's claims that the *CCRA* will even accomplish that goal).

F. Suspending an order of invalidity for one year would be inappropriate

64. Ontario's request that any declaration of invalidity be suspended for one year is wholly inappropriate in this case. If the *CCRA* is allowed to come into force, it will wreak immediate and irreparable harm to clients of SCSs. Moreover, it is the *CCRA* that seeks to change the *status quo* that has existed in Ontario for eight years. There is no void that will be created by striking it down. In these circumstances, there is no basis for suspending any declaration of invalidity.

65. The Supreme Court in *Ontario (Attorney General) v. G.* was clear that suspending declarations of invalidity should not be granted as a matter of course, but are reserved for "rare circumstances".[92] Before a court can grant this type of exceptional remedy, the government must demonstrate that "an immediately effective declaration of invalidity would endanger an interest of such great importance that, on balance, the benefits of delaying the effect of that declaration

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[91] *Harm Reduction Nurses Association v. British Columbia*, 2023 BCSC 2290, at paras. 103-104 (emphasis added).
[92] *Ontario (Attorney General) v. G.,* 2020 SCC 38, at paras. 132-133.

outweigh the cost of preserving an unconstitutional law that violates *Charter* rights". A suspension should not be granted simply because public safety is engaged.[93]

66. Establishing that the continued breach of constitutional rights is justified is not an easy task. The government must identify with specificity both the actual interest endangered and the manner in which it is endangered, supported by evidence.[94] Ontario has failed to meet its burden. It merely provides a vague assertion that a suspension "would avoid [...] the removal of protection for vulnerable children and youth".[95] Apart from the failure to provide the specificity required, this proposition is seriously flawed as (among other reasons):

- these "protections" are not currently in force – as noted above, it is the Applicants (not Ontario) that are effectively asking that the *status quo* be preserved;
- the level of protection that the *CCRA* will actually afford to children is dubious, even independent of the expert evidence indicating that removing SCSs from these communities will actually increase (not decrease) children's exposure to anti-social behaviour; and
- Ontario itself asserts that the *CCRA* is a "proactive and prophylactic" measure[96] in response to the lack of evidence of any ongoing harm at several SCSs.

67. Ontario's final justification for its request for a suspension is that it is for the legislature, not the courts, to develop policy.[97] While it is the role of the legislature to develop policy, it is the obligation of this Court to give effect to constitutional rights.[98] There is nothing in an immediate declaration of invalidity that would prevent Ontario from enacting a new legislative alternative that accords with this Court's ruling and the *Charter*.[99]

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of March, 2025.

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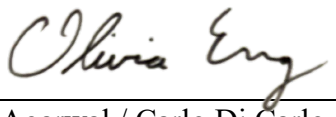
[93] *Ontario (Attorney General) v. G.,* 2020 SCC 38, paras 117, 132.
[94] *Ontario (Attorney General) v. G.,* 2020 SCC 38, at para. 133.
[95] Respondent's Factum, para 243.
[96] Respondent's Factum, paras 179, 207.
[97] Respondent's Factum, para 243.
[98] *Ontario (Attorney General) v. G.,* 2020 SCC 38, para 128.
[99] *Ontario (Attorney General) v. G*, 2020 SCC 38, para 130.



Rahool P. Agarwal / Carlo Di Carlo / Spencer Bass / Olivia Eng / Avnish Nanda

Lawyers for the Applicants

SCHEDULE "A"

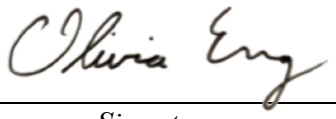
LIST OF AUTHORITIES

1. *Canada (Attorney General) v. Bedford,* 2013 SCC 72
2. *Carter v. Canada (Attorney General),* 2015 SCC 5
3. *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35
4. *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44
5. *Harm Reduction Nurses Association v. British Columbia*, 2023 BCSC 2290
6. *Tanase v. College of Dental Hygienists of Ontario*, 2021 ONCA 482
7. *Ontario Health Coalition and Advocacy Centre for the Elderly v. His Majesty the King in Right of Ontario,* 2025 ONSC
8. *R v Moreira*, 2023 ONCA 807
9. *R. v. Graat*, [1982] 2 S.C.R. 819
10. *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23
11. *R. v. Moriarity*, 2015 SCC 55
12. *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551
13. *Vancouver (City) v. Weeds Glass and Gifts Ltd*., 2020 BCCA 46
14. *Black v. Alberta*, 2023 ABKB 123
15. *Gordon v. Gordon et al.*, 2022 ONSC 550
16. *McCabe v. Roman Catholic Episcopal Corporation*, 2019 ONCA 213
17. *Browne v. Dunn*, 1893 CanLII 65 (FOREP)
18. *R. v. Quansah*, 2015 ONCA 237
19. *Harm Reduction Nurses Association v. British Columbia*, 2023 BCSC 2290,
20. *Ontario (Attorney General) v. G.,* 2020 SCC 38

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date March 21, 2025



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SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Community Care and Recovery Act, 2024, S.O. 2024, c. 27

Definitions

1 In this Act,

"child care centre" means a child care centre within the meaning of the *Child Care and Early Years Act, 2014*; ("centre de garde")

"controlled substance" means a controlled substance within the meaning of the *Controlled Drugs and Substances Act* (Canada); ("substance désignée")

"designated premises" means,

(a) a school, other than a school at which the only programs provided are adult education programs,

(p) a private school, other than,

(i) a private school located on a reserve, or

(ii) a private school that only offers classes through the internet,

(q) a child care centre, other than a child care centre located on a reserve,

(r) an EarlyON child and family centre, other than an EarlyON child and family centre located on a reserve, or

(s) a prescribed premises; ("lieu désigné")

"EarlyON child and family centre" means a centre of that name, administered by a service system manager within the meaning of the *Child Care and Early Years Act, 2014*, offering programs for families and children; ("centre pour l'enfant et la famille ON y va")

"Health Canada" means the federal Minister of Health and the Department over which that Minister presides; ("Santé Canada")

"local board" means a local board within the meaning of section 1 of the *Municipal Affairs Act*; ("conseil local")

"Minister" means the Minister of Health or any other member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; ("ministre")

"precursor" means a precursor within the meaning of the *Controlled Drugs and Substances Act* (Canada); ("précurseur")

"prescribed" means prescribed by the regulations; ("prescrit")

"private school" means a private school within the meaning of the *Education Act*; ("école privée")

"regulations" means the regulations made under this Act; ("règlements")

"reserve" means a reserve as defined in subsection 2 (1) of the *Indian Act* (Canada) or an Indian settlement located on Crown land, the Indian inhabitants of which are treated by Indigenous and Northern Affairs Canada in the same manner as Indians residing on a reserve; ("réserve")

"safer supply services" means the prescribing of medications by a legally qualified medical practitioner as an alternative to a controlled substance or precursor; ("services d'approvisionnement plus sécuritaire")

"school" means a school within the meaning of the *Education Act*; ("école")

"supervised consumption site" means a site in respect of which the federal Minister of Health has granted an exemption to allow activities at the site in relation to a controlled substance or precursor that is obtained in a manner not authorized under the *Controlled Drugs and Substances Act* (Canada),

(a) under section 56.1 of the *Controlled Drugs and Substances Act* (Canada), in circumstances where the federal Minister of Health is of the opinion that the exemption is necessary for a medical purpose, or

(b) under subsection 56 (1) of the *Controlled Drugs and Substances Act* (Canada), in circumstances where the federal Minister of Health is of the opinion that the exemption is necessary for a scientific purpose or is otherwise in the public interest. ("site de consommation supervisée")

Note: Section 2 comes into force on April 1, 2025.

Prohibition re location of supervised consumption site

2 (1) Subject to subsection (4), no person shall establish or operate a supervised consumption site at a location that is less than 200 metres, measured in accordance with subsection (2), from a designated premises.

Measurement

(2) Subject to the regulations, the distance mentioned in subsection (1) shall be measured in accordance with the following rules:

2. The distance shall be measured from the geometric centre of the building in which a supervised consumption site is located.

3. In the case of a school, the distance shall be measured to the door primarily used by the public to enter the building in which the school is located for the purpose of accessing the area where the school operates.

4. In the case of a private school, the distance shall be measured from,

   i. the centre of the building in which the school is located, as determined by the private school and made available on a Government of Ontario website, or
   ii. if the private school is located only in a portion of a building, the centre of the portion of the building in which the school is located, as determined by the private school and made available on a Government of Ontario website.

5. In the case of a child care centre or EarlyON child and family centre, the distance shall be measured to the geographic coordinates of the street address of the child care centre or EarlyON child and family centre, determined through the use of software or a web service that implements an address geocoding process.

6. In the case of a premises prescribed for the purposes of clause (e) of the definition of "designated premises" in section 1, the distance shall be measured to the point specified in the regulations.

7. If the measurement results in a number of metres that is not a whole number, the number shall be rounded up to the nearest whole number.

Geocoding

(3) If the regulations provide for a specific software or web service for the purposes of paragraph 4 of subsection (2), the distance to a child care centre or EarlyON child and family centre shall be measured using the prescribed software or web service.

Exception

(4) If a private school began providing instruction or a child care centre began operating after the day the *Safer Streets, Stronger Communities Act, 2024* received Royal Assent, subsection (1) does not apply to a supervised consumption site with respect to the private school or child care centre, as the case may be, until the day that is 30 days after the day the private school began providing instruction or the child care centre began operating.

Same

(5) Despite subsection (4), if the Minister specifies a day on which subsection (1) applies to a supervised consumption site, subsection (1) applies to the supervised consumption site as of that day.

Limit on power of municipalities, local boards

Application for exemption to decriminalize

3 (1) Subject to such exceptions as may be prescribed, despite sections 7 and 8 of the *City of Toronto Act, 2006* and sections 9, 10 and 11 of the *Municipal Act, 2001*, a municipality or local board does not have the power to apply to Health Canada for an exemption under subsection 56 (1) of the *Controlled Drugs and Substances Act* (Canada) from any provision of that Act for the purpose of decriminalizing the personal possession of a controlled substance or precursor.

Applications related to supervised consumption sites, safer supply services

(2) Subject to such exceptions as may be prescribed, despite sections 7 and 8 of the *City of Toronto Act, 2006* and sections 9, 10 and 11 of the *Municipal Act, 2001*, a municipality or local board does not have the power, without the approval of the Minister, to do any of the following:

1. Apply to Health Canada for an exemption or a renewal of an exemption to the *Controlled Drugs and Substances Act* (Canada) for the purpose of operating a supervised consumption site.
2. Apply to Health Canada for funding under Health Canada's Substance Use and Addictions Program or any other Health Canada program in respect of safer supply services, or enter into an agreement with the Government of Canada with respect to funding under such a program in respect of safer supply services.
3. Support, including by passing a by-law or making a resolution, an application made to Health Canada by any other person in respect of any matter described in paragraph 1 or 2.

Regulations

4 The Lieutenant Governor in Council may make regulations,

(a) prescribing anything that is referred to in this Act as prescribed or as otherwise dealt with in the regulations;

(b) defining or clarifying the meaning of any word or expression used in this Act that is not otherwise defined in this Act.

Note: On April 1, 2025, section 4 of the Act is amended by adding the following clause: (See: 2024, c. 7, Sched. 4, s. 5)

(c) varying, for specified circumstances, how the distance mentioned in subsection 2 (1) shall be measured under subsection 2 (2).

***Evidence Act*, R.S.O. 1990, c E.23**

Definitions
35 (1) In this section,
"business" includes every kind of business, profession, occupation, calling, operation or activity, whether carried on for profit or otherwise; ("entreprise")
"record" includes any information that is recorded or stored by means of any device. ("document") R.S.O. 1990, c. E.23, s. 35 (1).

Surrounding circumstances
(4) The circumstances of the making of such a writing or record, including lack of personal knowledge by the maker, may be shown to affect its weight, but such circumstances do not affect its admissibility. R.S.O. 1990, c. E.23, s. 35 (4).

THE NEIGHBOURHOOD GROUP COMMUNITY SERVICES et al.	and	HIS MAJESTY THE KING IN RIGHT OF ONTARIO	Court File No. CV-24-00732861-0000
Applicants		Respondent	

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

REPLY FACTUM OF THE APPLICANTS

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Suite 2750, 145 King Street West
Toronto ON M5H 1J8
Rahool P. Agarwal LSO#: 54528I
ragarwal@lolg.ca
Tel: 416 645 1787

STOCKWOODS LLP
Suite 4130, 77 King Street West
Toronto, ON M5K 1H1
Carlo Di Carlo LSO #: 62159L
carlodc@stockwoods.ca
Spencer Bass LSO#:75881S
spencerb@stockwoods.ca
Olivia Eng LSO #: 84895P
oliviae@stockwoods.ca
Tel: 416 593 7200

NANDA & COMPANY
10007 80 Avenue NW
Edmonton, AB T6E 1T4
Avnish Nanda LSA #: 18732
avnish@nandalaw.ca
Tel: 780 916 9860

Lawyers for the Applicants