



CV-24-00732861 - 0000  
Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

*(Court Seal)*

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*

**NOTICE OF APPLICATION**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing *(choose one of the following)*

- ☐ In writing
- ☒ In person
- ☐ By telephone conference
- ☐ By video conference

at the following location:

330 University Avenue, Toronto ON M5G 1R on a date to be set by the Registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date Dec. 9<sup>th</sup>, 2024 Issued by *Luís Falcão* "L. Falcão"  
Local Registrar

Address of court office: Superior Court of Justice L.F  
330 University Avenue, ~~9th Floor~~  
Toronto ON ~~M5G 1R7~~ L.F

TO: His Majesty the King in Right of Ontario  
Crown Law Office (Civil Law)  
Ministry of the Attorney General  
720 Bay Street, 8th Floor  
Toronto ON M7A 2S9

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OF JUSTICE  
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TORONTO, ONTARIO  
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COUR SUPÉRIEURE  
DE JUSTICE  
330 AVE. UNIVERSITY  
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TORONTO, ONTARIO  
M5G 1R7

## APPLICATION

1. The Applicants make application for:
  - (a) an order declaring that sections 2 and 3 of the *Community Care and Recovery Act, 2024*, S.O. 2024, c. 27, Sch. 2, violate sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms* in a manner that cannot be demonstrably justified in a free and democratic society under section 1 of the *Charter*;
  - (b) a declaration pursuant to section 52(1) of the *Constitution Act, 1982*, taking immediate effect, that sections 2 and 3 of the *Community Care and Recovery Act, 2024* are invalid and are of no force or effect;
  - (c) in the alternative to the relief sought at paragraph 1(b), an order pursuant to section 24(1) of the *Charter*, including but not limited to exempting the Kensington Market Overdose Prevention Site and the Supervised Consumption Site – Kitchener from the application of section 2 of the *Community Care and Recovery Act, 2024*;
  - (d) an order declaring that sections 2 and 3 of the *Community Care and Recovery Act, 2024*, are *ultra vires* because they encroach upon Canada's exclusive jurisdiction over criminal law under section 91(27) of the *Constitution Act, 1867*;
  - (e) in the alternative to the relief sought at paragraph 1(d), an order declaring that sections 2 and 3 of the *Community Care and Recovery Act, 2024* are constitutionally inoperative because they frustrate the purpose of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19;

- (f) an interim and/or interlocutory injunction restraining the application and effect of sections 2 and 3 of the *Community Care and Recovery Act, 2024* until the final determination of this proceeding;
  - (g) their costs of this application on a full indemnity basis, plus taxes; and
  - (h) such further and other relief as this Honourable Court may deem just.
2. The grounds for the application are:

**Overview**

- (a) The *Community Care and Recovery Act, 2024* (“*CCRA*” or the “*Act*”) will shutter supervised consumption sites across Ontario in a matter of months. The result will be that thousands of vulnerable Ontarians will be denied the medical care they need and will be exposed to an unnecessary risk of death and disease. The *CCRA* is unconstitutional and should be declared invalid;
- (b) Supervised consumption sites are a response to a Canada-wide drug overdose crisis that kills thousands of people every year. In Ontario alone, drug overdoses have claimed the lives of over 26,000 people since 2016;
- (c) The scientific data is clear and unambiguous: the consumption of drugs under the supervision of trained health professionals virtually eliminates the risk of death by overdose and substantially reduces the transmission of infectious diseases. For that reason, Canada enacted a regime that permitted the operation of supervised consumption sites notwithstanding the criminal prohibitions on controlled substances. Specifically, the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19



("CDSA") allows the Federal Minister of Health to issue exemptions when "necessary for a medical purpose" or "in the public interest" to permit people to use drugs at a supervised consumption site without the threat of criminal prosecution or sanction;

- (d) Ontario's first authorized supervised consumption sites opened in 2017, following a precipitous rise in overdose-related deaths across the province resulting from the emergence of fentanyl in the street drug supply. The Federal Minister of Health has issued 23 exemptions for supervised consumption sites in Ontario;
- (e) The positive health outcomes achieved by supervised consumption services in Ontario are undeniable. Between 2020 and 2024, Ontario's supervised consumption sites served 178,253 people, reversed 21,979 overdoses, and made 533,624 service and substance use treatment referrals;
- (f) Providing low-barrier, widespread access to supervised consumption services has achieved demonstrably positive health outcomes in Ontario. Despite this, Ontario enacted the *CCRA* and decided to treat supervised consumption as a social evil that causes increased crime and social disorder. There is no evidence to support the rationale for the approach taken by Ontario – to the contrary, experts in the field have unanimously concluded that supervised consumption sites actually decrease crime and social disorder in the communities they serve. Ignoring the objective evidence, Ontario has continued its attack on supervised consumption services through the *CCRA*;
- (g) The *CCRA* is unconstitutional in violation of the *Charter*:

- (i) it infringes the rights to life, liberty and security of the person under section 7 by arbitrarily denying or limiting access to services that save lives and reduce the transmission of infectious diseases;
  - (ii) it imposes cruel and unusual punishment contrary to section 12 by exposing people who use drugs to a substantially increased risk of death, disease, and a variety of other harms, in a manner that is degrading and dehumanizing and incompatible with basic conceptions of human dignity; and
  - (iii) it is discriminatory in violation of section 15 by denying people who suffer from a substance use disability, most of whom are already marginalized and disadvantaged, much-needed and proven medical treatment, thereby exacerbating existing disadvantages they face. It also reinforces the unjustified and unsubstantiated stereotype that people who use drugs and who suffer from substance use disabilities are a danger to society, and in particular to children, and are therefore not worthy of the care they need to survive;
- (h) The *CCRA* is also unconstitutional as a result of the division of powers. It is in pith and substance a restriction on supervised consumption services as a socially undesirable practice which should be extinguished and is therefore a clear incursion into Canada's exclusive criminal law jurisdiction that is *ultra vires* Ontario;
- (i) Even if the *CCRA* is not *ultra vires*, its purpose conflicts with the purpose of the *CDSA* and is therefore inoperative under the doctrine of federal paramountcy. The purpose of the *CDSA* is the promotion of health and public safety by regulating the

possession of controlled substances. The operation of the *CCRA* is incompatible with the *CDSA*'s purpose because its object is to terminate supervised consumption services that are proven to save lives and preserve and promote health;

### **The Applicants**

- (j) The Neighbourhood Group Community Services (“TNG”) is a social agency serving more than 40,000 low-income people and families across Toronto. It offers free programs and services to address a broad range of issues, including homelessness, mental health, unemployment, social isolation, treatment for substance use, conflict resolution, violence, youth alienation, and the settlement of newcomers. TNG is a charitable corporation under the Ontario *Not-for-Profit Corporations Act, 2010*, S.O. 2010, c. 15;
- (k) As part of its programs and services, TNG operates the Kensington Market Overdose Prevention Site (“KMOPS”), located at 260 Augusta Avenue, Toronto. KMOPS offers supervised consumption services to people who use drugs, in addition to other harm reduction services such as drug checking and peer assistance;
- (l) TNG operates KMOPS pursuant to an exemption from the federal government under section 56.1 of the *CDSA*. TNG has operated KMOPS since 2018. Its current exemption was approved on November 25, 2022 and expires on November 30, 2025;
- (m) KMOPS is privately funded. TNG does not receive or use any public funding to operate KMOPS;

- (n) Katharine Resendes is an individual living in Ontario. She is a person who suffers from a substance use disorder. She has used the supervised consumption services that TNG provides at the KMOPS to use drugs. She has also accessed the other services that TNG provides, including recovery services. In fact, she is a graduate of TNG's peer program. Ms. Resendes is currently in recovery for her substance use disorder. However, relapse is a recognized part of her medical condition, and Ms. Resendes has had to use TNG's supervised consumption services in order to consume in a safe manner;
- (o) Jean-Pierre Aubry Forgues is an individual living in Ontario. He currently accesses supervised consumption services at the Kitchener CTS (defined below). Access to supervised consumption services stabilized Forgues' medical condition, allowing him to improve his health, secure housing and employment, and live a fuller life;

**Supervised consumption services**

- (p) But for Canada granting an exemption for the possession and use of controlled substances, providing and accessing supervised consumption services would be criminal acts. They would violate provisions of the *CDSA* that prohibit the possession of Schedule I, II and III drugs. It is only pursuant to an exemption from the Minister of Health under the *CDSA* that service providers are able to provide supervised consumption services. A *CDSA* exemption permits people who use drugs at a particular site, and staff at that site, to use and/or handle drugs without facing the risk of criminal prosecution for the possession or trafficking of a controlled substance;



- (q) Supervised consumption services save lives and benefit communities. They provide safe, clean, clinical spaces for people to bring their own drugs to use in the presence of trained health professionals. This supervision allows for immediate intervention in the event of an overdose. They also offer other harm reduction services such as providing safe supplies for substance consumption (*e.g.*, sterile injection equipment) and “drug checking” (*i.e.*, checking drugs for contaminants);
- (r) Supervised consumption services also connect people who use drugs to other health and social services, including counselling, social services, and treatment for their underlying medical conditions;
- (s) The exemption eliminating the threat of criminal prosecution enhances the likelihood that people who use drugs will use a supervised consumption site, rather than using drugs elsewhere in the community, and will therefore have the benefit of the supervision of health professionals and the other services offered by the site. Without an exemption, the threat of criminal prosecution would deter staff from providing supervised consumption services and deter people who use drugs from accessing those life-saving services;
- (t) The discretion of whether to grant an exemption under the *CDSA* is solely the prerogative of Canada and the Minister of Health;
- (u) For decades, supervised consumption services have been deployed as a primary form of medical intervention for combatting the risk of overdose death, the spread of infectious diseases, and improving the broader health outcomes of people who

use illegal, street-sourced substances. There are over 100 supervised consumption sites in more than 60 cities in 11 countries;

- (v) There is a large body of scientific data and literature (including data and literature that Ontario has commissioned) evaluating the efficacy of supervised consumption services. The overwhelming consensus is that the provision of supervised consumption services has positive health effects. The scientific evidence demonstrates that supervised consumption services:

- (i) reduce overdose morbidity and mortality;
- (ii) reduce unsafe consumption behaviours (*i.e.*, needle sharing and reuse, improper disposal of consumption equipment, and poor hygienic practices);
- (iii) reduce the risk of transmission of injection-related infections, such as HIV, hepatitis C, and bacterial infections;
- (iv) reduce public drug consumption and improve the clean disposal of drug paraphernalia;
- (v) promote access to health and social services, including wound care, treating blood-borne diseases, substance use treatment, and access to housing supports; and
- (vi) reduce crime and social disorder in the neighbourhoods in which they are provided;

**The toxic opioid epidemic and overdose crisis**

- (w) Beginning in 2016, overdose rates in Ontario, and particularly in Toronto, saw a precipitous rise. This was because the street opioid supply was becoming increasingly potent and dangerous as a result of toxic drug contamination, leading to unprecedented overdose-related deaths and hospitalizations across the province;
- (x) In 2017, the opioid overdose mortality rate in Ontario increased by almost 50% compared to the previous year, from 867 deaths in 2016 to 1,294 deaths in 2017;
- (y) In an effort to combat the escalating toxic opioid drug crisis, three supervised consumption sites were opened in Toronto between 2017 and 2018 under the *CDSA* exemption scheme. More sites opened across Ontario in subsequent years. The Minister of Health currently has issued 23 exemptions under section 56.1 for supervised consumption sites in Ontario;
- (z) In 2018, in connection with the roll-out of supervised consumption services, Ontario commissioned an internal fact-finding investigation and expert study on supervised consumption services. The report coming out of that investigation was completed in September 2018. The report concluded that access to supervised consumption services:
  - (i) reduced overdose-related morbidity and mortality and can help reduce ambulance calls for overdose-related purposes;
  - (ii) improved access to health care services, such as treatment for injection-related infections, medical care, and harm reduction services;

- (iii) improved referrals and uptake for addictions treatment; and
  - (iv) minimized social disorder resulting from illegal substance use by decreasing needle sharing, the incidence of public drug use, and the unsafe disposal of drug paraphernalia;
- (aa) In other words, by September 2018, Ontario had expert advice, that it had itself commissioned, confirming that supervised consumption services are highly effective at preventing overdose-related deaths and reducing the spread of infectious diseases, and create additional health and social benefits for both people who use drugs and the broader community;

**Supervised consumption has had overwhelmingly positive health effects in Ontario**

- (bb) The data and research regarding the efficacy of supervised consumption services in Ontario is clear that these services have unambiguously had positive effects not only for people who use drugs, but also for the communities in which those services are provided;
- (cc) On November 13, 2024, the Centre on Drug Policy Evaluation published a report presenting data on the efficacy of supervised consumption services in Ontario. The report was prepared and published in response to the restrictions announced by the Ontario government that are the subject of this proceeding. As stated in the report, “The government announced this ban without presenting any supporting scientific, clinical, or public health evidence. This report, prepared by the Centre on Drug Policy Evaluation, is intended to fill this gap”;



- (dd) The report found, among other things, that:
- (i) between 2020 and 2024, a total of 21,979 non-fatal overdoses were reversed at supervised consumption sites. Without supervised consumption services, nearly all of those overdoses would likely have resulted in death or grievous bodily injury;
  - (ii) Toronto neighbourhoods that implemented supervised consumption services experienced a 67% reduction in the overdose mortality rate, compared to no significant reductions for neighbourhoods that did not implement supervised consumption services;
  - (iii) site users who injected at a site that also offered Hepatitis C care were 12% more likely to have received Hepatitis C testing and 67% more likely to have been treated for Hepatitis C, compared to those who did not access supervised consumption services;
  - (iv) among those who are homeless or underhoused, recent supervised consumption was associated with a substantial reduction in public injecting;
  - (v) areas close to the supervised consumption sites in Toronto experienced significant reductions in the homicide rate, while areas further away experienced increases; and
  - (vi) the rate of major crimes in neighbourhoods with supervised consumption services generally *declined* after their implementation (whereas neighbourhoods with no such services saw no decline);

**Ontario ignores expert reports and forces closure of supervised consumption sites**

- (ee) Despite the overwhelming data demonstrating the beneficial impacts of supervised consumption services, on August 20, 2024, Ontario announced that it would be imposing new restrictions on these services. Among other things, Ontario declared that it would be:
  - (i) “banning supervised drug consumption sites within 200 metres of schools and child care centres”; and
  - (ii) prohibiting “municipalities or any organization from standing up new consumption sites or participating in federal so-called ‘safer’ supply initiatives”;
- (ff) The announcement of these upcoming restrictions followed an audit that Ontario had commissioned to review a supervised consumption site operated by South Riverdale Community Health Centre (“SRCHC”). The audit was in response to the accidental shooting death of a person near the site in July 2023;
- (gg) The audit consisted of two reports: one from Unity Health Toronto (“Unity Health”), and one undertaken by the government-appointed supervisor of SRCHC, who was appointed after the shooting incident, with the assistance of staff from the office of the Medical Officer of Health;
- (hh) The Unity Health report recommended increasing funding to SRCHC. The supervisor’s report recommended expanding the availability of supervised

consumption services at SRCHC. Neither report suggested closing supervised consumption services;

- (ii) Ontario decided to impose the new restrictions, and announce that decision to the public, notwithstanding the findings and conclusions of the Unity Health and supervisor reports, which Ontario itself had commissioned;

**The *CCRA* terminates supervised consumption services**

- (jj) The restrictions announced by Ontario in August 2024 were made into law on December 4, 2024, through the passage of the *CCRA*;
- (kk) Section 2 of the Act prohibits the establishment or operation of a “supervised consumption site at a location that is less than 200 metres” from a school or child care centre. Section 2 comes into force on April 1, 2025;
- (ll) KMOPS is located within 200 metres of a child care centre (which is also operated by TNG) and is therefore caught by section 2 of the *CCRA*. TNG has been notified by Ontario that it must close KMOPS by April 1, 2025;
- (mm) The Applicant, Ms. Resendes has made use of the supervised consumption services at KMOPS. Relapse is a recognized part of recovery and so Ms. Resendes’s continued recovery from her medical condition depends on her ability to make use of these services. If the KMOPS closes, she will no longer have ready access to this service;
- (nn) Section 3(2) of the *CCRA* removes from “a municipality or local board” the power to apply for an exemption or a renewal of an exemption under the *CDSA* to operate

a supervised consumption site. A “local board” includes a “board of health”. Some of Ontario’s supervised consumption sites are operated by a municipality or board of health, and will therefore be prohibited from applying for a renewal of their exemptions when they expire;

- (oo) One of the supervised consumption sites that are run by boards of health is the Supervised Consumption Site – Kitchener, which is operated by Region of Waterloo Public Health and Paramedic Services and Sanguen Health Centre and is located at 150 Duke St West, Kitchener (the “**Kitchener CTS**”);
- (pp) The Applicant Mr. Forgues treats his condition through a safe supply treatment program that the Kitchener CTS connected him to in or around 2022. Mr. Forgues’ condition is chronic and relapsing, and he requires access to supervised consumption services when that occurs. With the Kitchener CTS closing, he will no longer have access to this service;
- (qq) In its August 2024 news release announcing the impending legislation, Ontario identified ten supervised consumption service facilities across Ontario (including KMOPS and the Kitchener CTS) that will close as a result of the *CCRA*. Five of these sites are located in Toronto. As Toronto only has ten supervised consumption service facilities in total, this means that *half* of Toronto’s supervised consumption sites will close. Given the demographic data of the individuals that tend to use supervised consumption services, and their inability to travel easily, closing these sites effectively denies them the ability to obtain supervised consumption services,



thereby increasing the likelihood of death and grievous bodily injury and other health and social harms;

- (rr) The other five supervised consumption sites that will be closed are located in Ottawa, Thunder Bay, Kitchener, Hamilton and Guelph. The closure of these facilities will have a similar, and likely even worse, adverse impact for users of supervised consumption services in those cities. In Thunder Bay, Kitchener, Hamilton and Guelph, the sites that are being closed are the only facilities where individuals can obtain supervised consumption services in those respective cities;
- (ss) In fact, the supervised consumption site in Thunder Bay is the only site in the entirety of Northern Ontario. Its closure will effectively deprive all Northern Ontarians of supervised consumption services;
- (tt) The closures compelled by the *CCRA* may be even more expansive than the ten sites identified by Ontario to date, as subsection 2(4) of the Act will compel any remaining supervised consumption sites to close within thirty days if a new private school or child care begins operating within a 200 metre radius;

**The CCRA is unconstitutional**

*(i) Sections 2 and 3 of the CCRA violate section 7 of the Charter*

- (uu) The Supreme Court of Canada has already determined that the termination of supervised consumption services violates section 7 the *Charter*;
- (vv) In *Canada (Attorney General) v. PHS Community Services Society*, the Supreme Court of Canada held that Canada's refusal to renew an exemption for a supervision

consumption site in Vancouver's Downtown East Side violated section 7 of the *Charter* in a manner that did not accord with the principles of fundamental justice and could not be saved by section 1;

- (ww) Sections 2 and 3 of the *CCRA* effect the very same outcome that was challenged in *PHS Community Services Society*, namely the closure of supervised consumption sites and the termination of supervised consumption services for the sites' clients. The *CCRA* therefore also violates section 7 of the *Charter* in a manner that does not accord with principles of fundamental justice and that cannot be saved by section 1;
- (xx) The termination of supervised consumption services infringes supervised consumption sites' clients' right to life. Supervised consumption services are a primary method of medical intervention for people who use drugs, and in particular people living with substance use disorder and who use street-sourced, illegal substances. Access to supervised consumption dramatically reduces the risk of death by overdose. Without meaningful access to supervised consumption services, people who use drugs will be forced to resort to unhealthy and unsafe consumption in environments where there is a significant risk of morbidity or death;
- (yy) The termination of supervised consumption services infringes clients' liberty interests under section 7 of the *Charter*. Without access to supervised consumption sites, which are protected by a *CDSA* exemption, these individuals will be exposed to a higher risk of potential criminal sanction as a result of their drug use disorders;

- (zz) The termination of supervised consumption services infringes clients' security of the person interests under section 7 of the *Charter*. Denying or limiting access to supervised consumption exposes substance users to a higher risk of the transmission of infectious diseases, among other harms to their health, including their psychological health, and imposes a barrier to accessing health care;
- (aaa) The threat to life, liberty and security of the person created by the *CCRA* is not in accordance with the principles of fundamental justice. Sections 2 and 3 of the *CCRA* are arbitrary, overbroad, and grossly disproportionate;
  - (ii) *Sections 2 and 3 of the CCRA violate section 12 of the Charter*
- (bbb) Section 12 of the *Charter* protects the "right not to be subjected to any cruel and unusual treatment or punishment".
- (ccc) People in Ontario who use drugs, and particularly those suffering from substance use disorder, have come to rely on supervised consumption services for their daily survival. Without supervised consumption services, people who use drugs will be exposed to a substantially increased risk of death, disease, and a variety of other harms, and will be left to face those risks alone and without sufficient medical or social support;
- (ddd) When it passed the *CCRA*, Ontario was aware of the health and social benefits of supervised consumption, and the deleterious effects the *CCRA* will cause people who use supervised consumption services;

(ccc) Ontario has thus knowingly increased the likelihood of death and grievous bodily injury for countless people in Ontario. The effects of the *CCRA* are grossly disproportionate, degrading and dehumanizing, and offend basic conceptions of human dignity. Accordingly, sections 2 and 3 of the Act give rise to cruel and unusual treatment that is prohibited under section 12 of the *Charter*;

**(iii) Sections 2 and 3 of the *CCRA* violate section 15 of the *Charter***

(fff) Section 15 of the *Charter* guarantees the right to be free from discrimination;

(ggg) Sections 2 and 3 of the Act violate section 15:

- (i) they impose differential treatment: people who access supervised consumption services will be denied access to those services or their access will be significantly impaired;
- (ii) the differential treatment is based on an enumerated and analogous grounds: most people who access supervised consumption services suffer from substance use disorder, which is a mental and physical illness and a disability. Moreover, the closure of supervised consumption services will have a disproportionate and compounding effect on people from marginalized communities and who face disadvantage because of their race, gender, and other personal, immutable characteristics;
- (iii) the differential treatment is discriminatory: termination of supervised consumption services exacerbates existing disadvantages faced by people who use those services. Many service users are marginalized and



disadvantaged, are subject to higher mortality and morbidity rates due to their medical condition, and have inequitable health care access. Impeding or outright denying service users access to these life-saving services will exacerbate their already vulnerable circumstances. The *CCRA* will also reinforce false stereotypes about people who suffer from substance use disorder, including that they are dangerous to children and to society more generally and that they are not worthy of medical care and attention:

*(iv) The violations of the Charter cannot be saved by section 1*

- (hhh) The violations of sections 7, 12 and 15 cannot be justified in a free and democratic society and therefore cannot be saved by section 1. The *CCRA* does not have a pressing and substantial objective – the purported objectives of the legislation are not supported by evidence. Further, sections 2 and 3 of the *CCRA* are not proportionate to the infringements they impose – they are not minimally impairing and their salutary benefits do not outweigh their deleterious effects;

*(v) The CCRA is ultra vires and therefore invalid*

- (iii) The *CCRA* is in pith and substance criminal law and therefore intrudes on Parliament's exclusive jurisdiction over this area. The purpose of the Act is to prohibit supervised consumption sites. This prohibition is not for the purpose of serving a health objective. It is fundamentally to serve a criminal law purpose, namely to suppress or extinguish the availability of supervised consumption services as a socially undesirable practice;

- (iii) The *CCRA* meets its criminal law objective by imposing requirements that make it nearly impossible for supervised consumption service providers to obtain the *CDSA* exemptions necessary to protect providers and users from penal sanction;
  - (kkk) Decisions about whether to criminalize certain conduct, and, conversely, when to *not* criminalize conduct, is exclusively the domain of Canada. It reflects and is consistent with Canada's responsibility over peace, order, security, health and morality. A myriad of factors affect these policy decisions, which are Canada's to make;
  - (III) Ultimately, after consideration and study, Canada determined that allowing for exemptions from criminal sanction for supervised consumption services best served peace, order, security, health and morality;
  - (mmm) The *CCRA*, in pith and substance, prohibits supervised consumption services in Ontario. There is no valid health purpose for these prohibitions. Even reports that Ontario itself has commissioned show the individual and public health benefits of supervised consumption. The *CCRA* is Ontario's colourable effort to thwart Canada's approach to address the drug overdose health crisis by effectively recriminalizing what Canada has sought to decriminalize in certain circumstances;
- (vi) *Paramountcy renders sections 2 and 3 of the CCRA inoperative*
- (nnn) Even if the *CCRA* is *intra vires* Ontario, it is nonetheless unconstitutional and inoperative under the doctrine of federal paramountcy. Sections 2 and 3 of the

*CCRA* frustrate the purpose of the *CDSA*, namely the promotion of public health and safety by regulating the possession of controlled substances;

(ooo) By enacting the statutory exemption regime under section 56 of the *CDSA*, Canada has conferred on the Minister of Health the discretionary power to issue and refuse exemptions for the operation of supervised consumption sites. It is up to the Minister to decide when an exemption should be granted, in accordance with the *CDSA*'s purpose of promoting health and public safety;

(ppp) Sections 2 and 3 of the *CCRA* usurp the Minister's delegated role as gatekeeper of *CDSA* exemptions and directly interfere and conflict with the health and safety purpose of the *CDSA*. Sections 2 and 3 force the termination of supervised consumption services. Many service users will be unable to access supervised consumption services and suffer catastrophic health consequences because of these closures. The *CCRA* necessarily conflicts with the *CDSA*'s promotion of health and safety, because its entire object is to bring to an end to life-saving and health-promoting services;

(qqq) Sections 2 and 3 should be declared inoperative for interfering with the purpose of the federally-enacted *CDSA*;

**Other grounds**

(rrr) sections 7, 12, 15(1), and 24(1) of the *Charter*;

(sss) section 52 of the *Constitution Act, 1982*;

(ttt) this Court's inherent jurisdiction;

(uuu) Rule 14.05 of the *Rules of Civil Procedure*; and

(vvv) such further and other grounds as the lawyers may advise.

3. The following documentary evidence will be used at the hearing of the application:

(a) the affidavit of Bill Sinclair, to be sworn; and

(b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 9, 2024

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THE NEIGHBOURHOOD GROUP COMMUNITY SERVICES et al.  
Applicants

-and- HIS MAJESTY THE KING IN RIGHT OF ONTARIO  
Respondent

Court File No. **CV-24-00732861-0000**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF APPLICATION**

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