

COURT OF APPEAL OF ALBERTA

Form AP-3

COURT OF APPEAL FILE NUMBER: 2501-0254AC

TRIAL COURT FILE NUMBER: 2410 01231

REGISTRY OFFICE: EDMONTON

APPLICANT: BRITISH COLUMBIA
CIVIL LIBERTIES
ASSOCIATION

STATUS ON APPEAL:

STATUS ON APPLICATION: INTERVENOR (PROPOSED)
APPLICANT

APPELLANT:

AARON BROWN

STATUS ON APPEAL:

APPELLANT

STATUS ON APPLICATION

RESPONDENT

RESPONDENTS:

HIS MAJESTY THE KING IN
RIGHT OF ALBERTA and
RECOVERY ALBERTA:
MENTAL HEALTH AND
ADDICTION SERVICES
RESPONDENTS

STATUS ON APPEAL:

STATUS ON APPLICATION: RESPONDENTS

DOCUMENT:

**MEMORANDUM OF FACT AND LAW OF
THE PROPOSED INTERVENOR, BCCLA**

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Part I - Statement of Facts

1. British Columbia Civil Liberties Association (“BCCLA”) seeks permission to intervene in this appeal with the right to file a factum and present oral argument at the hearing of this appeal.
2. BCCLA is a non-profit, non-partisan, unaffiliated advocacy group dedicated to promoting, defending, sustaining, and extending civil liberties and humans rights in British Columbia and Canada. BCCLA has been granted intervener status in over 100 cases before the Supreme Court of Canada, and in multiple cases before provincial appellate courts, including three cases before the Alberta Court of Appeal.¹
3. BCCLA is uniquely positioned to assist the Court on this appeal given its expertise in s. 7 and s. 15 of the *Charter*, its advocacy work pertaining to the health, safety, and rights of people living with substance use disorders, and its experience contributing to the development of the jurisprudence on the constitutionality of safe injection sites in Canada.
4. The application judge held that “Alberta’s decision to cease funding the Red Deer OPS” was a decision capable of engaging *Charter* scrutiny; however, they nonetheless find that there can be no breach of s. 7 and s. 15 of the *Charter* because Mr. Brown is seeking a “positive right” to the Red Deer OPS to which he is not entitled.
5. BCCLA wishes to intervene to assist the Court on the question of whether the government’s conduct gives rise to reviewable state action, and on what role the concept of “positive rights” plays in the s. 7 and s. 15 *Charter* analyses.

¹ Affidavit of Jerome Igbokwe, sworn March 5, 2026, at paras 15-16.

Part II – Statements of Question at Issue in this Application

6. Should BCCLA be granted leave to intervene in this appeal pursuant to Rule 14.58 of the *Alberta Rules of Court*, AR 124/2010?

Part III – Argument

7. In *Justice Centre for Constitutional Freedoms v Alberta*, this Court affirmed the two-step approach to evaluating intervenor applications: “1. whether the proposed intervenor has a particular interest in or will be directly and significantly affected by the outcome of the appeal, or 2. whether the proposed intervenor will provide some special expertise, perspective, or information that will help resolve the appeal.”²
8. In a constitutional case at the appellate level, “the standard for intervenor status is more relaxed”.³
9. In addition, the following factors *may* also be considered:
- a) is the presence of the intervenor necessary for the court to properly decide the matter;
 - b) might the intervenor’s interest in the proceedings not be fully protected by the parties;
 - c) will the intervention unduly delay the proceedings;
 - d) will there possibly be prejudice to the parties if intervention is granted;
 - e) will intervention widen the dispute between the parties; and
 - f) will the intervention transform the court into a political arena.

Proposed intervenor’s interest in the outcome of the appeal

10. BCCLA is committed to promoting, defending, sustaining, and extending civil liberties and human rights in BC and Canada. In particular, BCCLA’s work focuses on the ways in which state action can either advance or impede the full protection and enjoyment of

² *Justice Centre for Constitutional Freedoms v Alberta*, 2021 ABCA 295 at [para 9](#).

³ *Justice Centre for Constitutional Freedoms v Alberta*, 2021 ABCA 295 at [para 11](#).

civil liberties and *Charter*-protected rights. To fulfil this mandate, BCCLA has a direct interest in ensuring that courts have clarity on the proper approach to evaluating whether government conduct gives rise to reviewable state action.

Special expertise of the proposed intervenor

11. BCCLA has been granted leave to intervene in more than 100 appeals at the Supreme Court of Canada, and in numerous other appellate courts across Canada, including in British Columbia, Alberta, Saskatchewan, and Ontario.⁴ BCCLA has been at the forefront of advocating for the health, safety and rights of people living with substance-use disorders in submissions to governments, administrative bodies and courts. Most notably, BCCLA intervened at the SCC in *Canada (Attorney General) v. PHS Community Services Agency, et al.*, 2011 SCC 44⁵, a decision affirming the constitutionality of the Vancouver supervised injection site, *Insite*.⁶

Additional factors

12. All six of the additional factors favour granting BCCLA's application for leave to intervene.
13. Necessity: BCCLA's expertise in *Charter* litigation—and specifically its experience intervening in cases where the Crown argues that there can be no breach of the *Charter* because the claimant is seeking a positive right—makes it uniquely positioned to assist the Court in evaluating the role the “positive” or “negative” rights analysis plays within the s. 7 and s. 15 frameworks.

⁴ Affidavit of Jerome Igbokwe, sworn March 5, 2026, at paras 15-16.

⁵ *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, [2011] 3 S.C.R. 134.

⁶ Affidavit of Jerome Igbokwe, sworn March 5, 2026, at para 8.

14. BCCLA has its own interest in the appeal: The Appellant’s focus in his written submissions is on the application of the s. 7, 15, and 12 tests to the facts before the Court. By contrast, BCCLA’s submissions will focus on the discrete question of *Charter* applicability and reviewable state action in the context of a government decision to cease funding for a life-saving service.
15. The Appellant’s submissions do not address whether a “positive” or “negative” rights analysis belongs within the ss. 7 and 15 frameworks or whether policy decisions immunize government actors from *Charter* scrutiny. The Respondent’s written submissions at paragraphs 35-38 directly argue that the Appellant’s claims are positive rights claims and therefore cannot engage the *Charter*. Accordingly, BCCLA’s proposed submissions will be of assistance to the Court on an issue squarely raised by the parties.
16. No undue delay, prejudice, or widening of the dispute: BCCLA will not unduly delay the proceedings, nor cause any prejudice to the parties. BCCLA’s proposed submissions are limited in scope and raise matters already engaged by the record.
17. Intervention will not politicize the appeal: There is no risk that BCCLA’s participation will politicize the proceedings. Courts have recognized BCCLA’s perspective and expertise in previous *Charter* litigation. BCCLA appreciates that its function as intervener is to assist the Court in navigating complex constitutional issues. BCCLA’s proposed submissions are on narrow issues of law.

Part IV – Submissions Regarding Costs and Order Sought

18. BCCLA requests an order granting it leave to intervene in this appeal on the same terms outlined in BCCLA’s Application to Intervene, namely that BCCLA be permitted to (1) file a factum limited to 20 pages or such other length as the Court may permit; (2) to

present oral submissions not exceeding 15 minutes, or such other time as this Honourable Court deems appropriate; and (3) to have no costs awarded for or against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6 day of March, 2026.

A handwritten signature in blue ink, appearing to be 'RA' with a stylized flourish.

Rahool P. Agarwal
Andrea Galizia
Counsel for the Proposed Intervener, BCCLA

Part V – Table of Authorities

Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44, [2011] 3 S.C.R. 134

Justice Centre for Constitutional Freedoms v Alberta, 2021 ABCA 295.