COURT OF APPEAL OF ALBERTA

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COURT OF APPEAL FILE NUMBER:	2501-0254AC
TRIAL COURT FILE NUMBER:	2410-1231
REGISTRY OFFICE:	Calgary
PLAINTIFF/APPLICANT:	AARON BROWN
STATUS ON APPEAL:	Appellant
STATUS ON APPLICATION:	Respondent
DEFENDANT/RESPONDENT:	HIS MAJESTY THE KING
STATUS ON APPEAL:	Respondent
STATUS ON APPLICATION:	Respondent
APPLICANT/PROPOSED INTERVENOR	HIV Legal Network, Canadian Drug Policy Coalition
DOCUMENT:	**MEMORANDUM OF ARGUMENT**

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OVERVIEW

1. The HIV Legal Network and the Canadian Drug Policy Coalition ("the Applicant") apply jointly to intervene in this appeal. The issues raised by the appeal directly affect their clients, network members and their work, and they bring expertise and a distinct perspective to those issues. Both organizations have extensive histories of work with people who use drugs (PWUD) and the health policies that impact them.

THE TEST FOR INTERVENTION

2. Applications to intervene are contemplated by R 14.58(1), which permits a single appeal judge to grant intervener status to a party, subject to any terms, conditions, rights and privileges imposed by the judge. Intervenors may not raise or argue new issues.

3. A prospective intervenor must have a particular interest in or be directly and significantly affected by the outcome of the appeal, or provide special expertise, perspective or information that will assist the court resolving the appeal.[1] In evaluating whether one of those requirements is met, the court will consider whether the intervenor's presence is necessary to decide the matter properly, useful, different, or based in particular expertise, necessary to protect the intervenor's interest which would not be protected otherwise, will prejudice or delay the appeal, will widen the dispute between the parties, or transform the court into a political arena.[2]

PART 4 – THE PROPOSED INTERVENTION

4. If permitted, the Applicant proposes to intervene on the issue of the interpretation of s 7 of the *Charter.* The Applicant will focus its submissions on aspects of the lower court decision that threaten the legal approach developed nationally in the context of harm reduction programs and s 7, and the interpretive framework that has produced that approach.

5. Specifically, the Applicant would offer a version of the submissions outlined below.[3]

Courts Should Receive Guidance to Ensure Their Decision-Making About Section 7 Claims by PWUD is Not Tainted by Stereotypes or Assumptions

[1] *Papachase Indian Band v Canada* (*Attorney GeneraI*), 2005 ABCA 320 at para 2.
[2] *VLM v Dominey Estate,* 2023 ABCA 226 at para 2.
[3] Subject to any guidance or restrictions given by the Court if the application to intervene is granted, and adjustments to avoid duplicating any issues already addressed by the parties based on their filed materials.

6. The use of illicit substances is a topic of significant public debate, and can provoke strong moral intuitions and beliefs. The ubiquity of myths and stereotypes about people who use drugs and about effective responses to problematic substance use means courts must be particularly vigilant about the risk that assumptions about what is best or most helpful for people who use drugs will inform decision making. Injection "drug users are a historically marginalized population that has been difficult to bring within the reach of health care providers," and the specific parameters of health interventions for them must be assessed on their own evidence, and in light of the context of PWUD.[4]

7. Many people who use drugs are also members of marginalized groups who are targets for multiple forms of stereotyping and discrimination.[5] Court decisions are not immune to this risk. The Applicant understands the duty of an intervenor to take no position on the merits of an appeal, and takes no position on the outcome of this case based on the evidence in the record. But the Applicant seeks to intervene to ensure that this case, and future cases in this arena, are the product of analysis that guards vigilantly against allowing dangerous stereotypes to shape decision-making.

8. When a claimant alleges harm that engages their s 7 right in the context of access to health and harm reduction services, the court's assessment of the nature and scope of any harm caused must remain rooted in the evidence. This includes attending to the actual evidence about harm reduction services, which are "designed to minimize negative health and social consequences associated with drug use without requiring the cessation of drug use itself."[6] Harm reduction reflects "a shift in focus away from moral judgment and a rejection of punitive approaches in favour of pragmatic, public health-oriented interventions geared toward mitigating measurable harms."[7] These services comprise, "a scheme of care for drug users that would assist them at all points," by addressing the particular health risks they face in any given situation, rather than merely those connected to "the exit point when they quit drugs for good."[8]

9. Harm reduction services are part of a spectrum of care that is grounded in the reality that effective provision of services "requires acknowledgement of the difficulties of reaching a

[4] *Canada (Attorney General) v PHS Community Services Society,* 2011 SCC 44 (*PHS*) at para 10.
[5] *PHS* at para 9.
[6] *R v Wilson,* 2025 SCC 32 at para 187.
[7] Ibid at para 30.
[8] *PHS* at para 14,

marginalized population with complex mental, physical, and emotional health issues."[9] The spectrum of services has been established based on expertise about both the cyclical nature of substance use, and the risk of death and injury for people who use drugs even once - regardless of whether they have previously or are currently engaged in longer-term treatment and recovery programs. Harm reduction services, including supervised consumption services, are distinct but complementary to treatment. They target the health risks people who use drugs face in their given situation, reaching them where they are.

10. Interventions at *all* points on the spectrum of care routinely save the lives of clients and network members served and represented by the Applicant. The impact of removing a point on that spectrum of care must be assessed on the basis of its actual impact on a claimant alleging harm through a s 7 claim, rather than on the basis of assumptions about whether interventions elsewhere on the spectrum of care are worthwhile or better for them.[10] If a court is asked to consider the net impact of a policy change involving the substitution of services at one point on the spectrum with those at another, those questions of balancing are properly considered at a stage distinct from discerning whether the claimant has been harmed.

The Established Law on Government Decision-Making, Section 7 and Health Care Should Not Be Abandoned

11. The Applicant also proposes to offer the submission that the analysis of an alleged breach of a claimant's s 7 rights to life and security of the person in the context of health care, including their access to harm reduction services, should be informed by established government obligations to provide health services where s 7 rights are engaged, and to implement government policy in a manner consistent with the *Charter*.[11] Most significantly, the lower court decision departs from the governing approach to determine if s 7 is engaged by a government that fails to ensure the availability of specific health services in a manner that threatens the health and/or life of those that require access to these services, and governments' obligation to implement public policy – including healthcare systems – in a manner that complies with the *Charter*.[12] The decision below

[9] *Canada (Attorney General) v PHS Community Services Society* 2011 SCC 44 at para 14-15.
[10] *PHS* para 105.
[11] See paras 52-68 of *Brown v Alberta*, 2025 ABKB 495.
[12] See *PHS* generally and, *Chaoulli v Quebec* 2005 SCC 35.

dramatically alters the scope of s 7, and the power of litigants to advance and defend their right under that section. While the Court recognized that Alberta's decision to close the Red Deer OPS is a decision "capable of engaging Charter scrutiny," the decision below simultaneously closed the door to any meaningful constitutional challenge regarding a government decision that deprives people of access to vital health services.[13]

12. The Applicant will offer the perspective that the lower court's interpretation of core legal principles in s 7 significantly undermines the rights to life and security of the person. The Supreme Court of Canada has consistently ruled that access to s 7 consideration should not be cut off prematurely, through a narrow interpretation of causation. The Court has repeatedly held that a *risk* of deprivation suffices to engage section 7.[14] The causal connection between a state action and harm does not require that the action be the only or the dominant cause of prejudice suffered by a claimant.[15] In line with this, the analysis has always ensured that every person's rights matter: a grossly disproportionate, overbroad, or arbitrary effect on *one person* is sufficient to establish a breach of section 7.[16]

Commented [CK1]: Indeed the lower court the lower court said about this at para 61: Mr. Brown's risk arises from, among other things, the underlying substance use disorder, the potency of street drugs, and the commitment of the affected user to access services. It does not arise solely from Alberta's decision to reallocate funding to recovery-based alternatives.

13. If sustained by this Court, an approach which amounts to a change in the law of s 7 will have a serious effect on the rights of those the Applicant serves. It has immediate consequences for people requiring access to health care, and particular dangers for people who are discriminated against based on health conditions, including people who use drugs and those living with and affected by HIV.

The Approach to Section 7 Should Be Informed by the Interpretive Principal of Presumed Conformance with International Human Rights Law

14. The Applicant also seeks to make the submission that *Charter* interpretations should be interpreted in-line with Canada's obligations under international human rights law, and that this presumption should play a role in this court's decision-making in this case.[17] Courts have

[13] *Brown v Alberta*, 2025 ABKB 495 at para 42.
[14] *Carter v. Canada (Attorney General)*, 2015 SCC 5 at paragraph 62; *Chaoulli v. Quebec*, 2005 SCC 35 at paras 112-124 and 200.
[15] *Bedford v Canada*, 2013 SCC 72 at para 76.
[16] *Bedford*, at para 123.
[17] *Kazemi (Estate) v Islamic Republic of Iran,* 2014 SCC 62 at paras 150-151; *R v Hape,* 2007 SCC 26 at paras 53-55*; Quebec (Procureure generale) c 9147-0732 Quebec Inc,* 2020 SCC 32 at paras 27-40; *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada,* 2020 CHRT 20 at paras 153-157.

recognized the principle that treaties are binding and must be performed in good faith, as a central unifying principle of the international legal system.[18] As in all cases where the alleged breach of the claimant's rights concerns government provision of health care services, that presumption is engaged here.

15. The *Charter* is presumed to provide protection at least as great as what is protected under similar provisions in international human rights treaties that Canada has ratified. This is a firmly established interpretive principle for the *Charter* and courts should be guided by these sources in delineating the content and breadth of s 7. The Applicant will describe State obligations under the right to health to provide harm reduction services, including access to supervised consumption services, which is recognized in international instruments which Canada has ratified.

CONCLUSION

16. The Applicant requests leave to intervene, and permission to file a factum not exceeding 15 pages, and oral argument not exceeding 15 minutes, or such other limits as this Court deems appropriate. The Applicants seek no costs, and ask that no costs be ordered against them. The Applicant will not raise new issues, or expand the record, and commits to working with any other intervenors to ensure there is no duplication in the submissions to this Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS ___DAY OF March, 2026

Sarah Rankin

Counsel for the Applicant

[18] *Toussaint v Canada (Attorney General)*, 2022 ONSC 4747 at para 181 and *Canada v Alta Energy Luxembourg S.A.R.L.*, 2021 SCC 49 at para 59.

Citations

Papachase Indian Band v Canada (Attorney General), 2005 ABCA 320

VLM v Dominey Estate, 2023 ABCA 226

Canada (Attorney General) v PHS Community Services Society, 2011 SCC 44

R v Wilson, 2025 SCC 32

Brown v Alberta, 2025 ABKB 49

Chaoulli v Quebec 2005 SCC 35

Carter v. Canada (Attorney General), 2015 SCC 5

Bedford v Canada (AG), 2013 SCC 72

Kazemi (Estate) v Islamic Republic of Iran, 2014 SCC 62

R v Hape, 2007 SCC 26

Quebec (Procureure generale) c 9147-0732 Quebec Inc, 2020 SCC 32

First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada, 2020 CHRT 20

Toussaint v Canada (Attorney General), 2022 ONSC 4747

Canada v Alta Energy Luxembourg S.A.R.L., 2021 SCC 49