

COURT OF APPEAL OF ALBERTA

Form AP-1

[Rules 14.8 and 14.12]

COURT OF APPEAL FILE NUMBER: **2103-0048AC**

TRIAL COURT FILE NUMBER: 2003 15090

REGISTRY OFFICE: EDMONTON

PLAINTIFFS/APPLICANTS: TAYLOR ANTHONY MAXEY,
AMANDA FRANCES MARIE
ERVIN, BYRON BIRD,
CAITLYNN WESTGARD,
DUSTIN WESLEY ANDERSON,
FABIAN POLE, GARY WAYNE
FIDDLER, GREGORY LORNE
CREOR, KEIGAN TIERNEY,
MICHAEL SHANE CARSON, and
SHANE PAUL MONETTE

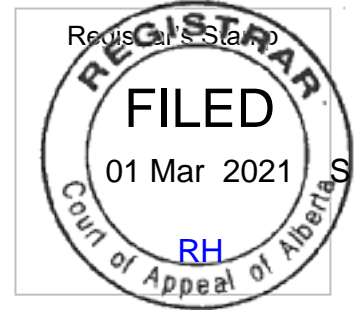
STATUS ON APPEAL: APPELLANT

DEFENDANT/RESPONDENT: HER MAJESTY THE QUEEN IN
RIGHT OF ALBERTA

STATUS ON APPEAL: RESPONDENT

DOCUMENT: **CIVIL NOTICE OF APPEAL**

APPELLANT'S ADDRESS FOR
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File No. 149.00001



WARNING

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

1. Particulars of Judgment, Order or Decision Appealed From:

Date pronounced: February 25, 2021

Date entered: N/A

Date served: N/A

Official neutral citation of reasons for decision: *TAM v Alberta*, 2021 ABQB 156

2. Indicate where the matter originated:

X Court of Queen's Bench

Judicial Centre: Edmonton

Justice: The Honourable Justice G.S. Dunlop

On appeal from a Queen's Bench Master or Provincial Court Judge?:

X No

3. Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)).

X Permission not required

4. Portion being appealed (Rule 14.12(2)(c)):

X Whole.

5. Provide a brief description of the issues:

- The Justice erred in identifying the correct legal framework that applies in the circumstances, including, but not limited to, the determination that irreparable harm under the test for injunctive relief against state action that is alleged to infringe the *Charter of Rights and Freedoms* requires the consideration of the “magnitude” of the harm alleged instead of the nature of the harm.
- The Justice erred in applying the correct legal framework to the material facts at issue in the application, including, but not limited to, his findings that the Appellants would suffer no irreparable harm if the injunction did not issue and that the balance of convenience favoured the Respondent.
- The Justice erred in apprehending the factual record before him, including, but not limited to, excluding large sections of unchallenged, relevant, and material fact and expert evidence after determining that he only had to consider the portion of the record filed after November 16, 2020 that set out the likelihood of patients of the injectable opioid agonist treatment (“**IOAT**”) program relapsing back into street opioid use.

- The Justice erred in apprehending the factual record before him, including, but not limited to, understanding severe opioid use disorder as a chronic, relapsing medical condition and the experience of individuals living with the condition. The Justice rejected direct evidence setting out this context, and failed to consider it in conjunction with established jurisprudence and fact and expert evidence setting out that the forced transition of patients from iOAT to the Opioid Dependency Clinic (“ODP”) proposal without consent would cause them to relapse back to using street opioids. Instead, the Justice substituted his own “common sense” for the information found in the jurisprudence and unchallenged direct and expert evidence on the record.
- The Justice erred in apprehending the factual record before him, including, but not limited to, accepting that the ODP proposal will result in the continued delivery of iOAT in Alberta and that there were sufficient details established on the record of the content of the alternative treatment and that it would actually be provided to iOAT patients.

6. Provide a brief description of the relief claimed:

- The Court of Appeal hear the appeal on an expedited basis, with an oral hearing held prior to March 31, 2021.
- The Court of Appeal grant an interim injunction until it renders a decision in the appeal.
- The Court of Appeal allow the appeal and direct the matter to a different Justice of the Court of Queen’s Bench of Alberta for determination on the same record and on an expedited basis, and issue an interim injunction until the matter is heard and decided.
- In the alternative, the Court of Appeal allow the appeal and grant the Appellants the injunctive relief they seek.

7. Is this appeal required to be dealt with as a fast track appeal? (Rule 14.14)

☒ Yes ☐ No

8. Does this appeal involve the custody, access, parenting or support of a child? (Rule 14.14(2)(b))

Yes ☒ No

9. Will an application be made to expedite this appeal?

Yes ☐ No ☒

10. Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate? (Rule 14.60)

Yes ☐ No ☒

11. Could this matter be decided without oral argument? (Rule 14.32(2))

Yes ☐ No ☒

12. Are there any restricted access orders or statutory provisions that affect the privacy of this file? (Rules 6.29, 14.12(2)(e),14.83)

Yes ☐ No ☒

13. List respondent(s) or counsel for the respondent(s), with contact information:

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14. Attachments (check as applicable)

Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))

Earlier order of Master, etc. (Rule 14.18(1)(c))

Order granting permission to appeal (Rule 14.12(3)(a))

Copy of any restricted access order (Rule 14.12(2)(e))