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Sent via email
Our File#:

Tuesday, August 17, 2021

Jill Clayton
Office of the Information and Privacy Commissioner of Alberta
#410, 9925 - 109 Street NW
Edmonton, AB T5K 2J8

Attention: Commissioner Clayton

RE: New Proposed Guidelines for Supervised Consumption Services in Alberta

In May 2021, the Alberta government announced new regulations for supervised consumption operators in the province, including the adoption of the Recovery-Oriented Overdose Prevention Services Guide (the “**Guidelines**”). The Guidelines impose many new barriers to accessing supervised consumption services in Alberta.

My office acts for Moms Stop the Harms Society, Lethbridge Overdose Prevention Society, and individual substance users who believe that the Guidelines will not only infringe their privacy rights and interests at common law and pursuant to the *Charter of Rights and Freedoms*, but also violate the *Health Information Act* and other privacy legislation in Alberta. My office requests that your office formally evaluate the Guidelines to ensure that they and the privacy documents prepared by individual operators of supervised consumption sites are compliant with the laws of Alberta.

Since 2017, supervised consumption services, which monitor people while they are consuming illegal drugs and provide emergency care in the event of an overdose, have been offered anonymously in Alberta (except where services are only open to registered patients of a hospital). Across Canada, community-based supervised consumption services do not routinely collect personal health numbers as a condition of registration. However, Alberta is now requiring the collection of this information as a condition of access to supervised consumption services, even though it is not necessary for delivery of this health service.

Our clients also request a thorough review of the impact the Guidelines will have on their privacy interests, including if it is consistent with applicable privacy legislation and ethical standards to require that people accessing supervised consumption services disclose their personal health numbers, and that this information be stored alongside records of illegal drug consumption. We also ask that your office investigate if the regulations will permit supervised consumption site operators to share the identifying

information obtained from people accessing the supervised consumption services with other health care providers and law enforcement without their informed consent.

Our clients have specific concerns on the requirement in the Guidelines that the personal identifying information of substance users accessing supervised consumption sites in Alberta be collected, stored, and disclosed to others without first obtaining the informed consent from substance users. Section 4.10 of the Guidelines state that supervised consumption service operators must have in place policies and procedures that:

ensure policies respecting client consent do not disallow access to information by other authorized service providers who deliver health services to the client in accordance with the *Health Information Act*, or access by other authorized custodians to track, in aggregate, the outcomes of supervised consumption services.

Substance users are concerned that to access life-saving services through supervised consumption sites in Alberta, the Guidelines now require them to disclose personal identifying information that can be used to confirm that they consume illegal substances, the nature of their substance use, when they are using substances, and other details around their substance use. This information can then be shared with health care providers and law enforcement without the consent of the substance users. Substance users are concerned that if this information is disclosed to health care providers and law enforcement it will lead to discriminatory health care treatment and criminal prosecution for their substance use.

People who access supervised consumption services are highly vulnerable and already have a distrust of the medical system and fear criminalization because of their condition. People who use substances are often unwilling to disclose their use to medical professionals for fear of stigma and mistreatment, and in some cases lack of treatment. They also fear criminal prosecution for their illegal substance use. Under no circumstances should information about a substance user's visit to a supervised consumption service be disclosed to another party without their expressed and informed consent. Further, access to the life-saving care provided at supervised consumption services should not be contingent on willingness to provide personally identifying information to service providers and law enforcement.

The sharing of private information without the express and informed consent of substance users would be a grave violation of their privacy interests and discourage them from accessing supervised consumption services in Alberta.

Yours truly,

A handwritten signature in black ink, appearing to read 'Avnish Nanda', with a stylized flourish extending from the end.

Avnish Nanda
Barrister & Solicitor

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