Form 10
[Rule 3.25]

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COURT FILE NUMBER	2103 11484
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFFS	MOMS STOP THE HARM SOCIETY and LETHBRIDGE OVERDOSE PREVENTION SOCIETY
DEFENDANT	HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA
DOCUMENT	**STATEMENT OF CLAIM**

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NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

A Brief Overview of the Action

1. The federal government regulates supervised consumption sites pursuant to section 56.1 of the *Controlled Drugs and Substances Act*, SC 1996, c 19, and in recent years, amended the regulatory framework to streamline the process to establish supervised consumption sites and ensure there are minimal barriers for individuals living with substance use disorder to access their lifesaving services.

2. In April 2021, the Defendant Her Majesty the Queen in Right of Alberta ("**HMQA**") adopted a series of regulations for supervised consumption sites that are referentially incorporated through the enactment of *Mental Health Services Protection Regulation*, Alta Reg 114/2021 as part of the *Mental Health Services Protection Act*, RSA 2018, c M-13.2. The regulations reimpose the barriers to delivering supervised consumption services and accessing supervised consumption sites that the federal government removed from the regulatory framework established under section 56.1 of the *Controlled Drugs and Substances Act*, SC 1996, c 19. HMQA established further regulations to create barriers for people living with opioid use disorder to access supervised consumption services in Alberta. People living with substance use disorder in Alberta will disengage from accessing supervised consumption services or will refuse or be unable to access them given their personal and geographical circumstances.

3. The regulations imposed by HMQA are intended to limit the number of supervised consumption sites and discourage people living with substance use disorder from accessing supervised consumption services in Alberta. Further, or in the alternative, the new regulations are intended to provide a uniform licensing regime for supervised consumption sites in Alberta but have the effect, intended or otherwise, to limit the number of supervised consumption sites and discourage people living with substance use disorder from accessing supervised consumption services.

4. The regulations imposed by HMQA will cause harm to both supervised consumption site operators and people living with substance use disorder who access supervised consumption services in Alberta, particularly those living with opioid use disorder.

5. The regulations imposed by HMQA frustrate the federal government's purpose behind section 56.1 of the *Controlled Drugs and Substances Act*, SC 1996, c 19; are *ultra vires* as it encroaches on the federal government's jurisdiction over the criminal law power; and breach the protections afforded supervised consumption site operators and people living with substance use disorder who access supervised consumption services in Alberta under the *Charter of Rights and Freedoms* pursuant to sections 2(a), 2(b), 7, 8, 12, and 15.

6. The Plaintiffs seek remedies that are interim and final in nature, including declarations that the regulations are inoperative to the extent that they frustrate the federal

government's purpose behind section 56.1 of the *Controlled Drugs and Substances Act*, SC 1996, c 19 and breach the *Charter* rights of supervised consumption site operators and people living with substance use disorder in Alberta.

The Parties

The Plaintiff Moms Stop the Harm

7. The Plaintiff Moms Stop the Harm Society ("**MSTH**") is a federally registered society that comprises of the family members of individuals who live with opioid use disorder in Alberta and other parts of Canada who are experiencing harms related to or have died as a result of the opioid overdose epidemic.

8. MSTH exists to advance the interests of people living with opioid use disorder, including advocating for policies and laws concerning substance use to embody a harm reduction approach that centers those who consume substances and their perspectives in any decision making. MSTH has advocated for legislative changes at all levels of government to make it easier to establish and access supervised consumption services and other harm reduction oriented treatment options for people who use opioids and other substances in Alberta.

9. MSTH participates in this action as a public interest standing litigant that brings this claim on behalf of people living with opioid use disorder in Alberta and rely on supervised consumption sites to consume opioids safely.

The Plaintiff Lethbridge Overdose Prevention Society

10. The Plaintiff Lethbridge Overdose Prevention Society ("**LOPS**") is a society registered in Alberta that provides supervised consumption services to people living with opioid use disorder in Lethbridge.

11. LOPS provides a safe and compassionate space for people living with opioid use disorder that is low-barrier and centered around people who use substances. People accessing LOPS can administer their substances in a hygienic environment under the supervision of volunteers trained in harm reduction.

12. LOPS' purpose and direction are rooted in its commitment to harm reduction and ensuring that its work conforms with this ethical and moral framework. The mission of

LOPS is improve the quality of life for people in Lethbridge who use substances, particularly opioids, through the provision of safe and compassionate harm reduction practices. The organization is community-driven, with an emphasis on peer support, and creating a judgement-free environment for people living with substance use disorder to receive quality care and support with dignity and respect.

13. LOPS provides harm reduction counselling and education, substance-use related first aid, assessment and referral to primary health care and social services, distribution and safe disposal of injection equipment and other harm reduction supplies, naloxone distribution and training, and other supervised consumption services.

14. LOPS tends to provide supervised consumption services to individuals with substance user disorder who are disengaged with the health care system as a result of their medical condition and prior experiences with the health care system. This population of individuals, particularly those living with opioid use disorder are highly vulnerable and marginalized and are more likely to experience adverse effects of street sourced opioid use, including overdose death.

15. LOPS emerged after HMQA ordered the closure of the Lethbridge Aids Reduction Community Harm Education & Support Society ("**ARCHES**"), the supervised consumption service that existed in Lethbridge between 2018 to 2020. LOPS was founded by and is directed and operated by the former staff members and site users of Lethbridge ARCHES.

16. LOPS is in the process of obtaining an exemption pursuant to section 56.1 of the *Controlled Drugs and Substances Act*, SC 1996, c 19 to provide supervised consumption services in Lethbridge, which has the highest per capita rate of opioid overdose deaths in Alberta. LOPS is working with Health Canada officials to obtain an exemption and has addressed most of the requirements to obtain a section 56.1 exemption.

17. In addition to being a party that is directly impacted by the impugned state conduct set out below, LOPS also participates in this proceeding as a public interest standing litigant, representing the interests of people with substance use disorder who access or may access supervised consumption sites in Alberta.

The Defendant Her Majesty the Queen in Right of Alberta

18. HMQA is a governmental entity that has developed and intends to implement new regulations for the delivery of supervised consumption services in Alberta that will impose barriers on and limit the number of supervised consumption sites that can operate in the province, and to discourage people with opioid use disorder in Alberta from accessing supervised consumption services.

19. Further, in the alternative, HMQA developed the new regulations for the delivery of supervised consumption services as a standard licensing scheme for supervised consumption sites in Alberta.

The Facts

Opioid Use Disorder

20. Although supervised consumption sites provide support for all forms of substance use, the need for widespread, low barrier access to supervised consumption services is particularly acute for those living with opioid use disorder given the overdose epidemic and increase in opioid related overdose deaths.

21. Opioid use disorder is a chronic, debilitating illness that results in mental and physical disability with a known pattern of relapse.

22. Like many chronic diseases, opioid use disorder is caused by a combination of factors including a change in brain function as a result of repeated exposure to opioids, genetics, and environmental factors such as early childhood trauma.

23. Opioids stimulate the reward region of the limbic system of the brain by causing a sharp increase in the release of dopamine, which is experienced as pleasurable. These reward signals that are triggered by the opioids create conditioned cues.

24. Chronic opioid use causes desensitization to these reward circuits and rearranges how the brain releases dopamine, so that a person experiences distressing or painful symptoms of withdrawal when the opioid is not taken continuously. In order to experience the initial euphoria from opioids or to avoid painful withdrawal, higher doses or more potent opioids are needed, which leads to the development of tolerance.

25. Chronic opioid use leads to severe reactivity to conditioned cues as well as decreased pain tolerance and increased emotional distress during withdrawal. These neurocircuitry changes impair executive functioning causing pronounced compulsivity of substance-taking when a person is experiencing active dependency and explain the high risk of relapse when in remission.

26. Opioid use disorder is a condition that takes over the endogenous opioid system. This system is composed of endogenous opioid peptides and receptors that are present throughout the peripheral and central nervous system. These peptides play a role in regulating pain processing, stress response, reward sensitivity, mood, breathing, digestion, and immune function among others. This explains the symptoms of opioid withdrawal, which can include chills, insomnia, diarrhea, nausea, vomiting, aches and pains, increased heart rate, anxiety, and even death.

27. Medical guidelines exist to diagnose opioid use disorder. The diagnostic framework for opioid use disorder is well-established and includes a range of factors and symptoms to determine if someone suffers from the illness.

28. Homelessness, criminality, and other social disadvantages and ills are associated with untreated opioid use disorder. Consuming opioids to avoid withdrawal, which often can only be accessed on the streets and through illegal means, becomes the primary focus of individuals with the illness. Obtaining and using opioids becomes all-encompassing for individuals with opioid use disorder, resulting in unemployment, a loss in housing, and devoting all their energies and resources to finding and using opioids on a daily basis.

29. Individuals with opioid use disorder turn to illicit substances to treat their illness and symptoms, including street drugs. Streets drugs are increasingly of poor quality, containing opioids with lethal potency or other substances that can result in major injuries and death. In addition, individuals may prepare and inject opioids in unsafe settings, where tools and gear used to consume drugs are shared, increasing the risk of transmission of Hepatitis C, HIV/AIDS, and other illnesses.

30. Toxic opioids are frequently mixed with other illicit substances causing individuals to overdose on substances that they believe to not contain opioids, resulting in the death of

non-opioid substance users and those living with other opioid use disorders. The toxic opioid crisis impacts all forms of illicit substance users.

31. People with opioid and other substance use disorders face stigma in the health care system. The stigma arises from misconceptions and negative attitudes and beliefs about people who use substances and leads to discriminatory and harmful treatment by health care professionals that undermines their quality of care and health care outcomes.

32. Individuals with opioid and other substance use disorders are often disengaged with the health care system due to the stigma they face as substance users. The discriminatory and harmful treatment they receive erodes their trust in health care institutions and often results in people with opioid and other substance use disorders to avoid care for routine and life-threatening medical conditions or, in the alternative, when receiving health care they may avoid disclosing their substance use and medical history. The impacts of stigma are exacerbated for marginalized populations of substance users, particularly those accessing supervised consumption services, including the unhoused and street involved, Indigenous people, and others.

33. Unintentional overdose death is a reality for individuals with opioid use disorder in Alberta. Overdose death results from individuals using poisoned street-sourced opioid supplies. Approximately 4 people die of opioid overdose deaths in Alberta each day.

The Opioid Epidemic in Alberta

34. Alberta is in the midst of an unprecedented opioid overdose epidemic. The opioid overdose epidemic corresponds with the proliferation of unsafe, highly potent, and synthetic opioids such as fentanyl and carfentanil. Individuals with opioid use disorder are knowingly and unknowingly consuming dangerous opioids, and are mentally and physically unable to refrain from continuing to use illicit opioids despite the risk of death and serious injury. The severity of their dependency and all-encompassing nature of their condition prevents them from stopping to use dangerous street opioids.

35. Individuals with opioid use disorder are among the most vulnerable people who live in Alberta.

36. The availability and predominance of contaminated street opioids is the reason behind the rise in opioid overdose deaths in Alberta. These deaths are preventable.

37. Opioid overdose deaths in Alberta have increased each year since 2016 with death rates increasingly exponentially over the past 5 years. In 2020, there were 1,152 opioid poisoning deaths recorded in Alberta. This is an increase from 553 opioid poisoning deaths recorded in 2016. In the first four months of 2021, there have been 454 opioid poisoning deaths recorded in Alberta.

38. Indigenous people are disproportionately impacted by the opioid overdose crisis in Alberta. Indigenous people account for 6% of the provincial population but represented 22% of all opioid poisoning deaths in Alberta in the first six months of 2020. This is an increase from 14% in 2016. From 2016 to 2019, the annual rate of accidental opioid poisoning deaths increased yearly on average of 16%. This rate increased by 60% from 2019 to the first sixth months of 2020. Comparatively, among Non-First Nations people, from 2016 – 2018, the annual rate of accidental opioid poisoning deaths increased yearly on average of 20%, but decreased by 30% from 2018 – 2019. From 2019 to the first six months of 2020, this rate among non-First Nations people increased by 36%. In the first six months of 2020, the rates of accidental opioid poisoning among First Nations people was seven times higher than Non-First Nations people.

39. Indigenous individuals are more likely to experience an opioid-related overdose event, more likely to die from an opioid-related overdose event and more likely to be hospitalized than non-Indigenous persons. Indigenous people are less advantaged than other populations, creating vulnerabilities associated to social determinants of health like poverty, lack of access to health care, lack of housing, and experiences of violence and other trauma all of which can be linked to substance use and opioid use disorder.

Harm Reduction: an Ethical and Moral Framework

40. Governments in Canada have worked to minimize the harms associated with street-sourced opioid use through the adoption of harm reduction as an ethical and moral framework to developing policies to address opioid use disorder and the epidemic more broadly.

41. Harm reduction is an ethical and moral worldview. In the context of substance use, harm reduction is focused on ensuring medical care approaches that address the opioid epidemic are centered around services and policies that protect the life, health, and

dignity of people who use substances and their communities. This approach is grounded in the understanding that opioid use disorder is a medical condition, and the overarching aim of any government action is to secure and maintain the lives of those who live with the condition or use opioids.

42. A core component of the harm reduction oriented approach to addressing the opioid overdose epidemic in Canada is through the delivery and expansion of supervised consumption services across the country, including in Alberta.

The Regulation and Authorization of Supervised Consumption Sites

43. The federal government enacted the *Controlled Drugs and Substance Act*, SC 1996, c 19 ("***CDSA***") by virtue of its jurisdiction over criminal law under s.91(27) of the *Constitution Act, 1867.* Parliament has recognized the need for urgent action to address the opioid overdose epidemic and has responded by amending the *Controlled Drugs and Substance Act*, SC 1996, c 19 ("***CDSA***") in 2017 to streamline the process to facilitate the delivery of supervised consumption services through supervised consumption sites, including opioid prevention sites, and ensure there are minimal barriers for individuals to access these lifesaving services ("***CDSA* Amendments**").

44. Supervised consumption services refer to a fixed or temporary location where people can use substances, primarily opioids, in a monitored, hygienic, and non-criminalized setting to reduce the risk of harm associated with the substance use while providing counselling, social services, and treatment for opioid use disorder and other medical conditions. Although supervised consumption services are offered to all forms of illicit substance use, access to them are particularly important in the context of opioid overdose epidemic, with the rates of harm and overdose death far exceeding those associated with other substance use.

45. Supervised consumption services are provided through supervised consumption sites, which operate in the form of permanent supervised consumption sites and overdose prevention sites.

46. Permanent supervised consumption sites are generally considered to be fixed, permanent locations that provide supervised consumption services in a broader medical setting that

is integrated with established and often institutional health care or social service providers.

47. Overdose prevention sites are grassroots organizations or collectives that provide supervised consumption services on an ad-hoc basis and in temporary locations. Overdose prevention sites deliver services where communities of substance users are located and in a non-judgmental manner that is situated in a broader harm reduction framework. Overdose prevention sites are meant to be a rapid response to an urgent health need and are often peer supported initiatives that are directed, led, and staffed through a combination of people who use substances, social workers, and health care professionals. Overdose prevention sites operate on limited budgets and do not have formal connections to the institutionalized health care system due to the distrust and disengagement many site users have with the health care system.

48. Supervised consumption sites require an exemption under section 56.1 the *CDSA* to operate in a manner that ensures site operators and users are not criminally liable for being in possession of and using illicit substances.

49. In light of the worsening opioid epidemic, the federal government enacted the *CDSA* Amendments to make it easier for supervised consumption sites to obtain authorization to operate and allow more individuals with opioid use disorder to access supervised consumption services regardless of their geographic location or life and personal circumstances, including distrust and disengagement with the health care system. As part of the *CDSA* Amendments, regulatory changes were also made to expedite overdose prevention society approvals pursuant to section 56.1 of the *CDSA*, recognizing the limited structure of the site operators and temporary and urgent nature of their operations.

50. It is within the sole and exclusive jurisdiction of the federal government to grant supervised consumption sites exemptions pursuant to section 56.1 of the *CDSA*.

Alberta's Attempt to Regulate and Limit Access to Supervised Consumption Services

51. In April 2021, Her Majesty the Queen in Right of Alberta ("**HMQA**") introduced the Recovery Oriented Overdose Prevention Services Guide (the "**Guidelines**") that sets out uniform licensing requirements for supervised consumption sites in Alberta, including overdose prevention sites. The Guidelines are referentially incorporated into law through

the enactment of the *Mental Health Services Protection Regulation*, Alta Reg 114/2021 as part of the *Mental Health Services Protection Act*, RSA 2018, c M-13.2.

52. The Guidelines are further regulatory requirements that supervised consumption sites must satisfy after obtaining a section 56.1 *CDSA* exemption to deliver supervised consumption services in Alberta.

53. The Guidelines replicate aspects of the regulatory framework that existed under section 56.1 of the CDSA prior to the CDSA Amendments. The CDSA Amendments were enacted to remove regulations that served as barriers to providing supervised consumption services. HMQA has reintroduced many of the same regulations that were removed by the CDSA Amendments through the adoption of the Guidelines. The Guidelines erect the same barriers to accessing supervised consumption services that the federal government enacted the CDSA Amendments to remove.

54. Further, or in the alternative, the Guidelines impose additional regulations that create new barriers to accessing supervised consumption services in Alberta undermining the purpose of the *CDSA* Amendments.

55. The Guidelines reflect a transition from supervised consumption sites in Alberta operating under a model of anonymity and confidentiality, which is in keeping with the principles of harm reduction, and embracing a model of delivery that integrates access to the services with the broader health care system. Supervised consumption site operators are now required to request and share personal and identifying information of site users, which will cause them to disengage from accessing supervised consumption services in the province.

56. The Guidelines require supervised consumption sites to confirm the identity of all site users through the collection of Personal Health Care Numbers ("**PHN**") to access supervised consumption services and maintain clinical medical infrastructure, including the ability to record, store, and disclose private personal and medical information electronically. A user of supervised consumption sites will not be allowed to access supervised consumption services in Alberta if they refuse to disclose their PHN and other identifying information, a significant departure from the existing requirements and the standard procedure in all other provinces.

57. Further, or in the alternative, the Guidelines mandate individuals accessing supervised consumption services in Alberta to provide their PHN and other identifying information but will not turn them away if they refuse to disclose their personal details. However, the demand and knowledge that this information is requested and stored, and that supervised consumption sites are no longer operating on a model of anonymity and confidentiality, will have the same effect as requiring all site users to provide their PHN and personal identifying details to access supervised consumption services. Substance users will disengage from supervised consumption sites to consume substances and be subject to all forms harms, including an increased risk of overdose death.

58. The personal information collected as part of the Guidelines will be shared in the electronic medical file system that Alberta Health Services operates, which means that any health care provider can determine if an individual accesses supervised consumption services in Alberta, and as a result, consumes illicit substances. This information can be accessed by other health care providers without further consent of a site user and may even be shared with the police upon request.

59. Even if a site user does not provide their personal identifying details, the notion that this information is being collected, stored, and shared with others in the health care system and possibly even the police serve as a major barrier that will prevent many from accessing supervised consumption services in Alberta.

60. The Premier of Alberta and various Ministers and Associate Ministers responsible to address the overdose epidemic have described supervised consumption sites as nuisances that only enables substance use disorder and substance use. HMQA has been directed to limit access to supervised consumption sites, including through the licensing regime set out in Guidelines.

61. The Guidelines reimpose many of the same barriers to establishing supervised consumption sites that the federal government enacted the *CDSA* Amendments to address. In addition, the medical clinic infrastructure requirements will preclude overdose prevention societies from delivering supervised consumption services in Alberta, as these grassroots organizations or collectives neither have the resources nor operate in fixed permanent locations to satisfy the licensing requirements. Further, the requirement that those accessing supervised consumption sites in Alberta provide operators with their

PHN and full identifying details and other personal information that can be shared with others will cause them to disengage from supervised consumption services and consume substances, including opioids, in dangerous and unsafe settings.

62. The Guidelines, in intent and effect, bar overdose prevention societies from delivering supervised consumption services in Alberta. The Guidelines will impose barriers on supervised consumption sites from operating and deter those living with opioid use and other substance use disorders in Alberta from accessing supervised consumption services.

63. The decision to implement the Guidelines frustrates the federal government's purpose behind the *CDSA* Amendments. The Guidelines will cause serious harms to both supervised consumption services operators and those living with substance use disorder in the province. They will prohibit overdose prevention sites from operating in Alberta, and by moving from a model of delivery premised on anonymity and confidentiality to an approach that is integrated with the broader health care system, will impose serious barriers to accessing supervised consumption service.

Lethbridge: Ground Zero of the Opioid Overdose Epidemic

64. Lethbridge has the highest per-capita rate of opioid overdose deaths in Alberta.

65. The Lethbridge Aids Reduction Community Harm Education & Support Society ("**ARCHES**") was a fixed permanent supervised consumption site operated in Lethbridge from February 2018 until August 2020 when it was shut down by HQMA over unproven allegations of financial mismanagement. After the closure of the facility, a mobile supervised consumption site and LOPS began operating to fill the gap left by the closure of ARCHES.

66. LOPS has been operating without a section 56.1 exemption under the *CDSA* given the urgent need to address the crisis in Lethbridge. However, it has been working with the federal government to obtain a section 56.1 *CDSA* exemption under the expedited process developed for LOPS through the *CDSA* Amendments.

67. Over 70% of the individuals that LOPS provides supervised consumption services to are Indigenous, reflecting the overrepresentation of Indigenous people among those

consuming street sourced opioids in Lethbridge and experiencing the harms associated, including overdoses and death.

68. However, the Guidelines prevent LOPS from providing supervised consumption services in Lethbridge even if LOPS obtains a section 56.1 exemption under the *CDSA*. LOPS will be unable to satisfy the Guidelines set out by HMQA as LOPS lacks the resources and capacity to satisfy the requirements of the Guidelines as an independent, grassroots, peer supported organization.

69. The requirements of the medical clinic infrastructure to collect, store, and disclose privileged personal and medical information is not something that LOPS is able to fulfill due to its limited resources and grassroots approach to address the opioid crisis. LOPS does not collect the personal and medical information of anyone who accesses its services. LOPS will not require this information be disclosed by anyone using its services as it may dissuade them doing so due to the stigma and fears associated with providing this information and cause site users to disengage from its supervised consumption services. It is not necessary for LOPS or any other supervised consumption site operator to have or collect this information for the purposes of providing supervised consumption services in Alberta.

70. In addition, LOPS is unable to secure the approval of its neighbours for the areas in Lethbridge that it operates. LOPS operates in numerous locations in Lethbridge, shifting to the geographic needs of the community that consumes substances. There is also a vocal opposition to LOPS delivering supervised consumption services and that opposes any form of harm reduction to address the opioid epidemic in Lethbridge. The requirement of neighbour approval does not conform to the manner in which LOPS and other overdose prevention societies operate and provide supervised consumption services. It also does not form part of the federal government's requirements for a section 56.1 *CDSA* exemption.

71. As a result of the Guidelines, LOPS will be unable to lawfully operate, in breach of its conscience, informed by its commitment to employing harm reduction as a means to safeguard and improve the lives of people living with opioid use disorder in Lethbridge. If LOPS continues to deliver supervised consumption services, it will be subject to serious regulatory penalties and criminal sanctions.

72. The rate of opioid overdoses and deaths in Lethbridge will continue to increase without LOPS and others delivering supervised consumption services to opioid users in the city. The Guidelines erect significant barriers for LOPS and OPS generally from obtaining the necessary authorizations to provide supervised consumption services or bars them from operating in Alberta.

The Guidelines Will Cause Patients Disengage from Supervised Consumption Sites

73. The requirements imposed by the Guidelines that supervised consumption sites must collect, store, and disclose the privileged personal information of site users will cause people living with opioid use disorder or who consume opioids to disengage from these sites and their supervised consumption services. This includes the mandatory disclosure of PHNs, the full names of supervised consumption site users, and other identifying information, and the refusal to allow those living with opioid use disorder who object and refuse to provide this information from accessing supervised consumption services.

74. People with opioid use disorder will opt to consuming opioids in unsupervised, unsafe settings rather than accessing supervised consumption sites that require the disclosure of personal information.

75. The mandatory disclosure of PHNs and personal information, and the sharing of this information in medical records systems, creates stigma for people living with opioid use disorder, discouraging them from using supervised consumption sites for the concern that this information will be revealed and follow them in every subsequent interaction with the medical system, lead to criminal investigation and prosecution, or other adverse experiences.

76. Further, or in the alternative, the Guidelines will create barriers and limit the number of supervised consumption sites in Alberta. There will be less supervised consumption sites for people with opioid use disorder to access and consume opioids in a safe and secure manner, particularly for individuals residing in parts of Alberta where overdose prevention societies operate or more likely to operate rather than a permanent, fixed-location supervised consumption site.

77. The Guidelines, for the reasons set out above, will cause people with opioid use disorder or who consume opioids to disengage from using or refuse to access supervised

consumption services. As a consequence of the requirements set out in the Guidelines, they will consume opioids in a manner that will increase their risk of harm, including acquiring preventable diseases, non-fatal and fatal overdoses, and a range of other harms associated with unsupervised street sourced opioid use.

Ultra Vires Provincial Power

78. The *CDSA* was constitutionally enacted under the federal government's criminal law power pursuant to section 92 of the *Constitution Act, 1867*. The *CDSA* seeks to regulate drug possession and trafficking by prohibiting possession and trafficking, as well as by enabling the Minister of Health to issue exemptions for medical, scientific, or other reasons deemed to be in the public interest.

79. The powers of the CDSA have a dual purpose of protecting public safety and public health, as stated in the sentencing purpose of the CDSA at section 10(1). The common law has recognized that the protection of public health and safety from the effects of addictive drugs is a valid criminal purpose.

80. The Guidelines intrude on the federal government's exclusive criminal jurisdiction as the intent and effects of the Guidelines are to prohibit and penalize conduct, which is criminal in nature, as it deals with matters of public peace, order, physical security, health, and morality. The prohibition lies in the category of controlled activities that are to be carried out in accordance with regulations or performed with a license to avoid penal sanction.

81. The Guidelines make it an offence for service providers to operate harm-reduction supervised consumption sites absent a good neighbour agreement and PHN data collection, which is otherwise permissible under the *CDSA* section 56(1) or 56.1(1) exceptions. This is an encroachment on parliament's exclusive criminal law jurisdiction. These requirements will also have the predictable effect of deterring the intended clientele, Albertan's suffering with opioid use disorder, from accessing lifesaving services, and bans harm-reduction trained service providers from continuing their existing service practices legally.

82. The Guidelines are colourable criminal law as they allege to merely encourage consistency of services and policies at supervised consumption sites in Alberta, including

overdose prevention sites, by introducing several mandatory operational requirements. Yet the additional bureaucratic requirements are incompatible with the urgency of the worsening opioid overdose crisis, and they are unrelated to the health and safety of individuals accessing these sites. Instead, the Guidelines penalize the existence of harm reduction-oriented consumption sites, that do not have infrastructural capacity to comply with the Guidelines, nor accept these guidelines as compatible with their harm-reduction worldview.

83. Moreover, the Guidelines are colourable since they were not enacted as new legislation nor statute that created new sanctions but nonetheless have the practical effect of creating new pathways to trigger penal sanctions under the *Mental Health Services Protection Act* by introducing requirements which must be met to operate legally.

84. Furthermore, the stated purpose and the legal effect of the Guidelines differ substantially from their practical effect and has the social and economic purpose of limiting or banning accessible supervised consumption sites in Alberta.

85. The criminal penalties are not merely incidental effect of the Guidelines and are an *ultra vires* invasion of federal criminal jurisdiction. The actual and predicated consequences of the application of the Guidelines will be to ban overdose prevention sites, deter people from accessing supervised consumption services, and penalizing supervised consumption service operations.

Paramountcy

86. The Guidelines frustrate the federal government's purpose behind section 56.1 of the *CDSA*, specifically in relation to the *CDSA* Amendments.

87. The *CDSA* Amendments were intended to streamline the delivery of supervised consumption services through supervised consumption sites, including opioid prevention sites, and ensure there are minimal barriers for individuals to access them. This legislative change was enacted as a result of the severity of the opioid overdose epidemic and ensuring that supervised consumption services could be accessed quickly and by anyone who needed them across Canada.

88. However, the Guidelines put in place the same requirements that the *CDSA* Amendments removed, and impose additional barriers to establishing and accessing supervised

consumption services in Alberta, undermining the intent and objectives behind section 56.1 of the *CDSA*.

89. The Guidelines, if allowed to operate, will frustrate the federal government's intent behind the *CDSA* Amendments, and should be rendered inoperable by virtue of the doctrine of paramountcy to the extent that it does frustrate the purposes behind section 56.1 of the *CDSA*.

The *Charter*

90. The Guidelines will cause people living with opioid use disorder who access or may access supervised consumption sites in Alberta to consume opioids in unsupervised and unsafe settings by imposing requirements that will discourage them or cause them to disengage from accessing these sites for supervised consumption services.

91. The Guidelines will result fewer supervised consumption sites in Alberta because of the onerous requirements that such operators are required to adhere to, including overdose prevention societies in less populated areas serving more vulnerable populations of opioid users.

92. In both scenarios, individuals will be consuming opioids in unsupervised, unsafe settings than otherwise would be the case, and as a direct consequence to the regulations imposed by the Guidelines. This will result in an increased risk of harm to people with opioid use disorder in Alberta, including greater likelihood of acquiring preventable diseases, non-fatal and fatal overdoses, and a range of other harms associated with unsupervised street sourced opioid use

Section 7, *Charter*

93. Section 7 of the *Charter* reads:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

94. The life, liberty, and security of the person interests of people with opioid use disorder in Alberta are engaged and deprived a result of the Guidelines, exposing them to the serious harms associated with unsupervised, unsafe street-sourced opioid use.

95. The decision to implement the Guidelines, and the deprivations it causes to the life, liberty, and security of the person interests of people with opioid use disorder in Alberta, fails to accord with the principles of fundamental justice, as they are arbitrary, overbroad, grossly disproportionate, shocks the conscience, and constitutes such further and other breaches of the principles of fundamental justice.

Section 12, *Charter*

96. Section 12 of the *Charter* reads:

> Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

97. The decision to implement the Guidelines constitutes cruel and unusual treatment that is grossly disproportionate and so excessive that it outrages the standards of decency.

Section 15, *Charter*

98. Section 15 of the *Charter* reads:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

99. The Guidelines breach the section 15 *Charter* entitlement people with opioid use disorder have to equality before and under the law, and equal protection and equal benefit of the law.

100. Opioid use disorder is a recognized medical condition that constitute a mental or physical disability or is an analogous ground under section 15 of the *Charter*.

101. On its face, the Guidelines create a distinction based on the enumerated ground of disability. The Guidelines impose further burdens on marginalize people with opioid use disorder by creating barriers for accessing supervised consumption services which, in turn, exacerbates their disadvantage. The discriminatory effect of the Guidelines particularly intersect with individuals of Indigenous ancestry and heritage who are overrepresented among people who use opioids in Alberta.

Section 2(a), *Charter*

102. Section 2(a) of the *Charter* reads:

> Everyone has the following fundamental freedoms:
> (a) freedom of conscience and religion;

103. LOPS holds a sincere belief that harm reduction as an ethical and moral framework that informs its mandate and directs all of the work it performs pursuant to it.

104. The Guidelines undermines LOPS ability to practice harm reduction, imposing regulations that it is unable or unwilling to comply with due to its worldview.

105. The regulations impedes LOPS in its ability to exercise its freedom of conscience by erecting serious barriers or barring it from delivering supervised consumption services in a low-barrier, client centered manner to extremely marginalized individuals who are disengaged from the health care system.

106. The Guidelines would prevent LOPS from providing lifesaving and life sustaining services to individuals with opioid use disorder in Lethbridge. It will cause those living with opioid use disorder who access LOPS' supervised consumption services to suffer serious harms, including an increased risk of death.

107. The Guidelines breach the fundamental right LOPS has to freedom of conscience.

Section 2(b), *Charter*

108. Section 2(b) of the *Charter* reads:

> Everyone has the following fundamental freedoms:
> …
>
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

109. The delivery of supervised consumption services constitutes expression for the purposes of section 2(b) of the *Charter*, constituting expression that pursues democratic, educational, health, and other valuable social purposes.

110. The decision to implement the Guidelines breaches LOPS' right to free expression as protected under section 2(b) of the *Charter*.

Section 8, *Charter*

111. Section 8 of the *Charter* reads:

> Everyone has the right to be secure against unreasonable search or seizure.

112. The mandatory collection, storage, and disclosure of the personal health and identity information of people with opioid use disorder who access supervised consumption sites in Alberta, and the refusal to allow those who object and refuse to provide this information from accessing supervised consumption services, constitutes an unreasonable seizure of personal information that is at the biographical core of their identity.

Section 1, *Charter*

113. Section 1 of the *Charter* reads:

> The Canadian *Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

114. HMQA bears the burden of establishing that the Guidelines represents a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society.

115. The decision of HMQA to impose barriers to establishing and accessing supervised consumption services in Alberta through the implementation of the regulations set out in the Guidelines is not a reasonable limit prescribed by law that is demonstrably justified in a free and democratic society.

Remedy sought:

116. The Plaintiffs seek the following in relief:

a. an Order declaring that the Guidelines, referentially incorporated through the enactment of *Mental Health Services Protection Regulation*, Alta Reg 114/2021 as part of the *Mental Health Services Protection Act*, RSA 2018, c M-13.2, to be constitutionally invalid as they are *ultra vires* to section 92 of the *Constitution Act, 1867*, encroaching upon the federal government's exclusive jurisdiction over the criminal law power,

b. an Order declaring that the Guidelines, referentially incorporated through the enactment of *Mental Health Services Protection Regulation*, Alta Reg 114/2021 as part of the *Mental Health Services Protection Act*, RSA 2018, c M-13.2, to be constitutionally inoperable to the extent that they frustrate the federal government's purpose behind section 56.1 of the *CDSA*, specifically in relation to the *CDSA* Amendments;

c. an Order pursuant to section 52 of the *Constitution Act, 1982*, section 24 of the *Charter of Rights and Freedoms*, the common law, or all of the above, declaring that the Guidelines, referentially incorporated through the enactment of *Mental Health Services Protection Regulation*, Alta Reg 114/2021 as part of the *Mental Health Services Protection Act*, RSA 2018, c M-13.2, to be of no force and effect, as it breaches sections 2(a), 2(b), 7, 8, 12, and 15 of the *Charter of Rights and Freedoms*, and cannot be saved pursuant to section 1;

d. an Interlocutory Order pursuant to section 24(1) of the *Charter*, common law, or both, suspending the operation of the Guidelines, referentially incorporated through the enactment of *Mental Health Services Protection Regulation*, Alta Reg 114/2021 as part of the *Mental Health Services Protection Act*, RSA 2018, c M-13.2, until this action is decided;

e. costs, including special costs, full indemnity costs, and advanced costs, and applicable taxes on those costs; and

f. such further and other relief deemed appropriate by this Honourable Court.

NOTICE TO THE DEFENDANT

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of

defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.