

Juncture questions:

1. Defend what exists (e.g. in anticipation of defunding/terminating existing programs)
2. Push for new models (e.g. via different legal/regulatory pathways, *Innovating Beyond Exclusively Medicalized Approaches Policy Brief and Recommendations, 2023*)

How to defend what exists?

Injunctions (temporary or permanent)

Charter claims:

- s. 7 right to life, liberty, security of the person
- s. 15 right to equality and non-discrimination

Chaoulli v. Quebec (AG), 2005 SCC 35: “[t]he Charter does not confer a freestanding constitutional right to health care. **However, where the government puts in place a scheme to provide health care, that scheme must comply with the Charter.**”

Providence HCS v. Canada (AG), 2014 BCSC 936

- Health Canada authorized B.C. doctors to prescribe DAM to 21 people exiting a clinical trial, but then federal Health Minister Rona Ambrose introduced new regulations that would make doing so illegal.
- Providence Health Care and 5 individuals launched a constitutional challenge arguing that denying the drug is a violation of their right to life, liberty and security of the person under Section 7 of the Charter and sought an interlocutory injunction so they could receive prescription DAM while the case was before the courts.

Providence HCS v. Canada (AG), 2014 BCSC 936

3-part test for determining whether to grant an injunction:

1. Is there is a serious question to be tried?
2. Will the applicant suffer irreparable harm if the injunction is not granted?
3. Which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction?

B.C. Supreme Court granted injunction: risks associated with severe heroin addiction “will be reduced if [they] receive injectable [DAM] treatment from Providence physicians. These potential harms are clearly irreparable in nature.”

Black v. Alberta, 2023 ABKB 123

- Ophelia Black treated at downtown Calgary clinic and prescribed hydromorphone, which she picked up at her local pharmacy and administered at home by injection.
- New regulations in Alberta provided that certain narcotics could not be prescribed for opioid dependency for use *outside* a treatment facility, meaning that Black could no longer get her medicine from her local pharmacy and consume it at home.
- Black said these changes would drive her back to street-sourced opioids, thus depriving her of Charter rights to life, liberty, and security of the person (s. 7), to be free of cruel and unusual treatment (s. 12), and to equality (s. 15).

Black v. Alberta, 2023 ABKB 123

- Black sought an interim injunction granting her an exemption from the regulations that would allow her to continue her treatment.
- Alberta argued that Black did not have a right to specific kind of treatment and that it is entitled to make decisions concerning treatments based on factors including cost, effectiveness, & patient / public safety. Alberta argued that **consumption of potent opioids outside supervised facility poses unreasonable risk to patients.**
- Court: **“The evidence at this stage of the litigation shows that Ms. Black has a strong position that her constitutional rights have been infringed, that she will suffer irreparable harm, and it is clear that the balance of convenience weighs in her favour.** I am satisfied that this is an appropriate case in which to grant an injunction.”

Canada (AG) v. PHS Community Services Society 2011 SCC 44

“The Minister’s decision... would have prevented injection drug users from accessing the health services offered by Insite, threatening their health and indeed their lives. It thus engages the claimants’ s. 7 interests and constitutes a limit on their s. 7 rights. ... it undermines the very purposes of the CDSA — the protection of health and public safety. It is also grossly disproportionate: during its eight years of operation, Insite has been proven to save lives with no discernable negative impact on the public safety and health objectives of Canada. **The effect of denying the services of Insite to the population it serves and the correlative increase in the risk of death and disease to injection drug users is grossly disproportionate to any benefit that Canada might derive from presenting a uniform stance on the possession of narcotics.**”

The paradox of choice

Black v. Alberta, 2023 ABKB 123: “It is clear from the evidence of all the doctors who testified for Alberta and Ms. Black that the nature of opioid use disorder is that it drives people to make **bad choices**, including choices that foreseeably could result in serious harm and death. To say that Ms. Black’s treatment choice is voluntary is to ignore her condition.”

Canada (AG) v. PHS Community Services Society, 2011 SCC 44: “The first strand is that from a factual perspective, personal choice, not the law, is the cause of the death and disease Insite prevents. Canada’s difficulty is that this assertion contradicts the uncontested factual findings of the trial judge. **The trial judge found that addiction is an illness, characterized by a loss of control over the need to consume the substance to which the addiction relates.**”

2023 UN human rights report on drug policy

September 2023: OHCHR report on human rights in drug policy, representing most ambitious UN document to date on drug policy and human rights, with recommendations to States to:

- consider “responsible regulation of drugs”. The report does not claim that regulation is required by a human rights approach to drugs but calls on States to take it into consideration. This is the **first time that a UN body breaks the taboo by recognizing that responsible regulation is an appropriate and legitimate approach to drug markets.**
- meaningfully engage and consider knowledge and experience of civil society and community organizations, highlighting people who use drugs and youth.