S 217831

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE CANADIAN ASSOCIATION OF PEOPLE WHO USE DRUGS, DEBRA HALE BAILEY, CHARLENE BURMEISTER, PAUL CHOISIL, AND RACHELLE SMALL on their own behalf and on behalf of all persons who use illicit drugs

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiffs,

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or,

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

Introduction

1. For over 100 years, Canada has criminalized the use of illicit drugs, intending to protect people from the harm caused by those drugs.
2. However, drug dependence is now well-recognized as a medical condition, that attracts limited or no moral blameworthiness.
3. The long-term criminalization of illicit drugs has created a high degree of fear in persons who use drugs ("PWUDs"), of law enforcement, and social stigma associated with drug use. PWUDs are stigmatized by their family, peers, doctors, police, social services, and many others. The result is that many PWUDs avoid seeking help, and use drugs in secret, in circumstances and environments that kill or seriously injure them.
4. From 2016 to 2020, the most recent years with complete statistics available from the Government of Canada, more than 21,000 PWUDs died from overdoses. Many of these deaths were preventable.
5. Some of these deaths occurred because of the fear and social stigma associated with drug use, but the principal cause of the current drug death and overdose epidemic is the arrival, since 2012 of fentanyl and its analogues in the illicit drug supply.
6. PWUDs, by operation of the drug criminalization, must buy their drugs from illicit drug dealers because there is no legal source. Starting around 2012, and increasingly since 2016, some of the drugs

sold in this illicit marketplace have been contaminated with fentanyl and its analogues, which has killed thousands of PWUDs.

7. Here is a chart showing drug deaths, just in British Columbia ("BC"), since 2010, based on data from the BC Coroners Service.

Year	**Deaths**
2010	211
2011	295
2012	270
2013	334
2014	369
2015	529
2016	991
2017	1,493
2018	1,549
2019	984
2020	1,728
2021	851 (to May 31, 2021)
Total	9,604

8. Contaminated drugs can be sold by drug dealers because they are immune from the accountability of a regulated market. PWUDs usually do not know the source of the contaminated drugs they use, which they have often purchased from an anonymous intermediary. None of the actors in this illicit supply chain are made accountable by a sufficient regulatory or licensing regime, because such a decriminalized, legalized, and regulated regime does not exist when illicit drugs remain controlled through criminal penalties. Contaminated drugs exist and predominate, as no safe and lawful marketplace exists.

9. The result is that Canada's longstanding policy of criminalizing illicit drugs, the purpose of which is to prevent harm, is now having the opposite effect. Criminalizing the use of illicit drugs, and, correspondingly, making the illicit market the only possible source of most drugs, is now killing thousands of Canadians each year.

10. These deaths are occurring among various demographic, socio-economic, and cultural groups.

11. The plaintiffs seek declarations that the present criminalized regime under the *Controlled Drugs and Substances Act*, SC 1996, c. 19 (the "*CDSA*") violates their various *Canadian Charter of Rights and Freedoms* rights, including:

a. s. 7 rights to life, liberty, and security of the person;
b. s. 12 rights against cruel and unusual treatment and punishment; and
c. s. 15 equality rights.

12. To remedy these violations requires the striking down of all drug possession offences and the reading down of drug trafficking offences, to exclude PWUDs that sell drugs out of necessity, (collectively "Drug Decriminalization"), for all listed controlled drugs and substances, prohibited by the *CDSA*.

Definitions

Drug Criminalization

13. The regulatory scheme found in the *CDSA* for controlled drugs and substances ("drugs"), and related enforcement actions, is a prohibitionist scheme imposing criminal penalties on various drugs and drug-related activities (collectively "Drug Criminalization"). Other drugs and drug-related activities are regulated, with less stringent penalties, outside the Drug Criminalization scheme, under other legislation, such as the *Food and Drugs Act*, R.S.C. 1985, c. F-27, or *Cannabis Act*, S.C. 2018, c. 16.

Prohibited Activities

14. The *CDSA* imposes criminal penalties on the following activities:

a. "possession of substance" in s. 4(1) and "obtaining substance" in s. 4(2), "possession for the purpose of trafficking" in s. 5(2), "possession for the purpose of exporting" in s. 6(2), and "possession […] for use in production of or trafficking in substance" in s. 7.1(1) (the "Possession Offences");

b. "trafficking in substance" in s. 5(1) and "sale […] for use in production of or trafficking in substance" in s. 7.1(1) (the "Trafficking Offences");

c. "importing and exporting" in s. 6(1) and "for use in production of or trafficking in substance" in s. 7.1(1) (the "Import/Export Offences"); and

d. "production of substance" in s. 7(1) and "for use in production of or trafficking in substance" in s. 7.1(1) (the "Production Offences").

(collectively the "Prohibited Activities")

Prohibited Drugs and Overdose-Linked Drugs

15. Drug Criminalization is imposed on specific drugs that are listed under Schedules I, II, III, and IV of the *CDSA* (collectively the "Prohibited Drugs"). Several Prohibited Drugs have been found in the bloodstreams of PWUDs that have died from overdose, including:

Drug	**Schedule and Section**
"Opium Poppy […] its preparations, derivatives, alkaloids and salts […]"	I, s. 1
"Opium"	I, s. 1(1)
"Codeine […]"	I, s. 1(2)
"Morphine […]"	I, s. 1(3)
"Diacetylmorphine (heroin) […]" ("heroin")	I, s. 1(10)
"Hydromorphone […]"	I, s. 1(17)
"Oxycodone […]"	I, s. 1(28)
"Naloxone […] and its salts"	I, s. 1(34.1)
"Coca […] its preparations, derivatives, alkaloids and salts […]"	I, s. 2
"Coca leaves"	I, s. 2(1)
"Cocaine […]"	I, s. 2(2)
"Methadone […]"	I, s. 5(4)
"Ketamine […]"	I, s. 14(1)
"Fentanyls, their salts, derivatives, and analogues and salts of derivatives and analogues […]"	I, s. 16
"Carfentanil […]"	I, s. 16(3)
"Fentanyl […]"	I, s. 16(5)
"Methamphetamine […], its salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues" ("meth")	I, s. 18
"Amphetamines, their salts, derivatives, isomers and analogues"	I, s. 19
"3,4-methylenedioxyamphetamine (MDA) […]" ("MDA")	I, s. 19(4)

"N-methyl-3,4-methylenedioxy- amphetamine […]" ("Ecstasy", "MDMA", or "molly")	I, s. 19(8)
"4-hydroxybutanoic acid (GHB) and any of its salts […]" ("GHB")	I, s. 21
"Benzodiazepines, their salts and derivatives […]" ("benzos")	IV, s. 18

(collectively the "Overdose-Linked Drugs")

Drug Deaths, Drug Injuries, the Overdose Epidemic, and the Poisoning

16. The number of PWUDs overdosing and dying ("Drug Deaths") or surviving and experiencing negative physical, psychological, psychosocial, and socioeconomic consequences from using drugs and Drug Criminalization (collectively "Drug Injuries") has historically been unacceptably high. On or around 2016, Drug Deaths and Drug Injuries significantly increased across BC and Canada (the "Overdose Epidemic"). The Overdose Epidemic has resulted from the increased adulteration of the illicit drug supply– largely in the illicit opioid supply – with fentanyl and other analogues (the "Poisoning").

17. Drug deaths have numbered 21,174 in Canada (2016-2020) and 9,604 in BC (2016- May 31, 2021) (based on data available from federal and provincial health authorities).

18. Many PWUDs have experienced Drug Injuries from using drugs and Drug Criminalization. According to Government of Canada data, there were 35,847 hospitalizations (2016-2020) and 28,800 suspected overdose incidents (in 2020), with opioids present, in Canada (excluding Quebec). In BC, there were 6,752 hospitalizations (2016-2020) and 17,159 suspected overdose incidents (in 2020) with opioids present.

19. Drug Criminalization, and the corresponding absence of a regulated safe supply of drugs, have caused the Poisoning and the resulting Overdose Epidemic, leading to these tragic Drug Deaths and Drug Injuries. Drug Criminalization also prevents PWUDs from effectively accessing harm reduction measures to countervail the effects of the Poisoning and the Overdose Epidemic, further contributing to Drug Deaths and Drug Injuries.

The Parties

20. The Plaintiffs are:

a. the Canadian Association of People Who Use Drugs ("CAPUD"), a non-profit organization incorporated on October 13, 2011, pursuant to BC's *Society Act*, RSBC 1996, c. 433, with a registered address of 925-131 Hastings St W, Vancouver, BC;

b. Debra Hale Bailey ("Deb"), a psychology clinic supervisor and counsellor, who lives Langley, BC;

c. Charlene Burmeister ("Charlene"), a provincial PWUD coordinator, who lives in Quesnel, BC;

d. Paul Choisil ("Paul"), a musician and harm reduction worker who lives in Vancouver, BC; and

e. Rachelle Leslie Small, who uses the name Hawkfeather Peterson ("Hawkfeather"), a harm reduction worker, who lives in Vancouver, BC.

(Deb, Charlene, Paul, and Hawkfeather, are collectively the "Individual Plaintiffs")

21. Charlene, Paul, and Hawkfeather, are all PWUDs, who have either formerly used or currently use illicit drugs on a routine basis. Deb is the mother of a PWUD who died of an overdose.

22. The Defendant, the Attorney General of Canada ("Canada"), has an address for service at 900 – 840 Howe Street, Vancouver, BC, V6Z 2S9.

Legislative Provisions Impugned

23. This claim challenges the constitutional validity and application of multiple sections of the *CDSA* and elements of Drug Criminalization. The challenge impugns Drug Criminalization of all Prohibited Drugs, as well as related enforcement actions. The challenge seeks partial decriminalization with respect to several drug-related activities, which could include decriminalizing:

a. the Possession Offences;

b. the Trafficking Offences, when they relate to necessity trafficking, which includes:

i. trafficking for subsistence;

ii. trafficking to support personal drug use costs; and

iii. trafficking to supply a guaranteed safe supply to vulnerable PWUDs. (collectively "Necessity Trafficking");

(collectively known as "Drug Decriminalization")

24. Each of these Drug Criminalization provisions, contravene multiple constitutionally protected human rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 (the "*Charter*"), including:

a. s. 7 rights to life, liberty, and security of the person;

b. s. 15 equality rights;

c. s. 12 rights not to be subjected to cruel and unusual treatment or punishment; and

d. *Charter* values of privacy and human dignity.

CAPUD

25. The purposes and objects of CAPUD are:

a. to celebrate the strengths of PWUDs and resist the 'war on drugs';

b. to realize, deepen, and share the love, camaraderie, and wisdom found in PWUD support groups;

c. to empower PWUDs to survive and thrive, with their human rights respected and their voices heard;

d. to improve the quality of life for PWUDs by developing and implementing educational programs and training events that ensure learning opportunities about safer drug use and harm reduction;

e. to establish an inclusive social justice network for PWUDs that encourages, supports, and welcomes PWUDs from across Canada and connects them with other PWUDs across Canada and around the world;

f. to develop networks and coalitions of informed and empowered PWUDs and non-users of drugs, which work to improve the health and social conditions of PWUDs;

g. to promote a better public understanding of the problems and dilemmas facing PWUDs and thus encourage the development of a regulated market for drugs, as well as compassionate and sound local, provincial, and federal drug laws; and

h. to ensure that the voices of PWUDs are strengthened and empowered so that their concerns about social, medical, and economic issues can be heard by policymakers, service providers, and the general public.

26. CAPUD was founded after several provincial, regional, and local PWUD groups identified a gap in PWUD representation in drug policy advocacy at the federal level. CAPUD first developed informally in June 2010, with organizing assistance from the Canadian HIV/AIDS Legal Network. The PWUD groups Alberta Addicts Who Educate and Advocate Responsibly ("AAWEAR"), Association québécoise pour la promotion de la santé des personnes utilisatrices de drogues) ("AQPSUD"), United Networkers of Drug Users Nationally ("UNDUN"), the Vancouver Area Network of Drug Users ("VANDU"), and the Western Aboriginal Harm Reduction Society ("WAHRS") were the PWUD groups who joined to cofound CAPUD. Several other PWUD groups followed. An application for the incorporation of CAPUD, under the former BC *Society Act*, RSBC 1996, c. 433, was later filed on October 13, 2011.

27. CAPUD's membership and Board are entirely composed of PWUDs. One present Board member, Charlene, is also an Individual Plaintiff. CAPUD has 560 members throughout Canada in all provinces and two territories, both individuals and other PWUD regional support groups.

28. CAPUD acts as a national representative for multiple affiliated provincial, regional, and local PWUD support groups, who collectively represent approximately 7,435 PWUDs (some deceased members are also included in this calculation). Several of these groups have informed CAPUD that they support Drug Decriminalization in the form CAPUD seeks, including:

a. The BC – Yukon Association of Drug War Survivors ("BCYADWS") in BC and Yukon;

b. The BC Association of People on Methadone ("BCAPOM") in BC (300 members);

c. AAWEAR, in Alberta (80 members);

d. AQPSUD, in Quebec (300 members);

e. The Abbotsford Drug War Survivors, in Abbotsford, BC (350 members);

f. The Brantford Substance Users Network, in Brantford, Ontario (300 members);

g. The Cape Breton Association of People Empowering Drug Users ("CAPED") in Cape Breton, Nova Scotia;

h. The Coalition of Peers Dismantling the Drug War ("CPDDW"), in Vancouver, BC (55 members);

i. Coalition of Substance Users of the North ("CSUN"), in northern BC (200 members);

j. Drug Users Advocacy League ("DUAL"), in Ottawa (1512 members);

k. Drug User Liberation Front ("DULF"), in Vancouver (250 members);

l. The i2i Peer Support Project, in the Sunshine Coast, BC;

m. London Area Network of Substance Users ("LANSU"), in London, Ontario (5 members);

n. The Peel Drug User Group, in Peel County, Ontario (510 members);

o. Rural Empowered Drug User Network ("REDUN"), in the Kootenays in BC (105 members);

p. Society of Living Illicit Drug Users ("SOLID"), in Victoria, BC;

q. Substance Users Society Teaching Advocacy Instead of Neglect ("SUSTAIN") in Powell River, BC (60 members);

r. Toronto Drug Users' Union ("TDUU"), in Toronto, Ontario; and

s. VANDU, in Vancouver, BC (3384 members).

29. Many individual CAPUD members have confronted the criminal justice system due to their drug usage and experienced negative consequences, from interactions with police and other government authorities, charges, convictions, and sentence conditions. Many former CAPUD members have died from Drug Deaths any many current members have suffered Drug Injuries. These have been caused by both their drug usage and Drug Criminalization.

30. CAPUD has been involved in advocacy, education, and research on a wide range of issues related to the negative consequences of Drug Criminalization, the need for legal reform to decriminalize drugs, the provision of a non-poisoned supply of illicit drugs ("safe supply"), and further policy measures to promote PWUD wellbeing. CAPUD has frequently consulted with the Minister of Health for Canada, Health Canada, provincial health ministries, and municipal public health agencies, providing the lived experience of its membership and Board as a resource to assist with combatting the Poisoning and the

Overdose Epidemic. Additionally, CAPUD works to ensure drug policy responses reflect and respect the reality of PWUDs' lived experiences.

31. CAPUD has repeatedly advocated that the vindication of PWUD's *Charter* rights to life, liberty, security of the person, equality, and against cruel and unusual treatment or punishment, as well as PWUD's *Charter* interests in privacy and human dignity, require Drug Decriminalization and safe supply as necessary policy responses to stop the Poisoning and to alleviate the Overdose Epidemic, Drug Deaths, and Drug Injuries.

32. CAPUD was an intervenor in *R v. Lloyd*,[1] where the then one-year mandatory minimum sentence for the Trafficking Offence was found to be inconsistent with *Charter* s. 12 rights.

33. CAPUD was a complainant in a human rights complaint to the BC Human Right Tribunal (*CAPUD on its own behalf and on behalf of a class of people who use drugs, and Jordan Westfall v Aquilini Investment Group, Drew Hardisty, CBRE Limited and Michael White*, Case No. 18310) for an alleged discriminatory denial of a commercial tenancy. CAPUD routinely advocates against discrimination, stigmatization, prejudice, and stereotyping of PWUDs due to their dependence on drugs (a physical and mental disability), drug use, race, and ethnicity (drug use is often a proxy of discrimination for racial discrimination), and political belief (in decriminalization as a policy solution to end the Overdose Epidemic). CAPUD has encountered several instances of discrimination due to its advocacy for PWUDs, including in attempts to secure a commercial tenancy and bank account.

34. CAPUD offers advocacy, research, and network and community-building services and programs to PWUDs throughout Canada, including:

a. Advocating on behalf of PWUDs to the federal government, namely Health Canada, and various provincial and local governments, on various drug policy reforms to promote the health, equality, and general welfare of PWUDs, such as:

    i. Decriminalization including removal of the Possession Offence and components of the Trafficking Offence;

    ii. State subsidized access to a safe supply of drugs;

    iii. Expanded public education about PWUDs to alleviate harmful stigma that burdens multiple areas of PWUDs' lives; and

[1] *R. v. Lloyd*, 2016 SCC 13 ["*Lloyd*"].

iv. Increased access to harm reduction services generally, including:

1. medical treatments for drug dependence;
2. access to supervised consumption sites ("SCSs") and overdose prevention sites ("OPSs");
3. access to the opioid overdose reversing drug naloxone;
4. further amnesty for those witnessing overdoses to promote uptake of emergency services to reverse overdoses; and
5. access to other psychosocial and socioeconomic benefits with positive effect on the social determinants of PWUD health, such as income support, housing, employment, and education.

b. Advocating on behalf of PWUDs internationally, through participation in the International Network of People who Use Drugs ("INDUP"), and as a Canadian delegate to the United Nations Commission on Narcotic Drugs;

c. Co-organizing the biennial Stimulus Conference, one of Canada's leading drug policy conferences and the largest conference focusing on PWUD perspectives;

d. Co-organizing the first national meeting of PWUD-run organizations for 18 organizations, the "Collective Voices Effecting Change" meeting in October 2013, which was the precursor to the Stimulus Conference;

e. Organizing ongoing Stimulus Connect webinars, in response to COVID-19, a new series of informational drug policy webinars to educate PWUDs, public health officials, and other harm reduction and drug policy stakeholders, on various topics of concern to PWUDs;

f. Presenting at, and representing PWUDS at, various drug policy conferences to ensure that the lived experience of PWUDs is reflected in the concrete policy reforms seeking to improve their living conditions;

g. Assembling informational and research reports, such as:

i. *How To Be In The Room: A guidebook preparing PWUDs for engaging in drug policy processes* in July 2021;

ii. *Safe Supply: Concept Paper* and the *Safe Supply: Fact Sheet* in February 2019;

iii. *This Tent Saves Lives: How to Open An Overdose Prevention Site* in August 2017;

iv. *Peerology: A guide by and for people who use drugs on how to get involved* in June 2015;

v. *Collective Voices, Effecting Change: Final Report of the National Meeting of Peer-Run Organizations of People Who Use Drugs* in June 2014.

h. Collaborating with researchers on various projects involving PWUD participation, including:

i. *A qualitative study on overdose response in the era of COVID-19 and beyond: how to spot someone so they never have to use alone* (Harm Reduction Journal) in August 2021;

ii. *Overdose Prevention During a Pandemic* (a collaboration with Dalhousie University Global Health Service Learning Program) in July 2021;

iii. *Splitting & Sharing in OPS/SCS Protocol Template* (a collaboration with the Dr. Peter AIDS Foundation) in July 2021;

iv. *Developing a digital health strategy for people who use drugs: Lessons from COVID-19* (Digital Health) in June 2021;

v. *Splitting & Sharing in Overdose Prevention and Supervised Consumption Sites: Survey Results* (a collaboration with the Dr. Peter AIDS Foundation) in May 2021;

vi. *"The Times They Are a-Changin": Addressing Common Misconceptions About the Role of Safe Supply in North America's Overdose Crisis* (Journal of Studies on Alcohol and Drugs) in February 2021; and

vii. *Addressing the Syndemic of HIV, Hepatitis C, Overdose, and COVID-19 Among PWUDs: The Potential Roles for Decriminalization and Safe Supply* (Journal of Studies on Alcohol and Drugs) in October 2020; and

i. Providing a peer network for PWUDs to connect nationally in Canada and internationally to better foster PWUD social networks and their capacity for advocacy, research, and network and community-building.

35. CAPUD's work seeks to promote the overall wellbeing of PWUDs by reducing the negative consequences of Drug Criminalization for PWUDs and facilitating PWUDs' access to harm reduction, including a safe supply of drugs.

Deb

36. Deb is 68 and her daughter, Elyse Ola Mary Bailey ("Ola"), was 21 when she died of an overdose in 2015.

Ola's History of Drug Use

37. Around age 3, Ola was adopted from Russia by Deb. Ola's birth mother suffered from mental illness and both her birth parents had drug dependence.

38. Ola used various drugs including alcohol, marijuana, opioids (heroin) and stimulants (meth).

39. Around age 5, Ola was diagnosed with attention deficit hyperactivity disorder ("ADHD") and was prescribed methylphenidate (also known as "Ritalin"). Ola had social, verbal, and learning difficulties.

40. Around age 13, Ola was diagnosed with bipolar disorder and started experimenting with drugs. Deb was informed by Ola's friends and medical records, as Ola was reluctant to tell Deb about her drug usage. Deb thinks that both Ola's sense of rejection and negative treatment from peers led to Ola's initial drug use.

41. Around age 15, Ola began seeing an adult male, unknown to Deb. He was a PWUD who used meth and heroin and Ola began experimenting with meth supplied by him. By age 18, Ola was using meth heavily. She began using heroin, up to four times daily.

42. On December 22, 2015, Ola died of a drug overdose from poly-substance drug use. Fentanyl and meth were found in her bloodstream.

Ola's interactions with the criminal justice system

43. Around age 16, Ola was detained under BC's *Mental Health Act*, R.S.B.C. 1996, c. 288, detention process. Ola was not taking her prescribed medication and this, along with illicit drug

usage, led to psychosis. Ola was treated with anti bi-polar and anti-psychotic medication and later released.

44. Deb is unaware if Ola was ever charged with the Possession Offence or Trafficking Offence, but she received several charges and convictions that were drug related.

45. Around age 17, Ola was charged with assault against the mother of her adult boyfriend. His mother was unaware that Ola was living with him and on discovering them using drugs together an altercation developed. This charge led to a restraining order from attending the home her boyfriend lived in. Ola, who was dependent on drugs and supplied by her boyfriend, however, routinely disregarded the order. This led to several breach convictions.

46. Ola sold drugs (low-level trafficking) to afford her necessities and drugs used. She would sell prescribed medications and transported drugs, as a drug mule. She would also pawn personal items and items stolen from family and others. Deb was concerned Ola was engaging in sex work.

47. Ola was charged with fraud by a Vancouver Skytrain officer. Ola was using drugs at the time and allegedly provided the officer with her Russian name. The officer did not believe Ola, refused to verify her name, and arrested Ola. Deb assisted disputing the fraud charges and the charge was eventually rejected.

Ola's Access to Harm Reduction

48. Ola was reluctant to seek medical treatment. This resulted from a combination of past failures to respectfully treat Ola's drug abuse, without stigmatization, and concerns about reporting her to the police. Ola distrusted police from previous interactions and their past failure to respond to her requests for justice after she was assaulted twice in drug related incidents.

49. Ola had previously been prescribed suboxone as opioid substitution therapy ("OST"). This treatment was a "carry" permission, where Ola could take it privately at home. After a few weeks, her doctor abruptly switched from the "carry" to daily supervised witnessing by a pharmacist. Ola stated that the process of daily supervised witnessing was degrading and stigmatizing. After the switch, Ola stopped using suboxone and her illicit drug use escalated.

Deb thinks Ola's doctor was concerned about professional regulation concerns, which led to this change.

50. Ola also wanted prescription methadone as OST, but she was unable to find a physician to prescribe this. She later used intra-venous ("IV") methadone diverted from others. If there was wider access to suboxone, methadone, and a safe supply of other illicit drugs, Ola would likely have used those supplies. Ola was aware of the Poisoning occurring as early as 2015. If there was a safe supply option available, exempt from the Possession Offenses and Trafficking Offenses, Ola would have used this.

51. Following Ola's several overdoses and a severe leg fracture caused by IV drug use, she received no referral to addiction services specialist nor for harm reduction services. Instead, Ola's medical practitioners further stigmatized Ola and treated her legitimate medical needs as drug seeking. This built distrust of doctors contributing to her death.

52. Ola suffered from self-shame and self-stigmatization. Deb thinks that if the drugs Ola was taking were decriminalized, like alcohol and tobacco, Ola would have been forthcoming about her drug usage and better able to seek out harm reduction and treatment.

53. A few days prior to her death, Ola and her boyfriend were suddenly evicted because they stoop up for another tenant who was evicted. The Burnaby RCMP upheld a same day eviction. Ola's landlords were violent during that eviction. Deb thinks Ola went to procure drugs on the day of her death, largely due to the stress of that eviction.

54. Ola was seen on video with another PWUD entering her place of death. There were no video cameras there and Ola's body was later found alone in a stairwell. Deb thinks that Ola and the other PWUD didn't use in a more public setting due to fear of judgment and stigmatization.

55. Tragically, there was a naloxone kit on the next floor, but no one was able use it in time. The PWUD with Ola that day likely used drugs with her and panicked and fled after she overdosed. The fear of criminalization likely played a role.

Deb's Efforts to Assist Ola

56. Deb made extraordinary efforts to help Ola and improve her living situation. Ola was always welcome at Deb's home.

57. Deb also assisted Ola in obtaining her open “carry” suboxone.

58. When Ola went missing, Deb would search for her daily. Deb spent nights searching for Ola in dangerous settings. Deb once found Ola overdosed on the street and called emergency services.

59. Deb also assisted Ola in resisting her dismissed fraud charges.

60. If Ola had access to treatment including a safe supply of the meth and heroin, it could have stopped her overdose and allowed her to improve her living conditions. This would have prevented the stress and serious psychological suffering that Deb endured.

61. Deb advocates for Drug Decriminalization, expanded access to OST, a safe supply of illicit drugs, and for reduced stigmatization of PWUDs. She advocates with the group Moms Stop the Harm, a group for PWUDs’ families, who have lost loved ones or dealt with loved one’s battling drug use and Drug Criminalization.

Charlene

History of drug use

62. Charlene is 52 and has used drugs for 31 years.

63. Charlene has used various drugs including alcohol, marijuana, psychedelics (psilocybin (also called magic mushrooms) and LSD) and stimulants (crack-cocaine (sometimes called crack or rock) and MDMA).

64. Charlene started using drugs around age 14, when she started having difficulty focusing and with school in her then hometown Cloverdale.

65. Around age 21, Charlene started smoking crack-cocaine, a drug she frequently continues to use today.

66. Charlene’s ex-husband was a PWUD who also sold cocaine and marijuana. Charlene was aware of this drug trafficking, and it supported both their drug use and their family’s household expenses.

67. Around age 27, Charlene and her ex-husband moved from Burnaby to Quesnel. She hoped moving would stop her ex-husband's drug trafficking and avoid related violence. Unfortunately, her ex-husband's trafficking did not cease after this move.

68. By the end of her marriage in 2010, Charlene's drug usage increased significantly, and she was using crack-cocaine four to five times per week.

69. Around age 42, Charlene left her ex-husband and got her own residence. She reduced her drug usage to two times weekly. She then attended a treatment program, after which she stopped using drugs for almost two years.

70. Around age 43, Charlene relapsed and was using crack-cocaine and alcohol weekly.

71. Around age 50, Charlene was diagnosed with ADHD. Following this diagnosis, Charlene was prescribed Ritalin, however, it was ineffective, and she stopped taking it. After her ADHD diagnosis, Charlene realized that her past and ongoing illicit stimulant use was her way of self-medicating for ADHD.

72. Charlene currently smokes crack-cocaine and uses alcohol, once or twice weekly. She also smokes marijuana occasionally. Charlene normally uses drugs at home.

Interactions with the criminal justice system

73. Although Charlene participated in the sale of illicit drugs, she was never convicted for any drug-related offences. Charlene's ex-husband sold cocaine and marijuana for many years.

74. Around 1994, Charlene was arrested and detained for a marijuana grow operation, but no charges were later filed.

75. Charlene lived in constant fear that she would be criminalized due to these activities. She further feared that her ex-husband would be caught by the police, resulting in consequences for her family, with the BC Ministry of Children and Family Development ("MCFD"). She also feared being robbed or attacked by her ex-husband's associates.

Access to Harm Reduction

76. Charlene has attended drug treatment centres twice, in 2010 and 2016, but was unable to eliminate her drug usage after receiving that treatment. Charlene does not think prescribed drug

alternatives would work for her as Ritalin was insufficient and most other stimulants prescribed to treat substance use disorder ("SUD") are not available in a form conducive to smoking, which Charlene prefers.

77. Charlene has diverse experience working with PWUDs and in harm reduction, which informs her assessment of PWUD access to harm reduction.

78. Since 2010, Charlene has worked as a peer research coordinator with the Opening Doors to Harm Reduction Research Project at the University of Northern BC, which involves surveying PWUDs in Quesnel. In 2014, Charlene began working with the BC Centre for Disease Control ("BCCDC") as a Provincial Peer Coordinator, serving as the representative for Northern BC. Charlene travels to Northern communities consulting with other PWUDs about their living conditions and developing drug use practice guidelines. In 2015, Charlene began working with the Fist Nations Health Authority as a Provincial Peer Coordinator.

79. In 2016, Charlene founded the Coalition of Substance Users of the North ("CSUN"), an alliance of PWUDs living in Northern BC. In August 2019, CSUN opened an office in Quesnel offering various harm reduction and PWUD support programs. Charlene also serves on the Board of CAPUD and the newly formed Provincial Organization of Drug User Organizations and Persons with Lived and Living Experience (PWLLE) Collective.

80. Charlene's PWUD consultation and harm reduction work has informed her understanding of the barriers Drug Criminalization manifests for PWUDs, which she has in turn applied to her own drug use, controlling many of the negative risks and consequences.

81. Charlene has experienced stress, fear, and anxiety about accessing health care services in her small rural community. Charlene has worried about lacking medical confidentiality.

82. There are currently no SCSs or OPSs in Quesnel. The nearest SCS is approximately 120 kilometres away. Charlene would also not likely use that SCSs as it only allows safe injection and not safe smoking.

83. Charlene has used drug testing in the past. Her crack-cocaine supplier informs that they routinely have their supply tested. Charlene has observed that drug testing services in rural communities often attract harassment, arrests, or the seizure of harm reduction supplies.

Charlene thinks that even if rural communities get ready access to SCSs and drug testing that many PWUDs would still not use them due to fear of negative interaction with nearby police or fear of outing themselves and being further stigmatized.

84. Charlene's ability to provide PWUDs in Quesnel and elsewhere with harm reduction services through a PWUD support network continues to be impaired by the presence of police, who usually respond to or become involved in overdose events in the community. Charlene's fear of arrest has, on occasion, also deterred her from helping other PWUDs in need.

85. Charlene has not yet received naloxone. However, she used naloxone approximately six times to reverse overdoses. Her partner is trained with naloxone and is usually at home when Charlene uses drugs to check and ensure she has not overdosed.

86. Charlene has observed that the *Good Samaritan Drug Overdose Act*, SC 2017, c. 4 (the "*GSA*") provisions are ineffective. Most PWUDs are unfamiliar with this legislation. Others who are familiar are fearful that they will be arrested for the Drug Trafficking Offence or others and don't call emergency services.

Paul

History of drug use

87. Paul is 58 and used drugs heavily for 34 years, from 1976 to 2010.

88. Paul is a Black Canadian originally from Montreal. He recalls facing racism from age 5.

89. Paul has used various drugs including alcohol, marijuana, hash, cocaine, and psychedelics (magic mushrooms, ketamine, LSD, mescaline, and phencyclidine ("PCP")), ecstasy, GHB, and meth. He has sold small amounts of marijuana, hash, or mushrooms to friends, to afford his drug use.

90. Paul initially used drugs to avoid stress and forget about the racism he experienced.

91. Around age 34, Paul was using drugs heavily following a difficult breakup with his civil partner.

92. Around age 39, Paul moved from Montreal to Vancouver. In Vancouver, Paul participated in local raves and used meth heavily.

93. Around age 47, Paul ceased using several drugs after he began working as a housing supervisor and harm reduction worker. Paul was able to stop using these drugs without medical treatment, largely by increasing his marijuana usage.

94. Paul continues to smoke marijuana and drink alcohol. He also uses magic mushrooms rarely.

Interactions with the criminal justice system

95. Paul has never been charged with the Possession Offence or Trafficking Offence.

96. He often would not carry drugs in public, or would take steps to avoid interactions with police, such as running away, hiding, or disposing his drugs.

97. Paul has experienced police street checks (also known as "carding"), from a young age. The carding is frequent and occurs whether Paul is dressed formally or casually. Paul attributes the carding to racism and recognizes that this racism contains prejudicial assumptions that Black, Indigenous, and other Persons of Color ("BIPOC") individuals use or sell drugs frequently.

98. Paul was once arbitrarily detained by police for several hours in his youth. After walking home at night, police detained him unlawfully while investigating a robbery.

Access to Harm Reduction

99. Paul did not use medical treatment to reduce his drug usage. Medical harm reduction treatment for stimulant use, like prescription dextroamphetamine (also known as dexedrine) replacing meth was not widely used. Paul's marijuana usage increased to alleviate addictive and withdrawal effects. Paul did not use any recovery centre, due to concerns about the overt religious overtones in such centres.

100. Paul has diverse experience working with PWUDs in harm reduction. He is employed by both the BCCDC and Vancouver Coastal Health. He previously worked as a housing supervisor where many PWUDs resided. This work and his own lived experience informed him on Drug Criminalization's deterrence on access to harm reduction.

101. If Paul was still using drugs with a high risk of overdose, from the Poisoning and Overdose Epidemic, he would not seek medical treatment or other harm reduction. His concerns

about stigmatization and discrimination by some health care and harm reduction practitioners would prevent him from seeking help.

102. Paul did not use SCSs or OPSs as, in 2010, SCSs were still relatively new. Most SCSs do not have Possession Offence and Trafficking Offence exemptions for stimulant users and are unable to provide harm reduction services to them.

103. When using stimulants in the past, Paul would often use alone due to cross-substance use and other prejudice. He thinks this prejudice would stop him from using with others and receiving naloxone or other harm reduction services to prevent an overdose.

104. Paul thinks that Drug Criminalization remains a significant barrier to BIPOC PWUDs receiving harm reduction. Drug Criminalization's stigma, combined with racism, causes the negative and prejudicial attitudes and treatment toward PWUDs by some medical practitioners and harm reduction workers, deterring their further medical treatment, SCS and OPS access, and usage in the presence of others. He thinks carding of BIPOC PWUDs furthers this deterrence.

Hawkfeather

History of drug use

105. Hawkfeather (they/them) is 43 and has used drugs for 28 years.

106. Hawkfeather has used various drugs including opioids (heroine, hydromorphone, methadone, and morphine), psychedelics (psilocybin and LSD), and stimulants (meth).

107. Hawkfeather was first exposed to drugs around age 10, when they were physically forced to use them.

108. Around age 25, Hawkfeather was sexually assaulted, leading to a suicide attempt and hospitalization. The sexual assault led them to attempt suicide and resulted in hospitalization and mental health issues. For self-medication, Hawkfeather started using prescription opioids.

109. Around age 26, Hawkfeather broke their back vertebrae and began taking more prescription opioids. When their back healed and prescription ended, they purchased from the local illicit market in their then hometown, Sechelt.

110. When their local supply dwindled, Hawkfeather travelled to Vancouver to buy illicit heroin. Hawkfeather would use heroin multiple times daily.

111. Around age 37, Hawkfeather started taking prescription morphine and then methadone as OST, which they continue to this day. After using methadone, Hawkfeather's illicit heroin use decreased.

112. In 2020 before COVID-19, Hawkfeather used heroin approximately once or twice per month and meth approximately once every two months. Following COVID-19, Hawkfeather was prescribed opioids as part of BC's "safe supply" (dual risk mitigation) program. Hawkfeather currently uses IV hydromorphone (also called dilaudid) and morphine daily. Hawkfeather also occasionally uses IV heroin.

113. Hawkfeather continues to use due to their dependence and the numbing and mood enhancing effects that varied drug use provides, which improves their mental health. Around age 22, Hawkfeather was diagnosed with an eating disorder. Hawkfeather also struggles with trauma from their childhood and sexual assault. They further have stress and anxiety from concerns about Drug Criminalization and possible interactions with MCFD, and stigmatization by others. Hawkfeather has also struggled with gender and body dysmorphia, due to their non-binary gender identity and expression. Their drug usage allows them to function, by alleviating negative effects of these mental health issues.

Interactions with the criminal justice system

114. Hawkfeather has had many negative interactions with both the criminal justice system and BC's child protection system resulting from Drug Criminalization. Around age 30, Hawkfeather was caught using heroin in a public washroom. The police seized their heroin and IV injection equipment and let them go without charges. The police did, however, report the incident to MCFD. MCFD visited Hawkfeather's home, and they were concerned that their children would be removed.

115. Around 2013, Hawkfeather was arrested and charged by the Royal Canadian Mounted Police ("RCMP") with a Possession Offence. The RCMP also threatened to charge them with a Trafficking Offence. Their usage amount was substantial, and they often purchased large quantities to use at home. The RCMP used these threatened charges to pressure Hawkfeather to

report local drug dealers. In court, the Possession Offence charge was dropped and Hawkfeather received a conditional discharge and two years' probation. These sanctions show up as a criminal record barring them from entering the United States.

Access to Harm Reduction

116. Hawkfeather is accessing harm reduction services, specifically OST. Hawkfeather previously tried buprenorphine as OST unsuccessfully. Methadone reduced the frequency of their heroin usage. However, they used illicit heroin and meth (when a safe supply of heroin was unavailable).

117. Hawkfeather has been reluctant informing healthcare providers about their drug use as they fear further interactions with the criminal justice system and MCFD. Hawkfeather's prescribing physician has threatened to report them to these authorities previously.

118. Hawkfeather has experienced two recent near fatal overdoses that were reversed with naloxone by their partner. One recent overdose required further hospitalization.

119. After this hospitalization, Hawkfeather's physician altered their OST regimen. Hawkfeather was coerced into daily witnessed methadone injections, instead of take-home methadone.

120. For their current prescribed safe supply, Hawkfeather was initially denied by their OST prescribing physician. Hawkfeather had to seek a distant, unfamiliar doctor for this prescription. Eventually, Hawkfeather's own doctor was willing to prescribe safe supply, but coerced Hawkfeather to attend an addictions clinic. In their former rural community, Sechelt, attending this clinic risked public stigmatization by outing attendants as PWUDs.

121. Hawkfeather has diverse experience working with PWUDs and in harm reduction, as both the former President of BCYADWS and former Secretary of CAPUD. They consulted many PWUDs on their ongoing health needs and the effects of drug use and Drug Criminalization on PWUD access to harm reduction. This work and their lived experience inform their understanding of the deterrent effect of drug use and Drug Criminalization on access to harm reduction.

122. There was no SCS in Sechelt, however, a permanent OPS opened after Hawkfeather and others started an OPS. This prompted further action from local officials. They are concerned that local PWUDs are restricted from accessing the OPS as local police patrol it and deter PWUDs from accessing it.

123. Hawkfeather has not generally used SCSs or OPSs due to fear this could lead to further negative interactions with authorities or further stigmatization. Hawkfeather has used SCSs and OPSs run by other PWUDs, when their concerns about Drug Criminalization, outing, and disclosure of drug use status were alleviated.

124. Hawkfeather uses drugs alone at home or privately in washrooms when away from home, driven by their fears and concern form stigmatization. Were it not for the support of their non-PWUD partner, they fear they would be dead from their recent overdoses.

125. Hawkfeather has relied on drug testing in the past to verify the safety of their supply when their fear of criminal sanction or other adverse consequences of requesting testing were removed.

The Individual Plaintiffs' Drug Injuries – Negative Consequences of drug use and Drug Criminalization

126. The Individual Plaintiffs and their loved ones have experienced physical suffering and other consequences from, their own or their loved ones', drug use and Drug Criminalization, including:

a. allergic reactions – including rashes and swelling of the hands and feet (Charlene);

b. broken femur resulting from an improperly treated infection (Ola);

c. cellulitis from IV injections (Hawkfeather);

d. death (Ola);

e. hangovers and resulting exhaustion, fatigue, and head and body aches (Charlene);

f. heart palpitations (Charlene);

g. liver damage (Charlene);

h. loss of capacity to focus on tasks (Paul);

i. lung and heart damage (Charlene);

j. malnutrition (Charlene, Ola);

k. overdoses requiring naloxone to reverse and further hospitalization (Hawkfeather) and causing death (Ola);

l. pain from scoliosis, exacerbated by drug use and the failure to receive proper treatment (Paul);

m. physiological stress, from concern for a loved one and related neglect while trying to provide them care (Deb);

n. sepsis from a blood infection (Ola);

o. sexual exploitation while using drugs (Ola);

p. trauma from being struck, stabbed, and otherwise assaulted for the collection of drug debts (Ola);

q. trauma from a physical abduction and detention by a drug trafficker for debt collection (Ola);

r. violence collateral to drug purchases (Ola).

127. The Individual Plaintiffs and their loved ones have experienced serious psychological suffering and other consequences from, their own or their loved ones', drug use and Drug Criminalization, including:

a. fear, stress, and anxiety at the prospect of interactions with the criminal justice system, arrest, or incarceration (Charlene, Paul, Hawkfeather, Ola), or a loved one enduring the same (Deb), including further negative experiences of being targeted by police due to racism and stigma against racialized PWUDs (Paul);

b. fear, stress, and anxiety of having to navigate further criminal proceedings or to endure other sanctions from Drug Criminalization (Charlene, Paul, Hawkfeather, Ola) or a loved one enduring the same (Deb);

c. fear, stress, and anxiety due to possible inability to access a safe drug supply and resulting death or serious physical suffering and other consequences due to a future overdose (Charlene, Hawkfeather, Ola) or a loved one enduring the same (Deb);

d. fear, stress, and anxiety due to unhealthy and verbally abusive relationships based on drug usage (Charlene);

e. fear, stress, trauma, loss of sleep, and nightmares from the potential threat of (Charlene) or actual (Ola) collateral violence related to drug use;

f. fear, stress, anxiety, and trauma, from experiencing sexual violence from sex work to afford drug use (Ola);

g. fear, stress, and anxiety of a deceased loved one, when alive, being subjected to further violence, including sexual violence and sexual exploitation, connected to drug use (Deb);

h. fear, stress, anxiety, and trauma, from witnessing second-hand violence related to enforcement of illicit market drug debts, including the violent assault of a partner (Ola);

i. fear, stress, and anxiety that physical danger might occur while under the influence of drugs and being unable to avoid experiencing injury (Charlene);

j. grief, despair, depression, sadness, and trauma, over the Drug Deaths of multiple people they knew who have died from the Poisoning and the Overdose Epidemic, including the Drug Deaths of family members (one ex-partner for Charlene), friends (at least 30 for Paul and at least 73 (including the child of a close friend) for Hawkfeather), harm reduction clients, and other acquaintances;

k. grief, despair, depression, sadness, emotional pain, and trauma, over a loved one's death or suffering while alive (Deb);

l. grief, despair, depression, sadness, and trauma, over the breakdown of family relationships (Paul);

m. fear, stress, and anxiety of the potential loss of custody and lack of relationship with her children (Charlene, Hawkfeather);

n. Stress and sadness from the negative stigmatization received from family, friends, and acquaintances, about their quality as a parent, following a loved one's death (Deb);

o. grief, despair, depression, sadness, trauma, loss of sleep, and nightmares over the overdoses of others witnessed in work assisting PWUDs (Charlene, Paul);

p. grief, despair, depression, sadness, trauma, loss of sleep, and nightmares over the anticipation of future trauma, of experiencing future Drug Deaths of people you know who are likely to die from the Poisoning and the Overdose Epidemic, including the future Drug Death of friends, clients, and other acquaintances (Charlene);

q. grief, anger, and discontent about the current system of Criminalization and the differential treatment of PWUDs, compared to those who use other legalized substances (Charlene);

r. grief, anger, and discontent about current system of Criminalization and the exposure of PWUDs to collateral violence as they must interact with the illicit drug market to obtain their drugs (Charlene);

s. grief, anger, and discontent over the failure of law enforcement to protect PWUDs from collateral violence associated with drug use, often motivated by discriminatory attitudes towards PWUDs based on their physical and mental disability and or race or ethnic origin (Charlene);

t. fear of infection from sexually transmitted infection from partners using drugs (Charlene);

u. suicidal ideation (Charlene);

v. loss of enjoyment of life and emotional numbness following a loved one's death (Deb); and

w. loss of time that could be focused on measures to improve her mental health overall, including seeing family, friends, and socializing generally (Charlene).

128. The Individual Plaintiffs and their loved ones have experienced psychosocial and socioeconomic disadvantages and other consequences from, their own or their loved ones', drug use and Drug Criminalization, including:

a. general stigmatization, prejudice, stereotyping, and ostracism by family, friends, and their broader community (Charlene, Paul, Hawkfeather, Ola, Deb);

b. specific stigmatization, prejudice, and stereotyping, due to the combined effects of sexism and discrimination against PWUDs, particularly within the context of intimate relationships (Charlene);

c. damage to their reputation and loss of community standing (Charlene, Paul, Hawkfeather, Ola, Deb);

d. loss and breakdown of familial relationships, intimate relationships, friendships, and other social relationships (Charlene, Paul, Hawkfeather, Ola, Deb);

e. indirect damage to the reputation of and loss of community standing for their family and friends (Hawkfeather, Ola);

f. strain on home life, including the cohesiveness of their relationships with their family, their privacy, and their autonomy in decisions governing their family life, including the straining of relationships with their partners and children (Charlene, Paul, Hawkfeather, Ola, Deb);

g. loss of social support networks (Paul, Hawkfeather, Ola, Deb);

h. significant drug use expenses (at least $400 daily for Paul and $500 weekly for Charlene) (currently $100 weekly for Charlene);

i. loss of income, income insecurity, and asset depletion (Charlene, Paul, Hawkfeather, Ola, Deb);

j. loss of employment, job security, or other employment or volunteer opportunities (Hawkfeather);

k. deterioration of working conditions and work relationships (Hawkfeather);

l. difficulty carrying out work duties, due to constant stress from loved one's living conditions (Deb);

m. distraction from work, home life, and relationships with friends, as energies are focused on improving loved one's precarious living conditions (Deb);

n. reliance on welfare for a long period of time (Paul, Ola);

o. increase in debts (Charlene, Paul, Ola);

p. decline in their credit rating (Charlene, Paul);

q. loss of employment, job security, or other employment or volunteer opportunities (Paul, Hawkfeather, Rache, Ola);

r. homelessness and precarious housing status (Charlene, Paul, Hawkfeather Ola);

s. denial of access to residential tenancies (Hawkfeather);

t. inequitable access to healthcare, including barriers to access to harm reduction services (Charlene, Paul, Hawkfeather, Ola);

u. difficulty in accessing medical services, in fully disclosing substance use to physicians and other service providers, blocking full access to available treatment and advice (Charlene, Hawkfeather, Ola);

v. inequitable access to education and learning opportunities (Paul, Hawkfeather, Ola);

w. reduced international mobility (Hawkfeather,);

x. barriers to religious (Hawkfeather), cultural, and spiritual practices (Paul, Hawkfeather, Ola);

y. loss of time from constant searches for loved ones on the street when they were precariously housed (Deb); and

z. loss of ability to socialize due to the emotional pain of loved one's death (Deb).

Private and Public Interest Standing

129. The Individual Plaintiffs each have private standing to challenge Drug Criminalization of the illicit drugs they (or their loved ones) formerly used, namely heroin, cocaine, and meth. Both the Individual Plaintiffs and CAPUD have sufficient interest to be granted public interest standing to challenge Drug Criminalization with respect to all illicit drugs prohibited under the *CDSA*. Factors supporting this public interest standing include:

a. this claim raises a serious challenge to the constitutional validity and application of ss. 4, 5, and Schedules I, II, III, and IV of the *CDSA*;

b. the Individual Plaintiffs and CAPUD have a demonstrated, serious, genuine, and justiciable interest in the subject matter of this litigation;

c. the issue of whether Drug Criminalization violates constitutional rights is relevant to all Canadians and of particular importance given the Poisoning and the Overdose Epidemic;

d. CAPUD is comprised of multiple provincial, regional, and local PWUD support groups in communities across Canada that consult with, facilitate research for, and provide direct services to PWUDs, who all have a direct personal stake in these issues, as they have experienced, or are likely to experience in the future, Drug Deaths, Drug Injuries, and other negative consequences as a result of Drug Criminalization;

e. the knowledge and lived experiences of both the Individual Plaintiffs and CAPUD confirm their capacity to bring forward the challenge and ensure that relevant and material issues will be presented with appropriate adjudicative, social, and legislative fact patterns;

f. the challenge raises transcendent public interest issues that are beyond the interest of any single PWUD;

g. the challenge is systemic – impugning multiple *CDSA* provisions based on multiple *Charter* grounds and seeking to reduce Drug Criminalization for all illicit drugs – and is, therefore, distinctive from any individual challenge on a discrete issue;

h. PWUDs are generally disadvantaged, marginalized, and vulnerable individuals, and experience significant barriers which limit their ability to access counsel and pursue legal claims as individual plaintiffs with respect to Drug Criminalization for each illicit drug prohibited by the *CDSA*;

i. PWUDs face the risk of criminal sanction and the corresponding consequences – including intense prejudice, stereotyping, and stigmatization – for pursuing legal claims related to their drug usage, creating further significant barriers to accessing counsel and pursuing legal claims in their individual capacity;

j. annually there are thousands of PWUDs charged under the *CDSA*, and yet no Canadian court has adjudicated a comprehensive systemic challenge to the *CDSA*;

k. it is unreasonable to expect individual PWUDs to expend the resources to initiate and conduct a comprehensive systemic challenge to the *CDSA* on the scale contemplated in this challenge; and

l. the challenge is, in all the circumstances, a reasonable and effective means of bringing the issues of the constitutionality of Drug Criminalization before the court.

History of Drug Criminalization

130. Canada has criminalized the possession and trafficking of illicit drugs since 1908. In that year, the *Opium Act of 1908* was enacted, which prohibited the use, sale, manufacture, or importation of opium. Following this first federal drug prohibition statute, many successive enactments have added to the list of criminalized illicit drugs, leading up to the present *CDSA*.

131. A substantial historic motivation for illicit drug prohibition and Drug Criminalization was discriminatory attitudes, including racism, xenophobia, and colonialism. A disproportionately high number of Possession Offence and Trafficking Offence convictions, charges, and corresponding negative interactions with the criminal justice system have been historically, and are presently, experienced by Canada's racialized and Indigenous peoples.

132. Drug Criminalization can cause further criminal activity in various ways. The costs of most illicit drugs are unregulated and are often substantial. Many PWUDs engage in further criminalized activities to obtain funds for their personal drug use, or to provide for their subsistence while also using illicit drugs (both forms of Necessity Trafficking). These other criminal activities can include the Import/Export Offences, the Production Offences, theft, fraud, robbery, assault, and commercial sex (the act of selling which was historically criminalized, but, which even now, following decriminalization, often involves related activities which remain criminalized).

133. Many PWUDs are forced to engage with the illicit drug market, either to purchase illicit drugs or in Necessity Trafficking. This can also lead to exposure to threats and violence, especially when illicit drug debts are unpaid. PWUDs engaged in Necessity Trafficking are also often coerced by drug suppliers, through threats or violence, to further threaten or commit violence against others. This is often to enforce payment of drug debts or to gain a competitive advantage over other drug suppliers.

134. On October 17, 2018, the enactment of the *Cannabis Act*, S.C. 2018, c. 16, delisted marijuana from the Possession Offence, effectively decriminalizing the recreational use of cannabis and implementing a regulatory market for the legal sale of marijuana. Partly motivating marijuana decriminalization was the view that continued criminalization created unnecessary harms for PWUDs using marijuana and blocked access to optimal harm reduction uptake for PWUDs, added enforcement-related costs and resource strain to the criminal justice system, and allowed an illicit market for marijuana to operate that independently created harms and other negative consequences for PWUDs and others. On June 21, 2019, *An Act to provide no-cost, expedited record suspensions for simple possession of cannabis*, S.C. 2019, c. 20 (Bill C-93) was enacted allowing pardons for criminal records for marijuana possession, which will permit certain PWUDs with criminal records to alleviate some of the negative consequences they have experienced associated with the criminalization of marijuana.

135. Several countries and sub-national jurisdictions have now decriminalized the possession of marijuana. Other countries have full or partially decriminalized possession of other illicit drugs, still criminalized by the *CDSA*, for at least small quantities or for any quantity. Jurisdictions where drugs have been decriminalized have experienced significant declines in Drug Deaths, Drug Injuries, and other negative consequences for PWUDs associated with drug usage. Drug Decriminalization has been accepted as necessary for harm reduction of illicit drug use, to end the Poisoning and the Overdose Epidemic, in commentary and reports from several regional and provincial public health authorities and agencies, local governments, local police authorities, and provincial and national politicians and political parties. This includes the recent Health Canada Expert Task Force on Substance Use, which in August 2021, released a report on alternatives to criminal penalties for simple possession (the Possession Offences) recommending "that Health Canada end criminal penalties related to simple possession and […] end all coercive measures related to simple possession and consumption".

Substance use disorder

136. Substance use disorder ("SUD") is a disease that affects a person's brain and behaviour and leads to an inability to control the use of a legal or illicit drug or medication. Individuals suffering from SUD, including some of the Individual Plaintiffs or their family members, continue to use drugs despite the

physical and psychological harm, as well as the negative psychosocial and socioeconomic consequences, caused by drug use.

137. As demonstrated by the circumstances of the Individual Plaintiffs and their family members, there are various events or pathways that lead to initial illicit drug use, including:

a. exposure to abuse, trauma, or violence;

b. severe physical injury requiring pain relief medication which is improperly monitored or cut-off leading to additional unmonitored illicit drug use;

c. self-medication for other underlying physical or psychological conditions;

d. alleviation of harsh personal circumstances, such as unemployment, homelessness, and poverty;

e. lack of parental supervision or neglect in childhood;

f. pressure from friends or other acquaintances and a desire to fit in;

g. boredom; and

h. personal preference to use drugs due to the short-term gratification from their mind and body altering effects.

138. SUD is a chronic, debilitating illness that results in mental and physical disability. The risk of developing SUD and how fast a PWUD develops SUD varies by drug and is often dependent on various factors including frequency of drug use, genetics, and other environmental factors, such as exposure to trauma or exposure to poor social determinants of health.

139. Drugs have various pharmacological effects; however, SUD typically develops when drugs are taken which stimulate brain function by causing an excess release of neurotransmitters which alter various neuroreceptors controlling experiences of pain and pleasure.

140. Drug use can alter neuroreceptor functioning and over time PWUDs often need to use increasingly higher doses of a drug to achieve a desired neurological effect, due to the development of a tolerance to specific drug use. Stoppage of drug use often leads to negative withdrawal symptoms, including:

a. anxiety.

b. aches and pains;

c. chills;

d. diarrhea;

e. increased heart rate;

f. insomnia;

g. nausea; and

h. vomiting.

141. PWUDs are often unable to stop using drugs as they do not want to confront the negative circumstances, they continue to use drugs to avoid suffering the harsh withdrawal symptoms. For many PWUDs, this alteration of their neurotransmitter functioning leads to compulsivity and a decline in executive functioning. This explains the difficulty in stopping drug use, maintaining remission, and high rates of relapse suffered by PWUDs who have initially stopped drug use. For many PWUDs, including some of the Individual Plaintiffs or their family members, obtaining and using drugs becomes their driving purpose, resulting in various negative psychosocial and socioeconomic consequences.

142. SUD has a well-established medical diagnostic framework and guidelines, which includes assessing various factors and symptoms to determine if a PWUD suffers from the illness.

143. Individuals with SUD, including several of the Individual Plaintiffs, knowingly and unknowingly consume dangerous illicit drugs, and are mentally and physically unable to refrain from continuing to use these drugs, despite the increased risk of experiencing Drug Deaths, Drug Injuries, or other negative psychosocial and socioeconomic consequences related to drug use and Drug Criminalization.

Poisoning of the illicit drug supply and the Overdose Epidemic

144. The Poisoning and the Overdose Epidemic is one of the worst Canadian public health crises since the HIV/AIDS epidemic of the 1980s and 1990s (the other being the subsequent COVID-19 pandemic). The BC provincial health officer declared a public health emergency due to Drug Deaths on April 14, 2016.

145. Canada’s overall life expectancy statistics have declined from the Poisoning and the Overdose Epidemic, despite the longstanding general trend of life expectancies improving. Drug Deaths are now the largest major cause of unnatural deaths in BC, and outpace accidental deaths from homicides, suicides, and car accidents combined. Drug Deaths have increased rapidly across Canada – in 2020, the year with the most Drug Deaths, at least 6,214 PWUDs died, equivalent to one life lost roughly every one-and-a-

half hour. Frequent Drug Deaths are not isolated to just BC as Ontario, Alberta, Quebec, and Saskatchewan also experienced particularly high death counts for 2020 and 2021.

Jurisdiction	Deaths (2020)	Deaths (2021)
BC	1,738	851 (to May 31)
Ontario	2,425	723 (to March 31)
Alberta	1,144	614 (to May 31)
Quebec	547	N/A
Saskatchewan	230	213 (to August 3, 2021)
Canada	6,214	N/A

146. The rates of Drug Deaths and Drug Injuries have increased dramatically over time, with the sharpest incline starting in 2016. This increase in Drug Death and Drug Injuries is attributable to the widescale availability of the manufactured drug fentanyl and its analogues and their use by drug manufacturers and suppliers in manufacturing several illicit drugs. Fentanyl is extremely poisonous and as little as two milligrams of pure fentanyl (the size of about four grains of salt) is enough to kill the average adult. Several fentanyl analogues are even more toxic – one such analogue, carfentanil, is increasingly being used in the manufacture of other illicit drugs.

Drug Criminalization's impact on the illicit drug supply, the Poisoning, and the resulting Overdose Epidemic

147. The manufacturing costs of many illicit drugs are dramatically reduced when developed using fentanyl and its analogues. The use of fentanyl and its analogues in the manufacture of illicit drugs is prolific with respect to the illicit opioid supply, where some drug testing studies have reported contamination of up to 90% or more of tested illicit drug samples. Fentanyl and its analogues are also increasingly used in the manufacture of other illicit drugs, namely stimulants like cocaine and meth. Drug manufacturers are also increasingly adulterating the illicit drug supply with various other drugs or substances. One emerging trend is the adulteration of opioids with benzos (which are a form of sedatives or tranquilizers). There are even emerging reports of fentanyl contamination in illicit hallucinogenic drugs, such as MDMA. The degree of contamination within the illicit drug supply is an evolving crisis, with the already contaminated categories of drugs becoming increasingly more toxic and the toxicity continuously spreading to new categories of drugs.

148. This adulteration of the illicit drug supply is partially caused by the desire of drug manufacturers to increase profits by cutting manufacturing costs, as well as to cross-contaminate some illicit substances with other illicit substances with more addictive effects, or to mimic the appearance of other drugs, to further drive-up future sales and increase profits. Cross-contamination also results from manufacturer negligence in the production of illicit drugs.

149. Following the increase in adulteration of the illicit drug supply in 2016, and throughout the evolving Overdose Epidemic, PWUDs have had difficulty accessing a safe supply. They are unable to guarantee that the illicit drugs they purchase are, in substance, the drug composition they believe them to be, nor are they able to confirm the potency of such drugs before using. Moreover, they are unable to determine whether such illicit drugs are free of poisonous adulterants. Many PWUDS have a physical dependency on illicit drugs and are unable to stop using illicit drugs despite the considerable risks posed by the Poisoning and Overdose Epidemic. Some PWUDs who used illicit opioids have switched to other illicit drugs with comparable prices and increased negative physical, psychological, psychosocial, and socioeconomic consequences, such as meth. However, due to breadth of the Poisoning, there is an increased risk of adulteration in those alternative illicit drugs as well.

150. Drug Criminalization, and the vacuum of government regulation regarding the composition and potency of illicit drugs, has created the “black market” illicit drug supply which has led to the Poisoning and the Overdose Epidemic. The evolving nature of the market forces driving the Poisoning and the Overdose Epidemic increases the difficulty for PWUDs to ensure that they are accessing a safe supply. Correspondingly, it is harder for PWUDs to avoid overdoses and the associated Drug Deaths and Drug Injuries.

151. Drug Decriminalization is a policy solution with sufficient flexibility to counteract the effects of the Poisoning and Overdose Epidemic. Drug Decriminalization would partially alleviate the negative effects of the Poisoning and the Overdose Epidemic by allowing PWUDs the freedom to procure drugs in a manner where they can guarantee composition and potency.

152. Drug Decriminalization would also likely decrease PWUD negative interactions with the criminal justice system and, correspondingly, increase PWUD uptake of harm reduction services, which would further help to alleviate negative effects of the Poisoning and Overdose Epidemic.

Drug Criminalization’s negative impacts and Coercive Force on PWUDs

153. Thousands of PWUDs are charged annually with the Possession Offences and the Trafficking Offences. PWUDs face the possibility of negative interactions with the criminal justice system due to

these offences. These interactions can include police or other authorities targeting, following, monitoring, stopping, questioning, threatening with arrest and charges, seizing from (drugs, harm reduction supplies, or other goods), harassing, or arresting and charging PWUDs. If charged, PWUDs must then navigate court processes leading up to an eventual conviction, acquittal, or dropping of any charges for the Possession Offence or Trafficking Offence. If convicted of the Possession Offence or Trafficking Offence, PWUDs may face various sanctions including potential incarceration. Police will often also assume that possession of large amounts of drugs is for the purpose of trafficking, and charge the Trafficking Offense, despite any other evidence to show the drugs were intended to be used beyond personal use by a PWUD, a phenomenon called "up charging".

154. Criminal records from convictions or police charges have diffuse effects outside of the criminal justice system and considerable negative effects on the lives of PWUDs convicted or charged with the Possession Offences or Trafficking Offences. PWUDs experience heightened prejudice, stereotypes, and stigmatization by society and applying criminal sanctions to drug usage both contributes to and reinforces these negative experiences leading to increased disadvantage, marginalization, and vulnerability for PWUDs.

155. The negative interactions with the criminal justice system and associated negative effects and experiences are traumatic for many PWUDs, who experience them firsthand or who witness or hear about them from other PWUDs. Potential exposure to these negative interactions, effects, or experiences instills fear, stress, anxiety, depression, despair, or other negative psychological suffering for many PWUDs. PWUDs also experience considerable psychological suffering from their forced interactions with the illicit drug market, where they may be subjected to threats or violence within the scope of purchasing or selling illicit drugs. Collectively, these negative interactions, effects, experiences, and psychological suffering for PWUDs are all caused by Drug Criminalization and have a coercive force on PWUD behavior (the "Coercive Force"). The Coercive Force is systemic and not generalized to the usage of any one illicit drug or to only the Possession Offence. Drug Decriminalization would alleviate many of the Coercive Force's negative consequences, by reducing the behavioral pressures placed on PWUDs that deter uptake on harm reduction services.

156. Several recent measures are targeted at reducing charges and convictions for the Possession Offence and potentially alleviating some of the Coercive Force. Some local police departments claim to have adopted policies of *de facto* decriminalization for the Possession Offence. On August 20, 2020, the Director of the Public Prosecution Service of Canada issued a new Guideline 5.13 stating that "resort to a criminal prosecution of [the Possession Offence] should generally be reserved for the most serious manifestations of the offence" and "alternatives to prosecution should be considered unless they are

inadequate to address the concerns related to the conduct". The federal government has also expanded funding for the development of more drug treatment courts, an alternative to incarceration offering an opportunity to complete a drug treatment program which involves judicial supervision, comprehensive substance use treatment, random and frequent drug testing, incentives and sanctions, clinical case management, and social services support. The recent Bill C-22, *An Act to Amend the Criminal Code and CDSA*, also sought to remove mandatory minimum sentences in the *CDSA* and to promote diversion for the s. 4 Possession Offence. Despite these measures, all PWUDs continue to face uncertainty about negative interactions with the criminal justice system, and the Coercive Force of Drug Criminalization will persist and deter PWUD access to harm reduction services, resulting in heightened Drug Deaths, Drug Injuries, and negative psychosocial and socioeconomic consequences for PWUDs.

Positive effects of Harm Reduction on alleviating Drug Deaths, Drug Injuries, and Negative Consequences of Drug Use

157. There are several harm reduction services that have a positive effect in alleviating Drug Deaths, Drug Injuries and other negative consequences associated with PWUD drug use, Drug Criminalization, the Poisoning, and the Overdose Epidemic. Many of these harm reduction services are based on or improved upon when used in combination with Drug Decriminalization.

158. PWUDs may benefit from OST where illicit drugs, such as methadone, buprenorphine, or suboxone, are prescribed with the intention of them replacing illicit opioids by preventing withdrawal and reducing drug dependence.

159. A small number of PWUDs also have access to legally prescribed heroin or hydromorphone, both illicit substances when not prescribed, through the Special Access Program ("SAP") contemplated under the federal *Food and Drug Regulations*, C.R.C., c. 870. This effectively grants an exemption to the Possession Offence for PWUDs prescribed drugs under the SAP, as well as an exemption to the Trafficking Offence for prescribing physicians who have sought SAP approval. The conditions on OST of prescribed heroin and hydromorphone are often strenuous, including medical supervision of injections or ingestion, and both drugs remain prohibitively expensive for widescale usage or public provision. The exemption for most of the PWUDs on OST therapy for SUD has been carried over from previous research studies. Many PWUDs who were research participants, or who are otherwise on OST with prescribed heroin or hydromorphone, can alleviate symptoms of their SUD by relying solely on their prescribed medication, rather than resorting to the illicit drug supply. This has allowed those PWUDs to avoid Drug Deaths, Drug Injuries, and other negative consequences from drug use and Drug Criminalization. There are currently further proposed relaxations to the SAP involving psilocybin usage for medicinal treatment

of depression and other mental health conditions. There are further calls for Health Canada to consider decriminalization of other drugs for medicinal purposes, such as amyl nitrites (commonly called "poppers") for pain relief, even from Canada's opposition Conservative party, who historically opposed such exemptions.

160. Section 56.1 of the *CDSA* allows a process for the federal Health Minister to approve exemptions from the Possession Offence and the Trafficking Offence for an SCS. Insite, operated by the PHS Community Services Society, was the first Canadian SCS and was approved in 2003. There are now multiple operating SCSs in Canada, spread amongst BC, Alberta, Ontario, Quebec, and Saskatchewan. SCSs can be approved to offer a variety of harm reduction services such as providing a safe space to consume free from police or other authorities, drug testing, emergency medical care in case of overdose, basic health services, testing for infectious diseases, access to sterile drug use equipment and a place to safely dispose, and access to health professionals and support staff trained in overdose prevention.

161. In 2016 and 2017, several OPSs began providing unsanctioned harm reduction services. In December 2017, Health Canada gave all provinces and territories the ability to apply for a class exemption to approve temporary (3 to 6 months) OPS, without the full SCS exemption process. OPSs also often have less strenuous operating requirements.

162. Despite the general progressive trend towards opening more SCSs and OPSs, attempts to open further SCSs and OPSs have been met with local opposition in several communities. Additionally, various provincial governments have imposed onerous operating conditions and funding constraints on SCSs and OPSs. Rural communities have restricted access to these harm reduction facilities due to these ongoing funding constraints.

163. SCSs and OPSs have saved PWUDs from Drug Deaths and Drug Injuries. Many overdoses have been reversed by SCS and OPS staff. No known deaths have occurred at any SCS. Where an SCS has opened there have also been observable reductions in Drug Deaths and crime statistics in the surrounding vicinity of the SCS site. Several of the Individual Plaintiffs and CAPUD Board Members have worked in and have used SCSs, OPSs, or for other harm reduction service providers and have observed the effectiveness of these services.

164. There was a recent policy consultation initiated by Health Canada considering whether the splitting and sharing of drugs in SCSs and OPSs should similarly be exempted activities. It resulted in changes to the s. 56.1 exemption application form for a *CDSA* exemption that now includes latitude to allow splitting and sharing of drugs (effectively a form of drug trafficking) within SCSs. Several major cities (Vancouver and Toronto) and one province (BC) have also publicly committed to or sent in a s. 56

exemption request to expand Possession Offence exemptions found in SCSs and OPSs to larger geographic areas experiencing the Overdose Epidemic acutely.

165. In 2016, Health Canada delisted naloxone, a drug that can reverse overdose symptoms when properly administered, from the Government of Canada's Prescription Drug List. This means that naloxone is now available over the counter, ensuring that it has become more readily accessible to PWUDs and to others to reverse overdose symptoms. BC has also subsidized naloxone kits. BC figures report that between 1,000 to 2,000 overdoses are reversed monthly with government-provided naloxone kits. However, a troubling emerging issue with the Poisoning and Overdose Epidemic is that naloxone has a reduced efficacy in reversing PWUD overdoses, when the illicit drugs consumed are poisoned with benzos.

166. In May 2017, the *GSA* amended the *CDSA* to include new exemptions from the Possession Offence for those experiencing or witnessing a medical emergency, and who report that emergency to authorities. However, many PWUDs report that the effects of the *GSA* are not widely known within the PWUD community and that the amnesty granted is too narrow as it does not include the Trafficking Offence or other drug-related criminal activity, which limits the effectiveness of this legislation.

167. Many of the core harm reduction activities rely on partial Drug Decriminalization to function. However, resource and geographical constraints preventing widescale implementation, as well as onerous conditions on accessing existing harm reduction services, combine to reduce the effectiveness of those services in counteracting Drug Deaths, Drug Injuries, and other negative consequences of drug use suffered by PWUDs. Further, the Coercive Force from fear of enforcement and concern for stigmatization blocks PWUDs from access to and optimal uptake of harm reduction services.

168. Drug Decriminalization, and an associated process of criminal record removals and pardons, would by themselves be a form of harm reduction, by alleviating much of the prejudice, stereotyping, stigma, negative psychosocial and socioeconomic consequences, and psychological suffering borne by PWUDs. In addition, Drug Decriminalization would lead to a reduction in Drug Deaths and Drug Injuries caused by overdoses and drug usage generally. It would amplify the effectiveness of the various existing criminal exemptions underpinning the SAP, SCSs, OPSs, access to naloxone and its usage to reverse overdoses, and the *GSA*, by effectively extending the reach of the exemptions to all PWUDs at risk of Drug Deaths and Drug Injuries.

169. Many PWUDs do not seek OST or treatment for other negative physical and psychological effects caused by their illicit drug usage from medical providers, due to their fear that medical providers may report their drug usage to police or other authorities or breach patient/physician confidentiality,

which will eventually lead to negative interactions with the criminal justice or child protection system. For similar reasons or due to fear of punitive treatment by medical providers – such as the removal of prescriptions or implementation of more onerous conditions on treatment for SUD – many PWUDs lack candour with medical providers and are thus receiving compromised access to harm reductions services.

170. Many PWUDs do not use SCSs or OPSs due to concerns that they will reveal themselves as PWUDs to police, other authorities, or the public and face future harassment. Police and other authorities have historically patrolled SCSs and OPSs and detained or questioned PWUDs coming and going from SCSs and OPSs. There is a further concern that attending a SCS or OPS will out a PWUD as a drug user in their local community, and therefore open up the PWUD to other negative psychological suffering or psychosocial and socioeconomic consequences. Other PWUDs are unable to take advantage of the benefits of SCSs as only criminal exemptions are provided for injectable drugs and not drugs that are inhaled or ingested. The illicit supply of drugs that are smoked or ingested (often stimulants) is also increasingly contaminated and increasingly more smoking or ingestion related overdoses are occurring, necessitating decriminalization of the supervised use of these drugs in the SCSs or OPSs to take full advantage of their harm reduction benefits.

171. The Coercive Force underlying the fear of interactions with police and other authorities and of stigmatization by others also prevents many PWUDs from confiding in friends and family about their drug use and from using in the presence of others. When a PWUD uses illicit drugs alone they cannot access naloxone to reverse overdoses or access emergency medical services. A significant number of Drug Deaths have occurred when illicit drugs are used alone, in locations like vehicles, bedrooms, and washrooms. The effectiveness of the *GSA* in granting PWUDs experiencing overdose access to naloxone and emergency medical services is similarly muted by the Coercive Force.

172. Drug Decriminalization will be effective in allowing PWUDs optimal access to harm reduction services, which will, in the short term, alleviate the Drug Deaths and Drug Injuries resulting from the Overdose Epidemic. More generally, Drug Decriminalization will alleviate many of the myriad factors that further contribute to ongoing illicit drug use and SUD.

Drug Deaths, Drug Injuries, and other negative consequences are exacerbated by the COVID-19 crisis

173. Following the onset of the COVID-19 global pandemic, the second major public health emergency facing Canada, Drug Deaths have increased even further. Since the known spread of COVID-19 to Canada in early 2020, and growth of COVID-19 cases in March 2020, reported overdose deaths in

BC and the rest of Canada have increased dramatically. In 2019, Overdose Deaths were 3,830 and 1,013, in Canada and BC, respectively. In 2020, those figures rose to 6,214 and 1,738.

174. The number of paramedic-attended overdoses in BC and elsewhere in Canada has also sharply risen following the emergence of COVID-19. In BC, that figure rose from 13,486 to 17,159 (2019 to 2020).

175. Shut down of borders and physical distancing practices closing businesses have further compromised the illicit drug supply, making drug usage more dangerous as sources of a safe supply are harder to maintain.

176. Physical distancing practices also further promote private drug usage away from other PWUDs, who might assist if an overdose occurs. Further, access to other harm reduction services is reduced as many doctor's offices, SCSs, and OPSs were closed or placed under restrictions to promote physical distancing. A marked decline in SCS and OPS visits in BC has also been observed.

Canada and BC respond to COVID-19 with partial decriminalization and safe supply

177. In response to COVID-19, and due to concerns that many PWUDs may face both heightened overdose risks and that PWUDs, who are more likely to suffer from homelessness and poverty, would be unable to physically distance, both Canada and BC have taken steps to expand the scope of Drug Decriminalization and the provision of safe supply, by using criminal exemptions and targeted regulation.

178. On March 19, 2020, Health Canada issued a Subsection 56(1) Class Exemption for Patients, Practicioners and Pharmacists Prescribing and Providing Controlled Substances in Canada During the Coronavirus Pandemic. This exempted practitioners and pharmacists from *CDSA* s. 5 and patients who receive illicit drugs from a pharmacist from *CDSA* s. 4. The exemption has been extended and applies, unless replaced or revoked, until September 30, 2026.

179. In BC, the BC Centre on Substance Use ("BCCSU") has issued practice guidelines, "Risk Mitigation: In the Context of Dual Public Health Emergencies", for physicians to prescribe safe supply of opioids, stimulants, and benzos. BC physicians and nurses have begun prescribing and PWUDs receiving a safe supply, including hydromorphone for opioid dependence, dexedrine or Ritalin for stimulant dependence, or clonazepam or diazepam for benzo dependence. Several barriers remain to a safe supply which has muted this policy response, including the reluctance of physicians to prescribe a safe supply despite the new authorizations to do so, as well as the absence of safe supply in other usage forms, such as for injection, smoking, or inhalation. No other jurisdiction appears to be permitting practitioners to

prescribe and PWUDs to obtain similar safe supply of illicit drugs, despite the COVID-19 risks also existing elsewhere.

Negative Effects of Overdose Epidemic Disproportionately Effect Vulnerable Groups

180. Certain vulnerable groups have disproportionately suffered increased Drug Deaths after the COVID-19 pandemic's onset in Canada. First Nations and Indigenous peoples in BC have experienced dramatically increased rates of Drug Deaths following the COVID- 19 onset. The First Nations Health Authority reported a 93% increase in First Nations Drug Deaths from January to May 2020 (an increase from 46 to 89). During that period, First Nations PWUDs were 16% of all BC Drug Deaths (despite representing only 3.3% of the province's population), up from 9.9% in 2019. First Nations PWUDs were already more likely to die than other British Columbians, 3.8 times more likely in 2019 and now are 5.6 times more likely to experience Drug Deaths. First Nations women were disproportionately represented in Drug Deaths in 2019, being 8.7 times more likely to experience Drug Deaths.

181. Other vulnerable groups, such as racialized, lesbian, gay, bisexual, transgender, queer, two-spirit, intersex, and other sexual minority ("LGBTQ2SI+"), and other socioeconomically disadvantaged persons face disproportionate negative interactions with the criminal justice system due to Drug Criminalization.

182. Canada and BC only report disaggregated drug overdose related statistics analysing sex and age. There is no data collected based on other common markers of discrimination including race, disability, sexual orientation, gender identity or expression, or socio-economic status. BC has recently taken preliminary steps, including commissioning feasibility reports from the BC Human Rights and Privacy Commissioners, to start collecting race-based health and policing data following the COVID-19 pandemic.

Part 2: RELIEF SOUGHT

183. The Plaintiffs seek the following relief:

a. Declarations under s. 52(1), of the *Constitution Act, 1982*, s. 24(1) of the *Charter*, or this Court's inherent jurisdiction, that the criminalization of the Possession Offences and Trafficking Offences in ss. 4(1), 4(2), 5(1), 5(2), 6(2), and 7.1(1), and Prohibited Drugs in Schedules I, II, III, and IV of the *CDSA*, violates ss. 7, 12, and 15 rights of the Plaintiffs and all Canadians who use drugs, in a manner that cannot be justified under s. 1, and are therefore of no force and effect;

b. An order that ss. ss. 4(1), 4(2), 5(2), and 6(2) of the *CDSA* be struck out in their entirety;

c. An order that the word "possess" in s. 7.1(1) be struck out;

d. An order that ss. 5(1) and 7.1(1) of the *CDSA* be read down to not include Necessity Trafficking;
e. Costs, including full indemnity special costs and applicable taxes on those costs, and
f. Such further and other relief as this Honourable Court deems just.

(the "Decriminalization Relief")

Part 3: LEGAL BASIS

Stare decisis

184. The doctrine of *stare decisis* is not applicable to the Plaintiffs' claim. Courts may reconsider settled rulings of higher courts where:

a. A new legal issue is raised; and

b. There is a change in the circumstances or evidence that fundamentally shifts the parameters of the debate.

Canada (Attorney General) v Bedford, 2013 SCC 72 para. 42 ["*Bedford*"]

185. Several new legal issues are raised, including:

a. A comprehensive challenge to the *CDSA*, distinct from the narrow s. 7 *Charter* challenge to an exemption denial in *PHS*; and

b. The constitutionality of Drug Criminalization for drugs other than marijuana, unlike *Malmo-Levine*.

Canada (Attorney General) v PHS Community Services Society, 2011 SCC 44 ["*PHS*"];

R v Malmo-Levine; R v Caine, 2003 SCC 74 ["*Malmo-Levine*"]

186. New circumstances and evidence have fundamentally shifted the debate, including:

a. The Poisoning and Overdose Epidemic; and

b. Marijuana Legalization.

Section 7

187. By failing to regulate the drug supply in a manner that prevents the Poisoning and Overdose Epidemic, Canada has deprived the Plaintiffs, and all Canadian PWUDs, of their rights to life, liberty, and security of the person, as well as their protected privacy interests.

188. Section 7 of the *Charter* states:

> 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.

Life

189. The right to life is deprived when Canada's actions impose death or an increased risk of death on a person, either directly or indirectly.

Carter v Canada, (Attorney General), 2015 SCC 5 para. 62 ["*Carter*"]

190. The right to life protects against current and future risk of death.

Charkaoui v Canada (Citizenship and Immigration), 2007 SCC 9 para. 14 ["*Charkaoui*"]

191. Drug Criminalization of the Possession Offenses and Necessity Trafficking and the Prohibited Drugs increases the Plaintiffs' and all Canadian PWUDs' risk of Drug Deaths thereby depriving their rights to life, as:

a. they create a regulatory vacuum that fails to ensure a safe drug supply and prevent the Poisoning and Overdose Epidemic; and
b. they create barriers to Harm Reduction Activities.

Security of the Person

192. The right to security of the person is deprived when government conduct leads to physical or serious psychological suffering. It also protects against current and future risk of suffering.

Carter, *supra* para. 64;

Charkaoui, *supra* para. 14

193. Security of the person also protects against the negative effects from criminal accusations, including:

a. stigmatization;
b. loss of privacy;
c. stress and anxiety, resulting from:
    i. disruption of family, social life and work,
    ii. legal costs; and
    iii. uncertainty as to the outcome and sanction.

Mills v The Queen, [1986] 1 S.C.R. 863, 1986 CanLII 17 (SCC) para. 145 ["*Mills*"]

194. This right further prevents government conduct that imposes dangerous conditions and bars risk protections.

Bedford, *supra* para. 60

195. The right is engaged when state conduct has the likely effect of impairing a person's health, including police tactics in investigating drug offences.

R v Poirier, 2016 ONCA 582 para. 77

citing *R v Monney*, [1999] 1 SCR 652, 1999 CanLII 678 (SCC) para. 55

Liberty

196. The right to liberty is deprived by potential imprisonment.

PHS, *supra* paras. 87 and 92

197. Liberty protects:

a. "the right to make fundamental personal choices free from state interference".

Carter, *supra* para. 64

b. "an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference".

Godbout v Longueuil (City), [1997] 3 SCR, 844, 1997 CanLII 335 (SCC) para. 66

(La Forest J. concurrence)

c. private choices of fundamental personal importance including medical care decisions.

R v Clay, 2003 SCC 75 para. 31

Combined Aspects of Liberty and Security of the Person

198. Where criminal prohibitions foreclose reasonable medical choices security of the person and liberty are also deprived.

R v Smith, 2015 SCC 34 para. 18

199. Privacy is an important *Charter* value recognized under s. 7 of the *Charter*, related to both security of the person and liberty.

Mills, *supra* para. 145

R v Dyment, [1988] 2 SCR 417, 1988 CanLII 10 (SCC) para. 17

200. The Drug Criminalization of the Possession Offences and Necessity Trafficking increase the Plaintiffs' and all Canadian PWUDs' risk of Drug Injuries, thereby depriving their rights to security of the person, as:

a. they create a regulatory vacuum that fails to ensure a safe drug supply and prevent the Poisoning and Overdose Epidemic; and
b. they create barriers to Harm Reduction Activities.

201. Those Drug Injuries include:

a. serious physical suffering like:
    i. cognitive impairment or other organ damage from hypoxia due to overdose;
    ii. contraction of infectious diseases like HIV, Hep C, and cellulitis;
    iii. development of other chronic conditions from continued exposure to poisoned drugs;
    iv. inability to treat SUD and its negative physical effects;
b. serious psychological suffering like:
    i. fear, stress, and anxiety of:
        1. death or serious physical suffering due to overdose;

2. death or serious physical suffering due to exposure to the illegal drug market;
3. death or serious physical suffering from chronic SUD and an inability to obtain medical care;
4. exposure to the criminal justice system, from:
    a. disruption of family, social life and work,
    b. legal costs;
    c. uncertainty as to the outcome and sanction;

c. Extreme stigmatization from exposure to the criminal justice system; and
d. Loss of privacy.

PHS, *supra* para. 93

202. These Drug Injuries arise as the government conduct of Drug Criminalization, for the Possession Offenses and Necessity Trafficking , imposes dangerous conditions leading to the Poisoning and Overdose Epidemic and bars the important risk protections of Harm Reduction Activities. They are effectively forced to use an unsafe supply of drugs and to use drugs in unsafe and unsanitary conditions.

203. The right to liberty is deprived by this Drug Criminalization as PWUDs face potential incarceration.

PHS, *supra* para. 92

204. This government conduct also impedes their ability to make fundamental personal choices relating to bodily autonomy. It effectively forecloses reasonable medical choices relating to overdose avoidance, SUD treatment, and harm reduction activities.

205. This government conduct also intrudes on personal privacy and autonomy, by criminalizing personal choices with effects confined to individual's bodies, residences, or other private locations.

Principles of Fundamental Justice

206. Deprivations of life, liberty, or security of the person under s. 7 are not in accordance with the principles of fundamental justice ("POFJs") when they are arbitrary, overbroad, grossly disproportionate, or are otherwise contrary to consensus in Canada about the way our legal system ought to operate.

207. Further principles of fundamental justice may be established where there is a legal principle about which there is significant societal consensus that it is fundamental to the way in which the legal system ought to fairly operate.

Malmo-Levine, *supra* para. 113

208. The *CDSA* exemptions no longer act as a "safety valve" preventing it from arbitrariness, overbreadth, or gross disproportionality review, given the Poisoning and Overdose Epidemic and their resulting Drug Deaths and Drug Injuries, which demonstrate any such valve is "illusory" in the present context and should not foreclose review of POFJs.

PHS, *supra* para. 113

R v Morgentaler, [1988] 1 SCR 30, 1988 CanLII 90 (SCC) at 33

209. The deprivations of the Plaintiffs and Canadian PWUDs rights are arbitrary as there is no rational connection between the *CDSA* Possession Offenses and Necessity Trafficking restrictions and Prohibited Drugs and the deprivations. Drug Criminalization is not capable of promoting any public health or safety objectives. Permitting an illegal drug market, condones an unsafe drug supply and collateral violence, that impede both public health and safety.

210. The deprivations are also overbroad. The denial of some of the Plaintiffs' and Canadian PWUDs' s. 7 rights has no connection to any public health or safety objective. Even if some individuals were to receive a public health or safety benefit from Drug Criminalization, there are many more PWUDs, whose rights remain negatively impacted.

211. The deprivations are also grossly disproportionate. The increased risks of Drug Deaths and Drug Injuries, dangerous conditions created, barriers to harm reduction activities, foreclosed medical care choices and other fundamental private choices are completely out of sync with any public health and safety objectives.

212. The deprivations also violate less commonly articulated and novel principles of fundamental justice, including:

a. The principle against punishment for morally innocent acts;

b. The principle against punishment for acts of self-harm;

c. The principle against punishment where mental disorder, which includes SUD, warrants a finding of not criminally responsible;

d. The principle of parity in application and enforcement of criminal prohibitions across Canada;

e. The principle of substantive equality; and

f. The principle against cruel and unusual punishment.

Section 12

213. Canada has imposed, through Drug Criminalization, a regulatory scheme that sanctions PWUDs with potential penal consequences if convicted and a wider system of negative treatment by criminal justice and healthcare authorities. This scheme infringes *Charter* s. 12 rights.

214. Section 12 of the *Charter* states:

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

215. "Treatment or punishment" has been interpreted widely. The other criminal justice drug enforcement actions such as questioning, stopping, arresting, seizure of drugs or harm reduction supplies, or detaining on a permanent or interim basis pending conviction, are also penal consequences meeting the definition of punishment and an active justice system process, meeting the definition of treatment.

216. A sentence will be cruel and unusual "if it is 'grossly disproportionate' to the punishment that is appropriate; having regard to the nature of the offence and the circumstances of the offender" or one that "would shock the conscience of Canadians".

Lloyd, *supra* paras. 22 and 33

217. Drug use and subsistence trafficking have a reduced moral blameworthiness compared to other crimes receiving punishment.

Lloyd, *supra* paras. 27-30

218. Drug Criminalization allows sentences grossly disproportionate to the conduct committed by PWUDs. The additional negative interactions with the justice system and denial of comprehensive healthcare created by Drug Criminalization, similarly, are grossly disproportionate consequences when compared to drug use. Further, this treatment and punishment, collectively, shocks the general Canadian conscience.

Section 15

219. Drug Criminalization further entrenches historical stigma, prejudice, and stereotyping suffered by PWUDs, deepening the disadvantages they disproportionately suffer. Drug Criminalization imposes negative moral judgment and criminal penalties to dissuade drug usage. Drug use's negative consequences are better treated as a health issue and remedied through access to medical treatment and harm reduction care.

220. Drug Criminalization and corresponding enforcement infringes s. 15(1) equality rights.

221. Sub-section 15(1) of the *Charter* states:

> 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.

222. The first component of a s. 15 equality rights analysis asks whether the impugned law or state action, on its face or in its impact, creates a distinction based on a listed or analogous ground of discrimination.

Fraser v Canada (Attorney General), 2020 SCC 28 para. 27 ["*Fraser*"]

223. Drug Criminalization creates both a facial distinction against and disproportionately impacts PWUDs based on several listed or analogous grounds.

224. SUD is a recognized mental and physical disability, which are listed prohibited grounds of discrimination.

Stewart v Elk Valley Coal Corporation, 2017 SCC 30 para. 58 ["*Stewart*"] (Gascon J. dissent)

R v Zora, 2020 SCC 14 para. 92

225. The Possession Offences and offences covering Necessity Trafficking explicitly target PWUDs, including SUD-sufferers. This is a facial distinction based on the listed grounds of physical and mental disability.

226. Alternatively, Drug Criminalization operates indirectly to impose a disproportionate impact on several protected groups.

Fraser, *supra* para. 52

227. Drug Criminalization has a disproportionate impact on persons with SUD, a mental and physical disability. It imposes a regulatory regime that fails to accommodate members of a protected group, PWUDs with SUD. The criminal sanctions apply to all persons, however, there is an undeniably disproportionate impact on persons with SUD who suffer from drug dependence.

Fraser, *supra* para. 54

228. Drug Criminalization also has a disproportionate impact on several other protected groups, based on race, national or ethnic origin (listed grounds), or sexual orientation (analogous ground). Disproportionate impact can be established if members of protected groups are denied benefits or forced to take on burdens more frequently than others.

Fraser, *supra* para. 55

229. PWUDs who are racialized or who have a minority sexual orientation are statistically over-represented in receiving incarceration, Drug Deaths, and Drug Injuries.

230. In the alternative, even if Drug Criminalization is not established as creating a distinction based on these established grounds, the grounds of drug dependence or drug usage are analogous grounds

worthy of protection. A ground of distinction is analogous where it is like grounds already listed or it "often serve[s] as the basis for stereotypical decisions made not on the basis of merit but on the basis of a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity".

Corbiere v Canada (Minister of Indian and Northern Affairs), [1999] 2 SCR 203, 1999 CanLII 687 (SCC) para. 13

231. The second component of a s. 15(1) analysis asks whether "the law impose[s] 'burdens or den[ies] a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating…disadvantage'". The harm may include economic exclusion or disadvantage, social exclusion, psychological harms, physical harms, or political exclusion.

Fraser, *supra* paras. 27 and 76

232. PWUDs have a long history of pre-existing psychosocial and socioeconomic disadvantages. These include tenuous housing access, exposure to trauma and exploitation, and exposure to serious adverse health consequences.

PHS, *supra* paras. 7-10

233. PWUDs suffer from amongst society's strongest negative stigmas, including pervasive stereotypical views that "individuals suffering from [drug dependence] are the authors of their own misfortune or that their concerns are less credible than those of people suffering from other forms of disability".

Stewart, *supra* para. 58 (Gascon J. dissent)

234. Drug Criminalization partially reinforces, perpetuates, and exacerbates this negative stigma and creates further barriers entrenching PWUDs other psychosocial and socioeconomic disadvantages and causing further social exclusion, physical harms, psychological harms, and dignity affronts.

235. Drug Criminalization also fails to correspond with PWUDs characteristics and lived experiences. It imposes moral condemnation on PWUDs without recognition of drug dependence as a health problem.

236. Drug Criminalization erects a further barrier to accessing critical healthcare, much in the same manner as other formal moral concerns over abortion or euthanasia.

Morgentaler, *supra* at 59 and 105-106

Carter v Canada (Attorney General), 2012 BCSC 886 para. 1076

237. There is limited ameliorative benefit for other groups in criminalizing PWUDs for possession and subsistence trafficking. A penal provision for a self-harm has likely no benefit to others.

238. The interests effected for PWUDs from Drug Criminalization are weighty, as their section 7 life, liberty, and security of the person interests are implicated. Several other important psychosocial and socioeconomic factors such as family, work and income, social life, housing, and access to medical care are also affected.

239. Drug Criminalization of the behaviour of drug usage, when SUD is present, is immutable or irreversible. Such criminalization is like historical morality-based criminalization of same-sex attraction. It is similarly impossible to "condemn a practice so central to the identity of a protected and vulnerable minority without thereby discriminating against its members and affronting their human dignity and personhood".

Saskatchewan (Human Rights Commission) v Whatcott, 2013 SCC 11 para. 123

240. When these various disadvantages, such as economic disadvantage, social prejudice and stereotyping, denial of equal access to healthcare, creation of physical and psychological harms, dignity affronts, are assessed, the distinctions drawn by Drug Criminalization have the effects of reinforcing, perpetuating, and exacerbating disadvantages. Substantive equality of PWUDs is undermined.

Section 1

241. Section 1 of the *Charter* states:

> 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.

242. The said infringements of ss. 7, 12, and 15 *Charter* rights cannot be justified under s. 1.

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Dated: August 31, 2021 Dustin Klaudt

Lawyer for the Plaintiffs

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Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A claim for remedies under s. 24 (1) of the *Charter*, s. 52 of the *Constitution Act, 1982*, and pursuant to the inherent jurisdiction of the Court for breaches of ss. 7, 12, and 15 *Charter* rights (that are not justified under s. 1 of the *Charter*) caused by the *Controlled Drugs and Substances Act* criminal prohibitions, and associated enforcement actions, for possession of illicit drugs and necessity trafficking of illicit drugs.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A dispute concerning:

[X] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[X] constitutional law

Part 4: ENACTMENTS RELIED UPON:

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*,

being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11

Constitution Act, 1982, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982,

c. 11

Controlled Drugs and Substances Act, S.C. 1996, c. 19