Court File No: CV-24-00732861-000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE NEIGHBOURHOOD GROUP COMMUNITY SERVICES, KATHARINE RESENDES and JEAN-PIERRE AUBRY FORGUES

Applicants

- and -

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Respondent

FACTUM OF THE RESPONDENT

March 18, 2025

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PART I – OVERVIEW

1. The Applicants are a corporation (The Neighbourhood Group Community Services, or "TNG") that operates a supervised consumption site ("SCS") at 260 Augusta Avenue in Toronto called the Kensington Market Overdose Prevention Site ("KMOPS") and two individuals who use SCSs in Toronto and Kitchener. The Applicants seek declarations that ss. 2 and 3(2)1 of the *Community Care and Recovery Act, 2024* (the "Act")[1] are unconstitutional. They also seek an interim order suspending the effect of these statutory provisions until the Court has determined this case.

2. The Respondent, His Majesty the King in Right of Ontario ("Ontario"), submits that the application should be dismissed with costs.

3. This case is about whether the Constitution permits the Legislature to regulate the shared use of neighbourhoods by requiring that SCSs be located at least 200m away from schools and daycares. The Applicants rely on one side of a contested and inconclusive scientific debate among health experts to assert that SCSs are "a vital public health intervention".[2] While this assertion is disputed among scientists, it is ultimately beside the point: the impugned Act does not prohibit SCSs from operating. The only question addressed by s. 2 of the impugned Act is *where* SCSs should operate.

4. Section 2 of the Act establishes a zoning rule that prohibits SCSs from operating within 200m of a school or daycare. This provision comes into force on April 1, 2025. Like any zoning rule, s. 2 of the Act regulates the permissible location of a particular kind of facility, but it does not otherwise prohibit SCSs, limit their number, or regulate any of their activities. Zoning rules are ubiquitous measures that regulate the shared use of neighbourhoods. Such rules are not unconstitutional, even when applied to facilities that offer health care.[3]

5. Section 3(2)1 of the Act requires municipalities and local boards to obtain provincial approval before applying to Health Canada for an exemption under the federal *Controlled Drugs and*

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[1] *Community Care and Recovery Act, 2024*, S.O. 2024, c. 27, Schedule 4 [*CCRA*].
[2] Applicants' factum at para. 3.
[3] *Vancouver (City) v. Weeds Glass and Gifts Ltd.*, 2020 BCCA 46 at para. 130 [*Weeds Glass*].

Substances Act ("*CDSA*") to operate an SCS. This provision does not affect the Applicants at all. The Applicants are not municipalities or local boards, and there is no evidence in this case that any municipality or local board has applied for provincial approval under this provision. In any event, it is not unconstitutional to require municipal institutions, which are creatures of the Province and exercise delegated provincial powers, to obtain provincial approval before seeking to operate an SCS.

6. SCSs are sites that allow clients to consume illicit drugs in the presence of a staff member who can monitor the clients for signs of overdose and intervene as necessary. Because possession of illicit drugs is a federal crime under the *CDSA*, as a practical matter SCSs require a federal exemption from the *CDSA* to permit staff and clients inside the site to possess drugs without risk of criminal prosecution. But only possession within the interior bounds of the SCS is exempt from federal prosecution.[4] It remains a federal crime under the *CDSA* for SCS clients to purchase the illicit drugs that they consume in an SCS, to transport illicit drugs to the SCS for consumption there, and to take illicit drugs out of the SCS, as many clients do.[5]

7. Public disorder is concentrated in the immediate vicinity of SCSs. People who use illicit drugs are linked to increased crime and disorder.[6] Moreover, since SCS clients obtain their illicit drugs from drug dealers, the immediate vicinity of SCSs attracts drug dealing.[7] As Ontario's expert criminologist Dr. Jerry Ratcliffe explained, "Areas where drug dealers gather to sell drugs in public settings are drug markets, and drug markets are linked to greater levels of social disorganization, physical and social disorder, and crime. SCSs make ideal locations for drug markets."[8]

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[4] Cross-examination of Bill Sinclair dated February 13, 2025 [**Sinclair Cross**], Amended Joint Supplementary Record [**AJSR**], Tab 1, pp. 83-87.
[5] Sinclair Cross, AJSR, Tab 1, pp. 67-68.
[6] Affidavit of Dr. Jerry Ratcliffe affirmed January 23, 2025 [**Ratcliffe Affidavit**] at para. 9, Responding Application Record [**RAR**], Vol. 5, Tab 35, p. 2090.
[7] Ratcliffe Affidavit at para. 10, RAR, Vol. 5, Tab 35, p. 2090.
[8] Ratcliffe Affidavit at para. 11, RAR, Vol. 5, Tab 35, p. 2090.

8. Ontario's record includes numerous and detailed eyewitness accounts of this public disorder from individuals who live or work near SCSs, or whose children attend a school or daycare near SCSs. These eyewitnesses testified about the instances of drug trafficking, public drug use, public intoxication, aggression and violence, and discarded needles and other drug paraphernalia either immediately adjacent to or within one or two blocks of an SCS. In many cases, the eyewitnesses have provided direct photo and video evidence of these instances.

9. The eyewitness accounts are also supported by the affidavit of Krishanthakumar Ganeshan, whose team observed and methodically documented, photographed and video-recorded recent examples of open illicit drug use, apparent hand-to-hand drug transactions, the brandishing of weapons, persons in a state of intoxication, and discarded needles and drug pipes in the immediate vicinity of eleven different SCSs in various cities across the Province.[9]

10. The eyewitness accounts are further reinforced by numerous incident reports prepared by the SCSs themselves, recording many instances of disorderly behaviour within or immediately outside the SCS, which in some cases escalated into more serious conflicts involving the use of weapons.[10] In many cases, the SCS's response to the disorder within its walls or on its doorstep was to expel people exhibiting disorderly or violent behaviour into the surrounding neighbourhood area.[11]

11. Many eyewitnesses gave distressing accounts of how their children have been negatively impacted by witnessing the public disorder near SCSs. In addition, Ontario relies on the expert evidence of Dr. Nancy Guerra, a childhood developmental psychologist, whose expert opinion was that regular exposure to the public disorder associated with drug use is harmful to the well-being and

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[9] Affidavit of Krishanthakumar Ganeshan sworn January 24, 2025 [**Ganeshan Affidavit**] at paras. 8-14, RAR, Vol. 5, Tab 38, pp. 2352-2367; ISN Supervised Injection Site Original Notes (Redacted), AJSR, Tab 24, pp. 2407-2535.

[10] Affidavit of Dr. Nancy Guerra affirmed January 23, 2025 [**Guerra Affidavit**] at paras. 29-30, RAR, Vol. 5, Tab 36, pp. 2169-2170, Exhibit C, pp. 2203-2299.

[11] Guerra Affidavit, RAR, Vol. 5, Tab 36, Exhibit C, pp. 2209, 2211, 2213, 2216, 2222, 2224, 2240, 2243-2244, 2249, 2253-4, 2256.

healthy development of children and youth and should be minimized as much as possible.[12] Dr. Guerra was unequivocal that children and youth should be separated from SCSs in order to reduce their exposure to multiple forms of antisocial and socially disruptive behaviour.[13]

12. The Applicants argue that Ontario has not proven to a scientific standard that SCSs cause crime. The Court should reject this argument. Ontario is not required to prove to a scientific standard that SCSs cause crime or public disorder. Whether SCSs cause disorder or simply concentrate it at a specific location, it is indisputable that public disorder occurs repeatedly in front of and in the immediate vicinity of SCSs across the Province. The eyewitness accounts, photo and video evidence, and incident reports from many different SCSs across Ontario and indeed Canada are consistent in reporting the same kinds of harmful, antisocial behaviours.

13. The Applicants attempt to minimize the numerous and disturbing eyewitness accounts of public disorder observed by neighbours and families near SCSs as "anecdotal evidence from a handful of individuals".[14] To the mother whose young son picked up a bag of pink fentanyl that looked like candy, or to the children who were confronted by a naked man while they were playing in front of their home, or to the parents whose child was rushed to the emergency room after poking himself with a used needle discarded in the school playground, or to the family and neighbours of the local mother who was fatally shot near an SCS in the crossfire of a drug deal gone wrong,[15] these distressing and even horrifying incidents are not mere anecdotes.

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[12] Guerra Affidavit at paras. 27-28, 39, RAR, Vol. 5, Tab 36, pp. 2168-2169, 2172.
[13] Guerra Affidavit at paras. 6(c)-6(d), 28, RAR, Vol. 5, Tab 36, pp. 2160, 2169.
[14] Applicants' factum at para. 74.
[15] Affidavit of Ashley Kea sworn January 14, 2025 [**Kea Affidavit**] at paras. 15-24, RAR, Vol. 2, Tab 7, pp. 601-2, Exhibit A, p. 612; Affidavit of Susan Khazaeli sworn January 24, 2025 [**Khazaeli Affidavit**] at paras. 18-19, RAR, Vol. 3, Tab 24, pp. 1443-4; Affidavit of Derek Finkle sworn January 14, 2025 [**Finkle Affidavit**] at para. 85, RAR, Vol. 1, Tab 5, p. 106; Kea Affidavit at para. 41, RAR, Vol. 2, Tab 7, p. 606; Affidavit of Tara Riley sworn January 14, 2025 [**Riley Affidavit**] at para. 68, RAR, Vol. 2, Tab 8, p. 637; Affidavit of Nigel Fick sworn January 14, 2025 [**Fick Affidavit**] at para. 16, RAR, Vol. 2, Tab 9, p. 643; Affidavit of Brook Coatsworth sworn January 14, 2025 [**Coatsworth Affidavit**] at para. 16, RAR, Vol. 2, Tab 11, p. 685; Affidavit of Andrea Nickel sworn January 21, 2025 [**Nickel Affidavit**] at paras. 9, 18, RAR, Vol. 2, Tab 13, pp. 751, 754.

14. The record demonstrates that it was legitimate for the Legislature to conclude that there was a reasoned apprehension of harm in permitting children and youth at schools and daycares in Ontario to continue to be exposed to the public disorder that is concentrated immediately around SCSs. Whether or not this evidence meets the scientific standard of causation is beside the point: it plainly meets the constitutional standard of a reasoned apprehension of harm. Nothing further is required.

15. The Applicants assert that the Act "mandates the closure of at least ten SCSs".[16] This characterization of the Act is incorrect. Section 2 of the Act is a zoning rule. It separates SCSs from immediate proximity to school and daycares, but does not otherwise prohibit SCSs, limit their number, or regulate any of their activities. Any SCS currently within a buffer zone is free under the Act to relocate to a permissible location.

16. Ontario's witness Mr. McGarry produced maps of ten Ontario cities that indicate the number and location of schools and daycares in each city and the extent of the 200m buffer zone around each school and daycare. Throughout most of these cities, the areas that fall within the buffer zone are only a small proportion of the available city space. These maps are attached as Appendix A to this factum.

17. For Kitchener, Kingston, St. Catherines, Thunder Bay, Peterborough and other cities in Ontario, there is no evidence and no reason to believe that any SCS that currently operates within the buffer zone would have any difficulty relocating to a location outside the buffer zone. Nor is there any evidence that any person who wanted to establish a new SCS in these cities would have any difficulty siting that SCS at a location that is permissible under the Act.

18. In Toronto, Canada's most populous city, space in the crowded downtown is scarce. Even so, as the maps demonstrate, there are areas within downtown Toronto in which it remains permissible under the Act to operate an SCS. Indeed, several Toronto SCSs will continue to operate in compliance with the Act after April 1, 2025. Even if some Toronto sites must close or move, Toronto and Ontario will continue to have among the highest numbers of SCSs per capita in the world.

[16] Applicants' factum at para. 40.

19. Bill Sinclair, the CEO of TNG, evidently does not wish to relocate KMOPS from its current address. But the Court should view with skepticism Mr. Sinclair's assertions that moving KMOPS to another address in downtown Toronto is impossible or unworkable. There is no evidence that TNG has made any efforts to find a new location so that KMOPS can continue to offer supervised consumption services at an address that is permissible under the Act.

20. In any event, the Legislature was entitled to balance the interests of SCS clients in having convenient nearby access to SCSs with the legitimate interests of children and youth in attending schools and daycares without harmful exposure to behaviours such as drug use, drug dealing, public intoxication, discarding of drug paraphernalia, and other related antisocial conduct. The Constitution does not require that the protection of children and youth must be subordinated to the convenience of SCS clients in choosing from among many different SCSs across downtown Toronto.

21. The Applicants and their supporting interveners also overstate the impact of the Act. The Act does not regulate the provision of clean drug paraphernalia, the safe disposal of used needles, drug checking, or the provision or administration of naloxone or oxygen to a person experiencing an overdose. These harm reduction measures are not prohibited by the Act at any location.

22. The Applicants' constitutional arguments must be rejected. The buffer zone does not infringe s. 7 of the *Charter*. It does not deprive anyone of liberty because it creates no offences and imposes no punishment. Nor does it deprive anyone of life or security of the person. There is no evidence that SCSs must be located within 200m of a school or daycare to provide health benefits to their clients. The *Charter* does not guarantee that individuals will not have to travel to access a health facility, and, in any event, there is no evidence that SCS clients cannot reasonably access locations within a city that are at least 200m from a school or daycare.

23. The Supreme Court's 2011 decision in *PHS,*[17] relied on by the Applicants, is distinguishable. *PHS* considered the validity of criminal prohibitions backed by sentences of imprisonment, rather than

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

zoning rules regulating the location of SCSs. The Supreme Court was explicit that its decision was "not a licence for injection drug users to possess drugs wherever and whenever they wish".[18]

24. In the alternative, the buffer zone is consistent with fundamental justice. The purpose of the buffer zone is to reduce the exposure of children and youth to the public disorder that is concentrated near SCSs. When examined against this purpose, it is clear that the impact of the buffer zone is not arbitrary, overbroad, or grossly disproportionate.

25. Neither does the buffer zone discriminate contrary to *Charter* s. 15. The law does not draw a distinction, on its face or in its impact, based on any protected ground. The Applicants have not shown that the law impacts people with disabilities differently or disproportionately as compared to its impact on people without disabilities.

26. If it were necessary to do so, any violation of *Charter* ss. 7 or 15 would be justified under *Charter* s. 1. The Legislature's objective of reducing this harm is pressing and substantial, and the buffer zone is rationally connected, minimally impairing, and proportionate.

27. Moreover, the Act is *intra vires* the Province. It is within Ontario's legislative jurisdiction to impose zoning restrictions on health facilities and to require provincial approval for municipal activities. The Act is not a colourable attempt to enact criminal law, as it does not create a penalty and therefore does not meet the test for a valid criminal prohibition. Nor is there any conflict between the federal *CDSA* and the provincial Act.

28. Finally, the Applicants have not satisfied the test for interim injunctive relief. They have not met the high threshold of demonstrating that this is one of the "clear cases" in which an Act of the Legislature should be suspended pending the Court's decision. The balance of convenience favours the protection of vulnerable children and youth from further exposure to the public disorder concentrated near SCSs.

[18] *PHS* at para. 140.

PART II – FACTS

A. Harmful behaviour is concentrated around SCSs

a) Public disorder concentrates near SCSs

29. Many people who live or work near SCSs, or whose children attend schools near SCSs, gave evidence detailing their experiences and concerns with drug trafficking, drug use, public intoxication, aggression and violence, and discarded drugs and paraphernalia concentrated in proximity to SCSs.

30. As outlined below, these witnesses recounted a myriad of harmful and disruptive behaviours observed in the immediate vicinity of SCSs, often documented with photos and videos. They highlighted the negative impact this disorder has had on their communities and children. Their accounts are numerous and consistent across different locations and cities, as well as consistent with SCS incident reports, surveys, and other eyewitness accounts. Their evidence is that they began observing this concerning behaviour, or saw it increase significantly, only after the SCSs were established. One affiant even detailed how the public disorder subsequently decreased when the SCS in his neighborhood closed.[19]

31. Ontario's expert evidence also confirmed that crime and public disorder are concentrated in the immediate vicinity of SCSs and that exposure to this public disorder is particularly detrimental to children and youth.

i. Drug trafficking

32. Dr. Ratcliffe, a leading expert in environmental criminology and the only criminologist to provide evidence in this case, explained that it is well-evidenced in the criminology literature that certain facilities and locations, such as SCSs, will attract crime and disorder.[20] Criminological and economic theories, supported by observational data, show that drug dealers target areas with high demand. Because SCS users must obtain their illicit drugs from dealers, this leads to an increase in

[19] Affidavit of Michael Wilson sworn January 23, 2025 [**Wilson Affidavit**] at paras. 49-52, RAR, Vol. 4, Tab 28, p. 1570.
[20] Ratcliffe Affidavit at para. 34, RAR, Vol. 5, Tab 35, p. 2100.

illegal drug trafficking around these sites. SCSs, due to their concentration of drug users and lack of law enforcement presence (discussed more below), thus become prime locations for this activity.[21]

33. Dr. Ratcliffe also explained that the crime and disorder attracted to these sites will concentrate at or in the immediate vicinity of them, with the concentration dissipating with increasing distance.[22] He explained that, in general, crime and disorder concentrate within a couple of city blocks (usually less than 200m) of criminogenic locations like SCSs.[23]

34. Dr. Guerra, drawing on her decades of experience working with over 100 inner-city communities, further corroborated this view, explaining that criminal activity and public disorder are typically concentrated in specific locations, such as street corners or abandoned properties, rather than equally distributed across entire neighborhoods.[24] Drug dealers, she explained, tend to seek out locations where users congregate and where police presence is minimal.[25]

35. Dr. Ratcliffe detailed how street-level drug markets are a significant driver of physical and public disorder in neighborhoods, contributing to an overall decline in community safety.[26] He explained that when drug dealers operate in these specific locations, and as the number of dealers increases, so too does the likelihood of violent confrontations.[27] A tragic example of this danger occurred outside of the South Riverdale SCS in Toronto in 2023, where a local mother was fatally shot during an altercation between drug dealers.[28]

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[21] Ratcliffe Affidavit at para. 10, RAR, Vol. 5, Tab 35, p. 2090.
[22] Ratcliffe Affidavit at para. 34, RAR, Vol. 5, Tab 35, p. 2100; See also Cross-examination of Dr. Nancy Guerra dated February 17, 2025 [**Guerra Cross**], AJSR, Tab 21, pp. 2258-2260, 2268-2269, 2284-2286, 2317-2319.
[23] Ratcliffe Affidavit at paras. 34-35, RAR, Vol. 5, Tab 35, p. 2100.
[24] Guerra Cross, AJSR, Tab 21, pp. 2258-2260
[25] Guerra Cross, AJSR, Tab 21, pp. 2258-2260, 2268-2269, 2284-2286, 2317-2319.
[26] Ratcliffe Affidavit at para. 24, RAR, Vol. 5, Tab 35, p. 2095.
[27] Ratcliffe Affidavit at para. 34, RAR, Vol. 5, Tab 35, pp 2095-2096.
[28] Cross-Examination of Derek Finkle dated February 21, 2025 [**Finkle Cross**], AJSR, Tab 8, pp. 978, 1021, 1030, 1038, 1050; Finkle Affidavit at paras. 85-6, RAR, Vol. 1, Tab 5, p. 106; Kea Affidavit at para. 41, RAR, Vol. 2, Tab 7, p. 606; Riley Affidavit at para. 68, RAR, Vol. 2, Tab 8, p. 637; Fick Affidavit at para. 16, RAR, Vol. 2, Tab 9, p. 643; Coatsworth Affidavit at para. 16, RAR, Vol. 2, Tab 11, p. 685; Nickel Affidavit at paras. 9, 18, RAR, Vol. 2, Tab 13, pp. 751, 754. See also Ratcliffe Affidavit at para. 22, RAR, Vol. 5, Tab 35, pp. 2094-2095; Guerra Affidavit at para. 34, RAR, Vol. 5, Tab 36, pp. 2170-2171.

36. Many eyewitnesses gave evidence of drug trafficking in close proximity to SCSs,[29] and observed that this problem began or substantially worsened only after the SCSs began operating.[30]

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[29] Cross-Examination of Krishanthakumar Ganeshan dated February 20, 2025 [**Ganeshan Cross**], Tab 22, pp. 2362-63, 2372-74; Cross-Examination of Jennifer Hilsden dated February 13, 2025 [**Hilsden Cross**] AJSR, Tab 10, p. 1148; Cross-Examination of Anthony Aarts dated January 23, 2025 [**Aarts Cross**], AJSR, Tab 5, pp. 782-3; Cross-Examination of Anya Fraser dated February 10, 2025 [**Fraser Cross]**, AJSR, Tab 13, p. 1305-6; Cross-Examination of Michael Wilson dated January 23, 2025 [**Wilson Cross**], AJSR, Tab 14, pp. 1353, 1357-59; Cross-Examination of Stefan Baranski dated February 10, 2025 [**Baranski Cross**], AJSR, Tab 6, pp. 832-34; Affidavit of Anthony Aarts sworn January 23, 2025 [**Aarts Affidavit**] at para. 11, RAR, Vol. 1, Tab 1, p. 5, Exhibit B, pp. 16-48; Affidavit of Stefan Baranski sworn January 24, 2025 [**Baranski Affidavit**] at para. 12, RAR, Vol. 1, Tab 2, p. 61; Shepherd Affidavit at para. 10, RAR, Vol. 1, Tab 4, pp. 81-2; Finkle Affidavit at paras. 35, 48, 107, RAR, Vol. 1, Tab 5, pp. 95, 99, 111; Nickel Affidavit at paras. 10, 20-23, 64, RAR, Vol. 2, Tab 13, pp. 752, 754-5, 762-3; Kea Affidavit at paras. 33, 47, RAR, Vol. 2, Tab 7, pp. 604, 607, Exhibits A-B, pp. 611-14; Riley Affidavit at paras. 32-33, 39, 46, RAR, Vol. 2, Tab 8, pp. 95-6, 98; Fick Affidavit at paras. 20-22, RAR, Vol. 2, Tab 9, p. 644, Exhibit A, p. 647; Affidavit of Jennifer Hilsden sworn January 14, 2025 [**Hilsden Affidavit**] at para. 12, RAR, Vol. 3, Tab 14, p. 1063, Exhibit E, p. 1075, Exhibit G, pp. 1079-80; Affidavit of Diane Chester sworn January 14, 2025 [**Chester Affidavit**] at para. 11, RAR, Vol. 3, Tab 15, pp. 1084-5; Affidavit of Lindsay Kerr sworn January 22, 2025 [**Kerr Affidavit**] at para. 15, RAR, Vol. 3, Tab 16, pp. 1139-41; Affidavit of Lois Dellert sworn January 24, 2025 [**Dellert Affidavit**] at para. 7, RAR, Vol. 3, Tab 19, pp. 1213-4; Affidavit of Jessica Stoeten affirmed January 23, 2025 [**Stoeten Affidavit**] at para. 10, RAR, Vol. 3, Tab 21, p. 1399; Affidavit of Pam Benoit sworn January 23, 2025 [**Benoit Affidavit**] at paras. 9-12, RAR, Vol. 3, Tab 22, pp. 1406-7; Khazaeli Affidavit at para. 12, RAR, Vol. 3, Tab 24, p. 144; Affidavit of Anya Fraser affirmed January 24, 2025 [**Fraser Affidavit**] at para. 7, RAR, Vol. 3, Tab 25, pp. 1470-71; Affidavit of Stéphanie Plante affirmed January 23, 2025 [**Plante Affidavit**] at para. 20, RAR, Vol. 3, Tab 26, p. 1522; Affidavit of John Tobin affirmed January 24, 2025 [**Tobin Affidavit**] paras. 22-23, RAR, Vol. 3, Tab 27, pp. 1553-4; Wilson Affidavit at paras. 22-23, 35-36, 42, 51, 53, RAR, Vol. 4, Tab 28, pp. 1565-71; Affidavit of Chantal Gagnon affirmed January 24, 2025 [**Gagnon Affidavit**] at para. 8, RAR, Vol. 4, Tab 29, pp. 1589-1590; Affidavit of Dr. Sharon Koivu affirmed January 24, 2025 [**Koivu Affidavit**] at para. 68, RAR, Vol. 4, Tab 32, p. 1884; Ganeshan Affidavit at paras. 9-11, RAR, Vol. 5, Tab 38, pp. 2357-9, Exhibit K, p. 2389.

[30] Aarts Affidavit at paras. 8, 13, RAR, Vol. 1, Tab 1, pp. 4-6, Exhibit A, pp. 9-14, Exhibit C, pp. 48-56; Baranski Affidavit at para. 10, RAR, Vol. 1, Tab 2, pp. 60-61; Shepherd Affidavit at para. 9, RAR, Vol. 1, Tab 4, p. 81; Finkle Affidavit at paras. 17-18, 32, RAR, Vol. 1, Tab 5, pp. 91, 95, Exhibit E, pp. 193-220; Supplementary Affidavit of Derek Finkle affirmed January 22, 2025 [**Finkle Supp Affidavit**] at para. 4c, RAR, Vol 2, Tab 6, p. 592; Kea Affidavit at para. 57, RAR, Vol. 2, Tab 7, p. 609; Fick Affidavit at paras. 6-7, RAR, Vol. 2, Tab 9, p. 641; Affidavit of Samantha Spence sworn January 14, 2025 [**Spence Affidavit**] at paras. 11, 15-16, 34, RAR, Vol. 2, Tab 10, pp. 651-3, 656; Affidavit of Stephen Tattle sworn January 15, 2025 [**Tattle Affidavit**] at paras. 12-13, RAR, Vol. 2, Tab 12, p. 733; Nickel Affidavit at paras. 8, 20, RAR, Vol. 2, Tab 13, pp. 751, 754, Exhibit B, pp. 779-786, Exhibit C, p. 788, Exhibit D p. 815; Coatsworth Affidavit at paras. 11-19, RAR, Vol. 2, Tab 11, pp. 684-6; Hilsden Affidavit at paras. 8-19, RAR, Vol. 3, Tab 14, pp. 1062-4, Exhibits C-F, pp. 1069-1077; Chester Affidavit at paras. 10-11, RAR, Vol. 3, Tab 15, pp. 1084-5; Kerr Affidavit at paras. 15-18, RAR, Vol. 3, Tab 16, pp. 1139-1142; Dellert Affidavit at paras. 5-8, RAR, Vol. 3, Tab 19, pp. 1213-4; Affidavit of Robert Bratina sworn January 22, 2025 [**Bratina Affidavit**] at para. 14, RAR, Vol. 3, Tab 20, p. 1390; Benoit Affidavit at para. 9, RAR, Vol. 3, Tab 22, p. 1406; Affidavit of Calla Barnett affirmed January 23, 2025 [**Barnett Affidavit**] at paras. 6-8, 12, RAR, Vol. 3, Tab 23, pp. 1433-34; Fraser Affidavit at paras. 6, 7-10, 13, 16, RAR, Vol. 3, Tab 25, pp. 1467-1471, 1475-7, Exhibits A-B, pp. 1478-1494; Tobin Affidavit at paras. 6-8, RAR, Vol. 3, Tab 27, pp. 1549-1550; Affidavit of Kevin Vuong sworn January 24, 2025 [**Vuong Affidavit**] at para. 7, RAR, Vol. 3, Tab 17, p. 1172; Affidavit of Curtis Priest sworn January 24, 2025 [**Priest Affidavit**] at paras. 10-15, RAR, Vol. 3, Tab 18, pp. 1191-2; Stoeten Affidavit at paras 9-11, RAR, Vol. 3, Tab 21, pp. 1398-1401; Khazaeli Affidavit at paras. 7-12, RAR, Vol. 3, Tab 24, pp. 1439-1441, Exhibit A, p. 1448; Plante Affidavit at para. 9, RAR, Vol. 3, Tab 26, p. 1518; Wilson Affidavit at paras. 22, 25-26, 30, 49, RAR, Vol. 4, Tab 28, pp.

37. Angela Nickel testified that, since the South Riverdale SCS opened, she has witnessed hundreds of drug deals in the laneway directly behind the site, on Queen Street in front of it, and in the parkette beside it. She witnessed some of these incidents while walking with her young son. For example, in August 2023, she witnessed drug deals occurring in front of the SCS. The SCS's security guards, standing less than 10 meters away, did nothing.[31]

38. Susan Khazaeli recalled how she has observed drug dealing routinely taking place on the cul-de-sac directly in front of an SCS in Ottawa and on the abutting residential sidewalks. She detailed how drug dealing and consumption is so incessant in the area directly outside the SCS that it forced the closure of a pedestrian access to the nearby shopping plaza. Drug dealing is so ubiquitous that she can now recognize who the drug dealers are. She has also observed the dealers carrying weapons, including one instance where a man pulled an 8-inch long knife from his backpack.[32]

39. Ashley Kea explained that one could not enter the Riverdale Community Health Centre without walking past people buying and selling drugs.[33] She also recalled that in or about December 2024, over a year after the fatal shooting outside the South Riverdale SCS, she and her son witnessed a drug deal while passing another SCS at 277 Victora Street. Her son had a panic attack and expressed concern for his safety and not wanting to be shot.[34]

40. Mike Wilson recalled how he witnessed many drug deals take place directly outside the site, including in plain sight of the SCS operators. He recounted that he was often asked if he wanted to buy drugs or if he had drugs when he walked by the SCS, and that he would cross the street to avoid

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1565-6, 1570, Exhibit A, pp. 1574-7; Gagnon Affidavit at para. 7, RAR, Vol. 4, Tab 29, p. 1589, Exhibit C, pp. 1613-1626, Exhibit E, pp. 1632-1648; Hilsden Cross, AJSR, Tab 10, p. 1145; Cross-Examination of Kevin Vuong dated February 19, 2025 [**Vuong Cross**], AJSR, Tab 11, p. 1185; Cross-Examination of Robert Bratina dated February 10, 2025 [**Bratina Cross**], AJSR, Tab 12, p. 1259; Fraser Cross, AJSR, Tab 13, p. 1287; Wilson Cross, AJSR, Tab 14, pp. 1344-6; Ganeshan Cross, AJSR, Tab 22, p. 2373; Aarts Cross, AJSR, Tab 5, p. 770; Finkle Cross, AJSR, Tab 8, pp. 956, 1048.

[31] Nickel Affidavit at paras. 20-23, RAR, Vol. 2, Tab 13, pp. 754-755.

[32] Khazaeli Affidavit at para. 12, RAR, Vol. 3, Tab 24, p. 1441.

[33] Kea Affidavit at para. 33, RAR, Vol. 2, Tab 7, p. 604.

[34] Kea Affidavit at para. 47, RAR, Vol. 2, Tab 7, p. 607.

what felt like a dangerous situation.[35] Mr. Wilson also detailed how, when this SCS relocated out of his neighbourhood, drug trafficking and the associated public disorder largely left with it.[36]

ii. Public drug use

41. Multiple affiants provided evidence, supported by photos and videos, documenting the public consumption of illicit drugs in the immediate vicinity of SCSs.[37] They recounted witnessing numerous instances of injection and inhalation concentrated outside the SCSs, or in the nearby laneways, parks and schoolyards. Their evidence is that they began observing this activity, or saw it significantly increase, only after the SCSs were established.

42. Lois Dellert, who lives a half a block from the Parkdale Queen West SCS, recalled one example on August 18, 2024 when, while in her backyard, she observed and overheard what she believed to be a drug deal in the neighbouring laneway. After the dealers left, she observed an individual who she believed to be one of the purchasers smoking out of a crack pipe. She was standing at her opened gate when the man in the laneway walked up and confronted her, which left her shaken.[38]

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[35] Wilson Affidavit at para. 35, RAR, Vol. 4, Tab 28, pp. 1567-1568.
[36] Wilson Affidavit at paras. 49-52, RAR, Vol. 4, Tab 28, p. 1570.
[37] Ganeshan Cross, AJSR, Tab 22, pp. 2362-63, 2371-74, 2379; Hilsden Cross. AJSR, Tab 10, p. 1146; Aarts Cross, AJSR, Tab 5, pp. 770, 773-4, 776-7, 788, 793, 798; Fraser Cross, AJSR, Tab 13, pp. 1290-92, 1305-6, 1315-18; Wilson Cross, AJSR, Tab 14, pp. 1351-3; Bratina Cross, AJSR, Tab 12, pp. 1247, 1257, 1266-7; Baranski Cross, AJSR, Tab 6, p. 832; Aarts Affidavit at para. 10, RAR, Vol. 1, Tab 1, p. 5; Baranski Affidavit at para. 12, RAR, Vol. 1, Tab 2, p. 61; Affidavit of Mike Shepherd sworn January 24, 2025 [**Shepherd Affidavit**] at para. 9, RAR, Vol. 1, Tab 4, p. 81; Finkle Affidavit at paras. 35, 51, 52, 72, RAR, Vol. 1, Tab 5, pp. 95, 99, 104; Coatsworth Affidavit at para. 12, RAR, Vol. 2, Tab 11, p. 685; Tattle Affidavit at para. 14, RAR, Vol. 2, Tab 12, p. 733; Nickel Affidavit at para. 64, RAR, Vol. 2, Tab 13, pp. 762-3; Hilsden Affidavit at para. 12, RAR, Vol. 3, Tab 14, p. 1063; Chester Affidavit at para. 11, RAR, Vol. 3, Tab 15, pp. 1084-5; Kerr Affidavit at para. 15, RAR, Vol. 3, Tab 16, pp. 1139-1141; Priest Affidavit at para. 13, RAR, Vol. 3, Tab 18, p. 1191; Dellert Affidavit at paras. 7, 11, RAR, Vol. 3, Tab 19, pp. 1213-5; Bratina Affidavit at para. 11, RAR, Vol. 3, Tab 20, p. 1389; Stoeten Affidavit at para. 10, RAR, Vol. 3, Tab 21, p. 1399; Benoit Affidavit at paras. 9, 12, 14, RAR, Vol. 3, Tab 22, pp. 1406-1408; Khazaeli Affidavit at paras. 7, 11, 13, RAR, Vol. 3, Tab 24, pp. 1439-1442; Fraser Affidavit at paras. 6, 7, 9, 10, 13, RAR, Vol. 3, Tab 25, pp. 1467-1471, 1475; Plante Affidavit at paras. 14-15, 20, 23-24, RAR, Vol. 3, Tab 26, pp. 1519-20, 1522-3; Tobin Affidavit at para. 29, RAR, Vol. 3, Tab 27, pp. 1554-5; Wilson Affidavit at paras. 31-34, 42, 44, 51, 53, RAR, Vol. 4, Tab 28, pp. 1567, 1569, 1570, 1571; Gagnon Affidavit at paras. 8, 9b, 14, 17, RAR, Vol. 4, Tab 29, pp. 1589-1593; Koivu Affidavit at para. 63, RAR, Vol. 4, Tab 32, p. 1883; Ganeshan Affidavit at para. 8, RAR, Vol. 5, Tab 38, pp. 2352-6.
[38] Dellert Affidavit at para. 11(t), RAR, Vol. 3, Tab 19, p. 1220, Exhibit E, p. 1256.

43. Mike Wilson recounted how he would witness individuals purchasing drugs outside of an SCS in Vancouver, and how he observed these same individuals enter the SCS to gather drug paraphernalia and then consume drugs in the public areas immediately around the site.[39]

44. Andrea Nickel explained that, in June 2023, Morse Primary school, which is a block from the South Riverdale SCS, had to institute a lockdown because somebody was using drugs in the school yard during school hours. The children were told to remain in their classrooms, and nobody was permitted to enter or leave the school. She recounted how police were called and the person using drugs reluctantly moved to just outside the school fence, where they continued to use drugs.[40]

45. Mr. Ganeshan's team observed multiple instances of what appeared to be hand-to-hand drug transactions of apparent narcotics outside of SCSs that were then injected or smoked by purchasers in the public area around the sites.[41]

46. As Dr. Ratcliffe explained, public drug use is highly concentrated around locations where drugs are dealt. Drug users are drawn to SCSs because they are locations where drug dealing is known to be available. This is true even of users who do not seek to use the SCS for supervised consumption.[42]

47. Dr. Ratcliffe's explanation is consistent with KMOPS's own records, which state that many of the site's clients choose to consume drugs outside, instead of injecting inside under supervision, because they want to enjoy the nice weather in the warmer months.[43] In fact, KMOPS offers a "drug packing" service whereby clients bring in drugs and use the SCS's equipment to prepare the drugs for future consumption offsite, taking drugs "to go".[44] KMOPS's policies do not include directing staff to call police if they see people using illegal drugs outside the site.[45]

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[39] Wilson Affidavit at para. 35, RAR, Vol. 4, Tab 28, p. 1567-1568; Fraser Cross, AJSR, Tab 13, p. 1357-1359.
[40] Nickel Affidavit at paras. 30-31, RAR, Vol. 2, Tab 13, p. 756.
[41] Ganeshan Affidavit at paras. 8-9, RAR, Vol. 5, Tab 38, pp. 2352-2357.
[42] Ratcliffe Affidavit at para. 28, RAR, Vol. 5, Tab 35, p. 2096-2097.
[43] Sinclair Cross, AJSR, Tab 1, pp. 52-65.
[44] Sinclair Cross, AJSR, Tab 1, pp. 67-68.
[45] Sinclair Cross, AJSR, Tab 1, p. 49.

48. The Applicants assert that SCSs reduce public drug injection, arguing that "In a cohort study of SCS clients in Toronto, accessing an SCS within the past 6 months was associated with a 50% reduction in the prevalence of high-frequency public injecting."[46] However, as Dr. Werb admitted, this study examined the correlation between self-reported answers to a survey asking drug users about their past SCS attendance and about their past public drug use.[47] People who self-reported that they used an SCS in the past were less prevalent in the group who self-reported that they injected in a public place "always or most of the time."[48] This correlation does not and cannot demonstrate that SCS use causes a reduction in public injecting.[49] Dr. Bayoumi also relies on correlational studies based on self-reported answers by drug users to surveys about their past public drug use.[50]

49. Dr. Koivu, a specialist in addictions medicine, explained that most users of illicit fentanyl consume their drugs by inhalation, but that only one SCS in Ontario offers supervised inhalation.[51] Even if SCSs reduce public injecting, which has not been proven, they clearly do not reduce public inhalation. Several eyewitnesses observed public inhalation of drugs in close proximity to SCSs.[52]

[46] Applicants' factum at para. 72.
[47] Cross-Examination of Dr. Daniel Werb dated February 13, 2025 [**Werb Cross**], AJSR, Tab 3, pp. 680-682.
[48] Werb Cross, AJSR, Tab 3, p. 682.
[49] Affidavit of Dr. Nathaniel Day sworn January 24, 2025 [**Day Affidavit**] at paras. 11-15, 19-20, RAR, Vol. 4, Tab 33, pp. 1940-43; Affidavit of Dr. Julian Somers affirmed January 24, 2025 [**Somers Affidavit**] at paras 27, RAR, Vol. 4, Tab 33, pp. 1803-4, Somers Affidavit at para. 51, RAR, Vol. 4, Tab 31, pp 1810-1811; Ratcliffe Affidavit at paras. 40-41, RAR, Vol. 5, Tab 35, p. 2103; Affidavit of Dr. Robert Platt sworn January 24, 2025 [**Platt Affidavit**] at paras. 31-43, RAR, Vol. 5, Tab 34, pp. 1969-1974.
[50] Cross-Examination of Dr. Ahmed Bayoumi dated February 12, 2025 [**Bayoumi Cross**], AJSR, Tab 2, pp. 265-266, 275-276.
[51] Koivu Affidavit at paras. 26, 119-129, RAR, Vol. 4, Tab 32, pp. 1873-4, 1897-1899.
[52] Ganeshan Affidavit at paras. 8a-d, 9, RAR, Vol. 5, Tab 38, pp. 2352-55, 2357, Exhibits B-E, pp. 2370-77; Dellert Affidavit at paras. 9, 11a, 11b, 11i 11k, 11m, 11o, RAR, Vol. 3, Tab 19, pp. 1214-8, Exhibit A, pp. 1232-6; Aarts Affidavit at para. 12, RAR, Vol. 1, Tab 1, p. 5; Nickel Affidavit, RAR, Vol. 2, Tab 13, Exhibit B, pp 779-786; Wilson Affidavit at para. 32, RAR, Vol. 4, Tab 28, p. 1567; Wilson Affidavit at RAR, Vol. 4, Tab 28, Exhibit B, p. 1579; Koivu Affidavit at para. 63, RAR, Vol. 4, Tab 32, p. 1883.

iii. Public intoxication

50. Many eyewitnesses gave evidence, supported by photos and videos, describing individuals who appear to be under the influence of illicit drugs in the immediate vicinity of SCSs.[53] They began observing this behaviour, or saw it significantly increase, only after the SCSs were established.

51. For example, Anya Fraser explained that an SCS near her home in Ottawa requires their clients to leave immediately after consuming drugs, which results in intoxicated clients wandering around the area unsupervised.[54] She explained how local residents and businesses end up supervising these clients when they are in their most vulnerable and volatile state. She and her neighbours regularly respond to SCS clients who are having a "bad trip" by trying to look out for their wellness while also balancing trying to keep themselves and their children safe from often erratic behaviour.[55] She recalled one instance where her neighbour witnessed somebody leaving an SCS and collapsing less than 100 meters from the door but staff did not come out to help him.[56]

52. Mike Shepherd, a restaurant owner in Kensington Market, explained that on two separate occasions in the last year he had to personally administer naloxone to reverse overdoses that were occurring outside of KMOPS.[57]

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[53] See footnote 52. See also Vuong Cross, AJSR, Tab 11, pp. 1199-1200, 1223-4; Hilsden Cross, AJSR, Tab 10, p. 1136; Cross-Examination of Andrea Nickel dated February 20, 2025, AJSR, Tab 9, p. 1108; Aarts Cross, AJSR, Tab 5, pp. 772-3; Fraser Cross, AJSR, Tab 13, pp. 1295-7, 1306-9; Wilson Cross, AJSR, Tab 14, pp. 1354, 1362-1363; Bratina Cross, AJSR, Tab 12, pp. 1264-5; Baranski Cross, AJSR, Tab 6, p. 834; Kea Affidavit at paras. 14, 46, RAR, Vol. 2, Tab 7, pp. 601, 607; Fick Affidavit at para. 11, RAR, Vol. 2, Tab 9, p. 642; Spence Affidavit at para. 15, RAR, Vol. 2, Tab 10, pp. 652-3; Coatsworth Affidavit at para. 15, RAR, Vol. 2, Tab 11, p. 685; Hilsden Affidavit at para. 12, RAR, Vol. 3, Tab 14, p. 1063; Kerr Affidavit at para. 15, RAR, Vol. 3, Tab 16, pp. 1139-1141; Vuong Affidavit at para. 8, RAR, Vol. 3, Tab 17, p. 1172; Priest Affidavit at para. 20, RAR, Vol. 3, Tab 18, p. 1194; Dellert Affidavit at paras. 7, 11, RAR, Vol. 3, Tab 19, pp. 1213-1221; Stoeten Affidavit at para. 9, RAR, Vol. 3, Tab 21, pp. 1398-1399; Benoit Affidavit at para. 12, RAR, Vol. 3, Tab 22, p. 1407; Barnett Affidavit at paras. 9, 14, RAR, Vol. 3, Tab 23, pp. 1434-5; Khazaeli Affidavit at paras. 9-11, RAR, Vol. 3, Tab 24, pp. 1440-1441; Fraser Affidavit at para. 11, RAR, Vol. 3, Tab 25, pp. 1471-4; Plante Affidavit at paras. 19-21, RAR, Vol. 3, Tab 26, p. 1522; Wilson Affidavit at paras. 21, 39, 42, 45, 50, 53, RAR, Vol. 4, Tab 28, pp. 1565, 1568-1571; Gagnon Affidavit at paras. 8, 9a, 14, RAR, Vol. 4, Tab 29, pp. 1589-1592; Ganeshan Affidavit at para. 13, RAR, Vol. 5, Tab 38, pp. 2361-63.

[54] Fraser Affidavit at para. 8, RAR, Vol. 3, Tab 25, p. 1470; Fraser Cross, AJSR, Tab 13, pp. 1302-1303.

[55] Fraser Affidavit at paras. 8-9, RAR, Vol. 3, Tab 25, p. 1470.

[56] Fraser Cross, AJSR, Tab 13, pp. 1302-1303.

[57] Shepherd Affidavit at para. 13, RAR, Vol. 1, Tab 4, pp. 82-83.

53. Affiants also described individuals passed out on the sidewalks, in the laneways, and on private property in the immediate vicinity of SCSs.[58] For example, Ms. Fraser recalled how she was leaving her house to find an intoxicated man sprawled out on her driveway. When she asked him politely to move so that she could exit, he grudgingly got up, swore at her, and kicked her car.[59]

54. Many affiants recounted numerous instances of disorderly behaviour in the vicinity of the SCSs by individuals who appear to be intoxicated. These included instances of public urination and defecation, public nudity, sexual activity including masturbation, thefts and break-ins, vandalism, and erratic behaviour including yelling and outbursts.[60]

55. As Dr. Koivu explained, clients who leave an SCS after using its services continue to be under the effects of the drugs they have consumed.[61] While some SCSs allow clients to stay for 30-60 minutes after injecting, which may reduce the immediate risk of overdose, the intoxicating effects of drugs can persist well beyond this short window.[62] For example, some drugs taken intravenously can have effects lasting 4-6 hours, with some opioid effects lasting significantly longer in duration. Methamphetamine-induced psychosis effects can last days to weeks after consumption.[63] Opioids cause mental confusion and fatigue, while methamphetamines can lead to aggression, agitation, or even violent behavior.[64]

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[58] Kea Affidavit at paras. 14, 20, RAR, Vol. 2, Tab 7, pp. 601-2; Nickel Affidavit at paras. 13, 36, RAR, Vol. 2, Tab 13, pp. 753, 757, Exhibit B at pp 779-86; Benoit Affidavit, RAR, Vol. 3, Tab 22, Exhibit C, pp. 1423-4; Khazaeli Affidavit at para. 23, RAR, Vol. 3, Tab 24, p. 1445; Vuong Affidavit at para. 7, RAR, Vol. 3, Tab 17, p. 1172; Dellert Affidavit at paras. 7f, 11, RAR, Vol. 3, Tab 19, pp. 1213-21; Aarts Cross, AJSR, Tab 5, p. 795; ISN Supervised Injection Site Original Notes (Redacted), AJSR, Tab 24, pp. 2453, 2472.
[59] Fraser Affidavit at para. 11, RAR, Vol. 3, Tab 25, pp. 1471-1474.
[60] See footnote 53.
[61] Koivu Affidavit at para. 85, RAR, Vol. 4, Tab 32, p. 1889.
[62] Koivu Affidavit at para. 83, RAR, Vol. 4, Tab 32, pp. 1888-1889.
[63] Koivu Affidavit at para. 80, RAR, Vol. 4, Tab 32, pp. 1887-1888.
[64] Koivu Affidavit at para. 81, RAR, Vol. 4, Tab 32, p. 1888.

iv. Aggression, violence and weapons

56. A concentration of drug dealing around sites can lead to violence,[65] while the effects of illicit drug use, whether consumed inside or outside of the sites, can cause behavioural changes for hours after consumption that lead to aggression and violence.[66]

57. KMOPS's own incident reports detail physical fights, threats of violence, theft, racist comments and verbal abuse, and brandishing of weapons by clients.[67] The reports detail the belligerent and harmful behaviour of individuals who were intoxicated from drug use and who were asked to leave the building due to their conduct.[68]

58. The incident reports of other Ontario SCSs detail similar instances of verbal and physical aggression by clients, as well as possession of guns and uses of weapons, including bear spray, scissors, and at least one stabbing.[69] In one incident, an SCS client took a shot of fentanyl after "last call", despite staff discouragement, and became highly sedated and unable to be roused. When paramedics administered naloxone to him, the "client went outside very upset and 'planning to do $40 worth of property damage,' to make up for their wasted drugs." The client attacked the ambulance, punching it with his bare hands, and then broke its windshield with a rock. He also attempted to puncture the tire of the ambulance with a syringe, which he left embedded in the front right tire.[70]

59. When clients exhibit aggressive or violent behaviour at the entrance or exterior of the SCS, they are denied entry to protect those inside.[71] When clients exhibit aggressive or violent behaviour while inside the SCS, they are sent outdoors to protect those inside.[72] In either case, the behaviour is

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[65] Ratcliffe Affidavit at para. 10, RAR, Vol. 5, Tab 35, p. 2090.
[66] Koivu Affidavit at para. 81, RAR, Vol. 4, Tab 32, p. 1888.
[67] Sinclair Cross, AJSR, Tab 1A, pp. 128-135 and Tab 1G(ii), pp. 179-233.
[68] Sinclair Cross, AJSR, Tab 1A, pp. 128-135 and Tab 1G(ii), pp. 179-233.
[69] Guerra Affidavit, RAR, Vol. 5, Tab 36, Exhibit C, pp. 2203-2299.
[70] Guerra Affidavit, RAR, Vol. 5, Tab 36, Exhibit C, p. 2274.
[71] See e.g. Guerra Affidavit, RAR, Vol. 5, Tab 36, Exhibit C, pp. 2207, 2209, 2243, 2245-2246, 2260, 2295.
[72] See e.g. Guerra Affidavit, RAR, Vol. 5, Tab 36, Exhibit C, pp. 2216, 2222, 2226-2227, 2233, 2240, 2243-2244, 2249, 2290; Sinclair Cross, AJSR, Tab 1, pp. 35-38.

pushed out into the immediate vicinity of the SCS. In one incident, after a fight started between two clients inside the SCS, "Security and staff asked them to leave property and threatened to call 911 if they do not leave."[73] The fight then continued outside, with one threatening to kill the other.

60. Many affiants described, and documented with photos and videos, multiple episodes of aggression and violence in the immediate vicinity of SCSs. Affiants recounted verbal and physical altercations occurring near the sites, including instances where the affiants were the victims. They also recounted instances where weapons were brandished or used, including the fatal shooting outside the South Riverdale SCS.[74] Their evidence is that they began observing this behaviour, or saw it significantly increase, only after the SCSs were established.

61. For example, Mr. Ganeshan's team observed physical altercations and the brandishing of weapons outside of SCSs. On one occasion, they videotaped a group of individuals consuming drugs immediately outside of an SCS in Ottawa. When a security guard ushered the group off of the SCS's property and on to the neighbouring sidewalk, one of the individuals became agitated and started

[73] Guerra Affidavit, RAR, Vol. 5, Tab 36, Exhibit C, p. 2240.

[74] Vuong Cross, AJSR, Tab 11, p. 1201; Aarts Cross, AJSR, Tab 5, pp. 778-780; Fraser Cross, AJSR, Tab 13, pp. 1315-17; Baranski Cross, AJSR, Tab 6, pp. 834-5; Aarts Affidavit at para. 9, RAR, Vol. 1, Tab 1, p. 4; Baranski Affidavit at para. 13, RAR, Vol. 1, Tab 2, p. 62; Shepherd Affidavit at paras. 14, 16, RAR, Vol. 1, Tab 4, pp. 83-4; Finkle Affidavit at paras. 51, 81-2, 93, RAR, Vol. 1, Tab 5, p. 112, 118-19, 121; Kea Affidavit at para. 12, RAR, Vol. 2, Tab 7, p. 601; Riley Affidavit at para. 43, RAR, Vol. 2, Tab 8, p. 633; Spence Affidavit at paras. 15, 39, RAR, Vol. 2, Tab 10, pp. 652-3, 656; Coatsworth Affidavit at para. 16, RAR, Vol. 2, Tab 11, p. 685; Nickel Affidavit at paras. 10, 28-9, 32-4, 36-41, RAR, Vol. 2, Tab 13, pp. 752, 756-8; Hilsden Affidavit at para. 13, RAR, Vol. 3, Tab 14, p. 1063; Chester Affidavit at paras. 11, 13, RAR, Vol. 3, Tab 15, pp. 1084-5; Kerr Affidavit at para. 15, RAR, Vol. 3, Tab 16, pp. 1139-41; Vuong Affidavit at para. 8, RAR, Vol. 3, Tab 17, p. 1172; Priest Affidavit at paras. 13, 15, 21, RAR, Vol. 3, Tab 18, pp. 1191-2; Dellert Affidavit at paras. 11g, 11k, 11n, 11s, 11t, RAR, Vol. 3, Tab 19, pp. 1216-20; Bratina Affidavit at para. 12, RAR, Vol. 3, Tab 20, p. 1389; Stoeten Affidavit at paras. 11-16, RAR, Vol. 3, Tab 21, pp. 1399-1402; Benoit Affidavit at paras. 9, 12, 14, RAR, Vol. 3, Tab 22, pp. 1406-8; Bratina Affidavit at para. 14, RAR, Vol. 3, Tab 20, p. 1390; Khazaeli Affidavit at paras. 12, 15, 17, 27, RAR, Vol. 3, Tab 24, pp. 1441-3, 1446; Fraser Affidavit at paras. 8, 11-12, RAR, Vol. 3, Tab 25, pp. 1470-75; Plante Affidavit at paras. 14, 20, RAR, Vol. 3, Tab 26, pp. 1519-20, 1522; Tobin Affidavit at para. 24, RAR, Vol. 3, Tab 27, p. 1554; Wilson Affidavit at paras. 23-4, 37, 42, 45, 51, RAR, Vol. 4, Tab 28, pp. 1565, 1568-70; Gagnon Affidavit at paras. 8, 14, 19, RAR, Vol. 4, Tab 29, pp. 1589-1592, 1594-5; Koivu Affidavit at para. 62, RAR, Vol. 4, Tab 32, p. 1883; Ganeshan Affidavit at para. 12, RAR, Vol. 5, Tab 38, pp. 2360-61, Exhibit K, pp. 2387-89.

acting erratically. He openly displayed and waved a tactical knife while members of the public, including children, walked by.[75]

62. Ms. Fraser recounted an instance of a person throwing rocks at passersby outside of an SCS,[76] and another where a person outside of an SCS was holding a large axe and a Bowie knife.[77] She recounted multiple instances of verbal assaults, including misogynistic epithets and racial slurs, that she has overheard in the area.[78] On one instance, an intoxicated man followed her as she was walking her dog and repeatedly called her a c**t.[79] Ms. Fraser now drives further away to do her shopping because she does not feel safe walking by the SCS.[80]

63. Jennifer Hilsden explained how, directly in front of the Queen West SCS in Toronto, she has witnessed violence and has seen individuals in possession of weapons. She says she has been verbally harassed directly outside of the site and, on one occasion, had a bottle of alcohol thrown at her.[81]

64. Andrea Nickel recalled driving with her family by the South Riverdale SCS, where several individuals were injecting drugs and blocking access to her garage. After she asked them to move, the group responded angrily and threw needles at her car.[82]

65. Anthony Aarts, who operates a hostel in Kensington Market near KMOPS, recalled multiple occasions of individuals who appeared to be under the influence of illicit drugs behaving erratically or dangerously in the area, including assaulting his employees and abusing passersby.[83]

66. Stefan Baranski witnessed a man who was practically nude, and who seemed to be under the influence of drugs, aggressively confronting a woman and a young girl outside of Westside School a block away from KMOPS. The man called the young girl a name, and staff from the school were

[75] Ganeshan Affidavit at para. 12, RAR, Vol. 5, Tab 38, pp. 2360-61, Exhibit K, pp. 2387-89.
[76] Fraser Affidavit at para. 11, RAR, Vol. 3, Tab 25, pp. 1471-1474.
[77] Fraser Affidavit at para. 11, RAR, Vol. 3, Tab 25, pp. 1471-1474.
[78] Fraser Affidavit at para. 12, RAR, Vol. 3, Tab 25, pp. 1474-1475.
[79] Fraser Affidavit at para. 12, RAR, Vol. 3, Tab 25, pp. 1474-1475.
[80] Fraser Affidavit at para. 11, RAR, Vol. 3, Tab 25, pp. 1471-1474.
[81] Hilsden Affidavit at para. 13, RAR, Vol. 3, Tab 14, p. 1063.
[82] Nickel Affidavit at paras. 28-29, RAR, Vol. 2, Tab 13, p. 756.
[83] Aarts Affidavit at para. 9, RAR, Vol. 1, Tab 1, p. 4.

required to intervene and come between the man and the woman and child. As he continued to threaten them, firefighters came out to provide assistance from the nearby station. He explained that this incident was witnessed by several young children and was deeply unsettling.[84]

67. Susan Khazaeli explained that since the opening of the SCS near her home in Ottawa, she has feared for her children's safety. She says that she has walked with her children in the middle of the day and observed physical brawls in the street, including people smashing glass on other people's heads. She has watched people who appeared to be under the influence of drugs scream and harass children, and recalled an incident when her two young children were playing with chalk in front of their home and a man exposed his genitalia in front of them.[85]

v. Discarded drugs and paraphernalia

68. The evidence demonstrates that discarded drugs and drug paraphernalia, including needles and pipes, are often littered in close proximity to SCSs, representing a significant public health concern, particularly for children.[86] Many affiants described and documented with photos and videos the discarded drugs and paraphernalia on sidewalks and in parks and school yards near SCSs.[87] Their

[84] Baranski Affidavit at paras. 14-15, RAR, Vol. 1, Tab 2, p. 62.
[85] Khazaeli Affidavit at para. 17, RAR, Vol. 3, Tab 24, p. 1443.
[86] Koivu Affidavit at para. 64, RAR, Vol. 4, Tab 32, p. 1884.
[87] Ganeshan Cross, AJSR, Tab 22, pp. 2366, 2381; Vuong Cross, AJSR, Tab 11, pp. 1184-5, 1186-7, 1188-1190, 1195-6, 1219-1220; Hilsden Cross, AJSR, Tab 10, pp. 1124, 1139, 1141-42; Aarts Cross, AJSR, Tab 5, pp. 780-781, 793; Fraser Cross, AJSR, Tab 13, pp. 1285-7, 1315-17; Wilson Cross, AJSR, Tab 14, pp. 1360-62; Baranski Cross, AJSR, Tab 6, p. 830; Aarts Affidavit at para. 12, RAR, Vol. 1, Tab 1, p. 5; Baranski Affidavit at para. 10, RAR, Vol. 1, Tab 2, pp. 60-6; Shepherd Affidavit at para. 11, RAR, Vol. 1, Tab 4, p. 82; Finkle Affidavit at paras. 33-4, 49, RAR, Vol. 1, Tab 5, pp. 108, 112; Kea Affidavit at paras. 11, 13, 15, 25, 28, 48-9, RAR, Vol. 2, Tab 7, pp. 600-3, 607-8, Exhibit A, p. 612, Exhibit B, p. 614; Spence Affidavit at paras. 15, 17, RAR, Vol. 2, Tab 10, pp. 652-53; Nickel Affidavit at paras. 10, 46-48, RAR, Vol. 2, Tab 13, pp. 752, 759; Chester Affidavit at para. 11, RAR, Vol. 3, Tab 15, pp. 1084-85; Kerr Affidavit at para. 15, RAR, Vol. 3, Tab 16, pp. 1139-41; Vuong Affidavit at paras. 7, 11, 15, RAR, Vol. 3, Tab 17, pp. 1172-4; Vuong Affidavit, RAR, Vol. 3, Tab 17, Exhibits C-D, pp. 1182-86; Priest Affidavit at paras. 14-16, RAR, Vol. 3, Tab 18, pp. 1191-3; Dellert Affidavit at paras. 7, 10, 11m, 11r, RAR, Vol. 3, Tab 19, pp. 1213-15, 1218-19; Benoit Affidavit at paras. 12, 14-5, 19, RAR, Vol. 3, Tab 22, pp. 1407-9; Barnett Affidavit at paras. 12-13, RAR, Vol. 3, Tab 23, pp. 1434-35; Khazaeli Affidavit at paras 8, 13, 18-20, 25-6, RAR, Vol. 3, Tab 24, pp. 1440-46; Fraser Affidavit at para. 6, Exh. A, RAR, Vol. 3, Tab 25, pp. 1467-9, 1478-1489; Plante Affidavit at paras. 14-18, 24, RAR, Vol. 3, Tab 26, pp. 1519-21, 1523; Tobin Affidavit at paras. 18, 29, RAR, Vol. 3, Tab 27, pp. 1552-5; Wilson Affidavit at paras. 50, 53, RAR, Vol. 4, Tab 28, pp. 1570, 1571; Gagnon Affidavit at paras. 8, 17, RAR, Vol. 4, Tab 29, pp. 1589-1590, 1593-4; Ganeshan Affidavit at para. 14, RAR, Vol. 5, Tab 38, pp. 2363-7, Exhibits N-R, pp. 2394-2403.

evidence is that they began observing these items, or noticed their presence significantly increase, only after the SCSs were established.

69. Lois Dellert recalled that on July 26, 2024 she witnessed a group of people passed out, smoking and injecting drugs in front of the Parkdale West SCS. She says that the unsecured needle disposal bucket was full, with needles poking out the top, and that there was discarded drug paraphernalia on the ground including a syringe, a pipe and "cooking" saucers.[88]

70. Susan Khazaeli recalled a disturbing incident in the Spring 2021 while her son was attending Andrew Fleck Daycare, which is in close proximity to three separate SCSs in Ottawa. A four-year-old child incurred an injury after picking up an uncapped needle while playing in the fenced daycare playground. The child had to be taken to the hospital and assessed for HIV and hepatitis. Ms. Khazaeli says this incident frightened her, especially considering that she sees regular evidence of drug use and paraphernalia on daycare property.[89] Ms. Khazaeli removed her child from that daycare and enrolled him in one further from the SCS and her home, which she says is far improved.[90] Andrew Fleck Daycare has since erected a larger fence around the perimeter to protect the children.[91]

71. Ashley Kea recounted an alarming incident in May 2023 when her son found a clear baggie near the South Riverdale SCS with a colourful pink substance inside it that looked like some sort of candy. She says that she came to learn that the substance was fentanyl.[92] When she tried to dispose of it at the SCS, she was too intimated to approach the building because there was a group of people acting erratically near the entrance.[93] A week later her son found a needle on their driveway,[94] and she consistently finds at least one or two needles on her property each week.[95]

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[88] Dellert Affidavit at para. 10, RAR, Vol. 3, Tab 19, pp. 1214-1215.
[89] Khazaeli Affidavit at paras. 18-19, RAR, Vol. 3, Tab 24, pp. 1443-4.
[90] Khazaeli Affidavit at para. 20, RAR, Vol. 3, Tab 24, p. 1444.
[91] Khazaeli Affidavit at paras. 21-22, RAR, Vol. 3, Tab 24, pp. 1444-5.
[92] Kea Affidavit at paras. 15-24, RAR, Vol. 2, Tab 7, pp. 601-2, Exhibit A, p. 612.
[93] Kea Affidavit at paras. 15-24, RAR, Vol. 2, Tab 7, pp. 601-2.
[94] Kea Affidavit at para. 25, RAR, Vol. 2, Tab 7, p. 602.
[95] Kea Affidavit at para. 28, RAR, Vol. 2, Tab 7, p. 603.

72. These accounts are all just examples drawn from a large volume of eyewitness observations. Different eyewitnesses in different neighbourhoods and cities across Ontario all describe the same kinds of public disorder adjacent to or in the immediate vicinity of SCSs.

73. The Applicants attempt to minimize this extensive evidence as "anecdotal evidence from a handful of individuals".[96] This dismissive approach to the eyewitness evidence of persons whose families have been exposed to harmful and dangerous conduct should be rejected. As Dr. Guerra explained, in social science research, "when multiple people across multiple kind of methods are telling you the same thing, you can have confidence in that."[97]

74. In any event, the Applicants and their expert witnesses are content to rely on anecdotal reports when those anecdotes support their own views. Dr. Bayoumi's claim that "In a Vancouver study, regular supervised consumption service clients had markedly decreased public injecting and increased disposal of used syringes" was based on self-reports by drug users who were asked "whether they thought their injecting behaviour had changed."[98] Dr. Werb's claim in his expert report that recent SCS use "was associated with a 50% reduction in the prevalence of high-frequency public injecting" is similarly based on self-reported recollections by drug users.[99] To support his view that SCSs reduce drug litter and public injecting, Dr. Bayoumi relied on a 2004 study wherein a single observer walked ten city blocks around Insite for six weeks before the site opened and for 12 weeks after, and reported that he saw less drug litter and less public drug use after the site opened.[100] Dr. Bayoumi did not agree that the value of this study was undermined by its uncontrolled nature, the possibility of observer bias, or reliance on corroborating anecdotes from neighbours and police.[101]

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[96] Applicants' factum at para. 74.
[97] Guerra Cross, AJSR, Tab 21, pp. 2269-2270, 2317-2319.
[98] Bayoumi Cross, AJSR, Tab 2, pp. 270-272.
[99] Werb Cross, AJSR, Tab 3, pp. 680-682.
[100] Bayoumi Cross, AJSR, Tab 2, pp. 278-280 and Tab 2F, pp. 665-668.
[101] Bayoumi Cross, AJSR, Tab 2, pp. 280-283.

b) Reported crime data is not an accurate measure of public disorder

i. Neighbourhood crime rates do not measure public disorder at the "microlevel"

75. Crime rates aggregated at the neighbourhood level do not capture the concentration of public disorder at particular locations such as SCSs. As a result, the crime data relied on by the Applicants' experts is of limited utility in assessing the extent of this localized disorder.

76. Dr. Ratcliffe explained that studies comparing crime rates at the neighbourhood level or at the level of a police district are conducted at a spatial scale that is too large to draw any reliable conclusions about the effect of SCSs on public disorder because "any negative proximity effects of a SCS are 'washed out' or dissipated when included in a larger analytical unit with areas far from the effects of the facility."[102] In his opinion, none of the crime studies relied on by the Applicants robustly examined crime and disorder at the relevant spatial scale.[103]

77. Dr. Guerra similarly observed that crime tends to occur at the "microlevel" within a city: "It can be on a block. It doesn't tend to be equally distributed across neighbourhoods. It tends to be on a street corner or…in a specific area or in an abandoned house where people congregate."[104]

78. It is therefore unsurprising that the literature examining the impacts of SCSs on crime is mixed. As Dr. Ratcliffe noted, some of the studies show an increase in crime, some show a decrease over time, and some show no statistically significant changes.[105] When the studies apply spatial scales that are so large, the conclusions they draw become highly context-specific and based on a number of different contributing factors.[106] Dr. Ratcliffe noted that this flaw in the research methodology tends to benefit researchers "who would prefer to show that SCSs are not harmful" by merging any negative

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[102] Ratcliffe Affidavit at para. 39, RAR, Vol. 5, Tab 35, pp. 2102-3; See also Ratcliffe Affidavit at para. 31, RAR, Vol. 5, Tab 35, pp. 2098-9.
[103] Ratcliffe Affidavit at para. 46, RAR, Vol. 5, Tab 35, p. 2105.
[104] Guerra Cross, AJSR, Tab 21, pp. 2258-2260, 2268.
[105] Cross-Examination of Dr. Jerry Ratcliffe dated February 17, 2025 [**Ratcliff Cross**], AJSR, Tab 20, pp. 43-44; See also Platt Affidavit at para. 43, RAR, Vol. 5, Tab 34, p. 1974; Cross-Examination of Dr. Robert Platt dated February 18, 2025 [**Platt Cross**], AJSR, Tab 19, p. 85.
[106] Ratcliff Cross, AJSR, Tab 20, pp. 32-34, 42-55; Ratcliffe Affidavit at paras. 31-32, 39, 42-43, 46-49, 52-56, RAR, Vol. 5, Tab 35, pp. 2098-2099, 2102-6, 2108-2110.

effects with data from unaffected areas, which can "mask negative local consequences in the immediate environment of criminogenic sites."[107]

79. In any event, reported crime rates, even if examined at an appropriate spatial scale, are not the most relevant measure of public disorder. As noted by Dr. Guerra, "A measured uptick in crime rates is less likely to harm children than daily exposure to drug users, drug dealers who may hang around the area, and violent incidents such as those reported in numerous incident reports".[108] She also noted that young peoples' mental health is negatively impacted by perceived threats of harm, not simply actual threats of harm. Young people's perception of neighbourhood danger is more predictive of poor mental health and relationship outcomes than dangers as measured by crime rates.[109]

ii. Crime statistics are likely to underreport actual levels of crime

80. Dr. Ratcliffe explained that official data from police services do not accurately capture how extensive drug dealing and drug use is within the immediate vicinity of SCSs. This is because the SCS's exemption from drug laws leads to an "air of impunity" around the SCS, "where there is less or no chance of police search and interdiction".[110] In other words, there is less likelihood of police activity in the area immediately proximate to an SCS.

81. Ontario's experts also noted that police tend to be discouraged from being near SCSs.[111] Dr. Koivu, who was involved in the establishment of an SCS in London, Ontario, observed that SCSs appear to be "shifting away" from acknowledging the value of police enforcement or police presence near sites.[112] This is consistent with the evidence of TNG's CEO, Mr. Sinclair, who admitted that

[107] Ratcliffe Affidavit at paras. 39, 52, 65-7, RAR, Vol. 5, Tab 35, pp. 2102-3, 2108, 2113-14; See also Somers Affidavit at para. 51, RAR, Vol. 4, Tab 31, pp. 1810-11; Platt Affidavit at paras. 42-3, RAR, Vol. 5, Tab 34, p. 1974.
[108] Guerra Affidavit at paras. 36-38, RAR, Vol. 5, Tab 36, pp. 2171-2172.
[109] Guerra Affidavit at para. 26, RAR, Vol. 5, Tab 36, p. 2168.
[110] Ratcliffe Affidavit at paras. 19-20, RAR, Vol. 5, Tab 35, p. 2093.
[111] Ratcliffe Affidavit at para. 20, RAR, Vol. 5, Tab 35, p. 2093; Koivu Affidavit at para. 74, RAR, Vol. 4, Tab 32, p. 1886.
[112] Koivu Affidavit at para. 74, RAR, Vol. 4, Tab 32, p. 1886.

KMOPS does not have any policy in place to direct staff to call police if they see a person using illegal drugs or trafficking in drugs outside the facility.[113]

82. Moreover, reported crime is often not an accurate measure of peoples' experience of crime in vulnerable neighbourhoods. Examples of "reporting fatigue" are found throughout the record, where witnesses recounted that they stopped reporting crimes because police did not follow up.[114]

83. The Applicants rely on the evidence of Dr. Werb, who concluded "that there was no evidence that homicides increased near SCSs."[115] Dr. Werb agreed on cross-examination that he would not describe himself as an expert in criminology or the spatial dynamics of crime.[116] As both Dr. Ratcliffe and Dr. Guerra explained, homicide and other violent crimes are "low base rate behaviours", meaning that the sample size is small and the results are subject to high variability.[117] Homicide rates at the neighbourhood level are so small that they do not have "sufficient statistical power to be relevant to this case."[118] It is not possible to draw reliable conclusions from this data.[119]

84. In any event, the harm the Act seeks to address is the exposure of children and youth to public disorder concentrated around SCSs. Of course, homicides are harmful. But exposure to public disorder short of homicide – including drug use, drug trafficking, public intoxication, and the unsafe disposal of needles and drugs – is harmful too, and it is legitimate for the Legislature to seek to prevent it.

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[113] Sinclair Cross, AJSR, Tab 1, pp. 47-50.
[114] Koivu Affidavit at paras. 69-70, RAR, Vol. 4, Tab 32, p. 1885; Cross-Examination of Dr. Sharon Koivu dated February 11, 2025 [**Koivu Cross**] AJSR, Tab 17, pp. 100-5; Kea Affidavit at paras. 23-4, RAR, Vol. 2, Tab 7, p. 602; Fick Affidavit at para. 22, RAR, Vol. 2, Tab 9, p. 644; Chester Affidavit at para. 13, RAR, Vol. 3, Tab 15, p. 1085; Dellert Affidavit at paras. 31-2, RAR, Vol. 3, Tab 19, pp. 1228-9; Wilson Cross, AJSR, Tab 14, p. 1346; Aarts Cross, AJSR, Tab 5, p. 774; See also Fraser Affidavit at paras. 8-9, RAR, Vol. 3, Tab 25, p. 1470.
[115] Applicants' factum at para. 37.
[116] Werb Cross, AJSR, Tab 3, p. 671.
[117] Ratcliffe Affidavit at paras. 32, 50, RAR, Vol. 5, Tab 35, pp. 2099-2100, 2107; Guerra Affidavit at paras. 36-37, RAR, Vol. 5, Tab 36, pp. 2171-2172.
[118] Ratcliffe Affidavit at para. 50, RAR, Vol. 5, Tab 35, p. 2107.
[119] Ratcliffe Affidavit at para. 50, RAR, Vol. 5, Tab 35, p. 2107; See also Platt Affidavit at paras. 31-32, RAR, Vol. 5, Tab 34, pp. 1969-1970.

c) Exposure to public disorder is harmful to children and youth

85. It is harmful to children and youth to be exposed to public disorder associated with drug use, and such exposure should be minimized as much as possible. As Dr. Guerra explained, there is extensive and compelling research demonstrating that regular exposure to behaviours associated with drug use can harm children and youth. Guaranteeing exposure to these behaviours by locating them next to schools or daycares can have seriously detrimental effects.[120]

86. Dr. Guerra explained that exposure to harmful behaviours can lead to greater approval and normalization of these behaviours in children as young as age 3, and that the impact of this harm increases with the frequency of exposure.[121] This is because children and youth learn normative standards for appropriate behaviour based on what they see around them in their daily lives (in homes, schools, and their proximate neighborhood).[122]

87. For example, if children and youth observe people using, buying or selling illegal drugs outside of SCSs, they are more likely to see drugs as acceptable, which can be particularly critical for adolescents who seek out risk and immediate pleasure.[123] Witnessing this activity right outside of school serves as a daily reminder that people are motivated to use drugs and that antisocial behavior is relatively commonplace and normative.[124]

88. Dr. Guerra also explained that one of the most harmful impacts of witnessing aggression and violence is that it over-sensitizes children to potential danger, making them more likely to respond immediately with aggression under ambiguous conditions without taking time to stop, think and accurately assess the situation.[125] Dr. Guerra explained that exposure to harmful behaviour on a regular basis is considered a stressful adverse childhood experience that can have detrimental impacts

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[120] Guerra Affidavit at para. 6(c), RAR, Vol. 5, Tab 36, p. 2160.
[121] Guerra Affidavit at paras. 13-15, RAR, Vol. 5, Tab 36, pp. 2163-4; Guerra Cross, AJSR, Tab 21, pp. 2310-13.
[122] Guerra Affidavit at paras. 14-15, RAR, Vol. 5, Tab 36, pp. 2162-2164.
[123] Guerra Affidavit at paras. 16-20, 32, RAR, Vol. 5, Tab 36, pp. 2164-2166, 2170.
[124] Guerra Affidavit at para. 6(a), RAR, Vol. 5, Tab 36, p. 2158.
[125] Guerra Affidavit at para. 32, RAR, Vol. 5, Tab 36, p. 2170.

on a child's development and well-being. Repeated exposure to different stressors compounds the negative effects.[126] For children, fear creates an inordinate amount of stress, which can interfere significantly with healthy physical, social and emotional development.[127]

89. In Dr. Guerra's professional opinion, SCSs that are located in close proximity to schools and daycares will increase the likelihood that children and youth will witness multiple forms of antisocial and socially disruptive behaviors, with deleterious effects on their healthy development.[128] Given the potential harm to children and youth, and the fact that children do not have a choice in where they go to school or daycare, a buffer zone between SCSs and schools and daycares is a feasible solution:

> In many cases, there are no simple solutions to preventing adversity; for instance, poverty alleviation requires complex solutions over time. On the other hand, in some cases there are more feasible solutions such as making sure that children are not exposed regularly to stressful experiences associated with public disorder. In my opinion, preventing children and youth from being exposed to public disorder associated with Supervised Consumption Sites within 200m of their schools or daycare is one such feasible solution.[129]

90. Dr. Guerra's evidence is corroborated by the experiences of families who live or attend schools or daycares near SCSs.[130] Many affiants expressed that they no longer feel safe walking near SCSs

[126] Guerra Affidavit at para. 27, RAR, Vol. 5, Tab 36, pp. 2168-9; Guerra Cross, AJSR, Tab 21, pp. 2310-13.
[127] Guerra Affidavit at para. 32, RAR, Vol. 5, Tab 36, p. 2170.
[128] Guerra Affidavit at paras. 6(c)-6(d), RAR, Vol. 5, Tab 36, p. 2160.
[129] Guerra Affidavit at para. 28, RAR, Vol. 5, Tab 36, p. 2169.
[130] Ganeshan Cross, AJSR, Tab 22, pp. 2376-7; Vuong Cross, AJSR, Tab 11, pp. 1208-1210, 1223-4; Fraser Cross, AJSR, Tab 13, p. 1327; Bratina Cross, AJSR, Tab 12, pp. 1266-67; Baranski Cross, AJSR, Tab 6, pp. 831, 834-5; Baranski Affidavit at paras. 10-12, 14-16, RAR, Vol. 1, Tab 2, pp. 60-63; Finkle Affidavit at paras. 34, 51-53, 79-80, RAR, Vol. 1, Tab 5, pp. 95, 99-100, 105; Spence Affidavit at paras 15c, 39, RAR, Vol. 2, Tab 10, pp. 652, 656; Coatsworth Affidavit at para. 16, RAR, Vol. 2, Tab 11, p. 685; Nickel Affidavit at paras. 10, 13, 18-19, 25-27, 30-31, RAR, Vol. 2, Tab 13, pp. 752-756; Kea Affidavit at paras. 11, 15, 24-25, 27, RAR, Vol. 2, Tab 7, pp. 600-3; Chester Affidavit at paras. 25-27, RAR, Vol. 3, Tab 15, p. 1089; Kerr Affidavit at para. 17, RAR, Vol. 3, Tab 16, p. 1141; Vuong Affidavit at para. 15, RAR, Vol. 3, Tab 17, p. 1174; Priest Affidavit at paras. 13, 15c-16, RAR, Vol. 3, Tab 18, pp. 1191-3; Bratina Affidavit at para. 18, RAR, Vol. 3, Tab 20, p. 1391; Benoit Affidavit at paras. 12-14, 16-17, 19, 21, RAR, Vol. 3, Tab 22, pp. 1407-8; Barnett Affidavit at paras. 9, 12, RAR, Vol. 3, Tab 23, pp. 1434-5; Khazaeli Affidavit at paras. 12, 15, 17-27, RAR, Vol. 3, Tab 24, pp. 1441-6; Fraser Affidavit at paras. 6-7, 11, RAR, Vol. 3, Tab 25, pp. 1467-1470, 1471-4; Plante Affidavit at paras. 14, 18, 21-24, RAR, Vol. 3, Tab 26, pp. 1519-1523; Gagnon Affidavit at paras. 7-11, 13-14, 17, RAR, Vol. 4, Tab 29, pp. 1589-1594; Ganeshan Affidavit at paras. 12, 14(e), RAR, Vol. 5, Tab 38, pp. 2360-61, 2366-7.

with their children, in stark contrast to how they felt before the sites were opened.[131] Parents reported that their children can no longer safely play in laneways, parks, or other public spaces near SCSs due to drug dealing, drug use, drug paraphernalia, and aggressive behavior.[132] Several parents described their children expressing fear, having panic attacks, and crying themselves to sleep.[133]

91. Schools and daycares near SCSs have had to take steps to try to reduce the exposure of the children in their care to this public disorder. Some schools and daycares have erected tall, opaque fences around their playgrounds to attempt to prevent children at play from witnessing the disorder near SCSs.[134] As noted above, a school located one block away from an SCS had to lockdown and keep children inside because of a person using drugs in the schoolyard.[135]

92. The experience of Pam Benoit, the director of a daycare that was located near three SCSs in Ottawa, is particularly disturbing. She regularly observed people slumped on the front steps of the daycare who refused to move when roused, who exposed themselves, who were in the process of acquiring or consuming drugs, who were screaming profanities, and who punched street parking signs. She also regularly observed discarded drug paraphernalia including used needles and pipes.[136] In March 2023, the daycare had to call Ottawa police on ten separate occasions because people were engaging in illegal activities immediately outside the daycare, including one instance where an

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[131] Baranski Affidavit at para. 16, RAR, Vol. 1, Tab 2, pp. 62-3; Spence Affidavit at paras. 18-19, RAR, Vol. 2, Tab 10, p. 653; Coatsworth Affidavit at para. 18, RAR, Vol. 2, Tab 11, p. 686; Nickel Affidavit at paras. 17-19, 25-27, RAR, Vol. 2, Tab 13, pp. 753-5; Fraser Affidavit at para. 15, RAR, Vol. 3, Tab 25, p. 1476; Hilsden Affidavit at para. 11, RAR, Vol. 3, Tab 14, pp. 1062-3; Kerr Affidavit at paras. 16-17, RAR, Vol. 3, Tab 16, p. 1141; Priest Affidavit at para. 11, RAR, Vol. 3, Tab 18, p. 1191; Gagnon Affidavit at para. 10, RAR, Vol. 4, Tab 29, pp. 1590-91.

[132] Finkle Affidavit at paras. 33-34, RAR, Vol. 1, Tab 5, p. 95; Nickel Affidavit at paras. 13, 36, RAR, Vol. 2, Tab 13, pp. 753, 757; Kea Affidavit at para. 11, RAR, Vol. 2, Tab 7, p. 600; Kerr Affidavit at para. 15(a), RAR, Vol. 3, Tab 16, p. 1139; Khazaeli Affidavit at paras. 20-21, RAR, Vol. 3, Tab 24, pp. 1444; Gagnon Affidavit at paras. 8-10, 14, RAR, Vol. 4, Tab 29, pp. 1589-1592, Exhibit C, pp. 1611-1626.

[133] Spence Affidavit at paras. 15c, 20, RAR, Vol. 2, Tab 10, pp. 652-653; Nickel Affidavit at paras. 25-27, RAR, Vol. 2, Tab 13, p. 755; Kea Affidavit at para. 47, RAR, Vol. 2, Tab 7, p. 607; Kerr Affidavit at para. 17, RAR, Vol. 3, Tab 16, p. 1141; Priest Affidavit at para. 15c, RAR, Vol. 3, Tab 18, p. 1192; Khazaeli Affidavit at paras. 23-26, RAR, Vol. 3, Tab 24, pp. 1445-1446.

[134] Chester Affidavit at paras. 25-27, RAR, Vol. 3, Tab 15, p. 1089; Benoit Affidavit at para. 16, RAR, Vol. 3, Tab 22, p. 1408, Exhibit E, pp. 1429-30; Khazaeli Affidavit at paras. 21-22, RAR, Vol. 3, Tab 24, pp. 1444-5.

[135] Nickel Affidavit at paras. 30-31, RAR, Vol. 2, Tab 13, p. 756.

[136] Benoit Affidavit at para. 12, RAR, Vol. 3, Tab 22, p. 1407.

intoxicated man tried to force his way into the facility. The daycare hired a security guard, installed additional fencing around the children's play area, developed safety policies, tried to engage with police and the community, and enlisted the services of a city-run needle clean-up service. Despite all of these efforts, Ms. Benoit felt that the daycare could not guarantee the safety of the children and decided to move to a new location further from the SCSs.[137]

B. The Applicants overstate the impact of the Act

93. To reduce the exposure of children and youth to the harmful public disorder described above, the buffer zone separates SCSs from schools and daycares by one or two city blocks. It does not, however, otherwise prohibit or restrict the supervised consumption of drugs.

94. The Act does not prohibit or regulate the provision of clean drug paraphernalia, the safe disposal of used needles, the provision or administration of naloxone or oxygen to a person experiencing an overdose, education and training concerning safer needle use, or referrals to health professionals or social supports. These activities are not prohibited by the Act wherever they occur, including within 200m of a school or daycare. Nor, contrary to the Applicants' and their supporting interveners' submissions, does the Act prohibit "drug checking" sites or scientific laboratories.[138] Such places are not supervised consumption sites, because no supervised consumption takes place there.

95. The Applicants' expert Dr. Werb opined that "the most likely reason" that neighbourhoods with SCSs experienced significantly greater reductions in overdose mortality is that SCSs "provide a range of overdose prevention services that may be used by clients in community settings, such as naloxone dispensation, drug checking information, safer drug use education, and referrals to treatment."[139] None of these services are prohibited by the Act in any location.

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[137] Benoit Affidavit at paras. 12-21, RAR, Vol. 3, Tab 22, p. 1407-1409.
[138] Applicant's factum paras. 41, 84; factum of the Intervener Board of Health for the City of Toronto Health Unit, paras. 25, 28-30.
[139] Affidavit of Dr. Dan Werb sworn February 7, 2025, Reply Application Record [**Reply AR**], Tab 24, Exhibit A, para. 41, p. 310.

96. Nor must these services be provided only in conjunction with supervised consumption of drugs: the Applicants' expert Dr. Wyman confirmed on cross-examination that the two medical clinics she works at both provide education on overdose prevention and the use of naloxone as well as harm reduction education and supplies,[140] while Ontario's expert Dr. Koivu explained that she has been involved in needle exchange and training on the safer use of drug paraphernalia long before an SCS opened in her city.[141] Mr. Sinclair similarly confirmed that his organization gave out harm reduction supplies and naloxone for years before opening an SCS.[142] Nothing in the Act prevents TNG from continuing to do so, including at KMOPS's current address.

97. The Applicants and their supporting interveners also misstate the impact of the Act on the disposal of used drug equipment.[143] Mr. Sinclair claimed in his affidavit that KMOPS staff's activities "in going out into the areas around KMOPS on a daily basis to collect and dispose of used drug equipment" was "part of KMOPS' supervised consumption services" and that it was "activity that is covered by our s. 56.1 *CDSA* exemption from the federal government."[144] But he agreed on cross-examination that his *CDSA* exemption does not actually extend to disposing of used drug equipment found outside of KMOPS,[145] and indeed TNG's website includes a link to a map of needle disposal boxes throughout the City of Toronto, including two nearby ones at neighbourhood public library branches that are not SCSs and do not operate under a *CDSA* exemption.[146] Nothing in the Act prevents TNG or anyone else from offering needle disposal at any location.[147]

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[140] Cross-Examination of Dr. Jennifer Wyman dated February 14, 2025 [**Wyman Cross**], AJSR, Tab 4, pp. 714-715.
[141] Koivu Affidavit at paras. 16-20, RAR, Vol. 4, Tab 32, pp 1870-1871.
[142] Sinclair Cross, AJSR, Tab 1, pp. 73-76.
[143] Applicants factum at para. 76; Factum of the Intervener Toronto Board of Health at para. 27.
[144] Affidavit of Bill Sinclair sworn January 9, 2025 [**Sinclair Affidavit**] at paras. 152-154, RAR, Vol. 1, Tab 3, pp. 66-67.
[145] Sinclair Cross, AJSR, Tab 1, pp. 103-109.
[146] Sinclair Cross, AJSR, Tab 1, pp. 110-113, Exhibit 6, pp. 155-157.
[147] See also *PHS* at para. 96: "Delivering leftover drugs to the police does not constitute possession, let alone trafficking."

98. In many cities, including Kitchener, Guelph, London, Peterborough, Thunder Bay, and St Catherines, the area currently outside of the 200m buffer zones greatly exceeds the areas within such zones. The Applicants' assertion that "Effectively all of Toronto is blanketed by overlapping circles in which no SCS can operate"[148] is demonstrably incorrect: indeed, the Toronto map reveals that the area directly south of KMOPS's current location, along with other parts of the neighbourhood, falls outside any buffer zones:

99. Indeed, Mr. Sinclair notes in his reply affidavit that "the map does appear to show the southern stretch of Augusta, and portions of streets branching off from it, as not currently falling within 200 metres" from a school or daycare, but complains that "those areas have very few vacant properties and are largely made up of small storefronts that would in any event not be suitable for a supervised consumption site."[149] Mr. Sinclair evidently does not wish to relocate and would prefer to remain at his current location. Other SCSs in Ontario, however, are more adaptable: the site in Sudbury, for

[148] Applicants' factum at para. 42.
[149] Affidavit of Bill Sinclair sworn February 7, 2025 at para. 48, Reply AR, Tab 1.

example, is located in a trailer in an open field, where it has supervised many hundreds of clients.[150] Nothing in the Act prevents TNG from offering similar services in compliance with the Act.

100. The Applicants rely on Dr. Bayoumi's opinion that many persons who use drugs will not travel even 500m to access an SCS.[151] Dr. Bayoumi was the co-principal investigator of the Report of the Toronto and Ottawa Supervised Consumption Assessment Study 2012, which noted that "we did not ask about specific distances that people might travel. Generally, people indicated that they would not travel far to get to a supervised consumption facility because they typically want to use their drugs right away." The report noted that "Many people would not be willing to walk for more than five or ten minutes to get to a supervised consumption facility once they have obtained their drugs."[152]

101. Of course, if people are not willing to walk for more than a few minutes to get to an SCS once they have obtained their drugs, this means that the drugs they use at the SCS must have been obtained within a few minutes' walk of the site. If clients are obtaining their illicit drugs within a few minutes' walk of the SCS, that is all the more reason why SCSs should not be located near schools and daycares.

102. Dr. Bayoumi's opinion about the willingness of persons who use drugs to travel to an SCS is based on two surveys of people who use drugs that were conducted years before any SCS was operating in Ontario. The survey respondents were asked how far they would travel to use a hypothetical future SCS and gave a range of answers.[153] His opinion was also based on a paper reporting on qualitative interviews of 20 clients of the Sudbury SCS, 14 of whom stated that the distance to travel to the site acted as a major barrier.[154] By contrast, Dr. Koivu's evidence was that the homeless and vulnerably-housed clientele of SCSs is "transient and not tied to individual

[150] Bayoumi Cross, AJSR, Tab 2C, pp 626.
[151] Applicants' factum at para. 40.
[152] Bayoumi Cross, AJSR, Tab 2, pp 254-256 and Tab 2A, pp 286-604.
[153] Bayoumi Cross, AJSR, Tab 2, pp. 244-247.
[154] Bayoumi Cross, AJSR, Tab 2, pp. 252-254 and Tab 2C, pp. 620-638.

neighbourhoods."[155] Their location changes as drug availability and resources move. Other witnesses testified that SCSs users relocate within cities or even travel from other cities to access SCSs.[156]

C. Experts disagree on the health benefits of SCSs

103. The record demonstrates that experts in addictions medicine and epidemiology do not agree about the state of the science concerning the health benefits of SCSs for their clients. The Applicants assert the benefits of SCSs in categorical terms, claiming that SCSs are "proven to be effective in keeping people alive.[157] But the experts they rely on represent only one side of an ongoing and vigorous debate among experts. It is not the task of this Court to settle a debate among scientists.[158] Nor is it necessary for this Court to attempt to do so, since the scientific question of whether SCSs provide health benefits to their clients is irrelevant to the legal question of whether the Constitution allows the Legislature to require that SCSs be located at least 200m from schools or daycares. Nevertheless, it is important for the Court to note that the science on the benefits of SCSs is contested and indeterminate.

a) The literature on SCSs is limited and methodologically weak

104. The science on the effectiveness of SCSs was examined in 2022 by the Stanford-*Lancet* Commission on the North American Opioid Crisis. The Commission highlighted the absence of evidence concerning the impact of SCSs on overdose mortality:

> Research on sites is methodologically weak, but generally suggests that the risk of death from overdose is lower in a site than outside of it. However, there is no evidence that accessing a site lowers an individual's risk of fatal overdose over time or that sites lower community overdose rates. Rigorous research on supervised consumption sites would be useful.[159]

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[155] Koivu Affidavit at para. 115, RAR, Vol. 4, Tab 32, p. 1896.
[156] Tobin Affidavit at paras. 6-8, 20, RAR, Vol. 3, Tab 27, pp. 1549-50, 1553; Fraser Cross, AJSR, Tab 13, p. 1291-93.
[157] Applicants' factum at para. 6.
[158] *Cochrane v. Ontario (Attorney General)*, 2008 ONCA 718 at paras. 23-25; *Thompson v. Ontario (Attorney General)*, 2016 ONCA 676 at paras. 20-33.
[159] Somers Affidavit at para. 31, RAR, Vol. 4, Tab 31, pp. 1804-5, citing Humphreys et al 2022; See also Platt Affidavit at para. 45, RAR, Vol. 5, Tab 34, p. 1975, citing Pardo et al.

105. Ontario's expert Dr. Nathaniel Day, Medical Director of addiction medicine for Recovery Alberta, noted that there has never been an experimental study or randomized control trial of the effectiveness of SCSs in improving the health outcomes of individuals. All the studies cited in this area are "correlational studies" that cannot prove any association between the SCS and outcomes.[160] A correlational study is one in which two or more variables are examined to see if they may be related. These studies can look at the correlations made between two variables but cannot determine a cause of the relationship. These studies are also subject to confounding variables, which are other factors that could better explain an association.[161] For example, ice cream sales may be positively associated with fatalities from drowning. One possible interpretation is that ice cream sales cause drowning. A more plausible interpretation is that on hot days, more people eat ice cream and more people swim.[162]

106. In the case of SCSs, confounding variables can include factors such as changes in the toxicity of the drug supply, the availability of the drug supply, and changes in individual tolerance to drugs.[163] For these reasons, Dr. Day concludes that the current literature on the effectiveness of SCSs "is of low quality and remains without the ability to determine causal benefits."[164]

107. Several of Ontario's other experts reached the same conclusion. Dr. Platt, Chair in Pharmacoepidemiology and Professor of Epidemiology, Biostatics and Occupational Health at McGill University, opined that the effectiveness and impact of SCSs "has not been demonstrated in any quality research study", and that "more work is required to be done before valid conclusions can be made."[165] Dr. Platt identified the same limits in the studies, and noted that randomized trials of public health interventions have sometimes been shown to contradict previous observational studies.[166]

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[160] Day Affidavit at para. 11, RAR, Vol. 4, Tab 33, p. 1940; See also Platt Affidavit at paras. 20-24, RAR, Vol. 5, Tab 34, pp. 1966-1968.
[161] Day Affidavit at paras. 12-13, RAR, Vol. 4, Tab 33, pp. 1940-1941.
[162] Day Affidavit at para. 18-19, RAR, Vol. 4, Tab 33, pp. 1942-1943.
[163] Day Affidavit at paras. 28-33, 36, 40, RAR, Vol. 4, Tab 33, pp. 1945-49; Cross-Examination of Dr. Nathaniel Day dated February 21, 2025 [**Day Cross**], AJSR, Tab 18, pp. 1718-19.
[164] Day Affidavit at para. 43, RAR, Vol. 4, Tab 33, p. 1949.
[165] Platt Affidavit at paras. 44-46, RAR, Vol. 5, Tab 34, p. 1975.
[166] Platt Affidavit at para. 24, RAR, Vol. 5, Tab 34, pp. 1967-68.

108. Dr. Somers, a professor at Simon Fraser University and clinical psychologist who has conducted extensive research on addictions, also opined that "The quality of research examining SCS is low and does not include any randomized trials or rigorous between-group comparisons, meaning that no causal inferences can be made about the effectiveness of SCSs on reported outcomes."[167]

109. Ontario's experts also note that the current research examining the impact of SCSs on health outcomes is constrained by geography and a limited focus on outcomes.[168] As noted by the Stanford-*Lancet* Commission, fewer than 200 SCS locations exist in the world. While these sites have existed for decades, there is no research that tracks clients' health outcomes over time.

110. The majority of the research does not track whether SCS clients who may be referred to treatment in fact go on to access and attend treatment and improve their health in the long term.[169] One longitudinal study in Australia concluded that the health and social situation of clients attending the consumption site actually deteriorated after time.[170] Dr. Somers explained that the fact that individual clients continue to attend at SCSs and fill out questionnaires about being referred to treatment does not mean they are in fact going on to access that treatment.[171] The Applicants' expert Dr. Wyman admitted that she is not aware of any published data showing that a visit to an SCS in Ontario by a client increases their likelihood of being connected with a primary care provider.[172]

111. The Applicants' experts do not acknowledge these limitations in the existing research. They treat the correlational studies as proof that SCSs produce beneficial health outcomes.[173] By contrast,

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[167] Somers Affidavit at paras. 27, 49, RAR, Vol. 4, Tab 31, paras. 1803-1804, 1810; Cross-Examination of Dr. Julian Somers dated February 11, 2025 [**Somers Cross**], AJSR, Tab 16, pp. 35-36.
[168] Somers Affidavit at para. 27, RAR, Vol. 4, Tab 31, pp. 1803-4; Platt Affidavit at paras. 23, 45, RAR, Vol. 5, Tab 34, pp. 1967, 1975.
[169] Somers Affidavit para. 33, RAR, Vol. 4, Tab 31, p. 1806; Somers Cross, AJSR, Tab 16, pp. 56, 60-61; Day Affidavit at paras. 45-47 RAR, Vol. 4, Tab 33, p. 1950; Koivu Affidavit at paras. 101, 135, RAR, Vol. 4, Tab 32, pp. 1893, 1900.
[170] Somers Affidavit at para. 28, RAR, Vol. 4, Tab 31, p. 1804.
[171] Somers Cross, AJSR, Tab 16, pp. 56, 60-61
[172] Wyman Cross, AJSR, Tab 4, pp. 733-735.
[173] Day Affidavit at paras. 11-12, 15, RAR, Vol. 4, Tab 33, pp. 1940-1941.

they are quick to point out the limitations of correlational studies that identify a correlation between SCSs and crime. As noted by Dr. Day,

> I observe that Dr. Bayoumi and Dr. Werb each assert certainty in the significance of associations when those associations favour their opinion but discount the associations as being without merit when those associations do not favor their opinion. When a researcher discounts correlations when they do not fit their narrative, and accepts them as causality when they do, I believe that the research is flawed and is no longer a scientific or evidence-based conclusion but is instead more readily identified as a political or social argument.[174]

112. Dr. Werb claimed that the health benefits of SCSs "are so well-recognized" that it would be "unethical" to test them in a randomized control trial.[175] When Dr. Werb was asked in what year he thought "that the health benefits of SCSs became so well-recognized that it became unethical to test those benefits in a randomized control trial", he answered that the Supreme Court's 2011 decision in *PHS* established the health benefits of SCSs.[176] Dr. Werb's opinion is in sharp contrast to the views of the expert researchers of the Stanford-*Lancet* Commission, who wrote in 2022 that "there is no evidence that accessing a site lowers an individual's risk of fatal overdose over time or that sites lower community overdose rates. Rigorous research on supervised consumption sites would be useful."[177]

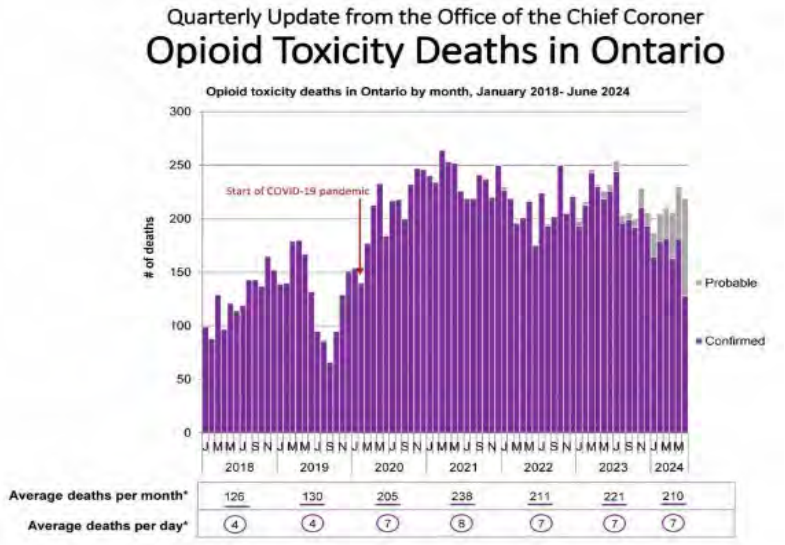
b) The impact of SCSs on reducing overdose mortality is overstated

113. Ontario's experts identified serious flaws with the studies relied on by the Applicants' experts to support the claim that SCSs reduce overdose mortality rates. In particular, Ontario's experts criticized an article co-written by Dr. Bayoumi and Dr. Werb comparing overdose rates in Toronto before and after SCSs opened in 2018. This article examined two 3-month periods, two years apart (May 1-July 31, 2017 and May 1-July 31, 2019). The authors noted that overdose mortality was lower

[174] Day Affidavit at para. 15, RAR, Vol. 4, Tab 33, p. 1941.
[175] Affidavit of Dr. Dan Werb sworn February 7, 2025, Reply AR, Tab 24, Exhibit A, para. 12, p. 295.
[176] Werb Cross, AJSR, Tab 3, pp. 672-673.
[177] Somers Affidavit at para. 31, RAR, Vol. 4, Tab 31, pp. 1804-1805, citing Humphreys et al 2022; See also Platt Affidavit at para. 45, RAR, Vol. 5, Tab 34, p. 1975, citing Pardo et al.

in the 2019 period than in the 2017 period and attributed this decrease to the fact that SCSs had opened in Toronto the year before.

114. The problem with attributing this lower mortality rate to SCSs opening in Toronto, as Dr. Day pointed out, is that "the authors selected a timeframe during which Ontario as a whole had a temporary but large reduction in overdose mortality."[178] This province-wide decrease in overdose deaths is illustrated in the following graph:[179]



115. Overdose deaths throughout Ontario were markedly lower in the May-July 2019 period. Dr. Day stated that he found it "shocking" and "astonishing"[180] that researchers would attempt to connect a lower overdose rate during this time to the implementation of SCSs in Toronto without acknowledging the "substantial change" in overall province-wide overdose deaths. In Dr. Day's view, "this important flaw seriously limits our ability to understand what actually happened in Toronto during and after SCS implementation."[181] Dr. Day further noted that there was also a similar reduction in overdose mortality in Alberta between 2017 and 2019, which cannot plausibly be attributed to the

[178] Day Affidavit at para. 22, RAR, Vol. 4, Tab 33, p. 1944.
[179] Day Affidavit at paras. 16-22, RAR, Vol. 4, Tab 33, pp. 1942-1944, citing data from the Office of the Chief Coroner in Ontario published in October 2024.
[180] Day Cross, AJSR, Tab 18, pp. 1766-1767.
[181] Day Affidavit at para. 24, RAR, Vol. 4, Tab 33, p. 1944.

implementation of SCSs in Toronto.[182] Dr. Platt and Dr. Somers also noted that the selection of this timeframe is a serious methodology flaw that limits the ability to draw any conclusions.[183]

116. This result illustrates the dangers of attempting to use correlations between overdose deaths and the presence of SCSs to assert that SCSs cause a decrease in deaths: there are simply too many confounding variables. As Dr. Day pointed out, it is impossible to know what caused this province-wide decline in overdose mortality: it could be that opioid access temporarily declined, or that the potency of street opioid concentrations temporarily declined.[184]

117. In fact, it is implausible that SCSs substantially reduce overdose mortality on a population level, because SCSs supervise only a small proportion of drug consumption.[185] Not all drug users attend SCSs, and even those who do are only supervised for a small proportion of their total drug use. The very small proportion of drug consumption that is supervised inside an SCS necessarily limits how effective SCSs can be in reducing overall overdose mortality.

118. Dr. Koivu explained that people who use opioids use them multiple times during the day and night. Individuals who inject drugs start to go into withdrawal within approximately 3 hours after injecting.[186] Most of her patients state that they inject 6-8 times per day.[187] Similarly, the Applicant Ms. Resendes said that she used heroin "every day in order to avoid withdrawal symptoms,"[188] while the Applicant Mr. Forgues stated that he injected opioids "multiple times a day."[189]

119. However, research suggests that individuals who use SCSs attend less than 100 times per year, or about 8 times a month.[190] Mr. Sinclair admitted on cross-examination that, in 2024, KMOPS

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[182] Day Affidavit at para. 26, RAR, Vol. 4, Tab 33, pp. 1944-1945.
[183] Platt Affidavit at paras. 13, 33-35, RAR, Vol. 5, Tab 34, pp. 1965, 1970; Somers Affidavit at para. 32, RAR, Vol. 4, Tab 31, pp. 1805-1806; Somers Cross, AJSR, Tab 16, pp. 91, 93.
[184] Day Affidavit at paras. 24-25, RAR, Vol. 4, Tab 33, p. 1944; Somers Affidavit at para. 32, RAR, Vol. 4, Tab 31, pp. 1805-1806; Koivu Affidavit at paras. 89-96, RAR, Vol. 4, Tab 32, pp. 1890-1892.
[185] Somers Affidavit at para. 30-31, RAR, Vol 4, Tab 31, pp.1804-1805.
[186] Koivu Affidavit at paras. 101, 104, 108-109, RAR, Vol. 4, Tab 32, pp. 1893-1895.
[187] Koivu Affidavit at paras. 101, 104, 108-109, RAR, Vol. 4, Tab 32, pp. 1893-1895.
[188] Affidavit of Katharine Resendes [**Resendes Affidavit**] at para. 8, Application Record [**AR**], Vol. 1, Tab 4, p. 284.
[189] Affidavit of Jean-Pierre Aubry Forgues sworn January 3, 2025 at para. 12, AR, Vol. 1, Tab 5, p. 301.
[190] Somers Affidavit at paras 30-31, RAR, Vol. 4, Tab 31, pp. 1804-1805; Somers Cross, AJSR, Tab 16, p. 112.

reported an average of 5 or fewer supervised consumptions per month for each unique client.[191] KMOPS also reported that clients were more often coming in to get clean supplies and were inhaling their drugs outside instead of injecting under the supervision of KMOPS staff.[192]

120. Supervised injecting is also of increasingly limited relevance given the shifting practice to smoking or inhaling opioids.[193] Dr. Koivu explained that while illicit fentanyl is a major contributor to opioid-related deaths in Ontario, its most common form of use is by inhalation, which is generally prohibited in SCSs to protect the staff from toxic fumes.[194] For this reason, some addictions specialists view supervised injecting as an "outmoded" form of harm reduction.[195]

c) Harm reduction should be combined with treatment

121. Addictions specialists agree that a comprehensive strategy to approaching addiction requires four pillars: prevention, treatment, harm reduction, and enforcement.[196] Harm reduction is only one component and should be pursued in combination with treatment. This view is shared by Ontario's experts Dr. Day, Dr. Somers and Dr. Koivu, as well as the Applicants' own expert Dr. Wyman.[197]

122. Harm reduction alone is not sufficient. As Dr. Somers noted, as drugs become increasingly potent, giving priority to harm reduction only prolongs the risk to drug users. Instead, the imperative should be to engage users in treatment to facilitate recovery.[198] As Dr. Koivu put it, we should not aim

[191] Sinclair Cross, AJSR, Tab 1, pp. 52-65, Exhibit 2, pp. 130-140.
[192] Sinclair Cross, AJSR, Tab 1, Exhibit 2, pp. 130-140.
[193] Somers Affidavit at para. 34-35, RAR, Vol. 4, Tab 31, p. 1806; Koivu Affidavit at paras. 26, 119-129, RAR, Vol. 4, Tab 32, pp. 1873-4, 1897-1899; Koivu Cross, AJSR, Tab 17, pp. 34-35.
[194] Koivu Affidavit at paras. 26, 119-129, RAR, Vol. 4, Tab 32, pp. 1873-4, 1897-1899. There is currently only one SCS in the province that permits supervised inhalation, which has been specifically retrofitted with a specialized fume hood.
[195] Somers Affidavit at para. 35, RAR, Vol. 4, Tab 31, p. 1806.
[196] Koivu Affidavit at paras. 36-37, RAR, Vol. 4, Tab 32, pp. 1876-1877.
[197] Affidavit of Dr. Jennifer Wyman sworn February 6, 2025 at paras. 6-7, 22, Reply AR, Tab 25, pp. 328, 333; Somers Affidavit at paras. 11-15, RAR, Vol. 4, Tab 31, pp. 1799-1800; Koivu Affidavit at para. 36, RAR, Vol. 4, Tab 32, p. 1876; Day Affidavit at paras. 4-5, 8, RAR, Vol. 4, Tab 33, pp. 1939, 1940.
[198] Somers Affidavit at paras. 22-25, RAR, Vol. 4, Tab 31, pp. 1802-3; Somers Cross, AJSR, Tab 16, pp. 1414-20.

"to meet people who suffer from substance use where they currently are and keep them there".[199] People who use drugs do not generally improve without supports and treatment.[200]

123. A large body of research supports treatment therapies, such as opioid agonist medications that manage withdrawal symptoms.[201] There is also considerable evidence supporting the effectiveness of community-based supports addressing employment, stable housing and healthy social reintegration.[202]

124. Ontario is implementing 27 new Homelessness and Addiction Recovery Treatment Hubs ("HART Hubs") across the Province.[203] HART Hub clients will receive supports that can include primary care, mental health services, addictions care and support, social services and supports, shelter and transition beds, and other supplies and services.[204] Dr. Somers noted that HART Hubs constitute a "substantial step to promoting recovery and social integration" for people with addiction, in particular people experiencing homelessness, addiction and mental illness, and unemployment.[205]

125. The Applicants complain about "Ontario's focus on abstinence-only drug treatment programs as opposed to SCSs".[206] But under Ontario's approach, HART Hubs will co-exist with SCSs. The presence of both HART Hubs and SCSs in Ontario aligns with the agreement among experts that a combination of harm reduction and recovery-oriented treatment is necessary in addressing the complex issue of addiction and substance use.

126. There are fewer than 200 SCSs operating in the world today, 23 of which currently operate in Ontario.[207] Whether or not some SCSs in Ontario may close, Ontario will continue to have one of the

[199] Koivu Affidavit at para. 137, RAR, Vol. 4, Tab 32, p. 1901.
[200] Wyman Cross, AJSR, Tab 4, p. 725-729.
[201] Somers Affidavit at para. 33, RAR, Vol. 4, Tab 31, p. 1806; Day Affidavit at paras. 8-10, 55, RAR, Vol. 4, Tab 33, pp. 1939-1940, 1951-1952; Koivu Affidavit at paras. 23, 91, RAR, Vol. 4, Tab 32, pp. 1872-3, 1891.
[202] Somers Affidavit at paras. 14-15, RAR, Vol. 4, Tab 31, p. 1800; Somers Cross, AJSR, Tab 16, pp. 1414-20.
[203] Ontario Ministry of Health, News Release, "Ontario Building Safer Communities With 18 Additional Homelessness and Addiction Recovery Treatment Hubs" (27 January 2025), online.
[204] Sinclair Affidavit, Exhibit V, AR, Vol. 1, Tab 3, pp. 248-252.
[205] Somers Affidavit at paras. 44-45, RAR, Vol. 4, Tab 31, p. 1809.
[206] Applicants' factum at para. 114.
[207] Day Affidavit at para. 54, RAR, Vol. 4, Tab 33, p. 1951; Affidavit of Dr. Bayoumi sworn January 8, 2025, AR, Vol. 2, Tab 11, Exhibit A, p. 677.

highest per capita rates of SCSs in the world.[208] Despite this very high number of SCSs, Ontario does not have better health outcomes for opioid-dependant people than other jurisdictions. A new approach is required that combines harm reduction with renewed emphasis on treatment and recovery.

PART III – ISSUES

127. Ontario submits that the issues are as follows:

a) Does the establishment of the buffer zone infringe *Charter* s. 7?

b) Does the establishment of the buffer zone infringe *Charter* s. 15?

c) If the establishment of buffer zone infringes a *Charter* right, is it justified under *Charter* s. 1?

d) Does requiring provincial approval for municipal applications for *CDSA* exemptions infringe *Charter* ss. 7 or 15?

e) Is the Act *ultra vires* the Province?

f) Is the Act inoperative by virtue of federal paramountcy?

g) Should interim injunctive relief be granted?

128. Ontario submits that s. 2 of the Act, which imposes the buffer zone, does not infringe *Charter* s. 7 or 15, and in the alternative that it is justified under *Charter* s. 1. Nor does the requirement for provincial approval of municipal requests for *CDSA* exemptions in s. 3 of the Act engage any *Charter* right. Ontario submits that the Act is *intra vires* the Province and is not inoperative under the doctrine of federal paramountcy. Ontario further submits that interim injunctive relief should not be granted.

PART IV – LAW

A. The establishment of the buffer zone does not infringe *Charter* s. 7

129. The establishment of the buffer zone does not infringe s. 7 of the *Charter*. Section 2 of the Act does not deprive anyone of life, liberty or security of the person. In the alternative, any deprivation is in accordance with the principles of fundamental justice.

[208] Day Affidavit at para. 54, RAR, Vol. 4, Tab 33, p. 1951.

130. The *Charter* s. 7 analysis proceeds in two stages. The first question is whether the impugned law deprives the claimant of their life, liberty, or security of the person. If the answer to that question is "yes", the second question is whether the infringement is in accordance with the principles of fundamental justice.[209] If the claimant cannot meet the first part of the test, the "analysis stops there."[210] The claimant bears the onus at both steps.

a) *PHS* is distinguishable

131. While the Applicants and their supporting interveners rely heavily on the Supreme Court's 2011 decision in *PHS*, there are important factual and legal differences between that case and this one.

132. *PHS* involved a challenge to the federal criminal prohibitions against possession and trafficking of controlled drugs,[211] together with a challenge to the federal Minister of Health's decision not to grant Insite a new exemption from these statutory prohibitions after its original exemption had expired.[212] At the time, Insite was the only "government-sanctioned safe injection facility" in North America, described by the Supreme Court as a "strictly regulated health facility" operated under the authority of British Columbia's regional health authority.[213]

133. The Supreme Court held that the *CDSA*'s criminal prohibition on possession of drugs deprived staff and clients of Insite of their liberty under *Charter* s. 7 because it exposed them to a possible sentence of imprisonment.[214] For the same reason, the criminal prohibition also deprived the clients of their right to life and to security of the person: "The threat to the liberty of the staff in turn impacts on the s. 7 rights of clients who seek the health services provided by Insite."[215] The application of this criminal prohibition to the activities at Insite deprived clients of their s. 7 interests.[216]

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[209] *Carter v. Canada (Attorney General)*, 2015 SCC 5 at para. 55 [*Carter*].
[210] *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 at para. 47.
[211] *PHS* at para. 75.
[212] *PHS* at para. 76; see also paras. 121-124.
[213] *PHS* at paras. 17-18.
[214] *PHS* at paras. 87-90.
[215] *PHS* at paras. 90-91.
[216] *PHS* at paras. 91-94.

134. The Supreme Court went on to hold that the *CDSA* prohibition was nonetheless in accordance with the principles of fundamental justice, because the statute granted discretion to the federal Minister to make exemptions: "The availability of exemptions acts as a safety valve that prevents the *CDSA* from applying where such application would be arbitrary, overbroad or grossly disproportionate in its effects."[217] But the Minister's refusal to grant Insite an exemption was arbitrary and grossly disproportionate, given the public health and public safety objectives of the *CDSA*.[218]

135. The instant case proceeds on a very different legal basis from *PHS*. The impugned Act does not create any offences. Unlike in *PHS*, in this case there is no "threat to the liberty of the staff [that] in turn impacts on the s. 7 rights of clients."[219] No staff or client of any SCS faces imprisonment under the impugned Act. The foundation for the *Charter* s. 7 claim in *PHS* simply does not arise in this case. Nor does the provincial Act affect the availability of any federal exemption under the *CDSA* – the very issue that was decided in *PHS*.

136. This case is also very different factually from the situation in *PHS*. When the *PHS* litigation was commenced, Insite was the only SCS in Canada operating under a *CDSA* exemption. Today, there are 23 such sites in Ontario alone. In 2011, the blanket application of the *CDSA* prohibition, together with the refusal to issue an exemption to Insite, meant that there was no place in Canada where a person who used drugs could lawfully go for supervised consumption. No such blanket prohibition is in place here. Moreover, the impugned Act's objectives are different from those of the *CDSA*: the impugned Act aims only to separate SCSs from schools and daycares by instituting a 200m buffer zone, without prohibiting SCSs, limiting their number, or otherwise regulating their activities.

137. The record in this case is also very different from that in *PHS* with respect to the negative external effects of SCSs. In *PHS*, the Supreme Court held that "There has been no discernable negative impact [of Insite] on the public safety and health objectives of Canada" and that Insite "has had no

[217] *PHS* at paras. 113-114.
[218] *PHS* at paras. 129-133.
[219] *PHS* at paras. 90-91.

negative impact on the legitimate criminal law objectives of the federal government."[220]By contrast, the record in this case reveals an enormous body of evidence, including eyewitness reports, photo and video evidence and incident reports from SCSs themselves, demonstrating the public disorder and antisocial behaviour that is proximate to SCSs. Whether or not this evidence could support a criminal prohibition of the kind that was at issue in *PHS*, it plainly supports the less intrusive objective of separating schools and daycares from the public disorder that is proximate to SCSs.

138. The Supreme Court in *PHS* cautioned that "The conclusion that the Minister has not exercised his discretion in accordance with the *Charter* in this case is not a licence for injection drug users to possess drugs wherever and whenever they wish. Nor is it an invitation for anyone who so chooses to open a facility for drug use under the banner of a 'safe injection facility'."[221] The Applicants ignore this caution, and instead rely on *PHS* as though it had established a constitutional right to operate an SCS at any street address they see fit, including within 200m of a school or a daycare. The Applicants' approach is unsupported – indeed, it is contradicted – by the *PHS* decision itself.

139. The case that is most similar to this case is not *PHS*, but rather *Weeds Glass*.[222] In that case, the British Columbia courts rejected a *Charter* challenge to municipal zoning by-laws that regulated the location of medical cannabis dispensaries. Among other restrictions, the by-laws required that the dispensaries be located at least 300m from schools and community centres.[223]

140. As in this case, the challengers in the BC case relied on evidence from a medical dispensary operator who complained that he would have to move kilometers away from his current location because of proximity to elementary schools,[224] voluminous expert opinion about the purported hardship to disabled medical cannabis users of having to travel to medical dispensaries at approved

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[220] *PHS* at paras. 133, 140.
[221] *PHS* at para. 140 [underlining added].
[222] *Vancouver (City) v. Karuna Health Foundation*, 2018 BCSC 2221, aff'd sub nom. *Vancouver (City) v. Weeds Glass and Gifts Ltd.*, 2020 BCCA 46.
[223] *Weeds Glass* at para. 15.
[224] *Weeds Glass* at para. 52.

locations,[225] and arguments that the by-laws would not in fact achieve their objectives of preventing crime, safeguarding health or mitigating nuisance.[226]

141. The BC courts rejected the challenge. There was no dispute that criminal prohibitions that prevented users from possessing cannabis for medical purposes infringed *Charter* s. 7.[227] But this did not mean that zoning restrictions on the *location* of medical cannabis dispensaries, including a 300m buffer zone around schools, infringed *Charter* s. 7. As the BC Supreme Court noted:

> Access to cannabis under [*Charter*] s. 7 does not mean access on every corner of a city. It does not mean access to a particular store or particular strain. Section 7 demands that individuals be given reasonable access to medical cannabis not unrestricted access. Individuals may be inconvenienced, but such inconvenience does not engage s. 7.[228]

142. The BC Court of Appeal affirmed this reasoning and held:

> The appellants' s. 7 argument is that the MMRU bylaws were unconstitutional to the extent that they required any patient to have to travel further than one could easily travel on foot or by motorized scooter to obtain medical cannabis (other than that available by mail through the ACMPR program). The same argument could be made in relation to any medical treatment or prescription and would lead to the absurd result that the City would be unable to enact zoning bylaws regulating the location of pharmacies and medical offices generally.[229]

143. The same conclusion should be reached here for the same reasons. It cannot be the case that any facility that provides health care is thereby immune from zoning laws under *Charter* s. 7: if that were true, then the Province (and municipalities exercising delegated provincial power) could never regulate the location of a hospital, doctor's office or pharmacy. For that matter, *Charter* s. 7 does not guarantee that a facility providing health care may never be closed or moved by state action: the Divisional Court has already held that the *Charter* does not prevent Ontario from closing a hospital and relocating its services elsewhere, even if patients do not want to travel to another hospital.[230]

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[225] *Weeds Glass* at paras. 60-61.
[226] *Weeds Glass* at para. 67.
[227] *R. v. Smith*, 2015 SCC 34 at paras. 17-18; *R. v. Parker*, 2000 CanLII 5762 (ON CA) at paras. 93-97.
[228] *Vancouver (City) v. Karuna Health Foundation*, 2018 BCSC 2221 at paras. 147-148.
[229] *Weeds Glass* at para. 130.
[230] *Wellesley Central Hospital v. Ontario (Health Services Restructuring Commission)*, 1997 CanLII 17803 (ON SCDC) at paras. 58-69.

144. *Charter* s. 7 is engaged by a penal prohibition that "limits liberty by foreclosing reasonable medical choices through the threat of criminal prosecution",[231] as in *Morgentaler*, *Carter*, *PHS* and *Smith*.[232] But *Charter* s. 7 is not engaged at all by a provincial regulatory statute that merely establishes zoning rules for the shared use of neighbourhoods. The Applicants have not identified any decision of any Canadian court holding that a zoning law infringed *Charter* s. 7 because it regulated the location at which a health care facility could be located, even though such zoning rules are ubiquitous.[233] This Court should decline the Applicants' invitation to make this case the first.

b) The context favours deference to the elected Legislature

145. This case involves the Legislature's balancing of competing interests, the protection of vulnerable groups, and an assessment of whether there is a reasoned apprehension of harm in light of conflicting and indeterminate evidence. These are all factors that call for judicial deference to legislative policy choices. The Court of Appeal for Ontario has repeatedly confirmed this deferential approach in assessing whether the law is arbitrary, overbroad or grossly disproportionate under *Charter* s. 7, and not just at the *Charter* s. 1 justification stage.[234]

146. The *Charter* s. 7 cases relied on by the Applicant – including *Bedford*, *Carter*, *PHS* and *Morgentaler*[235] – all arose in a very different context. Each of those cases involved a criminal prohibition coupled with a penalty of imprisonment. In such circumstances, the state acts as "singular antagonist"[236] against the individual by creating offences and the threat of imprisonment, and so of course the *Charter* s. 7 rights of individuals were implicated.

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[231] *R. v. Smith*, 2015 SCC 34 at para. 18.
[232] *R. v. Morgentaler*, 1988 CanLII 90 (SCC), [1988] 1 SCR 30 at pp. 56-57; *Carter,* at paras. 64-82; *PHS* at paras. 90-91; *R. v. Smith*, 2015 SCC 34 at para. 18.
[233] See e.g. City of Toronto, by-law No. 569-2013, *Zoning By-law*, chs. 80.20, 900.31.
[234] *Cochrane v. Ontario (Attorney General)*, 2008 ONCA 718 at para. 30; *R. v. Schmidt*, 2014 ONCA 188 at para. 46; *Thompson v. Ontario (Attorney General)*, 2016 ONCA 676 at paras. 20-33.
[235] *R. v. Morgentaler*, 1988 CanLII 90 (SCC), [1988] 1 SCR 30 at pp. 56-57; *Carter,* at paras. 2, 18; *PHS* at paras. 90-91; *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paras. 4-15 [*Bedford*].
[236] *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC) at p. 994 [*Irwin Toy*].

147. This case is different. Section 2 of the Act merely regulates the location of SCSs, without prohibiting their activities or restricting their number. In this context, the state is not acting as "singular antagonist" by punishing the conduct of individuals. Rather, it is concerned with the "reconciliation of claims of competing individuals or groups":[237] namely, balancing the interests of clients who wish to use SCSs with the interests of children and youth in not being exposed to the public disorder and antisocial behaviour that is proximate to SCSs. As the Supreme Court has noted, courts do not have superior expertise or legitimacy as compared to the elected branches of government in reconciling such competing interests:

> When striking a balance between the claims of competing groups, the choice of means, like the choice of ends, frequently will require an assessment of conflicting scientific evidence and differing justified demands on scarce resources. Democratic institutions are meant to let us all share in the responsibility for these difficult choices. Thus, as courts review the results of the legislature's deliberations, particularly with respect to the protection of vulnerable groups, they must be mindful of the legislature's representative function.[238]

148. The Court should also be deferential to the Legislature's assessment of the problem addressed by the Act. As the Court of Appeal has held, "where the risk of harm or the efficaciousness of Parliament's remedy is difficult or impossible to measure scientifically it is for the legislature, not the courts, to decide upon the appropriate course of action, provided there is evidence of a 'reasoned apprehension of harm'."[239] In the absence of "determinative scientific evidence", the Court can rely "on logic, reason and some social science evidence":

> The legislature is not required to provide scientific proof based on concrete evidence of the problem it seeks to address in every case. Where the court is faced with inconclusive or competing social science evidence relating the harm to the legislature's measures, the court may rely on a reasoned apprehension of that harm.[240]

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[237] *Irwin Toy* at p. 994.
[238] *Irwin Toy* at p. 993.
[239] *Cochrane v. Ontario (Attorney General)*, 2008 ONCA 718 at paras. 26-30.
[240] *Harper v. Canada (Attorney General)*, 2004 SCC 33 at paras. 77-78 [*Harper*].

149. The Applicants argue that Ontario's evidence of harm is merely "anecdotal evidence from a handful of individuals."[241] This characterization trivializes substantial Ontario's eyewitness evidence and photo and video evidence of disorderly behaviour, as well as the incident reports of the SCSs themselves. But in any event, the Supreme Court has noted that a reasoned apprehension of harm "does not require scientific demonstration" and "may be established by the application of common sense to what is known, even though what is known may be deficient from a scientific point of view."[242]

150. Accordingly, the question is not whether Ontario has proven to a scientific standard that SCSs cause crime. Rather, the question is whether "there was sufficient evidence of a reasoned apprehension of harm to permit the legislature to act."[243] Ontario's record plainly meets this standard: the evidence establishes that the Legislature had a reasoned apprehension of harm in seeking to separate children and youth attending schools and daycares from the public disorder that is proximate to SCSs. Once it is established that the harm in question is not insignificant or trivial, "the precise weighing and calculation of the nature and extent of the harm is Parliament's job", because legislators "are elected to make these sorts of decisions, and have access to a broader range of information, more points of view, and a more flexible investigative process than courts do."[244]

c) No deprivation of liberty

151. The Act does not deprive anyone of liberty. It creates no offences and imposes no imprisonment. There is no liberty right under the *Charter* to operate an SCS within 200m of a school or a daycare: the Supreme Court in *PHS* was explicit that its decision was "not a licence for injection drug users to possess drugs wherever and whenever they wish" nor "an invitation for anyone who so

[241] Applicants' factum at para. 74.
[242] *Harper* at para. 78.
[243] *Cochrane v. Ontario (Attorney General)*, 2008 ONCA 718 at para. 29.
[244] *R. v. Malmo-Levine*, 2003 SCC 74 at para. 133.

chooses to open a facility for drug use under the banner of a 'safe injection facility'."[245] This fact is sufficient to dispose of the liberty claim.

152. The Applicants argue that "By removing access to legal supervised consumption services, the *CCRA* drives people living with [substance use disorder] to use drugs under conditions where they are at heightened risk of criminal prosecution and consequent deprivations of their liberty."[246] There is no support for this argument in the case law or the evidence, and it should be rejected.

153. Nothing in the Act requires anyone to commit a crime. Moreover, as this Court has recently held, "a law is not invalid because some people may disobey it…If someone chooses to break the law, they are responsible for their non-compliance; it is not attributable to the law or those who have enacted it."[247] This proposition is even more true here, where the Applicants argue that a non-penal provincial zoning law is somehow responsible for a person's non-compliance with federal criminal law. If a person decides that they will commit a crime under the *CDSA* instead of travelling to an SCS that operates in compliance with the provincial Act, that is their decision to make. But that decision "is not attributable to the [provincial] law" and does not mean that the Act deprives them of liberty.

154. On the Applicants' argument, the revocation of a person's driver's licence or licence to practice medicine would also deprive a person of liberty, because in response to that revocation the person might unlawfully continue driving or practicing medicine without a licence, exposing themselves to penal jeopardy.[248] But the Court of Appeal for Ontario has held that there is no liberty right to drive a car[249] or practice a profession.[250] The connection between the civil, regulatory nature of the licensure rules and the penal consequences of committing a separate offence is simply too remote. The Court

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[245] *PHS* at para. 140.
[246] Applicants' factum at para. 60.; see also factum of the Intervener Black Legal Action Centre at paras. 7-11.
[247] *Ontario v. Trinity Bible Chapel et al*, 2022 ONSC 1344 at para. 151, aff'd 2023 ONCA 134 (application for leave to appeal to SCC refused: 2023 CanLII 72135 (SCC)).
[248] *Criminal Code*, RSC 1985, c. C-46, s. 320.18; *Regulated Health Professions Act, 1991*, SO 1991, c. 18, s. 40(1).
[249] *Horsefield v. Registrar of Motor Vehicles*, 1999 CanLII 2023 (ON CA).
[250] *Mussani v. College of Physicians and Surgeons of Ontario*, 2004 CanLII 48653 (ON CA) at para. 40; *Tanase v. College of Dental Hygienists of Ontario*, 2021 ONCA 482 at para. 42.

of Appeal has also held that a person's liberty is not engaged by a probation order or a fine, even though willful non-compliance with probation or willful non-payment of a fine can result in imprisonment.[251] The link between the imposition of the probation order or fine, which do not themselves deprive anyone of liberty, and the person's subsequent decision to willfully disobey is also too remote. The same is true here: the imposition of non-penal zoning rules on SCS operators is simply too remote from a user's decision to commit a crime punishable by imprisonment under the *CDSA*.

155. It must also be recognized that SCS clients commit crimes punishable by imprisonment as a matter of course in using an SCS. They commit crimes when they buy the illicit drugs that they use at the SCS, and they commit crimes when they transport those drugs to the SCS. The many clients of KMOPS who use that site's "drug packing services" every month – whereby drugs are packed inside KMOPS for later use outside of it – commit crimes every time they walk out of KMOPS with their "packed" drugs. The very model of SCSs, wherever they are located, involves clients committing crimes punishable by imprisonment. The Applicants' claim that a zoning law regulating the location of SCSs somehow exposes clients to the risk of imprisonment must be assessed against this reality.

d) No deprivation of life or security of the person

156. No person's life or security of the person is imperilled by requiring SCSs to be at least 200m from a school or daycare. There is no evidence that SCSs must be located within 200m of a school or daycare to provide their health benefits to clients. There is no evidence that SCS clients cannot reasonably access locations within a city that are at least 200m from a school or daycare. This fact is fatal to the *Charter* s. 7 claim in this case.

157. The Applicants have adduced voluminous evidence attempting to prove the health benefits that SCSs offer to their clients. While some of this evidence is contested, and while it is not the role of the Court to settle an ongoing and controversial dispute among expert clinicians and scientists, on

[251] *London (City) v. Polewsky*, 2005 CanLII 38742 (ON CA) at para. 4; *R. v. Schmidt*, 2014 ONCA 188 at paras. 43-44.

a fundamental level, all of this evidence is beside the point. Whatever health benefit SCSs may offer to their clients, there is no evidence and no reason to believe that SCSs cannot offer the same health benefits while being at least 200m away from a school or daycare.

158. The Applicants attempt to elide this basic fact by asserting that the Act "will mandate the closure of nearly half the SCSs in Ontario"[252] and that these SCSs "realistically will be unable to reopen to serve the same communities."[253] The Act mandates no such thing. Section 2 of the Act does not prohibit the operation of any SCS that is located at least 200m from a school or daycare. It does not prevent SCSs from serving any "communities." It does not prohibit SCSs that currently operate within 200m of a school or daycare from relocating outside of that buffer zone. Nor does the Act limit the number of SCSs that can operate in any city or in Ontario more generally.

159. The Applicants argue that "in order to be effective, SCSs were established in neighbourhoods that already had a high numbers of injection drug users".[254] But the Act does not prohibit SCSs from operating in any neighbourhood, and it does not require SCSs to leave any neighbourhood. 200m is roughly one or two city blocks.[255] For comparison, the walking distance between the adjacent courthouses at Osgoode Hall and 361 University Ave is 400m, according to Google Maps.[256] As the Toronto map at Appendix A reveals, KMOPS can comply with the Act simply by moving its SCS further south on Augusta Ave, or elsewhere within the neighbourhood.[257]

160. The Applicants argue that the Act will "eliminat[e]" SCSs "from some communities entirely", imposing "a total loss of access for all residents of Kitchener, Guelph, and Hamilton. The same goes for Thunder Bay".[258] Again, the Act does no such thing. The Act does not prohibit SCSs from

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[252] Applicants' factum at para. 53; see also factum of the Intervener Harm Reduction Service Providers Coalition at paras. 3, 5-7, 24.
[253] Applicants' factum at para. 100.
[254] Applicants' factum at para. 125.
[255] Ratcliffe Affidavit at para. 33, RAR, Vol. 5, Tab 35, p. 2100.
[256] Google Maps, "Osgoode Hall to 361 University Avenue, Toronto, ON", online: https://maps.app.goo.gl/2UxHoBXn4xzxNkEz9.
[257] McGarry Affidavit, RAR, Vol. 6, Tab 37, Exhibit B, pp. 2328-2330.
[258] Applicants' factum at para. 53.

operating in Kitchener, Guelph, Hamilton, Thunder Bay or any other city in Ontario. A glance at the maps of these cities at Appendix A reveals that there is abundant space within each of these cities for SCSs to operate lawfully under the Act.[259]

161. The Applicants assert that clients of current SCSs "will not be able to choose to delay their consumption to travel long distances to another SCS."[260] But the evidence of the Applicant Ms. Resendes is that she already takes public transit to get to KMOPS at 260 Augusta Ave, just as she previously took public transit to get to The Works at Victoria Street and Dundas Street East.[261] She is evidently able to delay consumption long enough to travel to these two sites (several kilometres apart) by public transit. For that matter, the Applicants' expert Dr. Werb opines that SCSs result in "significant reductions in overdose mortality of 59% as far as 5 kilometers away", which could only be true if people are travelling at least that distance to visit the sites.[262]

162. Of course, for any particular individual, the Act may result in the relocation of their preferred SCS from a street address that is convenient for them to a street address that is less convenient for them. It is equally true, as Prof. Ratcliffe notes, that "Depending on where [SCS clients] came from, a SCS displaced [by the Act] to a nearby street might even be closer to their point of origin."[263] But there is no evidence to show that SCS clients generally, or the individual Applicants in particular, cannot reasonably access the areas of each city in which it remains permissible under the Act to operate an SCS. Very frequently, as with KMOPS, these permissible areas include areas that are simply further down the same streets on which the sites are currently located.

163. In any event, the *Charter* does not guarantee against having to travel to access a health service or facility. In *Tanase*, the Court of Appeal for Ontario held that it was a "minor, if not trivial"

[259] McGarry Affidavit, RAR, Vol. 6, Tab 37, Exhibits B-K, pp. 2328-2349.
[260] Applicants' factum at para. 100.
[261] Resendes Affidavit at paras. 36-43, AR, Vol. 1, Tab 4, pp. 290-293.
[262] Affidavit of Dr. Daniel Werb sworn January 9, 2025, AR, Vol. 2, Tab 12, Exhibit B, p. 934; Ratcliffe Affidavit at para. 51, RAR, Vol. 5, Tab 35, p. 2107.
[263] Ratcliffe Affidavit at para. 51, RAR, Vol. 5, Tab 35, p. 2107.

inconvenience, rather than an infringement of liberty or security of the person, to require spouses of regulated health care practitioners to have to travel out of town to seek treatment rather than be treated by their spouses.[264] In *Ontario Health Coalition*, this Court recently held that the difficulty of travelling dozens of kilometers to visit a family member in an out-of-town long-term care home "is an inconvenience, not an infringement of the liberty or security of the person interests of either the patient or their family members."[265] The Divisional Court has held that the *Charter* is not infringed by the closing of a Toronto hospital, even if it means that patients will have to travel to other hospitals that they would not otherwise choose to attend.[266]

164. As the British Columbia courts have held, access to health care "does not mean access on every corner of a city",[267] and the *Charter* should not be interpreted to "lead to the absurd result" that legislators "would be unable to enact zoning bylaws regulating the location of pharmacies and medical offices generally."[268] What goes for hospitals, pharmacies and dispensaries must surely go for SCSs: while a prohibition against accessing health care may engage *Charter* s. 7, laws that regulate the specific locations of facilities within a city do not infringe the *Charter*. It would trivialize the *Charter* and the fundamental rights protected therein to hold that a facility offering health services is thereby immune from zoning laws or may never be required to relocate unless justified under *Charter* s. 1.

e) The establishment of the buffer zone is consistent with fundamental justice

165. In the alternative, even if s. 2 of the Act engages any interest protected by *Charter* s. 7, the Act is consistent with fundamental justice: "Section 7 does not promise that the state will never interfere with a person's life, liberty or security of the person — laws do this all the time — but rather that the

[264] *Tanase v. College of Dental Hygienists of Ontario*, 2021 ONCA 482 at paras. 50-51.
[265] *Ontario Health Coalition and Advocacy Centre for the Elderly v. His Majesty the King in Right of Ontario,* 2025 ONSC 415 at para. 245 [*Ontario Health Coalition*].
[266] *Wellesley Central Hospital v. Ontario (Health Services Restructuring Commission)*, 1997 CanLII 17803 (ON SCDC) at paras. 58-69.
[267] *Vancouver (City) v. Karuna Health Foundation*, 2018 BCSC 2221 at paras. 147-148.
[268] *Weeds Glass* at para. 130.

state will not do so in a way that violates the principles of fundamental justice."[269] When the purpose and effect of s. 2 of the Act are properly construed, the law is not arbitrary, overbroad or grossly disproportionate.

166. In the analysis of fundamental justice, this Court must examine "the relationship between the law's purpose and what it actually does".[270] The Act's purpose must be articulated "at an appropriate level of generality", which "resides between the statement of an 'animating social value' – which is too general – and a narrow articulation, which can include a virtual repetition of the challenged provision".[271] The purpose should be both precise and succinct, requiring the court to focus on the purpose of the particular provision being challenged.[272]

167. The purpose of s. 2 of the Act is to reduce the exposure of children and youth to the public disorder that is concentrated near SCSs. While the Act does not contain an explicit statement of this purpose, it is clear from the text, context and scheme of the Act itself.[273]

168. The purpose of s. 2 is clear on its face and "firmly anchored in the legislative text".[274] This court need not resort to extrinsic evidence of legislative purpose in this case. The Applicants and their supporting interveners rely on statements made by government officials in and out of the Assembly as evidence of the Act's purpose.[275] The Supreme Court has held that speeches and public declarations by political figures "should not be received as evidence".[276] Such statements "are political and are not credible sources of statutory or regulatory intention."[277]

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[269] *Carter* at para. 71.
[270] *R. v. Moriarity,* 2015 SCC 55 at paras. 27-31 [*Moriarity*].
[271] *Moriarity* at paras. 27-31; *R. v. Safarzadeh-Markhali*, 2016 SCC 14 at paras. 24, 27 [*Safarzadeh-Markhali*]; *R. v. Ndhlovu*, 2022 SCC 38 at paras. 61-62 [*Ndhlovu*].
[272] *Moriarity* at para. 29, *Safarzadeh-Markhali* at para. 28; *Ndhlovu* at para. 62.
[273] *Moriarity* at para. 31.
[274] *Moriarity* at para. 32.
[275] Applicants' factum at paras. 152-153; factum of the Intervener Board of Health for the City of Toronto Health Unit, para. 23; factum of the Intervener Barbara Hall and John Sewell at paras 9-10.
[276] *Reference re Upper Churchill Water Rights Reversion Act*, [1984] 1 SCR 297 at p. 319.
[277] *Tesla Motors Canada ULC v. Ontario (Ministry of Transportation)*, 2018 ONSC 5062 at para. 58; *Bowman et al. v. Her Majesty the Queen*, 2019 ONSC 1064 at para. 52; *Public School Boards' Assn. of Alberta v. Alberta (Attorney General)*, 2000 SCC 2 at para. 14; *Ruck v. City of Mississauga*, 2024 ONSC 2579 at para. 23.

169. Even statements made within the Assembly "should be given little weight", because "the intent of particular members of Parliament is not the same as the intent of the Parliament as a whole".[278] The Supreme Court also has cautioned that such statements "may be vague and incomplete and inferences of legislative purpose may be subjective and prone to error".[279]

170. Nor should the Court be concerned with the appropriateness of the legislative purpose at this stage. The court must take the objective "at face value" and assume that it is appropriate and lawful.[280]

171. Contrary to the contention of some interveners supporting the Applicants,[281] "equality" is not a principle of fundamental justice.[282] Nor have the Applicants raised this argument.

f) The Act is not arbitrary

172. A law is only arbitrary where there is "*no connection* to its objective".[283] A law is not arbitrary if it is "capable of fulfilling its objectives."[284] The Court of Appeal for Ontario has emphasized that there is a "heavy onus on the party challenging the legislation to establish that there is no connection between the effect of the law and its purpose", noting that "[t]he standard is not easily met."[285]

173. Section 2 of the Act is not arbitrary. The objective of s. 2 is reduce the exposure of children and youth to the public disorder that is concentrated near SCSs. The buffer zone is clearly capable of fulfilling this objective. The connection between the purpose of the law and its means is evident "on the basis of reason or logic."[286]

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[278] *R. v. Heywood*, [1994] 3 SCR 761 at p. 788 per Cory J.
[279] *Moriarity* at para. 31.
[280] *Moriarity* at para. 30.
[281] Factum of the intervener Barbara Hall and John Sewell at paras. 20-23; factum of the intervener HIV Legal Network and HALCO at paras. 23, 29.
[282] *R. v. Cornell*, [1988] 1 SCR 461 at paras. 24-25; *Sagharian v. Ontario (Education)*, 2008 ONCA 411 at para. 55.
[283] *R. v. Schmidt*, 2014 ONCA 188 at para. 46; *Carter* at para. 83, *Bedford* at paras. 98-100, 108, 111, 119-120.
[284] *Carter* at para. 83.
[285] *R. v. Long*, 2018 ONCA 282 at para. 76.
[286] *Harper* at para. 104, citing *RJR-MacDonald Inc. v. Canada (Attorney General),* 1995 3 SCR 199 at para. 153.

174. There is ample evidence that public disorder is concentrated in the immediate vicinity of SCSs. This evidence includes substantial eyewitness accounts and photo and video evidence of drug use, drug dealing, public intoxication, discarded drugs and paraphernalia, and aggression and violence. The evidence shows that this public disorder is concentrated immediately near SCSs, and is not merely in the same "neighbourhood" or city. The eyewitness accounts are numerous, consistent across different locations and cities, and corroborated by the SCSs' own incident reports. It is also consistent with Dr. Ratcliffe's expert opinion that SCSs attract drug markets, with all their attendant disorder.[287] Taken together, this evidence plainly meets the threshold of a reasoned apprehension of harm concerning the disorder that is concentrated immediately near to SCSs.

175. The Applicants argue that there is no scientific proof that SCSs cause crime or an increase in public disorder.[288] This argument misses the point. Ontario is not obliged to prove to a scientific standard that SCSs are the *cause* of the observed public disorder. Whatever the cause, Ontario's evidence establishes that public disorder is concentrated in the immediate vicinity of SCSs. The evidence also establishes that exposure to this disorder is harmful to children and youth. Nothing more is required to establish a reasoned apprehension of harm.[289]

176. The Applicants also argue that the Act is arbitrary because closing SCSs will only force clients to use drugs in public. This argument too should be rejected. The Act does not prevent SCSs from operating in Ontario, but simply requires that they do so outside the buffer zone. In any event, the purpose of the buffer zone is not to eliminate public drug use, but instead to reduce the exposure of children and youth to the concentration of drug use and other public disorder near SCSs. Requiring SCSs to relocate at least 200m from schools and daycares is rationally connected to this purpose.

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[287] Ratcliffe Affidavit at paras. 18, 24-26, RAR, Vol. 5, Tab 35, p. 2093, 2095-2096.
[288] Applicants' factum at para. 74.
[289] *Harper* at paras. 77-78.

g) The Act is not overbroad

177. Overbreadth means that the law must not go further than reasonably necessary to achieve its legislative goals.[290] For example, a blanket prohibition will be overbroad where it "sweep[s] conduct into its ambit that bears no relation to its objective."[291]

178. The buffer zone is not overbroad. Separating SCSs from schools and daycares goes no further than reasonably necessary in pursuit of the legislative goal of reducing the exposure of children and youth to the public disorder that is concentrated near SCSs.

179. The Applicants argue that the Act is overbroad for three reasons.[292] First, they argue that the law is overbroad because "Ontario has not put forward any evidence of safety issues at *four* of the nine SCSs that the [Act] will close".[293] This argument should be rejected. The buffer zone is a preventative, prophylactic measure taken to respond to the risk of concentrated public disorder near SCSs. It is a not a reactive penal consequence imposed only once a particular SCS has been proven to cause harm. As the Supreme Court held in *Harper*, "Surely, Parliament does not have to wait for the feared harm to occur before it can enact measures to prevent the possibility of the harm occurring."[294]

180. Second, the Applicants argue that the Act is overbroad because it applies to "SCSs that are not open to the general public, such as a hospital that provides supervised consumption services exclusively to inpatients".[295] This argument is entirely hypothetical. The only SCS in Ontario that serves hospital inpatients is Casey House in Toronto, which is not located within a buffer zone under the Act. Every other SCS in the Province is open to the general public.

181. Lastly, the Applicants and their supporting interveners claim that the Act is overbroad because the buffer zone applies to services other than supervised consumption, including scientific research

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[290] *Safarzadeh-Markhali* at para. 50, citing *Bedford* at para. 101.
[291] *Bedford* at para. 117.
[292] Applicants' factum at para. 78.
[293] Applicants' factum at para. 79.
[294] *Harper* at para. 98.
[295] Applicants' factum at para. 81.

and drug checking.[296] This argument is based on an erroneous interpretation of the term "supervised consumption site" in the Act. Courts should interpret legislation in a manner that fits the context and achieves a rational result, rather than in a manner that renders it overbroad.[297] This Court should not simply accept the Applicants' and their supporting interveners' assertions as to what the law prohibits:

> Until we know what the law catches, we cannot say whether it catches too much. This Court has consistently approached claims of overbreadth on this basis. It is not enough to accept the allegations of the parties as to what the law prohibits. The law must be construed, and interpretations that may minimize the alleged overbreadth must be explored.[298]

182. The purpose and scheme of s. 2 of the Act is to reduce the exposure of children and youth to the concentrated public disorder that is near SCSs. Any ambiguity in the definition of "supervised consumption site" must be resolved in light of this purpose. [299] It would be an absurd result to hold that the definition of "supervised consumption site" should include sites at which no supervised consumption takes place.

183. The Applicants give the Act an unreasonably broad interpretation, and then complain that it captures too much. The correct rule of statutory interpretation is exactly the opposite: any ambiguity in the Act should be resolved in light of the Act's purpose and in conformity with the *Charter*.[300]

h) The Act is not grossly disproportionate

184. The rule against gross disproportionality "only applies in extreme cases where the seriousness of the deprivation is totally out of sync with the objective of the measure": this idea "is captured by the hypothetical of a law with the purpose of keeping the streets clean that imposes a sentence of life

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[296] Applicants' factum at paras. 82-84; factum of the Intervener Board of Health for the City of Toronto Health Unit, paras. 25, 28-33.
[297] *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30 at paras. 43-44, 55-56 [*JTI*].
[298] *R. v. Sharpe*, 2001 SCC 2 at para. 32.
[299] *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC) at para. 21.
[300] *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC) at p. 1078; *Ontario Health Coalition* at para. 271; *Moriarity* at para. 32.

imprisonment for spitting on the sidewalk. The connection between the draconian impact of the law and its object must be entirely outside the norms accepted in our free and democratic society."[301]

185. The Act does not approach the "draconian impact" of a law that imprisons people for life for spitting on the sidewalk. The Act creates no offences and imposes no punishments. It would trivialize the important protections of the *Charter* to conclude that a law is "grossly disproportionate" because it prevents SCSs from operating within 200m of a school or daycare.

186. As set out above, there is no evidence that SCSs must be located near to schools or daycares to provide health benefits to clients. Nor is there evidence that SCS clients cannot reasonably access locations within a city that are at least 200m from a school or daycare. The Court should reject the Applicants' argument that the Act will force SCS clients to engage in "unsafe practices", including sharing needles or using unsanitary equipment.[302] Nothing in the Act requires these unsafe practices or limits the availability of clean equipment, injection education, or drug checking.[303]

187. The Applicants minimize the harm that the Act seeks to address as "incremental and indirect".[304] Yet Dr. Guerra was clear that regular exposure to public disorder can have serious detrimental effects beyond simply normalizing antisocial behaviour over time. Exposure to this kind of harmful behaviour result in stressful adverse child experiences that detrimentally impact a child's physical, mental, social and behavioural outcomes.[305] Repeated exposure to these activities results in an inordinate amount of stress and fear which in turn can interferes with a child's physical, social and emotional development.[306] This is clear from the eyewitness accounts of several parents who describe their children being fearful, having panic attacks and crying themselves to sleep.[307] Against this harm,

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[301] *Bedford* at para. 120.
[302] Applicants' factum at para. 86.
[303] *CCRA*.
[304] Applicants' factum at para. 88.
[305] Guerra Affidavit at paras. 21-28, RAR, Vol. 5, Tab 36, pp. 2166-2169.
[306] Guerra Affidavit at paras. 24-26, RAR, Vol. 5, Tab 36, pp. 2167-2168.
[307] Spence Affidavit at paras. 15c, 20, RAR, Vol. 2, Tab 10, pp. 652-53; Nickel Affidavit at paras. 25-27, RAR, Vol. 2, Tab 13, p. 755; Kea Affidavit at para. 47, RAR, Vol. 2, Tab 7, p. 607; Kerr Affidavit at para. 17, RAR,

and the harms resulting from children being exposed to drugs and used drug paraphernalia, the modest impact of a zoning restriction is not "totally out of sync".

B. The buffer zone does not discriminate contrary to *Charter* s. 15

188. The Applicants have not demonstrated a breach of s. 15 of the *Charter*, which requires them to prove on a balance of probabilities that the Act:

a. on its face or in its impact creates a distinction based on an enumerated or analogous ground (step one); and

b. that the distinction imposes burdens or denies benefits in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage (step two).[308]

189. A claimant must satisfy both steps of the test to establish a breach of *Charter* s. 15(1). In this case, the Applicants cannot demonstrate that either step of the test is satisfied.

190. The buffer zone does not draw a distinction on its face or in its impact. The buffer zone affects all SCS clients the same way, whether they have a disability or not.[309] The fact that many SCS clients have a disability "is not sufficient to meet the burden at Step One. Merely proving overrepresentation is insufficient."[310] All laws, including the buffer zone, are expected to affect individuals, including individuals with disabilities.[311] What must be proved is not that the law impacts individuals with disabilities, but that the law impacts individuals with disabilities differently as compared to how it impacts individuals without disabilities. The causation analysis at step one necessarily involves drawing a comparison between the claimant group and other groups.[312]

191. The Applicants have not adduced any evidence to demonstrate a clear disparity between how the imposition of the buffer zone will affect the claimants' group as compared to how it will affect

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Vol. 3, Tab 16, p. 1141; Priest Affidavit at para. 15c, RAR, Vol. 3, Tab 18, p. 1192; Khazaeli Affidavit at paras. 23-26, RAR, Vol. 3, Tab 24, pp. 1445-1446.

[308] *R. v. Sharma*, 2022 SCC 39 at paras. 28, 188 [*Sharma*]; *Ontario Health Coalition* at para. 308.

[309] *Ontario Health Coalition* at para. 317.

[310] *Ontario Health Coalition* at para. 317.

[311] *Ontario Health Coalition* at paras. 312-313; *Sharma* at para. 40.

[312] *Fair Change v. His Majesty the King in Right of Ontario*, 2024 ONSC 1895 at para. 383 [*Fair Change*]; *Sharma* at paras. 31-32, citing *Andrews v. Law Society of British Columbia*, 1989 CanLII 2 (SCC) at p. 164.

other comparator groups.[313] As the Court of Appeal for Ontario recently affirmed in rejecting a *Charter* s. 15(1) challenge, a sufficient evidentiary record is not a "mere technicality" but is instead "essential" for an Applicant to lead.[314] At step one of the test for discrimination, the burden is on the claimant to show not only that there is a disproportionate impact on a protected group, but to demonstrate through evidence that the impugned law *created* or *contributed to* that disproportionate impact.[315] It is important to distinguish between adverse impacts caused or contributed to by the impugned law and those that exist independently of it.[316]

192. The Applicants fail to establish that the buffer zone will cause greater disadvantage for SCS clients with disabilities. They have not led any evidence to demonstrate that SCS clients with disabilities have greater difficulty than clients without disabilities in accessing SCSs that are more than 200m from a school or daycare, or that clients with disabilities will have to travel further or wait longer than clients without disabilities to use an SCS that is at least 200m from a school or daycare.

193. The fact that many clients of SCSs are people with disabilities does not mean that a law that regulates the location of SCSs is thereby discriminatory on the basis of disability. The users of any health facility, including hospitals, will include people with disabilities, but it does not follow that laws regulating health facilities are for that reason discriminatory. For example, Centa J. recently held that a law regulating transfers from hospitals to long-term care homes did not have a disproportionate impact on the basis of age or disability merely because most hospital patients waiting for long-term care were elderly and disabled.[317] The key was that the law was not "triggered" by age or disability; it impacted elderly and disabled patients the same way it impacted all other patients subject to it.

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[313] *Ontario Health Coalition* at para. 310; *Fraser v. Canada (Attorney General)*, 2020 SCC 28 at paras. 62-63.
[314] *Ontario Teacher Candidates' Council v. Ontario (Education)*, 2023 ONCA 788 at para. 81, citing *MacKay v. Manitoba*, [1989] 2 SCR 357 at 366. See also: *Ernst v. Alberta Energy Regulator,* 2017 SCC 1 at para. 22; *Boone v. Kyeremanteng*, 2020 ONSC 198 at para. 15.
[315] *Sharma* at para. 44.
[316] *Fair Change* at para. 383; *Symes v. Canada*, 1993 CanLII 55 (SCC), [1993] 4 S.C.R. 695 at p. 765; *Sharma* at para. 44.
[317] *Ontario Health Coalition* at para. 317.

194. While the Applicants plead discrimination solely on the basis of disability, the interveners argue that the law also discriminates on the basis of race and sex.[318] These grounds are not pleaded by the Applicants in their Notice of Application or Notice of Constitutional Question[319] and should not be considered in this application, the scope of which is defined by the pleadings.[320] In any event, the same fatal flaw is present with these allegations: there is no evidence beyond a "web of instinct"[321] to demonstrate that the Act creates or contributes to a disproportionate impact on the basis of race or sex.

195. Even if the Applicants could satisfy step one of the test, which is denied, they have also failed to adduce any evidence to demonstrate that step two of the test is met. There is no evidence that the Act reinforces, exacerbates or perpetuates any historic or systemic disadvantage.

196. There is no doubt that many people with substance use disorder have lived lives of disadvantage and hardship. But this fact does not demonstrate that buffer zones established by the Act will cause or contribute to this disadvantage. There is no reason to think, for example, that it would alleviate anyone's disadvantage if they were permitted to attend an SCS 100m away from of a school or daycare as opposed to 200m away from a school or daycare. As noted above, the Act does not prohibit harm reduction efforts, healthcare, or the operation of SCSs. It simply establishes a zoning requirement for these sites in relation to schools and daycares.

C. Any infringement is justified under *Charter* s. 1

197. If this Court finds that the buffer zone infringes *Charter* ss. 7 or 15, any infringement is reasonable and demonstrably justified under s. 1 of the *Charter*. The buffer zone has a pressing and substantial objective. Any infringement is rationally connected to the objective, the means interfere as

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[318] Applicants' factum at para. 96; factum of the Intervener Aboriginal Legal Services at paras. 21-22; factum of the Intervener Black Legal Action Centre at paras. 13-20; factum of the Interveners HIV Legal Network and HIV & AIDS Legal Clinic Ontario at paras. 35-41.
[319] Applicants' Notice of Constitutional Question at paras. 17-21; Applicants' Notice of Application at para. 2(g)(iii), AR, Vol. 1, Tab 1, p. 6.
[320] *Mathur v. His Majesty the King in Right of Ontario*, 2023 ONSC 2316 at para. 95.
[321] *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30 at para. 34; *Ontario Health Coalition* at para. 313.

little as reasonably possible with the rights at issue, and its benefits outweigh any negative effects.[322]

198. An infringement under *Charter* s. 7 may be justified under *Charter* s. 1.[323] The Supreme Court has noted that "in some situations the state may be able to show that the public good – a matter not considered under s. 7, which looks only at the impact on the rights claimants – justifies depriving an individual of life, liberty or security of the person under s. 1 of the *Charter*."[324]

a) The Court should defer to the Legislature's policy choices

199. It is the role of the Legislature, not the courts, to make difficult policy choices on complex and multi-faceted issues. The legislature is required to "strike a balance between the claims of legitimate but competing social values."[325] As the Supreme Court has held, "Democratic institutions are meant to let us all share in the responsibility for these difficult choices."[326] Legislatures need not provide scientific proof of the problem they seek to address, nor "wait for the feared harm to occur" before enacting measures to prevent the possibility of harm occurring.[327]

200. Significant deference is owed here. Establishing zoning rules for the shared and safe use of neighbourhoods is a complex policy question. It requires a balancing of the interests of SCS clients with those of other vulnerable populations, namely children and youth. Ontario has adduced ample evidence to support a reasoned apprehension of harm to children and youth arising from exposure to the public disorder that is concentrated near SCSs. This Court need not resolve scientific debates on whether SCSs increase crime or decrease overdose mortality. Instead, it should defer to the Legislature's attempt to strike a balance between competing interests.

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[322] *R. v. Oakes*, 1986 CanLII 46 (SCC) at para. 70.
[323] *R. v. Michaud*, 2015 ONCA 585 at para. 81 [*Michaud*], *Gene Michaud v. Her Majesty the Queen*, 2016 CanLII 24866 (SCC) (leave to appeal to SCC refused).
[324] *Carter,* at para. 95; see also *Safarzadeh-Markhali* at para. 57; *Bedford* at paras. 125-129; *Michaud* at para. 83.
[325] *McKinney v. University of Guelph*, 1990 CanLII 60 (SCC), at p. 285; see also *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para. 53 [*Hutterian*]; *Quebec (Attorney General) v. A*, 2013 SCC 5 at para. 439; *Irwin Toy* at pp. 993-4.
[326] *Irwin Toy* at p. 993; see also *Heegsma v. Hamilton (City)*, 2024 ONSC 7154 at para. 84.
[327] *Harper* at paras. 77-78, 93, 98.

b) The buffer zone furthers a pressing and substantial objective

201. The Applicants do not dispute that the Act has a pressing and substantial objective.[328] As noted above, the objective of the buffer zone is to reduce the exposure of children and youth to the public disorder concentrated near SCSs. There can be no doubt that protecting children and youth from exposure to harmful incidents is pressing and substantial.

c) The establishment of the buffer zone is rationally connected to its objective

202. To establish a rational connection, Ontario "must show that it is reasonable to suppose that the limit may further the goal, not that it will do so."[329] This test is "not particularly onerous."[330] As long as the challenged limit "can be said to further in a general way an important government aim it cannot be seen as irrational."[331] The Act meets this low threshold. There is a clear connection between the Act's effects and its purpose of reducing the exposure of children and youth to public disorder. As noted by Dr. Guerra, "coming in and out of school, you are going to see these things every day…you can easily move it a block away so they're less likely to see".[332]

203. The Applicants argue that the law is irrational because closing SCSs will increase rather than decrease public drug use. They cite Dr. Guerra's cross-examination to assert that she agreed that it would be better for children if people consume their drugs inside a secure SCS where children are not allowed, rather than in public where children may stumble upon it.[333] This mischaracterizes Dr. Guerra's evidence. Dr. Guerra disagreed with the premise that SCSs eliminate drug use visible to children, noting the extensive evidence that drug use takes places outside of SCSs:

> I think the problem is is that you are guaranteeing exposure by creating these centres near schools and places where children go. You're guaranteeing they're going to see it. So, you

[328] Applicants' factum at para. 123.
[329] *Hutterian* at para. 48
[330] *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 at para. 143.
[331] *Canada (Human Rights Commission) v. Taylor*, 1990 CanLII 26 (SCC), [1990] 3 SCR 892 at pp. 925-926.
[332] Guerra Cross, AJSR, Tab 21, p. 2312.
[333] Applicants' factum at para. 128.

> know, in a way, even though you're bringing some of it indoors, you're also bringing more of it outdoors because you're just bringing more drug users to a certain area and drug dealers.[334]

204. Far from supporting the argument that the law is irrational, Dr. Guerra stated: "if you ask my professional opinion, I prefer they be 400 metres away so you – it's even less likely that you see it."[335]

d) The establishment of the buffer zone is minimally impairing

205. At the minimal impairment stage, the "government is not required to pursue the least drastic means of achieving its objective, but it must adopt a measure that falls within a range of reasonable alternatives.[336] Less drastic means which do not actually achieve the government's objective are not considered at this stage.[337] In making this assessment, the courts must accord the legislature a measure of deference, "particularly on complex social issues where the legislature may be better positioned than the courts to choose among a range of alternatives."[338] As the Supreme Court has held,

> There may be many ways to approach a particular problem, and no certainty as to which will be the most effective. It may, in the calm of the courtroom, be possible to imagine a solution that impairs the right at stake less than the solution Parliament has adopted. But one must also ask whether the alternative would be reasonably effective when weighed against the means chosen by Parliament…Crafting legislative solutions to complex problems is necessarily a complex task. It is a task that requires weighing and balancing. For this reason, this Court has held that on complex social issues, the minimal impairment requirement is met if Parliament has chosen one of several reasonable alternatives.[339]

206. The impugned Act falls within the range of reasonable alternatives to separate children and youth from the public disorder proximate to SCSs. The Act creates a reasonable zoning rule that requires at least 200m of distance, or about one or two city blocks, between an SCS and a school or daycare. This is consistent with other provincial zoning rules relating to children, such as the rule that a cannabis retail store cannot be located within 150m of a school.[340]

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[334] Guerra Cross, AJSR, Tab 21, pp. 2302-2303.
[335] Guerra Cross, AJSR, Tab 21, p. 2274.
[336] *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 at para. 149.
[337] *Hutterian* at paras. 53-54.
[338] *Hutterian* at paras. 53-54.
[339] *JTI* at para. 43 [citations omitted].
[340] O. Reg 468/18 to the *Cannabis Licence Act, 2018*, s. 11.

207. The Applicants assert that it would be more minimally impairing if Ontario had "conducted an examination of SCSs and closed those sites that were shown to cause negative impacts on children and other residents".[341] This proposed alternative is reactive to harms that have already occurred, rather than proactive and prophylactic. Ontario was not required to "wait for the feared harm to occur"[342] before seeking to prevent it. Nor was the Legislature required to consult with SCS operators before enacting a statute.[343] The Applicants, "instead of asking what is minimally required to realize the legislative goal, asks the government to significantly compromise it."[344]

e) The Act's salutary effects outweigh any deleterious effects

208. The last stage of the s. 1 analysis requires "proportionality" between the deleterious effects of the measures which limit the rights in question and the salutary effects of the measures.[345] At this stage of the analysis, the court must consider the impact of the law on other community members.

209. The negative effects of the buffer zone on SCS clients are overstated by the Applicants and in any event are outweighed by the Act's benefits for neighbouring children and youth. At most, the evidence shows that SCS clients may be inconvenienced by having to walk or take public transit to a differently located SCS for the few times a month that they inject drugs inside an SCS.

210. By contrast, the record is replete with many examples of the serious harms regularly faced by children and youth. Children and youth typically have little choice on which school or daycare they attend.[346] The Applicants minimize the many accounts of neighbours and families contending with the public disorder concentrated near SCSs by calling this evidence "speculative and marginal",

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[341] Applicants' factum at para. 135; See also Factum of the Intervener Toronto Board of Health, para. 42.
[342] *Harper* at para. 98.
[343] *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 at para. 157: "Legislators are not bound to consult with affected parties before passing legislation."; *Canadian Union of Public Employees v. Canada (Attorney General)*, 2018 FC 518 at para. 126.
[344] *Hutterian* at para. 60.
[345] *Hutterian* at paras. 72-74.
[346] Guerra Affidavit at para. 6, RAR, Vol. 5, Tab 36, pp. 2158-2160.

"anecdotal", "hearsay" and discriminatory against people who use drugs.[347] But the very real harms experienced by children and families near SCSs should not be trivialized or dismissed so lightly.

D. Section 3(2) of the Act does not engage any *Charter* rights

211. The Applicants also challenge the validity of para. 1 of s. 3(2) of the Act. This provision requires municipalities and local boards to obtain approval of the provincial Minister of Health to apply for a *CDSA* exemption to operate a supervised consumption site.

212. This provision has no impact on the Applicants at all.[348] The Applicants are not municipalities or local boards. The requirement for provincial approval does not apply to applications by private operators, such as the Applicant TNG, or by Community Health Centres. There is no evidence that any municipality or local board has ever applied for provincial approval under s. 3(2) and been denied.

213. In any event, it is not unconstitutional to require provincial approval to establish or operate a health facility. Hospitals,[349] long-term care homes,[350] and other health facilities in Ontario[351] all require provincial approval. No court has ever held that such a requirement infringes the *Charter*.

E. The Act is *intra vires* the Province

214. The Act is within provincial legislative jurisdiction. Section 2 of the Act, which establishes the buffer zone around schools and daycares, is authorized by the provincial powers over property and civil rights (*Constitution Act, 1867* s. 92(13)) and over matters of a merely local or private nature (*Constitution Act, 1867* s. 92(16)). Section 3 of the Act, governing the powers of municipalities and local boards, is authorized by the provincial power over municipal institutions (*Constitution Act, 1867* s. 92(8)). It follows that the Applicants' division of powers argument must be rejected.

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[347] Applicants' factum at paras. 74, 111-115, 140.
[348] *Ontario Health Coalition* at paras. 28-30; *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at paras. 1 and 37.
[349] *Public Hospitals Act*, RSO 1990, c P.40, s. 4; *Private Hospitals Act*, RSO 1990, c P.24, s. 7.
[350] *Fixing Long-Term Care Act, 2021*, SO 2021, c 39, Sch 1, s. 98.
[351] *Integrated Community Health Services Centres Act, 2023*, SO 2023, c 4, Sch 1, s. 4.

215. To decide whether a law or some of its provisions are constitutionally valid under the division of powers, courts must first characterize the law or provisions and then classify them by reference to the heads of power listed in ss. 91 and 92 of the *Constitution Act, 1867*.[352] Every legislative provision is presumed to be *intra vires* the level of government that enacted it: this "cardinal principle" is known as the presumption of constitutional validity.[353]

216. The characterization step involves determining the law's pith and substance: "What is the essence of what the law does and how does it do it?"[354] To ascertain the pith and substance of a law, courts look at its purpose and effects.[355]

217. The pith and substance of s. 2 to of the Act is to separate children and youth from the public disorder that is concentrated near SCSs by ensuring that SCSs are located at least a block or two away from schools and daycares. The pith and substance of s. 3(2)1 of the Act is to provide for provincial control over municipal applications to operate an SCS. Both matters fall within provincial jurisdiction.

218. Section 2 of the Act falls within provincial jurisdiction over property and civil rights and over matters of a merely local nature. It has long been held that these heads of power authorize laws in relation to health,[356] health facilities,[357] land use planning and zoning,[358] public disorder and the suppression of conditions conducive to crime,[359] and the protection of children and youth.[360] As the Supreme Court noted, "Although public peace, order, security, health and morality are classic criminal

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[352] *Murray-Hall v. Quebec (Attorney General)*, 2023 SCC 10 at para. 22 [*Murray-Hall*].
[353] *Murray-Hall* at para. 79; *Reference re Impact Assessment Act*, 2023 SCC 23 at paras. 69-72.
[354] *Chatterjee v. Ontario (Attorney General)*, 2009 SCC 19 at para. 16.
[355] *Murray-Hall* at paras. 23-24.
[356] *Murray-Hall* at paras. 68-77; *Reference re Genetic Non-Discrimination Act*, 2020 SCC 17 at para. 93; *Club Pro Adult Entertainment Inc. v. Ontario (Attorney General)*, 2008 ONCA 158 at paras. 10-12; *Sri Lankan Canadian Action Coalition v. Ontario (Attorney General)*, 2024 ONCA 657 at para. 97.
[357] *PHS* at para. 81; *Eldridge v. British Columbia (Attorney General)*, [1997] 3 SCR 624 at para. 24; *Schneider v. The Queen*, 1982 CanLII 26 (SCC) at pp. 135-138; *Reference re Assisted Human Reproduction Act*, 2010 SCC 61 at para. 260.
[358] *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39 at para. 22.
[359] *Schneider v. The Queen*, 1982 CanLII 26 (SCC) at pp. 132-134 (*per* Dickson J.); *Chatterjee v. Ontario (Attorney General)*, 2009 SCC 19 at paras. 24-30; *R. v. Dyck*, 2008 ONCA 309 at para. 60; *Bédard v. Dawson*, 1923 CanLII 43 (SCC) at p. 684.
[360] *Montréal v. Arcade Amusements Inc.*, [1985] 1 SCR 368 at pp. 420-421.

law purposes, the provinces may consider such imperatives in designing their own regulatory schemes."[361]

219. Section 3 of the Act falls within provincial jurisdiction over municipal institutions. The only effect of this provision is to make certain actions by municipal bodies subject to provincial control. It is beyond contention that "municipalities derive their existence and law-making authority from the provinces; that is, they exercise powers conferred on them by provincial legislatures.":[362] The Province has "absolute and unfettered legal power to do with them as it wills".[363]

220. The Applicants argue that the Act is a colourable attempt by the Province to legislate in relation to criminal law, which is an exclusively federal matter. This argument should be rejected.

221. The provincial Act contains no penalty and therefore cannot satisfy the three-part test for criminal law: "[a statute] will be valid criminal law if, in pith and substance: (1) it consists of a prohibition (2) accompanied by a penalty and (3) backed by a criminal law purpose."[364] Since the provincial Act contains no penalty, it cannot be criminal law; indeed, without a penalty, it would be unconstitutional for the federal Parliament to attempt to enact it.[365] *Morgentaler*, relied on by the Applicants, is distinguishable, because that provincial law, unlike the impugned Act, created an offence and imposed a penalty.[366]

222. The Applicants assert that "a prohibition backed by a penalty is not strictly necessary for the criminal law power under s. 91(27)", citing Quebec's challenge to Parliament's repeal of the long-gun registry.[367] But that case did not overturn the test, established in *Margarine Reference* and repeated consistently in the 70 years following, that valid federal criminal laws must have a prohibition coupled

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[361] *Murray-Hall* at para. 69.
[362] *Godbout v. Longueuil (City)*, [1997] 3 SCR 844 at para. 51.
[363] *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34 at para. 2 [citations omitted].
[364] *Reference re Genetic Non-Discrimination Act*, 2020 SCC 17 at para. 67.
[365] *Sri Lankan Canadian Action Coalition v. Ontario (Attorney General)*, 2024 ONCA 657 at paras. 109-110.
[366] *R. v. Morgentaler*, 1993 CanLII 74 (SCC), [1993] 3 SCR 463 at pp. 512-514.
[367] Applicants' factum at para. 161, citing *Quebec (Attorney General) v. Canada (Attorney General)*, 2015 SCC 14 at para. 33.

with a penalty for a criminal law purpose.[368] Instead, it merely held that Parliament's criminal law power allowed it to *repeal* a statute that met the three *Margarine Reference* criteria.

223. The Applicants also contend that statements made in and out of the Assembly demonstrate that the Act has a colourable purpose.[369] This argument should be rejected. None of the statements selected by the Applicants demonstrates that the Province intended to enact a criminal prohibition; rather, these statements reflect the concerns expressed by members about the impact on community safety of the increased disorder around SCSs. The Supreme Court has repeatedly cautioned that "[c]ourts are, for good reasons, reluctant to find legislation to be colourable."[370] Nothing in the legislative debates demonstrates "an intent to recriminalize what Parliament sought to decriminalize."[371]

224. While provincial laws may validly have an "incidental" effect on criminal law,[372] in this case, the provincial Act does not have even an incidental effect on the criminal law. The Act has no impact on any prosecution under the *CDSA* and does not affect the power of the federal Minister to grant exemptions from the *CDSA*.[373]

F. The Act does not engage the doctrine of federal paramountcy

225. The doctrine of federal paramountcy means that when a valid federal law and a valid provincial law conflict, the federal law prevails and the provincial law is inoperative to the extent of the conflict. Federal paramountcy does not apply in this case at all because there is no conflict between the federal *CDSA* and the provincial Act.

226. Paramountcy will be triggered when "it is impossible to comply with both laws simultaneously," or where "imposing an obligation to comply with provincial legislation would in

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[368] *Reference as to the Validity of Section 5(a) of the Dairy Industry Act*, 1948 CanLII 2 (SCC) [*Margarine Reference*], at pp. 49-50; *R. v. Malmo-Levine*, 2003 SCC 74 at para. 74; *Murray-Hall* at para. 92.
[369] Applicants' factum at para. 151.
[370] *Murray-Hall* at paras. 53-54.
[371] *Murray-Hall* at paras. 53-54.
[372] *Chatterjee v. Ontario (Attorney General)*, 2009 SCC 19 at paras. 29-30.
[373] *Sri Lankan Canadian Action Coalition v. Ontario (Attorney General)*, 2024 ONCA 657 at paras. 112-113.

effect frustrate the purpose of a federal law".[374] The burden resting on the party asserting a conflict is a high one: the court should prefer an interpretation that allows both laws to operate.[375]

227. It is possible to comply with both the federal *CDSA* and the provincial Act. Neither the federal nor the provincial enactment requires anyone to do anything that is prohibited by the other enactment. The operator of an SCS can comply with both enactments by complying with the terms of its federal exemption while also complying with the requirements of the provincial Act.[376]

228. Overlapping federal and provincial laws respecting health are in fact common. For example, the federal criminal law restricts possession of prescription narcotics,[377] but it is the Provinces that regulate the prescribing and dispensing of drugs by doctors and pharmacists,[378] as well as regulating health facilities such as hospitals where such drugs are used.[379] Health professionals and facilities must routinely comply with both federal and provincial laws. As the Supreme Court has explained,

> Health is an "amorphous" field of jurisdiction, featuring overlap between valid exercises of the provinces' general power to regulate health and Parliament's criminal law power to respond to threats to health: see RJR-*MacDonald*, at para. 32; *PHS*, at para. 60. The criminal law authority that Parliament exercises in the area of health does not prevent the provinces from regulating extensively in relation to health: *Hydro-Québec*, at para. 131. Indeed, the two levels of government "frequently work together to meet common concerns": para. 131.[380]

229. Nor does the provincial Act frustrate Parliament's purpose in granting exemptions from prosecution under the *CDSA* for SCSs. Parliament has enacted the *CDSA* under its criminal law power to prohibit the possession and trafficking of illicit drugs, and it has relieved against its own criminal prohibitions by creating exemptions to these prohibitions under *CDSA* ss. 56 and 56.1. But Parliament

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[374] *Murray-Hall* at para. 84.
[375] *Murray-Hall* at para. 85.
[376] Compare *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13 at paras. 22-24: "For an impossibility of dual compliance to exist, s. 30 of the [federal] *Tobacco Act* would have to require retailers to do what s. 6 of The [provincial] *Tobacco Control Act* prohibits."
[377] See e.g. the federal *Narcotic Control Regulations*, CRC, c. 1041.
[378] See e.g. *Drug and Pharmacies Regulation Act*, RSO 1990, c H.4 and O Reg 264/16, s. 26 and the *Medicine Act, 1991*, SO 1991, c 30 and O Reg 856/93, s. 1.
[379] See e.g. *Hospital Management*, RRO 1990, Reg 965, s 10.1.
[380] *Reference re Genetic Non-Discrimination Act*, 2020 SCC 17 at para. 93.

did not – and could not – create a positive "right" to operate an SCS, let alone a positive right to operate an SCS within 200m of a school or a daycare contrary to a provincial statute.

230. As the Supreme Court has explained, the federal criminal law power is "essentially prohibitory":[381] the criminal law can create prohibitions and then exempt conduct from those prohibitions, but Parliament cannot use the criminal law power to positively *allow* conduct that it has declined to prohibit. [382] In *Murray-Hall*, the Supreme Court confirmed that Provinces do not frustrate the purpose of the criminal law by prohibiting conduct that has been decriminalized.[383] This holding, binding on this Honourable Court, is a complete answer to the Applicants' paramountcy arguments:

> The provinces can legitimately undertake regulatory initiatives to provide a framework for decriminalized activities without thereby frustrating a purpose – the creation of positive rights – that by definition is outside the scope of the federal criminal law power.[384]

231. In any event, nothing in the *CDSA* suggests that Parliament's purpose was to be the exclusive regulator of the *location* of SCSs or of their proximity to schools and daycares. In the absence of "very clear statutory language" that Parliament intended to "occupy the field",[385] the Applicants have not met their high burden to show a frustration of any valid federal purpose.[386]

G. The test for injunctive relief is not met

232. The three-part test for an injunction is: (1) whether there is a serious question to be tried; (2) whether the party seeking the injunction would suffer irreparable harm if an injunction is not granted; and (3) whether the balance of convenience supports granting or dismissing the request.[387] The onus is on the Applicants to establish that all three elements of the test are met.

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[381] *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13 at para. 19 (see also paras. 11-21); *Murray-Hall* at para. 90.
[382] *Reference re Assisted Human Reproduction Act*, 2010 SCC 61 at para. 38.
[383] *Murray-Hall* at para. 68.
[384] *Murray-Hall* at para. 97.
[385] *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13 at para. 21.
[386] *Murray-Hall* at para. 85.
[387] *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at pp. 348-349.

233. Assuming the Applicants meet the low bar of serious issue to be tried, they have not established that irreparable harm will result from complying with the Act's zoning rules. The Applicants allege that "the required closures of SCSs pursuant to s. 2, creates a serious risk of harm to the health and lives of people who use drugs."[388] But s. 2 of the Act does not require any closures. Instead, it requires only that the supervised consumption services offered by KMOPS must take place at least 200m from a school or daycare. The Applicants have not attempted to establish that the relocation of their SCS services to a location that is compliant with the buffer zone will cause irreparable harm.

234. The proposal to create a buffer zone was publicly announced on August 20, 2024.[389] Since that time, TNG has had many months to prepare for the coming into force of s. 2 of the Act, including by making arrangements to provide supervised consumption at a location that complies with the buffer zone. There is no evidence that TNG has taken steps to relocate its services or made a plan to do so.

235. In these circumstances, it is unreasonable for TNG to argue that the closure of their supervised consumption services at 260 Augusta Ave will cause irreparable harm to their clients when they have not demonstrated any attempt to preserve the availability of these services at a location that complies with the buffer zone. The question is not whether there would be irreparable harm if no supervised consumption services were offered at all; the question is whether there would be irreparable harm if supervised consumption services were offered in compliance with the law. There is no evidence or reason to believe that irreparable harm would result from SCSs offering their services in compliance with the Act. The Applicants have not satisfied step two of the test.

236. The third step requires the Applicants to prove that the balance of convenience favours granting the injunction. The Supreme Court held that "interlocutory injunctions against enforcement of still-valid legislation under constitutional attack raise special considerations when it comes to

[388] Applicants' factum at para. 175.
[389] Sinclair Affidavit, Exhibit V, AR, Vol. 1, Tab 3, p. 248.

determining the balance of convenience." [390] An interim injunction may have the effect of depriving the public of the benefit of a statute which may in the end be held valid.[391]

237. In assessing the balance of convenience, this Court must presume that the impugned law will produce a public good. The public interest in enforcing the law "weighs heavily in the balance":

> Courts will not lightly order that laws that Parliament or a legislature has duly enacted for the public good are inoperable in advance of complete constitutional review, which is always a complex and difficult matter. It follows that only in clear cases will interlocutory injunctions against the enforcement of a law on grounds of alleged unconstitutionality succeed.[392]

238. This is not one of the "clear cases" in which the effect of a presumptively-valid law should be suspended. Here, the public good advanced by the law is the protection of vulnerable children and youth. Suspending the operation of the Act would deprive children and youth of the protection of the buffer zone and leave them fully exposed to the harms associated with public disorder near SCSs. The Act serves the public interest by establishing zoning rules to regulate the shared use of public spaces.

239. The Applicants argue that they "seek only a narrow injunction to maintain the *status quo*."[393] But the enactment of the Act has changed the *status quo*. The Legislature evidently determined that the *status quo* prior to the Act was insufficiently protective of children and youth. In this case, an appeal to the *status quo* as it stood prior to the Act misses the importance to the public interest of protecting children and youth from exposure to harm.

240. The Applicants argue in the alternative that the Court should order an exemption for KMOPS and for the Kitchener SCS visited by the Applicant Mr. Forgues.[394] But there is no evidence of any difference between these two sites and every other SCS regulated by the Act, other than the fact that two parties to this lawsuit happen to attend these particular sites. Granting an "exemption" in these

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[390] *Harper v. Canada (Attorney General)*, 2000 SCC 57 at para. 5;
[391] *Harper v. Canada (Attorney General)*, 2000 SCC 57 at para. 5; see also *Cycle Toronto et al. v. Attorney General of Ontario et al*., 2025 ONSC 1650 at paras. 77-81.
[392] *Harper v. Canada (Attorney General)*, 2000 SCC 57 at para. 9.
[393] Applicants' factum at para. 182.
[394] Applicants' factum at para. 184.

circumstances, where there is no principled distinction between these two sites and any other SCS, amounts to inviting a "cascade of stays and exemptions, the sum of which make them tantamount to a suspension case."[395] Only in "clear cases" should such orders be granted.

PART V – ORDER SOUGHT

241. Ontario respectfully submits that the application should be dismissed with costs.

242. In the alternative, if this Court concludes that any provision in the Act is invalid, the Court should "define carefully the extent of the inconsistency between the statute in question and the requirements of the Constitution", and if only a portion violates the Constitution, "only the offending portion should be declared to be of no force and effect, and the rest should be spared."[396]

243. Any declaration of invalidity should also be suspended for a period of one year to allow the Legislature the opportunity to remedy any constitutional wrong.[397] A suspended declaration would avoid "the harmful and undesirable consequences of an immediate declaration,"[398] namely the removal of protection for vulnerable children and youth. The Supreme Court has long held that "threats to public safety" are an established reason to suspend a declaration of invalidity.[399] Moreover, it is for the Legislature, not the courts, to develop policy that serves the public interest and respects the constitutional boundaries delineated by the judiciary.[400]

ALL OF WHICH IS RESPECTFULLY SUBMITTED

This 18th day of March, 2025

S. Zachary Green, Andrea Bolieiro, and Emily Owens
Of counsel for the Respondent

[395] *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, 1987 CanLII 79 (SCC) at para. 80.
[396] *Schachter v. Canada*, [1992] 2 SCR 679 at pp. 696-697 [*Schachter*]; *Ontario (Attorney General) v. G*, 2020 SCC 38 at para. 112.
[397] *Schachter* at pp. 715-717, 719; *Ontario (Attorney General) v. G*, 2020 SCC 38 at para. 139; *Ndhlovu* at paras. 139, 142.
[398] *Ontario (Attorney General) v. G* at para. 129.
[399] *R. v. Swain*, [1991] 1 SCR 933 at p. 1021, *Schachter* at p. 719, *Ontario (Attorney General) v. G*, 2020 SCC 38 at para. 178.
[400] *Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27 at paras. 154–155.

SCHEDULE A – CASE LAW

1.	*Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37
2.	*Andrews v. Law Society of British Columbia*, 1989 CanLII 2 (SCC)
3.	*Baier v. Alberta*, 2007 SCC 31
4.	*Bédard v. Dawson*, 1923 CanLII 43 (SCC)
5.	*Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44
6.	*Boone v. Kyeremanteng*, 2020 ONSC 198
7.	*Bowman et al. v. Her Majesty the Queen*, 2019 ONSC 1064
8.	*Canada (Attorney General) v. Bedford*, 2013 SCC 72
9.	*Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45
10.	*Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30
11.	*Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44
12.	*Canada (Human Rights Commission) v. Taylor*, 1990 CanLII 26 (SCC)
13.	*Canadian Union of Public Employees v. Canada (Attorney General)*, 2018 FC 518
14.	*Carter v. Canada (Attorney General)*, 2015 SCC 5
15.	*Chatterjee v. Ontario (Attorney General)*, 2009 SCC 19
16.	*Club Pro Adult Entertainment Inc. v. Ontario (Attorney General)*, 2008 ONCA 158
17.	*Cochrane v. Ontario (Attorney General)*, 2008 ONCA 718
18.	*Cycle Toronto et al. v. Attorney General of Ontario et al.*, 2025 ONSC 1650
19.	*Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624
20.	*Ernst v. Alberta Energy Regulator*, 2017 SCC 1
21.	*Fair Change v. His Majesty the King in Right of Ontario*, 2024 ONSC 1895
22.	*Frank v. Canada (Attorney General)*, 2019 SCC 1
23.	*Fraser v. Canada (Attorney General)*, 2020 SCC 28
24.	*Gene Michaud v. Her Majesty the Queen*, 2016 CanLII 24866 (SCC)

25.	*Godbout v. Longueuil (City)*, [1997] 3 SCR 844
26.	*Harper v. Canada (Attorney General)*, 2000 SCC 57
27.	*Harper v. Canada (Attorney General)*, 2004 SCC 33
28.	*Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27
29.	*Heegsma v. Hamilton (City)*, 2024 ONSC 7154
30.	*Horsefield v. Registrar of Motor Vehicles*, 1999 CanLII 2023 (ON CA)
31.	*Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC)
32.	*Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30
33.	*London (City) v. Polewsky*, 2005 CanLII 38742 (ON CA)
34.	*MacKay v. Manitoba*, [1989] 2 SCR 357
35.	*Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, 1987 CanLII 79 (SCC)
36.	*Mathur v. His Majesty the King in Right of Ontario*, 2023 ONSC 2316
37.	*McKinney v. University of Guelph*, 1990 CanLII 60 (SCC)
38.	*Montréal v. Arcade Amusements Inc.*, [1985] 1 SCR 368
39.	*Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1
40.	*Murray-Hall v. Quebec (Attorney General)*, 2023 SCC 10
41.	*Mussani v. College of Physicians and Surgeons of Ontario*, 2004 CanLII 48653 (ON CA)
42.	*Ontario (Attorney General) v. G*, 2020 SCC 38
43.	*Ontario Health Coalition and Advocacy Centre for the Elderly v. His Majesty the King in Right of Ontario*, 2025 ONSC 415
44.	*Ontario Teacher Candidates' Council v. Ontario (Education)*, 2023 ONCA 788
45.	*Ontario v. Trinity Bible Chapel et al*, 2022 ONSC 1344
46.	*Ontario (Attorney General) v. Trinity Bible Chapel*, 2023 ONCA 134
47.	*Public School Boards' Assn. Of Alberta v. Alberta (Attorney General)*, 2000 SCC 2
48.	*Quebec (Attorney General) v. A*, 2013 SCC 5

49.	*Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39
50.	*Quebec (Attorney General) v. Canada (Attorney General)*, 2015 SCC 14
51.	*R. v. Cornell*, [1988] 1 SCR 461
52.	*R v. Dyck*, 2008 ONCA 309
53.	*R. v. Heywood*, [1994] 3 SCR 761
54.	*R. v K.R.J.*, 2016 SCC 31
55.	*R. v. Long*, 2018 ONCA 282
56.	*R. v. Malmo-Levine*, 2003 SCC 74
57.	*R. v. Michaud*, 2015 ONCA 585
58.	*R. v. Morgentaler*, 1988 CanLII 90 (SCC), [1988] 1 SCR 30
59.	*R. v. Morgentaler*, 1993 CanLII 74 (SCC)
60.	*R. v. Moriarity,* 2015 SCC 55
61.	*R. v. Ndhlovu*, 2022 SCC 38
62.	*R. v. Oakes*, 1986 CanLII 46 (SCC)
63.	*R. v. Parker*, 2000 CanLII 5762 (ON CA)
64.	*R. v. Safarzadeh-Markhali*, 2016 SCC 14
65.	*R. v. Schmidt*, 2014 ONCA 188
66.	*R. v. Sharma*, 2022 SCC 39
67.	*R. v. Sharpe*, 2001 SCC 2
68.	*R. v. Smith*, 2015 SCC 34
69.	*R. v. Swain*, [1991] 1 SCR 933
70.	*R. v. Dyck*, 2008 ONCA 309
71.	*Reference as to the Validity of Section 5(a) of the Dairy Industry Act*, 1948 CanLII 2 (SCC)

72.	*Reference re Assisted Human Reproduction Act*, 2010 SCC 61
73.	*Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27
74.	*Reference re Genetic Non-Discrimination Act*, 2020 SCC 17
75.	*Reference re Impact Assessment Act*, 2023 SCC 23
76.	*Reference re Upper Churchill Water Rights Reversion Act*, [1984] 1 SCR 297
77.	*Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC)
78.	*RJR-MacDonald Inc. v. Canada (Attorney General)*, 1995 3 SCR 199
79.	*Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13
80.	*Ruck v. City of Mississauga*, 2024 ONSC 2579
81.	*Sagharian v. Ontario (Education)*, 2008 ONCA 411
82.	*Schachter v. Canada*, [1992] 2 SCR 679
83.	*Schneider v. The Queen*, 1982 CanLII 26 (SCC)
84.	*Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC)
85.	*Sri Lankan Canadian Action Coalition v. Ontario (Attorney General)*, 2024 ONCA 657
86.	*Symes v. Canada*, 1993 CanLII 55 (SCC)
87.	*Tanase v. College of Dental Hygienists of Ontario*, 2021 ONCA 482
88.	*Tesla Motors Canada ULC v. Ontario (Ministry of Transportation)*, 2018 ONSC 5062

89.	*Thompson v. Ontario (Attorney General)*, 2016 ONCA 676
90.	*Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34
91.	*Trinity Bible Chapel, et al. v. Attorney General of Ontario, et al.*, 2023 CanLII 72135 (SCC)
92.	*Vancouver (City) v Karuna Health Foundation*, 2018 BCSC 2221
93.	*Vancouver (City) v. Weeds Glass and Gifts Ltd.*, 2020 BCCA 46
94.	*Wellesley Central Hospital v. Ontario (Health Services Restructuring Commission)*, 1997 CanLII 17803 (ON SCDC)

SCHEDULE B – LEGISLATION

***Cannabis Licence Act*, 2018, S.O. 2018, c. 12, Schedule 2**

O. Reg. 468/18: GENERAL

O. Reg. 468/18: GENERAL, s. 11.

No Issuance, proximity to schools

11. (1) In this section,

"private school" means a private school as defined in the *Education Act*.

(2) For the purposes of clause 4 (12) (a) of the Act, a proposed cannabis retail store may not be located less than 150 metres from a school or a private school, as determined in accordance with the following:

1. If the school or private school is the primary or only occupant of a building, 150 metres shall be measured from the property line of the property on which the school or private school is located.

2. If the school or private school is not the primary or only occupant of a building, 150 metres shall be measured from the boundary of any space occupied by the school or private school within the building.

(3) Subsection (2) does not apply to a private school if,

(a) it is located on a reserve; or

(b) it only offers classes through the Internet.

Definitions

1 In this Act,

"child care centre" means a child care centre within the meaning of the *Child Care and Early Years Act, 2014*; ("centre de garde"

"controlled substance" means a controlled substance within the meaning of the *Controlled Drugs and Substances Act* (Canada); ("substance désignée")

"designated premises" means,

(a) a school, other than a school at which the only programs provided are adult education programs,

(b) a private school, other than,

(i) a private school located on a reserve, or

(ii) a private school that only offers classes through the internet,

(c) a child care centre, other than a child care centre located on a reserve,

(d) an EarlyON child and family centre, other than an EarlyON child and family centre located on a reserve, or

(e) a prescribed premises; ("lieu désigné")

"EarlyON child and family centre" means a centre of that name, administered by a service system manager within the meaning of the *Child Care and Early Years Act, 2014*, offering programs for families and children; ("centre pour l'enfant et la famille ON y va")

"Health Canada" means the federal Minister of Health and the Department over which that Minister presides; ("Santé Canada")

"local board" means a local board within the meaning of section 1 of the *Municipal Affairs Act*; ("conseil local")

"Minister" means the Minister of Health or any other member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; ("ministre")

"precursor" means a precursor within the meaning of the *Controlled Drugs and Substances Act* (Canada); ("précurseur")

"prescribed" means prescribed by the regulations; ("prescrit")

"private school" means a private school within the meaning of the *Education Act*; ("école privée")

"regulations" means the regulations made under this Act; ("règlements")

"reserve" means a reserve as defined in subsection 2 (1) of the *Indian Act* (Canada) or an Indian settlement located on Crown land, the Indian inhabitants of which are treated by Indigenous and Northern Affairs Canada in the same manner as Indians residing on a reserve; ("réserve")

"safer supply services" means the prescribing of medications by a legally qualified medical practitioner as an alternative to a controlled substance or precursor; ("services d'approvisionnement plus sécuritaire")

"school" means a school within the meaning of the *Education Act*; ("école")

"supervised consumption site" means a site in respect of which the federal Minister of Health has granted an exemption to allow activities at the site in relation to a controlled substance or precursor that is obtained in a manner not authorized under the *Controlled Drugs and Substances Act* (Canada),

(a) under section 56.1 of the *Controlled Drugs and Substances Act* (Canada), in circumstances where the federal Minister of Health is of the opinion that the exemption is necessary for a medical purpose, or

(b) under subsection 56(1) of the *Controlled Drugs and Substances Act* (Canada), in circumstances where the federal Minister of Health is of the opinion that the exemption is necessary for a scientific purpose or is otherwise in the public interest. ("site de consommation supervisée")

Note: Section 2 comes into force on April 1, 2025

Prohibition re location of supervised consumption site

2 (1) Subject to subsection (4), no person shall establish or operate a supervised consumption site at a location that is less than 200 metres, measured in accordance with subsection (2), from a designated premises.

Measurement

(2) Subject to the regulations, the distance mentioned in subsection (1) shall be measured in accordance with the following rules:

1. The distance shall be measured from the geometric centre of the building in which a supervised consumption site is located.

2. In the case of a school, the distance shall be measured to the door primarily used by the public to enter the building in which the school is located for the purpose of accessing the area where the school operates.

3. In the case of a private school, the distance shall be measured from,

(i) the centre of the building in which the school is located, as determined by the private school and made available on a Government of Ontario website, or

(ii) if the private school is located only in a portion of a building, the centre of the portion of the building in which the school is located, as determined by the private school and made available on a Government of Ontario website.

4. In the case of a child care centre or EarlyON child and family centre, the distance shall be measured to the geographic coordinates of the street address of the child care centre or EarlyON child and family centre, determined through the use of software or a web service that implements an address geocoding process.

5. In the case of a premises prescribed for the purposes of clause (e) of the definition of "designated premises" in section 1, the distance shall be measured to the point specified in the regulations.

6. If the measurement results in a number of metres that is not a whole number, the number shall be rounded up the nearest whole number.

Geocoding

(3) If the regulations provide for a specific software or web service for the purposes of paragraph 4 of subsection (2), the distance to a child care centre or EarlyON child and family centre shall be measured using the prescribed software or web service.

Exception

(4) If a private school began providing instruction or a child care centre began operating after the day the Safer Streets, Stronger Communities Act, 2024 received Royal Assent, subsection (1) does not apply to a supervised consumption site with respect to the private school or child care centre, as the case may be, until the day that is 30 days after the day the private school began providing instruction or the child care centre began operating.

Same

(5) Despite subsection (4), if the Minister specifies a day on which subsection (1) applies to a supervised consumption site, subsection (1) applies to the supervised consumption site as of that day.

Limit of power of municipalities, local boards

Application for exemption to decriminalize

3 (1) Subject to such exceptions as may be prescribed, despite sections 7 and 8 of the *City of Toronto Act, 2006* and sections 9, 10 and 11 of the *Municipal Act, 2001*, a municipality or local board does not have the power to apply to Health Canada for an exemption under subsection 56 (1) of the *Controlled Drugs and Substances Act* (Canada) from any provision of that Act for the purpose of decriminalizing the personal possession of a controlled substance or precursor.

Applications related to supervised consumption sites, safer supply services

(2) Subject to such exceptions as may be prescribed, despite sections 7 and 8 of the *City of Toronto Act, 2006* and sections 9, 10 and 11 of the *Municipal Act, 2001*, a municipality or local board does not have the power, without the approval of the Minister, to do any of the following:

1. Apply to Health Canada for an exemption or a renewal of an exemption to the *Controlled Drugs and Substances Act* (Canada) for the purpose of operating a supervised consumption site.

2. Apply to Health Canada for funding under Health Canada's Substance Use and Addictions Program or any other Health Canada program in respect of safer supply services, or enter into an agreement with the Government of Canada with respect to funding under such a program in respect of safer supply services.

3. Support, including by passing a by-law or making a resolution, an application made to Health Canada by any other person in respect of any matter described in paragraph 1 or 2.

Regulations

4 The Lieutenant Governor in Council may make regulations,

(a) prescribing anything that is referred to in this Act as prescribed or as otherwise dealt with in the regulations;

(b) defining or clarifying the meaning of any word or expression used in this Act that is not otherwise defined in this Act.

Note: On April 1, 2025, section 4 of the Act is amended by adding the following clause: (See: 2024, c. 7, Sched. 4, s. 5)

(c) varying, for specified circumstances, how the distance mentioned in subsection 2 (1) shall be measured under subsection 2 (2).

***Controlled Drugs and Substances Act*, S.C. 1996, c. 19, ss. 56, 56.1**

Exemption by Minister

56 (1) The Minister may, on any terms and conditions that the Minister considers necessary, exempt from the application of all or any of the provisions of this Act or the regulations any person or class of persons or any controlled substance or precursor or any class of either of them if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.

Exception

(2) The Minister is not authorized under subsection (1) to grant an exemption for a medical purpose that would allow activities in relation to a controlled substance or precursor that is obtained in a manner not authorized under this Act to take place at a supervised consumption site.

1996, c. 19, s. 56; 2015, c. 22, s. 5; 2017, c. 7, s. 41

Exemption for medical purpose – supervised consumption site

56.1(1) For the purpose of allowing certain activities to take place at a supervised consumption site, the Minister may, on any terms and conditions that the Minister considers necessary, exempt the following from the application of all or any of the provisions of this Act or the regulations if, in the opinion of the Minister, the exemption is necessary for a medical purpose:

> **(a)** any person or class of persons in relation to a controlled substance or precursor that is obtained in a manner not authorized under this Act; or
>
> **(b)** any controlled substance or precursor or any class of either of them that is obtained in a manner not authorized under this Act.

Application

(2) An application for an exemption under subsection (1) shall include information, submitted in the form and manner determined by the Minister, regarding the intended public health benefits of the site and information, if any, related to

> **(a)** the impact of the site on crime rates;
>
> **(b)** the local conditions indicating a need for the site;
>
> **(c)** the administrative structure in place to support the site;
>
> **(d)** the resources available to support the maintenance of the site; and
>
> **(e)** expressions of community support or opposition.

Subsequent application

(3) An application for an exemption under subsection (1) that would allow certain activities to continue to take place at a supervised consumption site shall include any update to the

information provided to the Minister since the previous exemption was granted, including any information related to the public health impacts of the activities at the site.

Notice

(4) The Minister may give notice, in the form and manner determined by the Minister, of any application for an exemption under subsection (1). The notice shall indicate the period of time — not less than 45 days or more than 90 days — in which members of the public may provide the Minister with comments.

Public decision

(5) After making a decision under subsection (1), the Minister shall, in writing, make the decision public and, if the decision is a refusal, include the reasons for it.

2015, c. 22, s. 5; 2017, c. 7, s. 42.

Criminal Code, R.S.C. 1985, c. C-46

Criminal Code, R.S.C. 1985, c. C-46, s. 320.18

Operation while prohibited

320.18 (1) Everyone commits an offence who operates a conveyance while prohibited from doing so

(a) by an order made under this Act; or

(b) by any other form of legal restriction imposed under any other Act of Parliament or under provincial law in respect of a conviction under this Act or a discharge under section 730.

Exception

(2) No person commits an offence under subsection (1) arising out of the operation of a motor vehicle if they are registered in an alcohol ignition interlock device program established under the law of the province in which they rise and they comply with the conditions of the program.

2018, c. 21, s. 15.

O. Reg. 264/16: GENERAL, s. 26

Controlled drugs, narcotic drugs, targeted substances and verbal prescription narcotics

26. (1) In this section,

"controlled drug" means a substance set out in the Schedule to Part G of the *Food and Drug Regulations* under the *Food and Drugs Act* (Canada) and includes a substance that contains one or more controlled drugs and one or more medicinal ingredients in a recognized therapeutic dose that are not controlled drugs;

"narcotic drug" means a substance referred to in the Schedule to the *Narcotic Control Regulations* under the *Controlled Drugs and Substances Act* (Canada) or anything that contains any substance set out in that Schedule;

"targeted substance" means a targeted substance as defined in the *Benzodiazepines and Other Targeted Substances Regulations* under the *Controlled Drugs and Substances Act* (Canada);

"verbal prescription narcotic" means a verbal prescription narcotic as defined in the *Narcotic Control Regulations* under the *Controlled Drugs and Substances Act* (Canada).

(2) No controlled drugs, narcotic drugs, targeted substances or verbal prescription narcotics shall be located at or made available from a remote dispensing location, unless the remote dispensing location has safeguards in place that have been approved by the Council as preventing the unauthorized access to, or diversion of, such drugs and substances.

Fixing Long-Term Care Act, 2021, S.O. 2021, c. 39, Schedule 1, s. 98

License required

98 (1) No person shall operate residential premises for persons requiring nursing care or in which nursing care is provided to two or more unrelated persons except under the authority of a licence under this Part or an approval under Part IX.

Exclusions

(2) Subsection (1) does not apply to,

(a) premises falling under the jurisdiction of,

(i) the *Child, Youth and Family Services Act, 2017*,

(ii) the *Private Hospitals Act*,

(iii) the *Public Hospitals Act*, or

(iv) the *Retirement Homes Act, 2010*; or

(b) other premises provided for in the regulations.

Offence

(3) Every person who contravenes subsection (1) is guilty of an offence.

Hospital Management, R.R.O. 1990, Reg. 965, s. 10.1

10.1 (1) No hospital shall, directly or indirectly, purchase or otherwise obtain a drug except from,

(a) a pharmacy within the meaning of the *Drug and Pharmacies Regulation Act* in respect of which a valid certificate of accreditation has been issued under the Act;

(b) a person who, in connection with the place from which the drug is provided, holds a valid establishment licence or other approval that may be required in connection with the manufacture, fabrication, packaging, labelling, distribution, testing or importing of the drug under the *Food and Drugs Act* (Canada);

(c) a pharmacy accredited in accordance with the applicable governing legislation in a province or territory of Canada;

(d) a person who, in connection with the place from which the drug is provided, operates a drug preparation premises within the meaning of Part XV of Ontario Regulation 256/24 (General) made under the *Pharmacy Act, 1991* that passed its latest inspection under that Part;

(e) a person who,

(i) purchased or otherwise obtained the drug from a person or entity mentioned in clause (a), (b), (c) or (d), and

(ii) has not reconstituted, diluted or otherwise prepared the drug, or combined, admixed or mixed it together with another substance;

(f) a person who,

(i) purchases or otherwise obtains goods or services for the hospital, and

(ii) has purchased or obtained the drug from a person or entity mentioned in clause (a), (b), (c), (d) or (e);

(g) the Government of Ontario or the Government of Canada or a person acting on behalf of the Government of Ontario or the Government of Canada;

(h) another hospital;

(i) a person conducting a clinical trial authorized pursuant to Division 5 of Part C of the *Food and Drug Regulations* under the *Food and Drugs Act* (Canada);

(j) a person named in a letter of authorization pursuant to section C.08.010 of the *Food and Drug Regulations* under the *Food and Drugs Act* (Canada);

(k) a patient who supplies their own drug; or

(l) a person approved by the Minister in accordance with subsection (2). O. Reg. 155/13, s. 1; O. Reg. 258/24, s. 1.

(2) The Minister may approve a person for the purposes of clause (1) (l), where the Minister is satisfied that,

(a) the person has demonstrated that they can supply the drug to a hospital in a safe manner; and

(b) it is in the public interest to do so. O. Reg. 155/13, s. 1.

(3) For greater certainty, where a hospital purchases a drug from a party and has it mixed, compounded or otherwise prepared by a third party, it shall be considered to have obtained the drug from the third party for the purposes of this section. O. Reg. 155/13, s. 1.

(4) Subsection (1) does not apply to a hospital if a declaration of emergency made under the *Emergency Management and Civil Protection Act* is in effect in the area in which the hospital is located. O. Reg. 155/13, s. 1.

(5) In this section,

"drug" means a substance or a preparation containing a substance referred to in clauses (a) to (d) of the definition of "drug" in subsection 1 (1) of the *Drug and Pharmacies Regulation Act*, but does not include,

(a) a substance or preparation referred to in those clauses that is manufactured, sold or represented for use in animals or fowl, or

(b) a substance or preparation referred to in clause (e), (f), (g), (h) or (i) of that definition. O. Reg. 155/13, s. 1.

Integrated Community Health Services Centres Act, 2023, S.O. 2023, c. 4, Schedule 1

Integrated Community Health Services Centres Act, 2023, S.O. 2023, c. 4, Schedule 1, s. 4

Licence required

4 No person shall establish or operate an integrated community health services centre except under the authority of a licence.

Medicine Act, 1991, S.O. 1991, c. 30

O. Reg. 856/93: PROFESSIONAL MISCONDUCT

O. Reg. 856/93: PROFESSIONAL MISCONDUCT, s. 1

1. (1) The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:

1. Contravening a term, condition or limitation on the member's certificate of registration.
2. Failing to maintain the standard of practice of the profession.
3. Abusing a patient verbally or physically.
4. Practising the profession while the member's ability is impaired.

4.1 Practising the profession while the member knows that he or she has deficient clinical ability, as defined in section 26 of Ontario Regulation 114/94 (General) made under the Act.

4.2 Practising the profession during the period after the member is notified by the College that he or she has deficient clinical ability, as defined in section 26 of Ontario Regulation 114/94 (General) made under the Act, and before the member is notified by the College that he or she no longer has deficient clinical ability.

5. Having a conflict of interest.
6. Prescribing, dispensing or selling drugs for an improper purpose.
7. Discontinuing professional services that are needed unless,
   i. the patient requests the discontinuation,
   ii. alternative services are arranged, or
   iii. the patient is given a reasonable opportunity to arrange alternative services.
8. Failing to fulfil the terms of an agreement for professional services.
9. Performing a professional service for which consent is required by law without consent.
10. Giving information concerning the condition of a patient or any services rendered to a patient to a person other than the patient or his or her authorized representative except with the consent of the patient or his or her authorized representative or as required by law.
11. Sharing fees with a person who has referred a patient or receiving fees from any person to whom a member has referred a patient or requesting or accepting a rebate or commission for the referral of a patient.
12. Failing to reveal the exact nature of a secret remedy or treatment used by the member following a proper request to do so.
13. Making a misrepresentation respecting a remedy, treatment or device.
14. Making a claim respecting the utility of a remedy, treatment, device or procedure other than a claim which can be supported as reasonable professional opinion.
15. Using a name other than the member's name as set out in the register in the course of providing or offering to provide services within the scope of practice of the profession.

15.1 Without restricting the generality of paragraph 27, using a term, title or designation relating to a specialty or subspecialty of the profession in contravention of section 9 of Ontario Regulation 114/94 (General) made under the Act.

15.2 Without restricting the generality of paragraph 27, failing to include, in a clear and prominent manner and unabbreviated form, specialist or subspecialist information or the fact that the member is a general practitioner in any material that advertises, promotes or relates to the provision of any professional services by a member in contravention of section 9 of Ontario Regulation 114/94 (General) made under the Act.

16. Falsifying a record relating to the member's practice.

17. Failing without reasonable cause to provide a report or certificate relating to an examination or treatment performed by the member to the patient or his or her authorized representative within a reasonable time after the patient or his or her authorized representative has requested such a report or certificate.

18. Signing or issuing, in the member's professional capacity, a document that the member knows or ought to know is false or misleading.

19. Refusing to perform a medically necessary service unless all or part of the fee is paid before the service is performed.

20. Charging a fee for services not performed, but a member may charge for the cancellation of an appointment less than twenty–four hours before the appointment time or, in psychotherapy practice, in accordance with any reasonable written agreement with the patient.

21. Charging a fee that is excessive in relation to the services performed.

22. Charging a fee for a service that exceeds the fee set out in the then current schedule of fees published by the Ontario Medical Association without informing the patient, before the service is performed, of the excess amount that will be charged.

23. Charging a block or annual fee, which is a fee charged for services that are not insured services as defined in section 1 of the *Health Insurance Act* and is a set fee regardless of how many services are rendered to a patient.

23.1 Charging a fee for an undertaking not to charge for a service or class of services.

23.2 Charging a fee for an undertaking to be available to provide services to a patient.

24. Failing to itemize an account for professional services,

i. if requested to do so by the patient or the person or agency who is to pay, in whole or in part, for the services, or

ii. if the account includes a commercial laboratory fee.

25. Failing to issue a statement or receipt when requested by a patient or his or her authorized representative.

26. Selling or assigning any debt owed to the member for professional services, but a member may accept a credit card to pay for professional services and may make a general assignment of debts as collateral for a loan to finance his or her medical practice.

26.1 Pledging, mortgaging or in any other way encumbering or granting security in the member's interest in a medical record required to be kept under the Act.

27. Contravening the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts.

27.1 Without restricting the generality of paragraph 27, failing, by act or omission, to comply with any duty or requirement under Part XI (Inspection of Premises where Certain Procedures are Performed) of Ontario Regulation 114/94 (General) made under the Act.

28. Contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a public hospital if,

i. the purpose of the law, by-law or rule is to protect public health, or

ii. the contravention is relevant to the member's suitability to practise.

29. Permitting, counselling or assisting a person who is not a member of the College to perform acts which should be performed by a member.

30. Failing to respond appropriately or within a reasonable time to a written inquiry from the College.

31. Influencing a patient to change his or her will or other testamentary instrument in favour of a member.

32. Being subjected to the withdrawal or restriction of rights or privileges under the *Narcotic Control Act* (Canada) or the *Food and Drugs Act* (Canada) or the regulations under either of those Acts, unless by the member's own request.

33. An act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

34. Conduct unbecoming a physician. O. Reg. 856/93, s. 1 (1); O. Reg. 857/93, s. 1 (1); O. Reg. 115/94, s. 1; O. Reg. 53/95, s. 1; O. Reg. 450/10, s. 1.

Note: On April 1, 2025, the day section 1 of Schedule 3 to the *Advancing Oversight and Planning in Ontario's Health System Act, 2021* comes into force, paragraph 34 of subsection 1 (1) of the Regulation is amended by adding "or physician assistant" at the end. (See: O. Reg. 222/24, s. 1)

(2) Despite paragraph 10 of subsection (1), it is not professional misconduct for a member to give information about a patient, including access to the patient's records,

(a) to a practitioner of a health profession for the purpose of providing care to the patient; or

(b) to a person for the purpose of research or health administration or planning if the member reasonably believes that the person will take reasonable steps to protect the identity of the patient. O. Reg. 856/93, s. 1 (2).

(2.1) Paragraphs 23, 23.1 and 23.2 of subsection (1) do not apply in a case where a member charges a fee to a third party for a third party service under the *Health Insurance Act*. O. Reg. 857/93, s. 1 (2).

(3) A member shall be deemed to have committed an act of professional misconduct if the governing body of a health profession in a jurisdiction other than Ontario has made a finding of incompetence or professional misconduct or a similar finding against the member, and the finding is based on facts which would, in the opinion of the College, be grounds for a finding of incompetence as defined in section 52 of the Code or would be an act of professional misconduct as defined in subsection (1). O. Reg. 856/93, s. 1 (3).

(4) A member shall be deemed to have committed an act of professional misconduct if,

(a) the governing body of a health profession in a jurisdiction other than Ontario has provided records to the College evidencing that an allegation of professional misconduct or incompetence

or a similar allegation has been made against the member and he or she has entered into an agreement or compromise with the governing body in order to settle the matter without a finding of misconduct or incompetence or a similar finding being made;

(b) the College is satisfied that the records are authentic, accurate and complete; and

(c) the act or omission that is the subject of the allegation would, in the opinion of the College, be an act of professional misconduct as defined in subsection (1), or would constitute incompetence as defined in section 52 of the Code. O. Reg. 856/93, s. 1 (4).

Narcotic Control Regulations, C.R.C., c. 1041

Private Hospitals Act, R.S.O. 1990, c. P.24

Private Hospitals Act, R.S.O. 1990, c. P. 24, s. 7

Licence, renewal

7 (1) Every licence is renewable annually in accordance with the regulations. R.S.O. 1990, c. P.24, s. 7 (1).

Fees

(2) The Minister may establish and charge fees for the renewal of licences. 1997, c. 15, s. 15(1).

Public Hospitals Act, R.S.O. 1990, c. P.40

Public Hospitals Act, R.S.O. 1990, c. P.40, s. 4

Approvals by Minister

Approval of articles

4 (1) No articles shall be filed under the Not-for-Profit Corporations Act, 2010 in respect of a hospital until the articles have first received the approval of the Minister. 2010, c. 15, s. 240(1).

Approval of incorporation, amalgamation, amendment

(1.1) No application to incorporate a hospital or amalgamate two or more hospitals under a private Act or to amend a private Act in respect of a hospital shall be proceeded with until the application has first received the approval of the Minister. 2010, c. 15, s. 240(1).

Approval

(2) No institution, building or other premises or place shall be operated or used for the purposes of a hospital unless the Minister has approved the operation or use of the premises or place for that purpose. 1997, c. 15, s. 16.

Approval of additions

(3) No additional building or facilities shall be added to a hospital until the plans therefor have been approved by the Minister. R.S.O. 1990, c. P.40, s. 4(3).

Approval of sales

(4) No land, building or other premises or place or any part thereof acquired or used for the purposes of a hospital shall be sold, leased, mortgaged or otherwise disposed of without the approval of the Minister. R.S.O. 1990, c. P.40, s. 4(4).

Suspension or revocation of approval

(5) Any approval given or deemed to have been given under this Act in respect of a hospital may be suspended by the Minister or revoked by the Lieutenant Governor in Council if the Minister or the Lieutenant Governor in Council, as the case may be, considers it in the public interest to do so. R.S.O. 1990, c. P.40, s. 4(5); 1996, c. 1, Sched. F, s. 5(2).

Regulated Health Professions Act, 1991, S.O. 1991, c. 18

Regulated Health Professions Act, 1991, S.O. 1991, c. 18, s. 40(1)

Offences

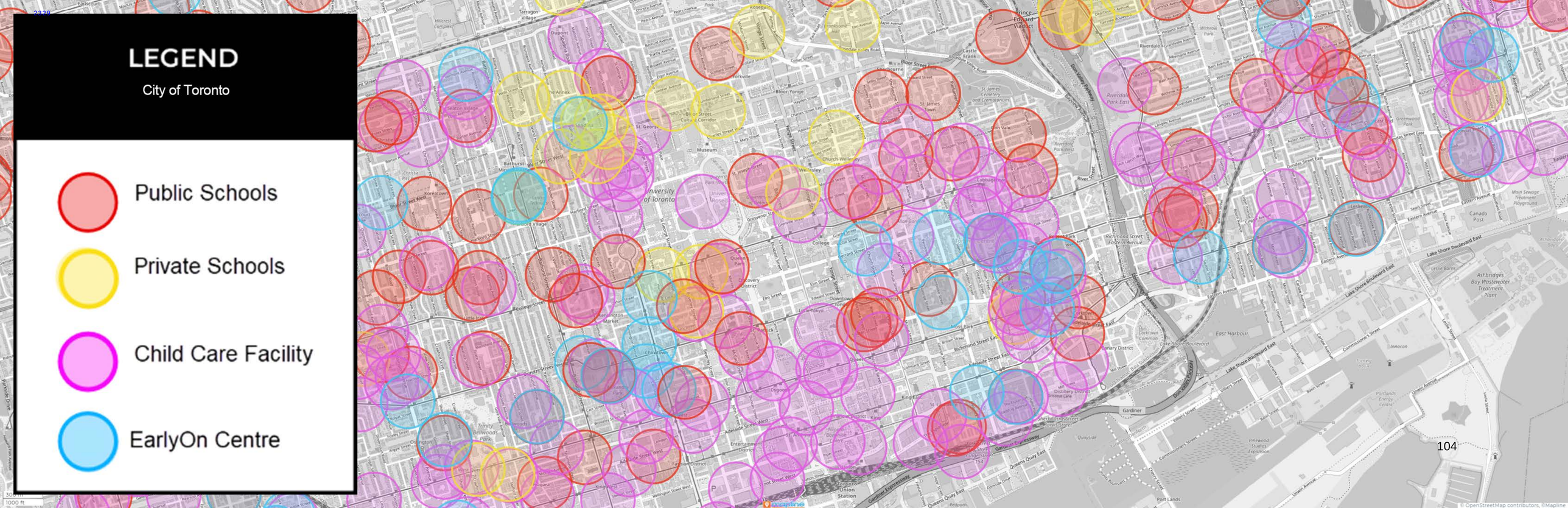
40 (1) Every person who contravenes subsection 27 (1), 29.1 (1) or 30 (1) is guilty of an offence and on conviction is liable,

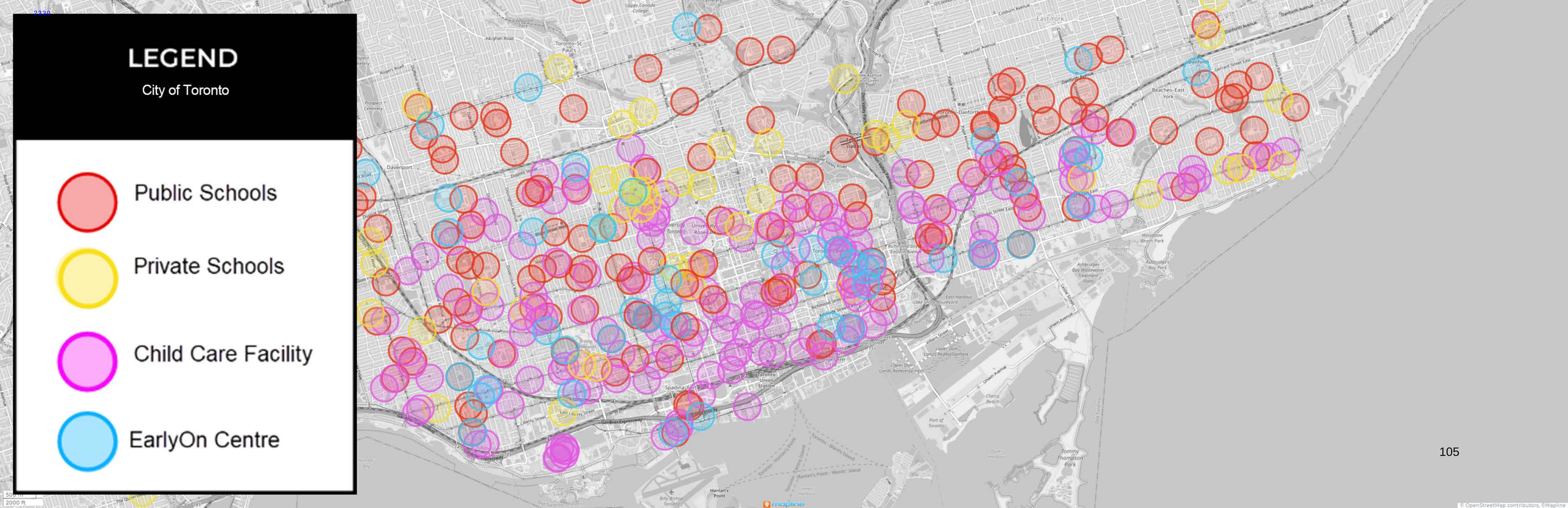
(a) for a first offence, to a fine of not more than $25,000, or to imprisonment for a term of not more than one year, or both; and

(b) for a second or subsequent offence, to a fine of not more than $50,000, or to imprisonment for a term of not more than one year, or both. 2007, c. 10, Sched. M, s. 12; 2015, c. 18, s. 3.

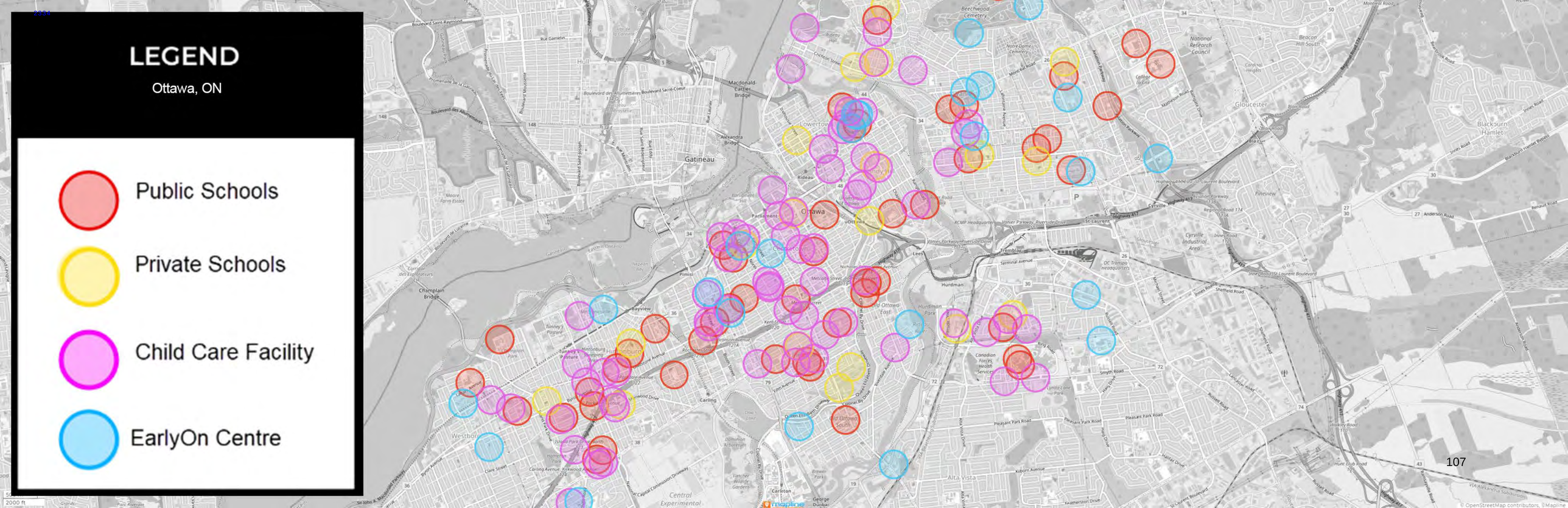
APPENDIX A – MAPS

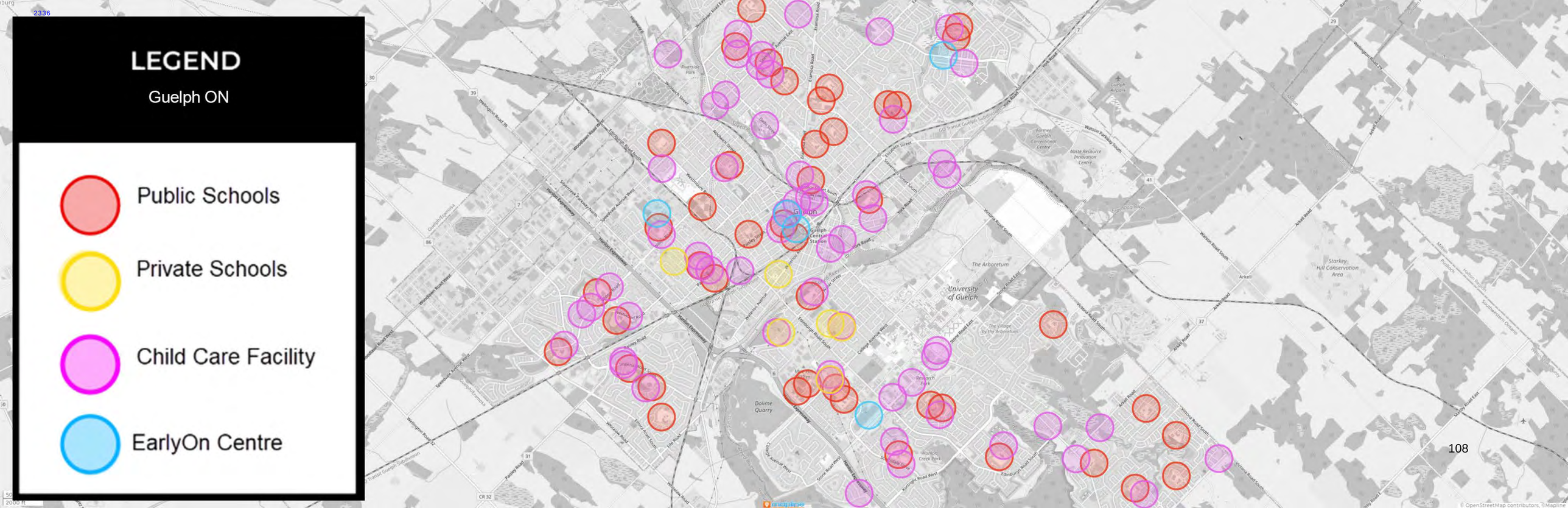
McGarry Affidavit, RAR, Vol. 6, Tab 37, Exhibits B-K, pp. 2328-2349.

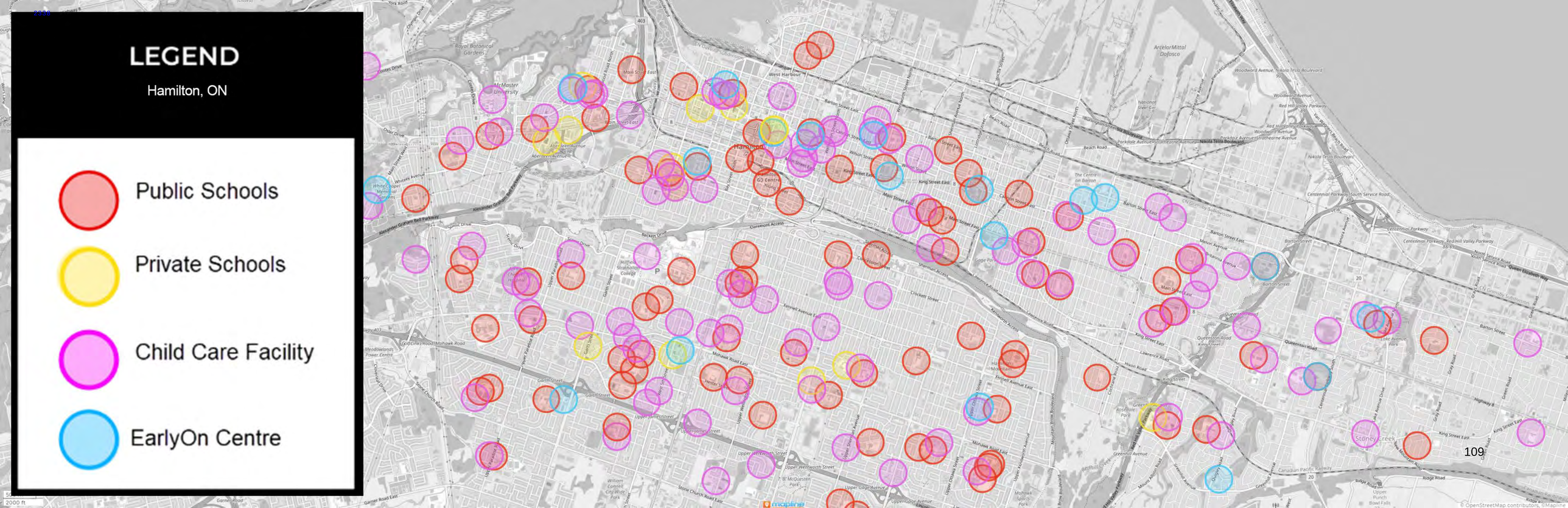

LEGEND
City of Toronto
Public Schools
Private Schools
Child Care Facility
EarlyOn Centre

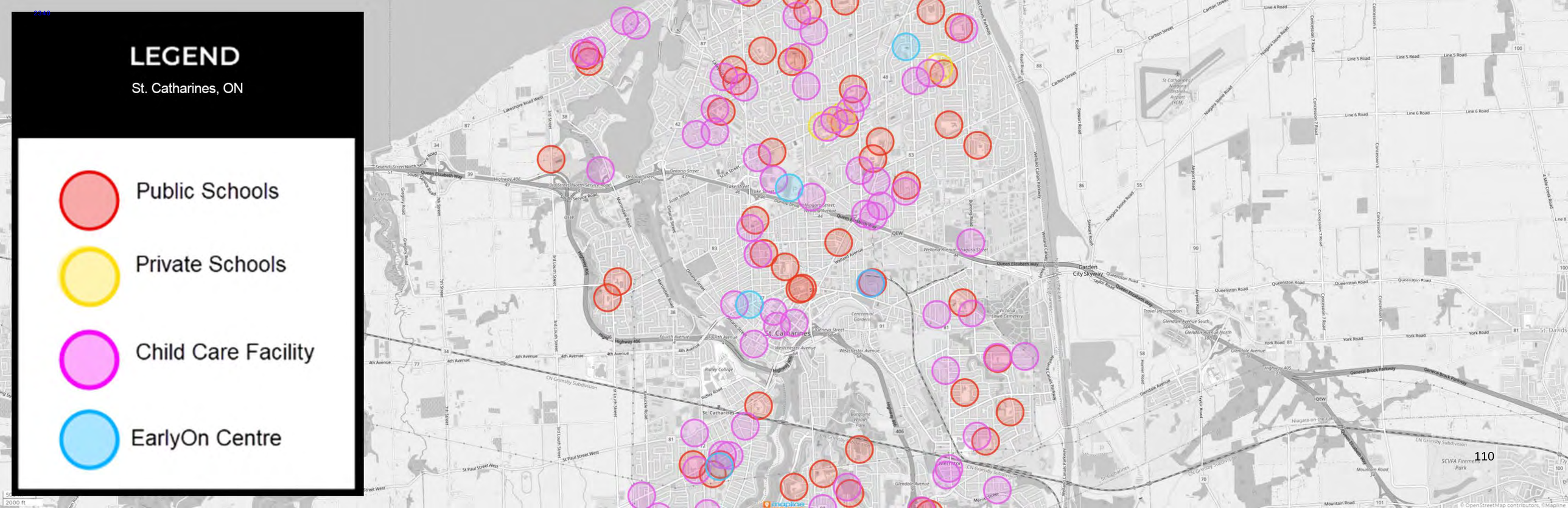

LEGEND
City of Toronto
Public Schools
Private Schools
Child Care Facility
EarlyOn Centre

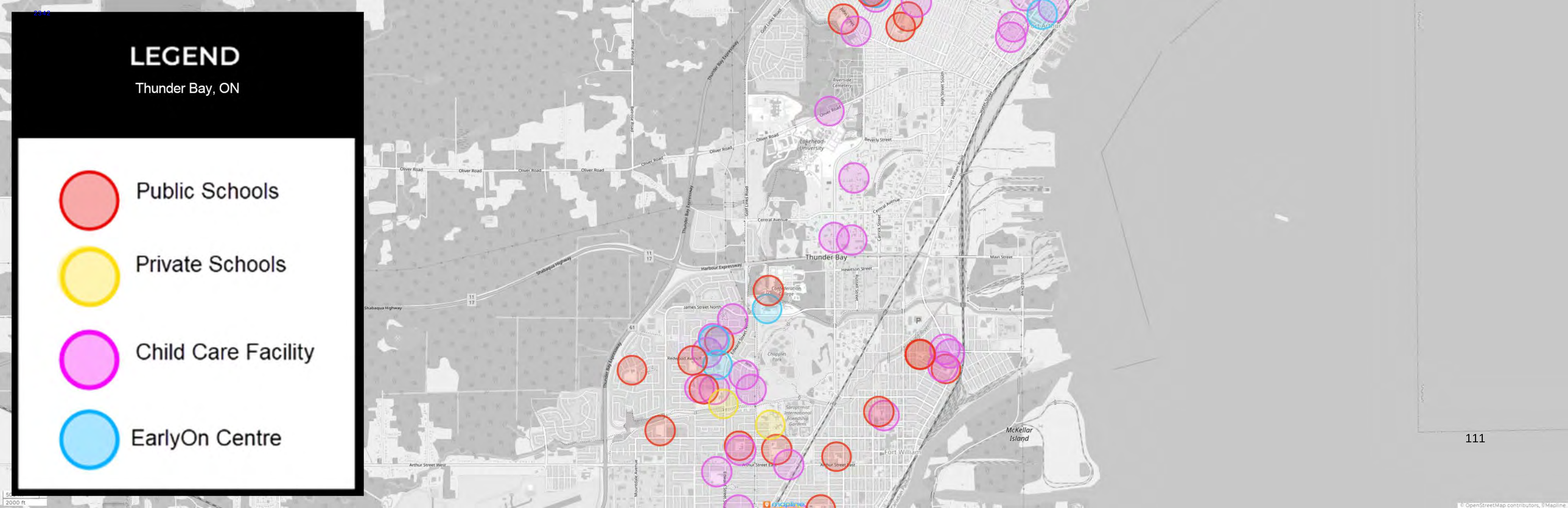

LEGEND
Kitchener, ON
Public Schools
Private Schools
Child Care Facility
EarlyOn Centre

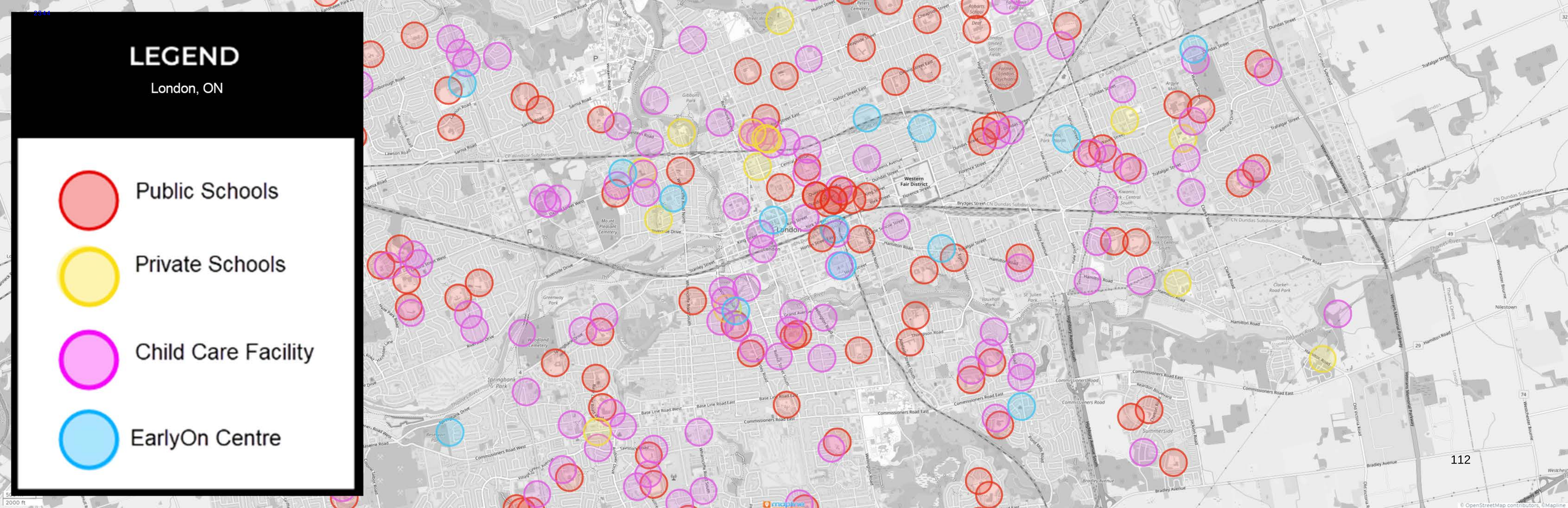

LEGEND
Ottawa, ON
Public Schools
Private Schools
Child Care Facility
EarlyOn Centre


LEGEND
Guelph ON
Public Schools
Private Schools
Child Care Facility
EarlyOn Centre

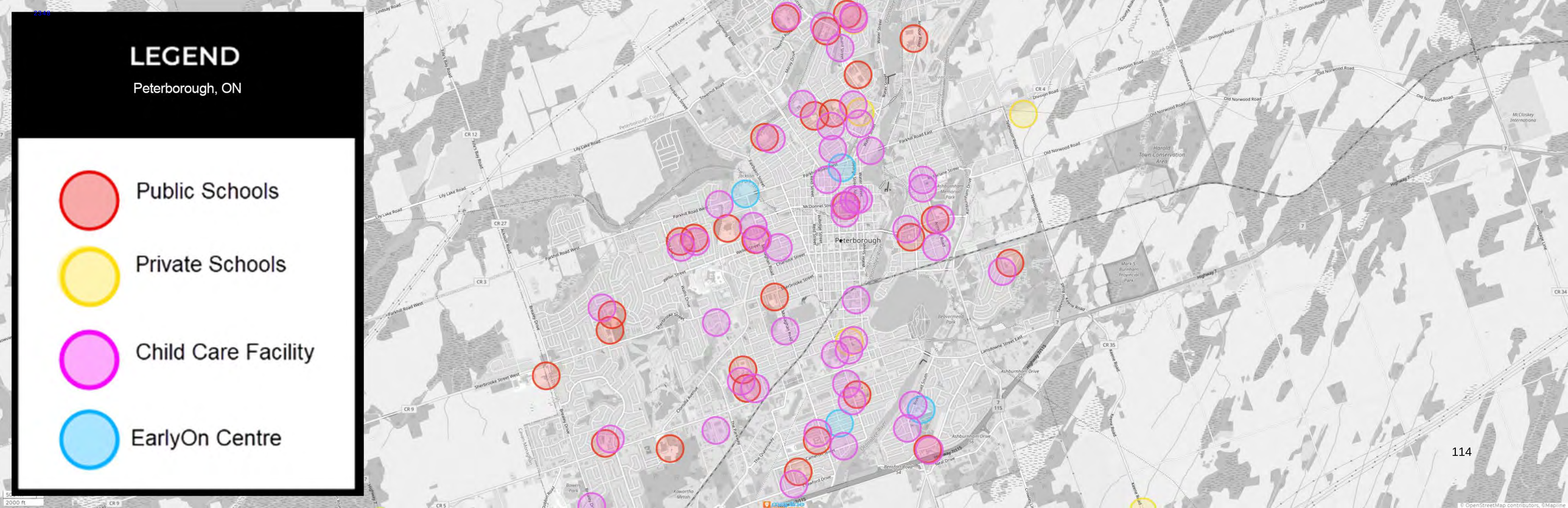

LEGEND
Hamilton, ON
Public Schools
Private Schools
Child Care Facility
EarlyOn Centre
109


LEGEND
St. Catharines, ON
Public Schools
Private Schools
Child Care Facility
EarlyOn Centre


LEGEND
Thunder Bay, ON
Public Schools
Private Schools
Child Care Facility
EarlyOn Centre
Thunder Bay
Fort William
McKellar Island
Oliver Road
Harbour Expressway
Thunder Bay Expressway
Shabaqua Highway
Central Avenue
Arthur Street West
Arthur Street East
James Street North
Golf Links Road
Lakehead University
Riverside Cemetery
Chippewa Park
Fort William First Nation
2000 ft
© OpenStreetMap contributors, ©Mapline


LEGEND
London, ON
Public Schools
Private Schools
Child Care Facility
EarlyOn Centre


LEGEND
Kingston, ON
Public Schools
Private Schools
Child Care Facility
EarlyOn Centre
CFB Kingston
Frontenac Prison Farm
Marshlands Conservation Area
Kingston


LEGEND
Peterborough, ON
Public Schools
Private Schools
Child Care Facility
EarlyOn Centre
Peterborough

Court File No. CV-24-00732861

THE NEIGHBORHOOD GROUP COMMUNITY SERVICES, et al	**- and -**	**HIS MAJESTY THE KING IN RIGHT OF ONTARIO**
Applicants		**Respondent**

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at Toronto

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