

Protecting safe places to consume drugs outweighs protecting disorder around supervised consumption sites (The Neighbourhood Group v. HMKT)

Canadian Charter of Rights and Freedoms | Constitutional Law | Injunction | Litigation | Litigation & Dispute Resolution

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In Ontario, government action taken by Premier Ford has caused much litigation because political opponents to the Premier have been unable to crack his personal popularity and the popularity of his government's views on issues such as the redevelopment of Ontario Place or the removal of bike lanes on major roadways, particularly in Toronto.

Premier Ford's government has also taken the initiative to prohibit the operation of supervised consumption sites ("SCSs") within 200 metres of a school or daycare. Unsurprisingly, although some will see this as a purely ballot box issue, this issue too has ended up in court.

Given the opposing views on the value of SCSs, it is important to review the decision in *The Neighbourhood Group v. HMKT*, 2025 ONSC 1924 (unreported on CanLII). In this decision, a court granted an interlocutory injunction against the government thereby permitting 10 SCSs to continue operation within 200 metres of daycares and schools, contrary to section 2 of the *Community Care and Recovery Act, 2024* ("CCRA"), which mandates that SCSs are not permitted to be established or operated within 200 metres of a childcare facility or school.

In this case, the applicants argued that sections 2 and 3 of the CCRA breached sections 7 and 15 of the *Charter of Rights and Freedoms* (the "Charter").

In support of their application, the applicants provided evidence showing that SCSs provided persons addicted to drugs, such as heroin and fentanyl, a safe place to consume drugs, that fentanyl was a powerful addictive drug, and that fentanyl's supply on the street was unreliable and contaminated with dangerous additives. The applicants explained, among other things, the closure of SCSs would result in addicts would revert to consuming dangerous drugs in unsupervised settings, reusing needles and not properly discarding needles.

The applicants also contended that the vast majority of SCS users were from marginalized communities and showed that since 2016, more Ontarians had died from drug overdose than from COVID-19.

From 2016 to 2021, the Chief Coroner for Ontario recorded 10,601 opioid-related deaths, with numbers steadily increasing since 2018.

Accordingly, in the applicants' view, the mandated closure of SCSs would create risk of personal injury, and potentially death.

On the other hand, the government contended that SCSs operating too close to daycares or schools negatively impacted children using those facilities because they were exposed to disorderly conduct by clients and others in and around the SCSs.

The disorderly conduct included people being passed out in front of schools, urinating and defecating in public, confrontational behaviour, drug transactions outside SCSs, drugs being consumed outside SCSs, and discarded needles, pipes and drugs in the vicinity of schools and daycares.

Some affiants, in support of the legislation, also relied on the tragic shooting death of an innocent mother near an SCS when a drug deal went wrong.

In determining whether an interlocutory injunction should be granted, the application judge applied the standard three-part test in *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC).

Under this test, a court is required to determine: a) whether there is a serious issue to be tried; b) whether irreparable harm will be suffered by the moving party if the injunction is not granted; and c) whether the balance of convenience favours granting or refusing the injunction.

The first part of the test sets a low threshold, and the government did not contest that the threshold had been met.

With respect to irreparable harm, the application judge explained that the applicants bore the burden of showing that they would suffer irreparable harm if relief was not granted. The court noted that financial harm or the risk of personal injury could constitute irreparable harm.

The application judge also accepted that SCSs provided places where overdoses could be reversed, and where clients had a lower risk of contracting bloodborne diseases such as hepatitis C or HIV. If the SCSs were closed, the application judge held that clients would be at greater risk of overdose and death.

Accordingly, the applicants satisfied the irreparable harm threshold.

With respect to balance of convenience, the application judge explained that at this stage the court was required to assume that the CCRA served a public benefit and that it was not the role of the court to second-guess the wisdom of the policy or to question whether the impugned provisions really served the public interest.

While noting the government's argument that the CCRA would protect vulnerable children and youth, the application judge also found that the impact on users of SCSs was a matter of public interest worthy of protecting. As stated in *Carter v. Canada (Attorney General)*, 2015 SCC 5 (CanLII): "[t]he sanctity of life is one of our most fundamental societal values."

The application judge concluded that the current opioid crisis in Ontario was exceptional and that closing the SCSs would cause significant harm across the province, including the loss of life. This outweighed the public disorder issues that the CCRA was addressing and tipped the balance of convenience in favour of the applicants such that granting an exemption from section 2 of the CCRA for a period of time for existing SCSs was warranted.

In making this finding, the application judge noted that the exemption would not prevent new SCSs from opening and operating within 200 metres of daycares or schools.

Since all three parts of the interlocutory injunction were met, the applicants were granted their injunction. The court, however, has not yet ruled on whether sections 2 and 3 of the CCRA breach the Charter.

While the key takeaway from this decision is that government legislation which potentially breaches the Charter can be enjoined from operating, pending the final determination on the issue of whether the impugned legislation actually breaches the Charter, the injunction may have little practical effect because the provincial government has already ended funding for most of the SCSs impacted by the legislation.

The injunction did not mandate the government to fund those SCSs, and 9 out of the 10 SCSs have already agreed to become new homeless and addiction recovery treatment "hubs". According to a CBC media report, those hubs will receive four times as much money as they did under previous funding models, and the province is investing \$550 million on these kinds of hubs across Ontario and creating 540 new highly supportive housing units. A PDF version is available to download [here](#).

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