

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN)

BETWEEN:

HIS MAJESTY THE KING

Appellant

- and -

PAUL ERIC WILSON

Respondent

- and -

JOHN HOWARD SOCIETY OF SASKATCHEWAN, *ET AL.*

Interveners

**FACTUM OF THE JOINT INTERVENERS, CANADIAN DRUG POLICY COALITION,
ASSOCIATION DES INTERVENANTS EN DÉPENDANCE DU QUÉBEC, AND
HARM REDUCTION NURSES ASSOCIATION**

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

[Translated Version from French to English]

Maxime Bédard
Daniel Brown Law LLP
103 Church Street, Suite #400
Toronto, Ontario M5C 2G3
P: 581-995-1359
E: bedard@danielbrownlaw.ca

Meagan Berlin
Mack Law Corp
7297 West Saanich Road
Saanichton, British Columbia V8M 1R7
P: 780-222-7380
E: meagan@macklawcorp.ca

Counsels for the Joint Interveners, Canadian Drug Policy Coalition, Association des intervenants en dépendance du Québec, and Harm Reduction Nurses Association

ORIGINAL: REGISTRAR

COPIES:

Erin Bartsch
Ministry of Justice and Attorney General
Public Prosecutions
300-1874 Scarth Street
Regina, Saskatchewan S4P 4B3
P: 306-787-5490
F: 306-787-8878
E: erin.bartsch@gov.sk.ca

Counsel for the Appellant

Thomas Hynes
Pfefferle Law Office
311-21st Street East
Saskatoon, Saskatchewan S7K 1C1
P: 306-370-5516
F: 866-869-2959
E: thomas@pfefferlelaw.com

Counsel for the Respondent

Pierre Hawkins
John Howard Society of Saskatchewan
2010 7th Avenue
Regina, Saskatchewan S4R 1C2
P: 306-584-2115
F: 306-584-2112
E: phawkins@sk.johnhoward.ca

Counsel for the Intervener, John Howard Society of Saskatchewan

D. Lynne Watt
Gowling WLG (Canada) LLP
Barristers and Solicitors
160 Elgin Street, Suite #2600
Ottawa, Ontario K1P 1C3
P: 613-786-8695
F: 613-788-3509
E: lynne.watt@gowlingwlg.com

Agent for the Appellant

Moira Dillon
Supreme Law Group
1800-275 Slater Street
Ottawa, Ontario K1P 5H9
P: 613-691-1224
F: 613-691-1338
E: mdillon@supremelawgroup.ca

Agent for the Respondent

Thomas Slade
Supreme Court Advocacy LLP
340 Gilmour Street, Suite #100
Ottawa, Ontario K2P 0R3
P: 613-295-8855
E: tslade@supremeadvocacy.ca

Agent for the Intervener, John Howard Society of Saskatchewan

Janna A. Hyman
Colleen Liggett
Public Prosecution Service of Canada
515-234 Donald Street
Winnipeg, Manitoba R3C 1M8
P: 204-984-0493
F: 204-984-1350
E: janna.hyman@ppsc-sppc.gc.ca

Counsels for the Intervener, Director of Public Prosecutions

Caitlin O. Shane
Mark Iyengar
Pivot Legal Society
312 Main Street
Vancouver, British Columbia V6A 2T2
P: 604-255-9700
F: 604-255-1552
E: caitlin@pivotlegal.org

Counsels for the Intervener, Pivot Legal Society

Sarah Rankin
Heather Ferg
McKay Ferg LLP
1705, 639 5th Avenue SW
Calgary, Alberta T2P 0M9
P: 403-984-1919
F: 844-895-3926
E: sarah@mckaycriminaldefence.com

Counsels for the Intervener, Canadian Civil Liberties Association

Éric Marcoux
Public Prosecution Service of Canada
160 Elgin Street, 12th Floor
Ottawa, Ontario K1A 0H8
P: 867-336-0762
F: 613-941-7865
E: eric.marcoux@ppsc-sppc.gc.ca

Agent for the Intervener, Director of Public Prosecutions

Jean-Simon Schoenholz
Norton Rose Fulbright Canada LLP
99 Bank Street, Suite #500
Ottawa, Ontario K1P 6B9
P: 613-780-1537
F: 613-230-5459
E: jean-simon.schoenholz@nortonrosefulbright.com

Agent for the Intervener, Pivot Legal Society

Maxine Vincelette
Juristes Power Law
50 O'Connor Street, Suite #1313
Ottawa, Ontario K1P 6L2
P: 613-702-5560
F: 613-702-5573
E: mvincelette@powerlaw.ca

Agent for the Intervener, Canadian Civil Liberties Association

Matthew R. Gourlay
Brandon Chung
Henein Hutchison Robitaille LLP
235 King Street East, First Floor
Toronto, Ontario M5A 1J9
P: 416-368-5000
F: 416-368-6640
E: mgourlay@hhllp.ca

*Counsels for the Intervener; Criminal
Lawyers' Association (Ont.)*

TABLE OF CONTENTS

Content	Page
PART I – OVERVIEW AND STATEMENT OF FACTS	1
Overview	1
Statement of Facts	3
PART II – QUESTIONS IN ISSUE	3
PART III – STATEMENT OF ARGUMENT	3
A. The Harmful Consequences of an Overdose on the Victim’s Physical and Psychological Integrity	4
B. The Objective of Clarity in the Interpretation of s. 4.1 of the <i>CDSA</i>	6
C. The Importance of a Myth and Stereotype-Free Examination of the Purpose of s. 4.1 of the <i>CDSA</i>	8
PART IV – COSTS	10
PART V – ORDER SOUGHT	10
PART VI – TABLE OF AUTHORITIES	12

PART I – OVERVIEW AND STATEMENT OF FACTS

Overview

1. This appeal concerns the role that police officers must play when called upon to intervene at the scene of an overdose. More specifically, this Court is asked to rule on the scope of the police's powers of arrest in such a situation, under s. 495 of the *Criminal Code*. Determining the scope of these powers invariably requires an examination of the scope of s. 4.1 of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as this provision reflects a paradigm shift in the expected role of police officers at the scene of an overdose.
2. This examination of the scope of s. 4.1 requires, in turn, an assessment of the purpose of this provision, in order to properly ascertain Parliament's intent. Indeed, "legislative intent can be understood only by reading the language chosen by the legislature *in light of the purpose of the provision* and the entire relevant context".¹
3. It is against this backdrop that the Canadian Drug Policy Coalition, the Association des intervenants en dépendance du Québec, and the Harm Reduction Nurses Association (together, the "Harm Reduction Coalition") intervene to provide unique insights into the true purpose behind the adoption of s. 4.1 of the *CDSA*.
4. Enacted in the wake of the national toxic drug crisis, s. 4.1 seeks to encourage the public to call 911 to limit the consequences of an overdose. The purpose of s. 4.1 must therefore be assessed in light of the scourge it seeks to contain, namely the *devastating and avoidable* consequences of an overdose, when those who witness it – or even the victim themselves – refuse to call 911 for fear of the criminal repercussions that may result from their call.
5. Accordingly, the purpose of s. 4.1 should not be viewed from a criminal law perspective, but rather from a *public health* perspective – a perspective more in keeping with the *raison d'être* of the provision: to prevent the devastating consequences of an overdose. This integral public health perspective is directly put forward by members of Parliament who commented on the adoption of

¹ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, para. 118, [emphasis added], citing Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed., LexisNexis, 2014, pp. 7-8.

s. 4.1², and requires an assessment of s. 4.1 *grounded in science, focused on harm reduction, and responsive to the experience of people who access the unregulated drug supply.*³

6. It is in this very perspective that lies the contribution of the Harm Reduction Coalition, which aims to shed light on several facets of the public health purpose behind s. 4.1. These clarifications will facilitate this Court’s assessment of the impact of s. 4.1 on the scope of the police’s powers of arrest.

7. The Coalition is ideally positioned to provide this Court with such guidance. Composed of three non-profit organizations, the Coalition has extensive practical experience in the provision of health services for people who use drugs (“PWUD”), as well as in research, analysis, and education on the laws and policies that shape the experiences, behaviours, and social and health outcomes of PWUD. The Coalition collaborates daily with individuals, and organizations, for whom the scope of s. 4.1 is of critical importance (including people whose lives, health, and security will be directly affected by the scope this Court will bestow on s. 4.1).

8. Drawing on this experience, the Coalition submits that the perspective this Court adopts in its assessment of the purpose of s. 4.1 is crucial. Indeed, this perspective will *inform the role* that police forces must assume when called upon to intervene at the scene of an overdose – are they acting from a criminal law perspective, or from a public health perspective? The Coalition submits that, given the purpose of s. 4.1, the answer is self-evident: police forces are required to act from a public health perspective – thereby informing the scope of their powers under s. 495 of the *Code*.

² The sponsor of the bill, MP Ron McKinnon, told the Standing Committee on Health that the consequences of the national toxic drug crisis “are public health issues, and we have to start thinking about them as public health issues” (Canada, House of Commons, *Standing Committee on Health*, Evidence, No. 17, 1st Sess., 42nd Parl., June 15, 2016, p. [13](#)).

MP Erin Weir, in a speech to the House, echoed his colleague's remarks: “This bill deserves to be praised [for] adopting [an] evidence and public health based approach to drug policy” (Canada, House of Commons, *House of Commons Debates*, Vol. 148, No. 65, 1st Sess., 42nd Parl., June 3, 2016, p. [4032](#)).

³ As further explained in Part. III.C. of this factum, s. 4.1 of the *CDSA* not only protects people living with a substance use disorder, but also anyone accessing the unregulated drug market, including young first-time users and trades workers managing chronic injuries and pain.

Statement of Facts

9. The Harm Reduction Coalition relies on the facts contained in the Appellant’s and Respondent’s factums.

PART II – QUESTIONS IN ISSUE

10. The guidance offered by the Harm Reduction Coalition in this factum relates to the first of the two issues raised by the Appellant, namely:

Does s. 495 of the *Criminal Code* authorize the arrest of an individual at the scene of a “drug overdose” for the offence of simple drug possession, even if the individual may ultimately be immune from being charged or convicted for that offence according to s. 4.1(2) of the *CDSA*?

PART III – STATEMENT OF ARGUMENT

11. As this Court emphasized in *ATCO Gas*, the text of a provision is not in itself dispositive of Parliament’s underlying intent.⁴ Rather, interpreting a provision such as s. 4.1 of the *CDSA* requires an examination of its “total context” – including its purpose – “no matter how plain the disposition may seem upon initial reading”.⁵

12. In light of the foregoing, the Harm Reduction Coalition submits that the Appellant’s characterization of the purpose of s. 4.1 is insufficiently precise to perform the required interpretive exercise. The Appellant declares that the purpose of s. 4.1 is “*straightforward and uncontroversial*”, describing it as follows: “to provide some incentive to Canadian citizens to call 9-1-1 *to prevent those who have consumed illegal drugs from dying*”.⁶ This incomplete depiction of s. 4.1’s purpose deserves to be clarified, in order to fully appreciate Parliament’s intent.

⁴ *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, para. 48.

⁵ *Ibid.*, citing *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, para. 34.

⁶ Factum of the Appellant, para. 28 [emphasis added]; See also *Id.*, paras. 29 and 40.

13. As mentioned, the Coalition argues that the purpose of s. 4.1 of the *CDSA* must be assessed in view of the public health imperatives underlying its enactment.⁷ Although the *CDSA* as a whole serves a dual purpose – the protection of both public safety and public health⁸ – recent enactments have demonstrated a shift towards a public health approach to regulating drug use.⁹ This shift must inform the purpose of s. 4.1.

14. More specifically, the Coalition seeks to provide this Court with unique insights into three important facets of the public health purpose of s. 4.1: (A.) the harmful consequences of overdoses exceed the numerous deaths occurring across the country, (B.) the principle of clarity is an important objective behind the enactment of any public health provision, and (C.) the purpose of s. 4.1 must be analyzed free of any myths or stereotypes related to drug use.

A. The Harmful Consequences of an Overdose on the Victim’s Physical and Psychological Integrity

15. The Harm Reduction Coalition stresses that the medical consequences faced by overdose victims are not limited to the possibility of death, but also encompass a whole range of debilitating repercussions for their physical and psychological integrity. These long-term consequences must imperatively be taken into account when examining the purpose of s. 4.1 of the *CDSA*. The goal is not merely, as the Appellant suggests, to “prevent those who have consumed illegal drugs from dying”¹⁰, it is just as much about protecting the physical and psychological integrity of these people in a state of extreme vulnerability.

16. The case law across Canada is replete with examples where courts have recognized the devastating consequences an overdose can have on its victim’s physical, psychological and emotional

⁷ Public health is not synonymous with health care services. Public health looks at *upstream* policies, norms and programs, and underlying inequities that shape both the conditions people live in and their behaviours. Its goals are to prevent harm and improve population health, reduce health inequities, strengthen community resiliency and promote social determinants of health, including housing and employment security and reduced criminal justice involvement.

⁸ *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, para. 41.

⁹ These recent enactments include not only s. 4.1, but also ss. 10.1 to 10.7. While ss. 10.1 (a) to (e) of the *CDSA* do not expressly apply to s. 4.1, it is clear from *Hansard* that Parliament had in mind these same principles when enacting s. 4.1. These provisions should be read harmoniously to ensure that Parliament’s intent is fully realized.

¹⁰ Factum of the Appellant, para. 28.

integrity.¹¹ The same holds true for the scientific literature, which reveals the extent of the medical sequelae that can result from an overdose episode.¹²

17. The Coalition does not suggest this Court recognize specifically one or more of these physical and psychological consequences; these authorities are cited solely to reflect an indisputable reality: an overdose episode can lead, apart from death, to devastating consequences for the victim’s physical and mental health. The Coalition submits that Parliament was well aware of this reality when it enacted s. 4.1.¹³

18. Consequently, insofar as this Court is called upon to interpret s. 4.1 of the *CDSA* in “such fair, large and liberal construction and interpretation as best ensures the attainment of its objects” (*Interpretation Act*, R.S.C. (1985), c. I-21, s. 12), it is critical that Parliament’s intent not be unduly reduced exclusively to the prevention of deaths. The purpose of s. 4.1 is much broader, and includes recognition of the long-term consequences of an overdose on the physical and psychological health of the victim, and their knock-on effects on the victim’s friends and family, consequences that can also be avoided if 911 is called without delay. Instances of overdose where the delay in calling 911 caused the victim irreparable harm, short of death, must therefore also be considered when deciding whether Parliament intended to allow arrests for simple possession at the scene of an overdose.

¹¹ See, for instance, *R. c. Lévesque*, 2021 QCCQ 9272, para. 24, *R. v. Milne*, 2021 BCSC 1859, para. 32, and *McKitty v. Hayani*, 2018 ONSC 4015, para. 6. Moreover, this Court in *PHS* already implicitly recognized that the risks faced by PWUD extend beyond death: *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, para. 136.

¹² See Hong JS, *et al.*, “Neurologic, cognitive, and behavioral consequences of opioid overdose: a review”, *Curr Phys Med Rehabil Rep.* 2019;7, pp. 305–13 (<https://doi.org/10.1007/s40141-019-00247-2>) (on the long-term functional consequences of a near-fatal overdose, including cognitive deficits as well as emotional and behavioral changes).

See also Corrigan JD and Adams RS, “The intersection of lifetime history of traumatic brain injury and the opioid epidemic”, *Addictive Behaviors* 2019;90, pp. 143–5 (<https://doi.org/10.1016/j.addbeh.2018.10.030>) (on the cognitive disorders that can result from an overdose episode, including impaired memory, reduced processing speed and impaired emotional control).

¹³ Parliament understood that overdoses can lead to debilitating injuries, and that timely emergency response can prevent or mitigate these outcomes. See, for instance, Canada, House of Commons, *House of Commons Debates*, Vol. 148, No. 48, 1st Sess., 42nd Parl., May 4, 2016, pp. 2896 and 2900.

B. The Objective of Clarity in the Interpretation of s. 4.1 of the CDSA

19. The Harm Reduction Coalition further submits that a key public health principle must guide the interpretation of s. 4.1 of the *CDSA*: the principle of clarity. Indeed, a lack of clarity in the interpretation and application of s. 4.1 would undermine Parliament’s purpose in enacting this provision – i.e. to encourage the public to call 911 to prevent the consequences of an overdose. Put another way, Parliament’s objective cannot be fully realized if the public remains *uncertain* about the criminal consequences that may flow from their 911 call.

20. This concern for clarity is reflected in the recent Quebec jurisprudence on the scope of s. 4.1. For instance, in *Beaulieu*, the Court of Québec laid out in plain language the test that must be met to trigger the application of s. 4.1 – thereby clarifying the scope of the provision.¹⁴

21. This concern for clarity takes on added importance when determining the extent of the police’s powers at the scene of an overdose. In this respect, it is essential to avoid any result that would perpetuate, in the eyes of the public, uncertainty as to the extent of police powers, since such a result would perpetuate, by the same token, [translation] “the *fear* of judicial consequences [that] may prevent someone from requesting the intervention of emergency services” – thus lowering the chances the victim will obtain the help they require.¹⁵ As such, the development by this Court of a complex test – assessing, for instance, the legality of an arrest after the fact, based on a balancing of multiple factors – would contravene this need for clarity.

22. *A fortiori*, the principle of clarity militates in favour of an interpretation of s. 4.1 that does not permit the arrest of Good Samaritans for simple possession. Allowing such arrests would add a further layer of confusion, again undermining Parliament’s purpose. Admittedly, as the Appellant repeatedly indicates, there is a legal distinction between being *charged and convicted*, on the one

¹⁴ *R. c. Beaulieu*, 2023 QCCQ 8005, para. 19. See also the reasons of St-Pierre J. in *Lévesque*, who ruled categorically that s. 4.1 does not cover situations where the 911 call is made, not to protect a person who has used drugs, but to ensure the safety of a member of their entourage: *Lévesque, supra*, n. 11, paras. 26 and 31.

¹⁵ *Lévesque, supra*, n. 11, para. 14 [emphasis added].

hand, and ‘merely’ being *arrested*, on the other.¹⁶ For a qualified jurist, these concepts “are well-understood legal terms of art”, and their respective scope “is self-evident”.¹⁷

23. That being said, the aforementioned distinction drawn by the Appellant is far from obvious for a non-jurist. An arrest is intimately linked, in the public consciousness, to the consequences of a possible criminal conviction.¹⁸ This confusion is amplified in this case by the information on the scope of s. 4.1 provided by the various government bodies. For example, the French version of the summary of s. 4.1 presented by the Government of Canada makes no distinction between the various legal concepts put forward by the Appellant, thus adding to the confusion.¹⁹ Meanwhile, the Government of Saskatchewan’s website unambiguously states: “CALL 911 if you think someone is overdosing. *The Good Samaritan Act* protects you from being *arrested* if illegal drugs are present”.²⁰

24. In short, the possibility of being arrested for simple possession, and the resulting uncertainty, do nothing to minimize the public’s fear at the idea of calling 911 at the scene of an overdose, thus frustrating Parliament’s purpose. Consequently, the clarity required for an effective application of s. 4.1 calls for an interpretation of the provision that does not allow the arrest of a Good Samaritan

¹⁶ Factum of the Appellant, paras. [35-36](#), [40](#) and [73](#).

¹⁷ *Id.*, paras. [35-36](#).

¹⁸ The Harm Reduction Coalition argues that this Court can take judicial notice of the public confusion that exists between an arrest and a charge. See on this topic, Pamplin II JR *et al.*, “Persistent criminalization and structural racism in US drug policy: the case of overdose Good Samaritan Laws”, *Am J Public Health*, 2023;113(S1):S43–S48 (<https://doi.org/10.2105/AJPH.2022.307037>):

[T]here is considerable confusion among the public about which protections GSLs provide. Colloquially, the term “arrest” is often used interchangeably to mean arrest, charge, and prosecution. This may contribute to distrust that law enforcement officials are abiding by the laws, which studies have suggested is a considerable barrier to their effectiveness. (pp. S44-S45).

¹⁹ The French version of this summary reads:

Cette loi peut vous protéger:

De l’interdiction de possession de substances désignées (drogues) aux termes du paragraphe 4(1) de la *Loi réglementant certaines drogues et autres substances*.

Government of Canada, « À propos de la Loi sur les bons samaritains secourant les victimes de surdose », online : < <https://www.canada.ca/fr/sante-canada/services/opioides/apropos-loi-bons-samaritains-secourant-victimes-surdose.html> >.

²⁰ Government of Saskatchewan, “Opioid Overdoses: What You Need to Know” [emphasis added], online: < <https://www.saskatchewan.ca/residents/health/accessing-health-care-services/mental-health-and-addictions-support-services/alcohol-and-drug-support/opioids> >.

for simple possession.²¹ The Coalition accordingly invites this Court to recognize the principle of clarity as a crucial secondary objective underpinning s. 4.1 of the *CDSA* – with the implications of this conclusion on the scope of police powers.

C. The Importance of a Myth and Stereotype-Free Examination of the Purpose of s. 4.1 of the *CDSA*

25. Finally, the Harm Reduction Coalition submits that s. 4.1 must be interpreted using a science-based approach.²² This approach must naturally be free of any myths or stereotypes related to drug use; to include such myths not based on scientific evidence would contravene Parliament’s goal of adopting a science-based approach to the regulation of drug use in response to the toxic drug crisis.

26. This Court already rejected two of these myths in *PHS*. On the one hand, this Court refused to conclude, in the absence of any scientific evidence, that drug use is always a matter of personal choice.²³ Accordingly, no police intervention for simple possession should be aimed at *punishing* the person concerned – especially in the context of an overdose. Only a public health approach can adequately address the complex difficulties faced by people living with a drug addiction.

27. On the other hand, also in *PHS*, this Court recognized that the Insite supervised injection site – while permitting the use of drugs – did not have the effect of “increasing the incidence of drug use and crime in the surrounding area”.²⁴ By the same token, there is no scientific evidence in this case to suggest that arresting a Good Samaritan at the scene of an overdose better protects public

²¹ The same logic extends to any form of investigation at the scene of an overdose. To that end, even *outside* the context of an overdose, Parliament recently urged peace officers to adopt a public health approach when they intervene in simple possession cases: see *CDSA*, ss. [10.1](#) and [10.2](#).

Not only does such an interpretation avoid any uncertainty with regard to the scope of police powers, it critically reinforces Parliament’s message behind the adoption of s. 4.1: the public, when calling on the police in the context of an overdose, need not fear the criminal consequences associated with mere possession (see excerpts from the parliamentary debates cited by the Respondent: Factum of the Respondent, paras. [28-38](#)).

²² This includes both quantitative sciences, as well as social sciences that qualitatively assess structural drivers of certain behaviours and outcomes.

²³ *PHS*, *supra*, n. 8, paras. [99](#) and [101](#). This Court also recognized that: “Successful treatment [of substance use addiction] requires acknowledgment of the difficulties of reaching a marginalized population with complex mental, physical, and emotional health issues” (*Id.*, para. [15](#)).

²⁴ *Id.*, para. [19](#).

health and safety. On this point, the architect of s. 4.1 – MP Ron McKinnon – expressed confidence that this provision would not increase the rate of drug use.²⁵

28. This second myth is critical, as the Appellant places in direct opposition, on one side, a generous interpretation of s. 4.1 that would offer greater protections to Good Samaritans and, on the other, the safety of the public.²⁶ Yet, the assertion that arresting a person at the scene of an overdose always promotes public safety is not supported by any scientific evidence. On the contrary, as the Respondent rightly points out, in the exceptional cases where the mere possession of drugs in the context of an overdose would endanger public safety, the police already possess numerous powers other than arrest that enable them to adequately protect the public.²⁷

29. The Coalition wishes to add an additional myth to the two already recognized by this Court in *PHS*: the myth that the protection conferred by s. 4.1 *only* benefits people living with an addiction. To the contrary, this legal protection is also vital for occasional drug users, including young adults and adolescents using unregulated drugs for the first time. In short, s. 4.1 of the *CDSA* benefits anyone accessing the unregulated drug market.

30. Recognizing this last myth does not require fresh evidence. Indeed, a person using an unregulated substance for the first time is not someone who would meet the criteria for a substance use disorder diagnosis, nor would they be in need of or qualify for any form of treatment services. It is also a matter of judicial notice that this person is not immune to an overdose, particularly due to the very real risk that the drug they are using contains a different drug, or a drug in a different amount than they expected. This is precisely the example offered by the architect of s. 4.1, who recalled, before the House, the story of Mr. Kelly Best. This 19-year-old had consumed half a pill that, unbeknownst to him, contained fentanyl. He fell into a state of overdose, while his friend was present next to him. Unfortunately:

²⁵ Canada, House of Commons, *Standing Committee on Health*, Evidence, No. 17, 1st Sess., 42nd Parl., June 15, 2016, p. [2](#).

²⁶ Factum of the Appellant, para. [31](#).

²⁷ Factum of the Respondent, para. [94](#).

The friend panicked, texted other friends about what to do and, eventually, phoned his dad, who immediately called 911. The delay was about an hour. It was fatal. The friend had a small amount of drugs on him and did not want to go to jail.²⁸

31. In view of this tragedy, it is imperative not to unduly limit the scope of s. 4.1. as applying solely to people living with an addiction. This myth, like the two others already recognized in *PHS*, must be excised from any consideration of the scope of s. 4.1, as they are not supported by scientific evidence.

32. In the absence of such evidence, and in light of both the nefarious consequences of an overdose on the victim's physical and psychological integrity, as well as the requirement for clarity that underpins s. 4.1, the Harm Reduction Coalition submits that the true purpose of s. 4.1 of the *CDSA* militates in favour of an interpretation that limits police's powers under s. 495 of the *Code* at the scene of an overdose, and prioritizes an interpretation that makes it unassailably clear: calling 911 because someone needs medical help due to a toxic drug reaction will result in just that – a medical response. This requires, in all instances, that the police intervene in a manner that aligns with the principles set out in ss. 10.1 (a) to (e) of the *CDSA*.

PART IV – COSTS

33. The Coalition seeks no costs, and ask that no costs be awarded against it.

PART V – ORDER SOUGHT

34. The Harm Reduction Coalition takes no position on the disposition of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, in Toronto, this 26th day of August, 2024

²⁸ Canada, House of Commons, *House of Commons Debates*, Vol. 148, No. 48, 1st Sess., 42nd Parl., May 4, 2016, p. [2893](#). See also MP Christine Moore's comments, emphasizing the fear teenagers experience at the prospect of being arrested at the scene of an overdose: *Id.*, pp. [2899-2900](#).



Maxime Bédard

Daniel Brown Law LLP

103 Church Street, Suite #400

Toronto, Ontario M5C 2G3

P: 581-995-1359

E: bedard@danielbrownlaw.ca



Meagan Berlin

Mack Law Corp

7297 West Saanich Road

Saanichton, British Columbia V8M 1R7

P: 780-222-7380

E: meagan@macklawcorp.ca

Counsels for the Joint Interveners

PART VI – TABLE OF AUTHORITIES

Jurisprudence	Paragraph(s)
<i>ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)</i> , 2006 SCC 4	11
<i>Canada (Attorney General) v. PHS Community Services Society</i> , 2011 SCC 44	13, 16, 26, 27
<i>Canada (Minister of Citizenship and Immigration) v. Vavilov</i> , 2019 SCC 65	2
<i>Chieu v. Canada (Minister of Citizenship and Immigration)</i> , 2002 SCC 3	11
<i>McKitty v. Hayani</i> , 2018 ONSC 4015	16
<i>R. c. Beaulieu</i> , 2023 QCCQ 8005	20
<i>R. c. Lévesque</i> , 2021 QCCQ 9272	16, 20, 21
<i>R. v. Milne</i> , 2021 BCSC 1859	16
Secondary Sources	
Corrigan JD and Adams RS, “The intersection of lifetime history of traumatic brain injury and the opioid epidemic”, <i>Addictive Behaviors</i> 2019:90, pp. 143–5 (https://doi.org/10.1016/j.addbeh.2018.10.030)	16
Government of Canada, « À propos de la Loi sur les bons samaritains secourant les victimes de surdose », online : < https://www.canada.ca/fr/sante-canada/services/opioides/apropos-loi-bons-samaritains-secourant-victimes-sur-dose.html >	23
Government of Saskatchewan, “Opioid Overdoses: What You Need to Know” [emphasis added], online: < https://www.saskatchewan.ca/residents/health/accessing-health-care-services/mental-health-and-addictions-support-services/alcohol-and-drug-support/opioids >	23
Hong JS, <i>et al.</i> , “Neurologic, cognitive, and behavioral consequences of opioid overdose: a review”, <i>Curr Phys Med Rehabil Rep.</i> 2019:7, pp. 305–13 (https://doi.org/10.1007/s40141-019-00247-2)	16
<i>House of Commons Debates</i> , Vol. 148, No. 65, 1st Sess., 42nd Parl. , June 3, 2016	5
<i>House of Commons Debates</i> , Vol. 148, No. 48, 1st Sess., 42nd Parl. , May 4, 2016	17, 30
Pamplin II JR, <i>et al.</i> , “Persistent criminalization and structural racism in US drug policy: the case of overdose Good Samaritan Laws”, <i>Am J Public Health</i> , 2023;113(S1):S43–S48 (https://doi.org/10.2105/AJPH.2022.307037)	23
<i>Standing Committee on Health, Evidence</i> , No. 17, 1st Sess., 42nd Parl. , June 15, 2016	5, 27

Legislation	
<i>Controlled Drugs and Substances Act</i> , SC 1996, c 19 <i>Loi réglementant certaines drogues et autres substances</i> , LC 1996, c 19	ss. 4.1 , 10.1 to 10.7
<i>Criminal Code</i> , RSC 1985, c C-46 <i>Code criminel</i> , LRC 1985, c C-46	s. 495
<i>Interpretation Act</i> , R.S.C. (1985), c. I-21 <i>Loi d'interprétation</i> , LRC 1985, c I-21	s. 12