

**COURT OF APPEAL OF ALBERTA**

COURT OF APPEAL FILE NUMBER: 2501-0254AC

TRIAL COURT FILE NUMBER: 2410 01231

REGISTRY OFFICE: CALGARY

APPLICANT: AARON BROWN

STATUS ON APPEAL: APPELLANT

RESPONDENTS: HIS MAJESTY THE KING IN RIGHT OF ALBERTA  
and RECOVERY ALBERTA: MENTAL HEALTH  
AND ADDICTION SERVICES

STATUS ON APPEAL: RESPONDENTS

DOCUMENT: **FACTUM**

Appeal from the Decision of  
The Honourable Justice D.A. Yungwirth  
Dated the 26<sup>th</sup> day of August, 2025  
Filed the 30<sup>th</sup> day of October, 2025

**FACTUM OF THE APPELLANT**

**Avnish Nanda**  
Nanda & Company  
10007 80 Avenue NW  
Edmonton, AB T6E 1T4  
avnish@nandalaw.ca  
Phone: 587-400-1253

**Nathaniel Gartke**  
Alberta Justice  
10th Floor, 102A Avenue Tower  
10025 – 102A Avenue  
Edmonton, AB T5J 2Z2  
Nathaniel.gartke@gov.ab.ca  
Phone: 780-641-9718

**Counsel for the Appellant**

**Counsel for the Respondent**  
**His Majesty the King in Right of Alberta**

**Shalee Kushernick**  
Alberta Health Services  
Floor 5, Seventh Street Plaza, North Tower  
10030 - 107 Street  
Edmonton, AB T5J 3E4  
Shalee.Kushnerick@albertahealthservices.ca

**Counsel for the Respondent**  
**Recovery Alberta: Mental Health and Addiction Services**

## TABLE OF CONTENTS

<b>PART I – FACTS .....</b>	<b>- 4 -</b>
<i>A. The Chambers Justice Appropriately Found that Supervised Consumption Services     Constitute Essential Care for Substance Users in Central Alberta .....</i>	<i>- 6 -</i>
<i>B. The Chambers Justice Appropriately Held the Decision to Shut Down the Red Deer     OPS Reflected a Shift in Addictions Policy, the Minister Provided No Justification .</i>	<i>- 8 -</i>
<i>C. The Chambers Justice Correctly Found that the Alternative Treatments Provided     Benefits, But Were Not the Same as Supervised Consumption Services .....</i>	<i>- 8 -</i>
<i>D. The Chambers Justice Correctly Found That Patients of the Red Deer OPS Would Be     Harmed Through the Denial of Supervised Consumption Services .....</i>	<i>- 12 -</i>
<b>PART II – GROUNDS OF APPEAL .....</b>	<b>- 13 -</b>
<b>PART III – STANDARD OF REVIEW .....</b>	<b>- 14 -</b>
<b>PART IV – ARGUMENT.....</b>	<b>- 14 -</b>
<i>A. The Chambers Justice Erred in Finding that Section 15 of the Charter Does Not     Recognize an Adverse Effects Discrimination Claim .....</i>	<i>- 14 -</i>
<i>B. The Chambers Justice Erred in Finding No Deprivation of the Appellant’s Section 15     Charter Right By Justifying the Decision .....</i>	<i>- 17 -</i>
<i>C. The Chambers Justice Erred in Incorporating His Majesty’s Justification Arguments     Into the Deprivation Analysis to Find No Breach of Section 7 of the Charter .....</i>	<i>- 19 -</i>
<i>D. The Chambers Justice Erred in Finding That Section 7 of the Charter Does Not     Recognized a Right to Health Care Services.....</i>	<i>- 26 -</i>
<i>E. The Chambers Justice Did Not Identify the Correct Legal Test Under Section 12 of the     Charter or Apply it to the Appellant’s Section 12 Charter Claim .....</i>	<i>- 30 -</i>
<b>PART V – RELIEF SOUGHT .....</b>	<b>- 33 -</b>
<b>TABLE OF AUTHORITIES.....</b>	<b>- 35 -</b>

## PART I – FACTS

1. At the hearing below, the Appellant advanced the position that supervised consumption services is a vital form of health care for people like himself who live with substance use disorder. His Majesty the King in Right of Alberta’s decision to close of the Red Deer overdose prevention site (“**Red Deer OPS**”) meant that this essential medical treatment would no longer be available to the hundreds of vulnerable central Albertans who required it to mitigate the harms from street-sourced substance use. The decision deprived the Appellant and others of their rights at sections 7, 12, and 15 of the *Charter of Rights and Freedoms* and could not be saved under section 1.
2. The Chambers Justice agreed with the Appellant that supervised consumption services constituted necessary medical care “to a particularly vulnerable subpopulation of people who use opioids, and who are at the highest risk of negative outcomes.”<sup>1</sup> She also agreed that the closure of the Red Deer OPS meant that vulnerable substance users would be denied access to medical treatment that eradicates the risk of overdose death, grievous bodily injury, and other harms.<sup>2</sup>
3. However, the Chambers Justice declined to find that the decision deprived the Appellant and other patients of the Red Deer OPS of their *Charter* rights. She found that there was no *Charter* breach because the Appellant (a) challenged state action that represented a “targeted shift” in policy implemented through a funding decision<sup>3</sup> and (b) that alternative treatments were available to some of the patients who accessed the Red Deer OPS.<sup>4</sup>
4. The Chambers Justice’s reasoning discloses reviewable errors. Both (a) the nature of the decision and whether deference is owed, and (b) the efforts taken by the state to reduce the harms that result from its conduct are factors to be assessed at section 1 of the *Charter*. The state’s justification for its impugned conduct does not determine if a claimant’s rights at sections 7 or 15 of the *Charter* have been deprived. Neither is it relevant at the deprivation stage of the analysis if the state has introduced ameliorative measures to mitigate against the harms its actions caused.
5. The deprivation assessments at sections 7 and 15 of the *Charter* are distinct from the justification analysis performed at section 1 under the *Oakes* test. The Chambers Justice conflated

---

<sup>1</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶22, Appellant’s BOA, Tab 1.

<sup>2</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶¶19-22, Appellant’s BOA, Tab 1.

<sup>3</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶42, ¶80, and ¶81, Appellant’s BOA, Tab 1.

<sup>4</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶¶64-65, Appellant’s BOA, Tab 1.

and collapsed the justification stage of the analysis into the deprivation stage, imposing a higher threshold for the Appellant to establish a deprivation of his *Charter* rights. For the Appellant to prove a deprivation of his *Charter* rights, he was required to demonstrate that His Majesty's conduct was not justified. This represents a reversal of the section 1 onus. His Majesty has the burden to justify its conduct.

6. The Chambers Justice also erred in dismissing the Appellant's section 15 *Charter* claim on the grounds that "the cessation of funding applied equally to all residents," and that he was not being denied the treatment "based on his disability."<sup>5</sup> The Appellant advanced an adverse effects discrimination claim. The denial of continued access to supervised consumption services was neutral on its face as it applied to everyone. But, the decision had a disproportionate impact on the Appellant and other substance users because of their medical condition. The finding that section 15 is limited to claims of direct discrimination is an error in law.

7. The Chambers Justice also committed errors in her analysis of section 7 of the *Charter*. According to the Chambers Justice, since there is no constitutional right to health care, denying continued access to lifesaving medical services does not mean that the life, liberty, or security of the person interests of patients were deprived.<sup>6</sup> The finding is at odds with numerous decisions on the scope of section 7 in the health care realm; including *PHS*, where the court held that state action that creates a risk to the health through the denial of access to medical services deprives them of their security of the person and life interests.<sup>7</sup> The court below erred in law by holding that section 7 of the *Charter* does not recognize a right to continued access of essential medical services.

8. At section 12 of the *Charter*, the Chambers Justice failed to consider the claim that the Appellant advanced. She considered a different claim and failed to identify the correct legal test for civil section 12 *Charter* claims that arise in the context of the right to be free from cruel and unusual "treatment." This is an error of law and principle that warrants appellate intervention.

---

<sup>5</sup> *Brown v Alberta*, 2025 ABKB 495 at ¶79, Appellant's BOA, Tab 1.

<sup>6</sup> *Brown v Alberta*, 2025 ABKB 495 at ¶¶66-67, Appellant's BOA, Tab 1.

<sup>7</sup> *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 ("*PHS*") at ¶93, Appellant's BOA, Tab 2.

**A. The Chambers Justice Appropriately Found that Supervised Consumption Services Constitute Essential Care for Substance Users in Central Alberta**

9. The Chambers Justice found that the Appellant lives with severe opioid use disorder; a chronic, relapsing, remitting neurological disease that is marked by the physical and psychological compulsion to consume opioids even at enormous personal risk of harm.<sup>8</sup> The harm to the Appellant and other substance users has increased over the past decade due to the influx of synthetic substances such as fentanyl. This has led to a crisis of overdose deaths in Alberta.

10. Supervised consumption services is a lifesaving and sustaining medical service. It is a form of medical treatment that consists of “a safe and clean environment for people to consume illegal drugs and be monitored by trained healthcare staff who provide emergency medical aid in the event of a drug poisoning or overdose.”<sup>9</sup> The key mechanisms that prevents harm from street-sourced substance use is that people can consume illegal drugs without the risk of criminal prosecution and that consumption occurs under medical supervision.<sup>10</sup>

11. The Chambers Justice correctly determined that supervised consumption services provide “benefits to a particularly vulnerable subpopulation of people who use opioids, and who are at the highest risk of negative outcomes.”<sup>11</sup> However, she did not elaborate on the specific benefits. Instead, she referenced the evidence of Dr. Elaine Hyshka (“**Dr. Hyshka**”), an expert on the health impacts that supervised consumption services, adopting her unchallenged testimony on the issue.<sup>12</sup>

12. Dr. Hyshka’s evidence was that supervised consumption services:<sup>13</sup> (a) reduces the risk of overdose death; (b) reduces the specific risks of injecting drugs in public; (c) makes substance users more likely to access treatment and other forms of health care; (d) has no impact on increases in crime and disorder; and (e) leads to public expenditure savings on health care, policing, and criminal justice costs. Supervised consumption services are “an essential component of the continuum of care for people with substance use disorders” and “essential to the health and safety of people with substance use disorder, particularly given the toxic and unpredictable nature of

---

<sup>8</sup> *Brown v Alberta*, 2025 ABKB 495 at ¶1, Appellant’s BOA, Tab 1 and Extracts of Key Evidence of the Appellant (“**Appellant’s EKE**”), Tab 1, A29 at ¶112.

<sup>9</sup> Appellant’s EKE, Tab 1, A4 at ¶15.

<sup>10</sup> Appellant’s EKE, Tab 1, A5-6 at ¶20.

<sup>11</sup> *Brown v Alberta*, 2025 ABKB 495 at ¶22, Appellant’s BOA, Tab 1.

<sup>12</sup> *Brown v Alberta*, 2025 ABKB 495 at ¶19, Appellant’s BOA, Tab 1.

<sup>13</sup> Appellant’s EKE, Tab 1, A6-7 at ¶¶23-36.

Alberta's illegal drug supply.”<sup>14</sup> Supervised consumption services are also vital to substance users in recovery; relapse is a common occurrence for those living with substance use disorder, and substance users in recovery relapse.<sup>15</sup> Supervised consumption services are a safeguard for anyone who uses street sourced substances, regardless of the stage or context of their use.

13. Beyond ensuring that substance users avoid immediate death from consuming potent street-sourced opioids, supervised consumption services are also critical to integrating substance users into the formal health care system. This population often feels discriminated against in the health care setting, leading to their disengagement.<sup>16</sup> Access to supervised consumption services integrates them into the health care system to address their broader medical needs.

14. The Respondents did not deny that supervised consumption services is a vital form of medical care for those living with substance use disorder. The Respondents’ witnesses confirmed that supervised consumption services is critical medical care for those living with the condition and at all stages of their illness. This Court can conclude that when the court below references the health impacts of supervised consumption services, her decision reflects this understanding of the treatment’s benefits, which was uncontested on the record.

15. Those living with substance use disorder in central Alberta were first provided access to supervised consumption services in 2018 through the Red Deer OPS. It quickly became one of the busiest supervised consumption sites in the province. Between October 1, 2018 and June 30, 2024, the site had 207,651 client visits, accounting for 14.3% of all supervised consumption site visits in Alberta.<sup>17</sup> The Red Deer OPS averaged 3,049 visits and 74 unique visitors per month and successfully managed 6,511 potentially life-threatening overdose events.<sup>18</sup> EMS was only required in 51 of these events. It handled an average of 104 adverse drug events per month, representing 24.7% of all overdose events responded to at supervised consumption sites in Alberta.<sup>19</sup>

16. For the period running from June 2024 to the site’s closure in March 2025, the Chambers Justice accepted the evidence of Natasha Stagg, Manager of the Red Deer OPS, that the site’s

---

<sup>14</sup> Appellant’s EKE, Tab 2, A35 and A37 at ¶14 and ¶27.

<sup>15</sup> Appellant’s EKE, Tab 3, A43 at page 19, lines 16-24.

<sup>16</sup> Appellant’s EKE, Tab 4, A45 at ¶9.

<sup>17</sup> Appellant’s EKE, Tab 1, A20 at ¶73.

<sup>18</sup> Appellant’s EKE, Tab 1, A20 at ¶73.

<sup>19</sup> Appellant’s EKE, Tab 1, A20 at ¶73.

usage increased. During this time, the site served 618 patients and had a monthly average of 2,123 visits, 1,888 consumptions, 198 unique patients, 42 average daily unique visits, and 26 adverse events.<sup>20</sup> Approximately 40% of the site’s patients consume stimulants while the remaining patients consume opioids.<sup>21</sup> The site was also busiest in the evenings and nights.<sup>22</sup>

**B. The Chambers Justice Appropriately Held the Decision to Shut Down the Red Deer OPS Reflected a Shift in Addictions Policy, the Minister Provided No Justification**

17. On September 23, 2024, the Minister decided to close the Red Deer OPS. The Chambers Justice correctly held that the decision reflected “a targeted shift in addictions strategy” that was “expressed through funding mechanisms and operational changes.”<sup>23</sup> In other words, depriving patients of continued access to supervised consumption services was a policy decision that the government implemented by denying further funding to the only service provider in the region.

18. His Majesty’s sole fact witness was a civil servant working for the Ministry, who denied any personal knowledge of the reason behind decision, as he was not “inside the minister's brain.”<sup>24</sup> He could offer no evidence around the purpose behind the closure or any other information.

19. His Majesty admitted it tendered no section 1 evidence, as it did not believe it was necessary to defend against the action. As the Chambers Justice noted, His Majesty’s position was that the claim could not proceed past the deprivation stage, which meant that it was not required to tender section 1 evidence.<sup>25</sup> The Chambers Justice agreed.

**C. The Chambers Justice Correctly Found that the Alternative Treatments Provided Benefits, But Were Not the Same as Supervised Consumption Services**

20. The Chambers Justice broadly held that the alternative therapies provided some benefit to those patients who were denied continued access to supervised consumption services. She then relied on this finding to hold that the decision did not deprive them of their *Charter* rights.

21. The Chambers Justice did not rule that the alternative treatments replaced supervised consumption services or offered the same benefits. Nothing on the record would support such a

---

<sup>20</sup> *Brown v Alberta*, 2025 ABKB 495 at ¶21, Appellant’s BOA, Tab 1.

<sup>21</sup> Appellant’s EKE, Tab 5, A63, page 26, lines 4 to 8.

<sup>22</sup> Appellant’s EKE, Tab 5, A63, page 26, lines 14-21.

<sup>23</sup> *Brown v Alberta*, 2025 ABKB 495 at ¶42, Appellant’s BOA, Tab 1.

<sup>24</sup> Appellant’s EKE, Tab 6, A78 at page 29, line 14.

<sup>25</sup> Appeal Record, Part 3 – Transcripts, page 96, lines 9 to 22.

finding. All experts and fact witnesses with specialized knowledge of addictions treatment agreed that none of the therapies were adequate replacements for supervised consumption services.

22. A mobile rapid access to addiction medicine clinic (“**M-RAAM**”) does not offer medical supervision of people consuming illegal street-sourced substances.<sup>26</sup> The dynamic overdose response team (“**DORT**”) is also not a supervised consumption services provider and instead consists of a team of paramedics and nurses who will patrol areas where substance users frequent, hoping to find them in time to reverse overdose deaths after they consumed toxic substances.<sup>27</sup>

23. Accessing the Digital Overdose Response System (“**DORS**”) requires a smartphone, which many substance users do not have.<sup>28</sup> Substance users are supervised by non-medical staff virtually and there is a delayed response if an overdose occurs as medical personnel must be dispatched to the person, increasing the “risk of anoxic brain injury, death, so automatically poorer outcomes for those people using it versus accessing a supervised consumption service.”<sup>29</sup>

24. His Majesty presented the Narcotic Transition Service (“**NTS**”) as the primary alternative to supervised consumption services. However, Dr. Lucas Gursky, the Medical Lead for the NTS in Red Deer, testified that not all patients who currently access the Red Deer OPS would be eligible for the NTS.<sup>30</sup> The NTS does not provide treatment for those suffering from stimulant use disorder.<sup>31</sup> The NTS has between four to seven patients at any given time and only has capacity to treat a maximum of 15 patients.<sup>32</sup> It operates strictly from 7:00 AM to 7:00 PM.<sup>33</sup> The NTS is not an adequate alternative to the Red Deer OPS because it cannot accommodate the number of patients, range of substance use disorders, or dosing times.

25. According to Dr. Karine Meador, an addictions medicine doctor who has experience working at the NTS and treating substance use disorder, frequent relapse and the continued use of street-sourced opioids while on treatment programs like the NTS “is a well-documented and

---

<sup>26</sup> Appellant’s EKE, Tab 1, A26-27 at ¶¶99-103.

<sup>27</sup> Appellant’s EKE, Tab 1, A28 at ¶108.

<sup>28</sup> Appellant’s EKE, Tab 5, A69-70, 2025 at page 39, line 1 to page 40, line 26.

<sup>29</sup> Appellant’s EKE, Tab 5, A69-70, 2025 at page 39, line 1 to page 40, line 26.

<sup>30</sup> Appellant’s EKE, Tab 3, A40 at page 16, lines 13-23.

<sup>31</sup> Appellant’s EKE, Tab 3, A41-42 at page 17, lines 23-27 to page 18, lines 1-23 and Appellant’s EKE, Tab 5, A63, at page 26, lines 4-8.

<sup>32</sup> Appellant’s EKE, Tab 3, A39 at page 12, lines 10-15 and Appellant’s EKE, Tab 7, A81 at ¶15.

<sup>33</sup> Appellant’s EKE, Tab 7, A81 at ¶13.

medically accepted reality in long-term treatment of opioid use disorder.”<sup>34</sup> Dr. Gursky also admitted that it is common for NTS patients to continue to consume illegal street-sourced substances while in the program, creating a real and serious risk of overdose death.<sup>35</sup> “It is neither realistic nor medically appropriate to expect OAT<sup>36</sup> alone to eliminate the need for harm reduction interventions in patients with complex and severe opioid use disorder.”<sup>37</sup> His Majesty “does not offer the full range of evidence-based pharmacological treatments” for substance use disorder, which “increases the likelihood of treatment cessation, disengagement from care, and exposure to volatile and unregulated substances.”<sup>38</sup>

26. “Relapse is an expected part of the continuum of addiction as a disease.”<sup>39</sup> It is expected that those living with the condition will continue to access street-sourced substances while in recovery.<sup>40</sup> The consequence of depriving substance users in central Alberta of supervised consumption services, including those in the NTS, is that they can no longer access the most effective form of medical intervention for illegal substance use. For the patients of the Red Deer OPS, this means “elevated risk of overdose death and other harms linked to polysubstance use.”<sup>41</sup>

27. Stagg also conceded that many NTS patients continued to access supervised consumption services while in treatment.<sup>42</sup> Based on Stagg’s figures, nearly half of all NTS patients at a given time were also consuming illegal street-sourced substances at the Red Deer OPS. Without access to the Red Deer OPS, the risk these patients face of overdose death and other serious health and social harms increases significantly whenever they consume substances outside of the NTS.

28. Dr. Thara Kumar, central Alberta’s Medical Officer for addictions and substance-using populations, also outlines how the NTS cannot meet the needs of patients who previously accessed the Red Deer OPS. Supervised consumption services and the NTS “provide different services and

---

<sup>34</sup> Appellant’s EKE, Tab 8, A90 at ¶20.

<sup>35</sup> Appellant’s EKE, Tab 9, A108 at page 17, lines 15-18.

<sup>36</sup> The NTS is a form of Opioid Agonist Treatment, which is referred to by its acronym.

<sup>37</sup> Appellant’s EKE, Tab 7, A82 at ¶22.

<sup>38</sup> Appellant’s EKE, Tab 8, A90-91 at ¶¶23-30.

<sup>39</sup> Appellant’s EKE, Tab 3, A43 at page 19, lines 11-24 and Appellant’s EKE, Tab 9, A109-110 at page 18, line 24 to page 19, line 16.

<sup>40</sup> Appellant’s EKE, Tab 7, A82 at ¶22.

<sup>41</sup> Appellant’s EKE, Tab 8, A91 at ¶26.

<sup>42</sup> Appellant’s EKE, Tab 10, A140 at lines 9 to 22.

target different patient populations.”<sup>43</sup> Dr. Gursky admitted the same. The NTS cannot accommodate all the Red Deer OPS’ patients from a clinical perspective.<sup>44</sup> Stimulant use is not treated at the NTS, and stimulants — such as cocaine or methamphetamine — accounted for 40% of all consumptions at the Red Deer OPS.<sup>45</sup> The onerous requirements to access the NTS also deters many from participating in the program.

29. The Chambers Justice found that the frequency of the Appellant’s street-sourced substance increased after supervised consumption services were suspended, even though he was accessing the NTS.<sup>46</sup> The unknown toxicity of street-sourced substances means that there is a high likelihood of overdose death or grievous bodily injury every time they are consumed outside of a supervised consumption site. Increased daily consumption of street-sourced substances without the safeguards provided by supervised consumption services means that the Appellant faces an increased risk of these harms occurring. These are the “increased risks” the Chambers Justice found that the Appellant now experiences with the closure of the Red Deer OPS.<sup>47</sup>

30. The Chambers Justice found that the introduction alternative medical services did not replace the benefits provided by the Red Deer OPS. The safest option for the Appellant and other patients of the Red Deer OPS is to consume street-sourced substances is while accessing supervised consumption services. Neither the NTS nor any of the other alternative therapies introduced provide the same protections or health benefits. The Chambers Justice held that the denial of supervised consumption services, even with the introduction of the alternative treatments, caused the Appellant to suffer “certain disadvantages and increased risks.”<sup>48</sup> Based on the record, the disadvantages and risks must mean the increased risk of overdose death, grievous bodily injury, and an array of other social and health harms.

---

<sup>43</sup> Appellants’ EKE, Tab 11, A170 at ¶8.

<sup>44</sup> Appellant’s EKE, Tab 5, A62-63 at page 25, line 15 to page 26, line 19 and Appellant’s EKE, Tab 9, 100 at page 9, lines 19-26.

<sup>45</sup> Appellant’s EKE, Tab 9, A106 at page 15, lines 4-23.

<sup>46</sup> [\*Brown v Alberta\*](#), 2025 ABKB 495 at ¶29, Appellant’s BOA, Tab 1.

<sup>47</sup> [\*Brown v Alberta\*](#), 2025 ABKB 495 at ¶46, Appellant’s BOA, Tab 1.

<sup>48</sup> [\*Brown v Alberta\*](#), 2025 ABKB 495 at ¶46, Appellant’s BOA, Tab 1.

**D. The Chambers Justice Correctly Found That Patients of the Red Deer OPS Would Be Harmed Through the Denial of Supervised Consumption Services**

31. The harms to patients of the Red Deer OPS occurred within days of suspending access to supervised consumption services. Stagg testified that at least four patients died within weeks of the site's closure.<sup>49</sup> Stagg, who also leads Recovery Alberta's Community In-Reach Team, which responds to overdoses near Red Deer's shelter, also reported a 350% increase in overdoses from the month before and after the service's suspension.<sup>50</sup> DORT witnessed double the number of naloxone opioid overdose reversals.<sup>51</sup> More overdoses occurred in public, which is due "to people using substances in unsafe and unsupervised settings due to the lack of the OPS."<sup>52</sup>

32. Dr. Hyshka's testimony is also critical in determining the risk substance users face in being denied access to supervised consumption services. Overdose deaths and non-fatal harms will likely increase as "many such incidents would have previously been either prevented or optimally managed by medical staff on site. Drug poisoning events managed within an SCS are attended to more swiftly, with an expanded set of clinical interventions, and are less likely to require EMS response, hospitalization, substantially reducing the risk of medical complications or death."<sup>53</sup>

33. The Chambers Justice accepted this evidence but then held that it was too early to judge the true impacts of the Red Deer OPS' closure. However, the evidence of harms resulting from the closure was uncontested and consistent. His Majesty was not replacing the Red Deer OPS with another provider of supervised consumption services. It did not introduce another form of medical intervention aimed at preventing immediate death or other harms from street-sourced substance use, including stimulant use. No evidence was tendered to contest the heightened risk substance users faced through the deprivation of supervised consumption services. Statistical and direct evidence was tendered on increases in overdoses, overdose deaths, and other harms since the closure of the site, including from the Respondents' own witnesses. The increased risk and actual harms resulting from the denial of supervised consumption services was not speculative.

---

<sup>49</sup> Appellant's EKE, Tab 10, A146-147 at page 15, line 23 to page 16, line 15.

<sup>50</sup> Appellant's EKE, Tab 10, A145-147 at page 14, line 15 to page 16, line 9 and Appellants' EKE, Tab 11, A171 at ¶14.

<sup>51</sup> Appellants' EKE, Tab 11, A179 at ¶13 and Appellants' EKE, Tab 10, A145 at page 14, lines 15-26

<sup>52</sup> Appellants' EKE, Tab 11, A179 at ¶15

<sup>53</sup> Appellant's EKE, Tab 2, A36 at ¶26.

34. The Appellant's own near fatal overdose exemplifies the increased risk of harm due to the closure of the Red Deer OPS. The Appellant testified that on April 26, 2025, a month after the Red Deer OPS closed, and while in active treatment at the NTS, he had intense withdrawal cravings and consumed street-sourced opioids to address them.<sup>54</sup> He overdosed, had trouble breathing, and was only resuscitated through two doses of naloxone. It was the Appellant's first major overdose since the opening of the Red Deer OPS in 2018. Had the Appellant had access to supervised consumption services, he would have consumed the illegal substances at the site, surrounded by a medical team. The Appellant was fortunate to survive; he may not be so lucky in the future.

35. The Chambers Justice accurately stated that a variety of factors could have led to the Appellant's overdose and recorded surge in overdoses and deaths since the site's closure. However, what is uncontested is that the closure of the Red Deer OPS has increased the risk of death and grievous bodily injury every time someone consumes street-sourced substances. The safeguard no longer exists in central Alberta. Now, every consumption of street-sourced substances carries with it a high risk of serious harm. The harms resulting from the denial of supervised consumption services is evident on a proper reading of the record.

## **PART II – GROUNDS OF APPEAL**

36. The decision below should be reversed on the following grounds:
- a. the Chambers Justice erred in identifying and applying the correct legal framework for determining breaches of sections 7, 12, and 15 of the *Charter*;
  - b. finding that adverse effects discrimination claims do not fall within the scope of section 15 of the *Charter*;
  - c. holding that public policy considerations factor into whether there is a deprivation of the right to equality at section 15 of the *Charter*;
  - d. incorporating the justification assessment at section 1 of the *Charter* into the analysis of whether a deprivation of life, liberty, or security of the person interests protected at section 7 of the *Charter* has occurred;
  - e. finding that section 7 of the *Charter* does not encompass a right to life, liberty, or security of the person if state action creates a risk of harm to individuals by preventing access to health care services;

---

<sup>54</sup> Appellant's EKE, Tab 12, A186-189 at ¶¶2-13.

- f. failing to identify and apply the correct legal framework for section 12 of the *Charter* claims to the one the Appellant advanced.

### PART III – STANDARD OF REVIEW

37. Identifying the appropriate legal frameworks and claims advanced under sections 7, 12, and 15 of the *Charter* are questions of law and principle that are reviewed for correctness. Applying the correct legal framework to the record is a question of mixed fact and law that is entitled to deference, unless the factual findings can be easily extricated from the law. Factual findings are set aside if they disclose a palpable or overriding error.

### PART IV – ARGUMENT

#### A. The Chambers Justice Erred in Finding that Section 15 of the *Charter* Does Not Recognize an Adverse Effects Discrimination Claim

38. The court below rejected the Appellant’s section 15 *Charter* claim because “the cessation of funding applied equally to all residents, and Alberta did not deny the OPS to Mr. Brown based on his disability.”<sup>55</sup> According to the Chambers Justice, an equality rights claim under section 15 of the *Charter* requires proof of discriminatory intent. A breach of section 15 only occurs if the state deliberately targets an individual on protected grounds.

39. The Chamber Justice’s understanding of the right to equality at section 15 of the *Charter* limits the protection to direct discrimination claims. This is not a correct interpretation of the equality rights protection under the *Charter*. Section 15 jurisprudence explicitly recognizes adverse effects discrimination claims and has set out a framework to assess them.

40. In 1997, the Supreme Court of Canada in *Eldridge*<sup>56</sup> first recognized that adverse effects discrimination claims fall within the scope of section 15 of the *Charter*. As subsequent decisions have held, “adverse impact discrimination ‘violate[s] the norm of substantive equality’ which underpins this Court’s equality jurisprudence. At the heart of substantive equality is the recognition that identical or facially neutral treatment may ‘frequently produce serious inequality’”<sup>57</sup> Contrary

---

<sup>55</sup> *Brown v Alberta*, 2025 ABKB 495 at ¶79, Appellant’s BOA, Tab 1.

<sup>56</sup> *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624 (“*Eldridge*”), Appellant’s BOA, Tab 3.

<sup>57</sup> *Fraser v Canada (Attorney General)*, 2020 SCC 28 (“*Fraser*”), Appellant’s BOA, Tab 4.

to the findings of the Chambers Justice, adverse effects discrimination claims, such as the one advanced in this action, are recognized at section 15 of the *Charter*.

41. The legal test for determining an adverse effects discrimination claim was established in *Eldridge*. The framework has developed since then, including most recently in *Fraser*<sup>58</sup> and *Sharma*.<sup>59</sup> Proving an adverse effects discrimination claim requires a court to first determine if (a) the impugned law or state action, on its face or **in its impact**, creates a distinction based on an enumerated or analogous ground.<sup>60</sup> “For a law to create a distinction based on prohibited grounds through its effects, it must have **a disproportionate impact on members of a protected group**. If so, the first stage of the s. 15 test will be met.”<sup>61</sup>

42. After establishing a disproportionate impact, the analysis turns to whether the impugned state action (b) “imposes **burdens** or denies a benefit in a manner that has the effect of **reinforcing, perpetuating, or exacerbating disadvantage**.”<sup>62</sup> State action is discriminatory if it “widens the gap between the historically disadvantaged group and the rest of society rather than narrowing it, then it is discriminatory.”<sup>63</sup> The analysis must be flexible and consider a broad range of harms.<sup>64</sup>

43. The Chambers Justice also incorrectly held that the protection is only engaged if a claimant is “seeking equal access to a benefit provided to everyone else.”<sup>65</sup> This interpretation of the equality rights protection contradicts binding section 15 *Charter* jurisprudence that holds that state action that “imposes burdens” on individuals that reinforces, perpetuates, or exacerbates disadvantage results in a violation of the right.<sup>66</sup> This improper reading of the law led the Chambers Justice to dismiss the Appellant’s section 15 claim. Appellate intervention is required to address the multiple legal errors made by the court below and to engage in a thorough and complete analysis of the Appellant’s adverse effects discrimination claim.

---

<sup>58</sup> *Fraser* at ¶47, Appellant’s BOA, Tab 4.

<sup>59</sup> *R v Sharma*, 2022 SCC 39 (“*Sharma*”).

<sup>60</sup> *Fraser* at ¶50, Appellant’s BOA, Tab 4.

<sup>61</sup> *Fraser* at ¶52, Appellant’s BOA, Tab 4.

<sup>62</sup> *Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 (“*Alliance*”) at ¶73, Appellant’s BOA, Tab 5.

<sup>63</sup> *Quebec (Attorney General) v. A.*, 2013 SCC 5 at ¶332, Appellant’s BOA, Tab 6.

<sup>64</sup> *Fraser* at ¶76, Appellant’s BOA, Tab 4.

<sup>65</sup> *Brown v Alberta*, 2025 ABKB 495 at ¶79, Appellant’s BOA, Tab 1.

<sup>66</sup> *Alliance*, 2018 SCC 17 at ¶73, Appellant’s BOA, Tab 5.

44. The Appellant and other patients of the Red Deer OPS live with substance use disorders such as opioid use disorder and stimulant use disorder. Substance use disorders are recognized medical conditions that fall under the “enumerated ground of mental or physical disability.”<sup>67</sup> The site provided those living with the condition access to supervised consumption services, a low barrier and extremely effective form of medical treatment for illegal street-sourced substance use to prevent death and injury and to improve their health outcomes. The treatment essentially eradicates the harms inherent with consuming street-sourced substances.

45. His Majesty’s decision to deprive access to supervised consumption services in central Alberta appears neutral on its face because it applies to everyone. No one can access supervised consumption services. However, the decision disproportionately impacts those living with substance use disorder because they depend on the treatment. Those living with the condition are now denied the only form of medical intervention proven to prevent the serious and immediate harms from street-sourced substance use.

46. The denial of continued access to supervised consumption services “has a disproportionate impact” on those living with substance use disorder, satisfying the first prong of the test under section 15 of the *Charter*. It is also discriminatory. The decision imposes burdens on those living with substance use disorders that has the effect of reinforcing, perpetuating, or exacerbating disadvantage. Individuals living with substance use disorder are a “historically marginalized population” because of their medical condition.<sup>68</sup> Courts have long held that this population is difficult to bring within the formal health care system and face stigma and prejudice.<sup>69</sup> They have higher mortality and morbidity rates due to their disability, and also receive inadequate medical care in the formal health care setting.<sup>70</sup>

47. Supervised consumption services integrate those living with substance use disorder into the broader medical system to treat their broader health care needs and underlying medical condition. It is considered a first line treatment for those living with the condition, providing them the

---

<sup>67</sup> [Black v Alberta](#), 2023 ABKB 123 at ¶¶114-123, Appellant’s BOA, Tab 7.

<sup>68</sup> [PHS](#) at ¶10, Appellant’s BOA, Tab 2.

<sup>69</sup> [PHS](#) at ¶10, Appellant’s BOA, Tab 2. and [Ontario \(Disability Support Program\) v. Tranchemontagne, 2010 ONCA 593](#) (“*Tranchemontagne*”) at ¶121 and ¶126, Appellant’s BOA, Tab 8.

<sup>70</sup> [PHS](#) at ¶10, Appellant’s BOA, Tab 2 and [Tranchemontagne](#) at ¶121 and ¶126, Appellant’s BOA, Tab 8.

foundation to overcome the illness.<sup>71</sup> The denial of continued access to the treatment burdens patients of the Red Deer OPS by depriving them of effective safeguards to prevent the harms associated with street-sourced substance use. Access to the treatment is being curtailed during an overdose crisis and in a region that is the epicentre of the epidemic in the province.<sup>72</sup>

48. The decision increases the Appellant and other patients of the Red Deer OPS' risk of death and other serious harms. It widens the gap between them and the rest of society; reinforcing, perpetuating, and exacerbating their disadvantage based on their medical condition. It violates their right to substantive equality that is a core aspect of section 15 of the *Charter*.

**B. The Chambers Justice Erred in Finding No Deprivation of the Appellant's Section 15 Charter Right By Justifying the Decision**

49. The Chambers Justice also erroneously incorporates the justification analysis at section 1 into her assessment of whether a deprivation of the equality right has occurred:<sup>73</sup>

accepting Mr. Brown's claim under section 15 would effectively constitutionalize any program that serves a disadvantaged group, creating a chilling effect on innovation and flexibility in public policy. It would require governments to permanently fund any program that benefits a vulnerable population, regardless of its effectiveness or budgetary constraints. As Alberta rightly points out, this would improperly entrench policy choices and undermine the separation of powers.

50. There is no component of the deprivation framework at section 15 of the *Charter* that requires a court to consider the policy ramifications of accepting a claimant's equality rights claim to determine if they have been deprived of the protection. At this stage of the analysis, a court is not to consider whether finding a breach "would require governments to permanently fund any program that benefits a vulnerable population, regardless of its effectiveness or budgetary constraints," or "improperly entrench policy choices and undermine the separation of powers."<sup>74</sup> Rather, the framework limits a court's assessment to determining if (a) the impugned law or state action, on its face or in its impact, creates a distinction based on an enumerated or analogous ground; and (b) it imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.

---

<sup>71</sup> Appellant's EKE, Tab 1, A9-10 at ¶¶31-34.

<sup>72</sup> Appellant's EKE, Tab 1, A21 at ¶76.

<sup>73</sup> *Brown v Alberta*, 2025 ABKB 495 at ¶79, Appellant's BOA, Tab 1.

<sup>74</sup> *Brown v Alberta*, 2025 ABKB 495 at ¶80, Appellant's BOA, Tab 1.

51. In referencing public policy reasons as part of its analysis of section 15 of the *Charter*, the court below merged the deprivation and justification stages of the analysis. The correct approach would have been for the Chambers Justice to first assess whether an infringement has occurred and then address any objections in granting a *Charter* remedy under the *Oakes* test at section 1. A review of *Charter* jurisprudence confirms this approach. In *Eldridge*,<sup>75</sup> *G(J)*,<sup>76</sup> *PHS*,<sup>77</sup> and *Fraser*,<sup>78</sup> the state actors involved raised policy reasons and budgetary considerations as justification for their actions. The court addressed these factors at section 1 rather than at the deprivation stage. This is the correct approach to deciding *Charter* claims.

52. “When a policy is translated into law or state action, those laws and actions are subject to scrutiny under the *Charter*.”<sup>79</sup> The Chambers Justice’s reasoning that any attempt to challenge state action resulting from policy choices raises separation of powers concerns that preclude a court from finding a *Charter* violation undermines the entire concept of the rule of law. The state has discretion over policy, but the impacts from when it translates law into policy is actionable.

53. Further, the state’s attempt to limit or deny the right to equality, like any *Charter* right, must be supported with evidence. The state cannot meet its section 1 burden without an evidentiary foundation.<sup>80</sup> It must prove the objectives behind its conduct, budgetary constraints, or any other factor that it relies upon to justify its actions. Evidence is required because a section 1 analysis under the *Charter* cannot be done in the abstract.<sup>81</sup>

54. His Majesty tendered no evidence justifying its decision to deny continued access to supervised consumption services. As His Majesty contended and the court below noted, its defence was premised entirely on there being no actionable *Charter* claim because the Appellant challenged a policy change implemented through a funding decision. However, as the Chambers

---

<sup>75</sup> *Eldridge* at ¶¶84-94, Appellant’s BOA, Tab 3.

<sup>76</sup> *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46 (“*G(J)*”) at ¶¶94-108, Appellant’s BOA, Tab 9.

<sup>77</sup> *PHS*, Appellant’s BOA, Tab 2 at ¶¶137-140.

<sup>78</sup> *Fraser*, Appellant’s BOA, Tab 4 at ¶¶125-130.

<sup>79</sup> *PHS*, Appellant’s BOA, Tab 2 at ¶105.

<sup>80</sup> *R v Ndhlovu*, 2022 SCC 38 at ¶126, Appellant’s BOA, Tab 10 and *Wiring v Law Society of Alberta*, 2025 ABCA 413 at ¶¶95-112, Appellant’s BOA, Tab 11.

<sup>81</sup> *R v Ndhlovu*, 2022 SCC 38 at ¶126, Appellant’s BOA, Tab 10 and *Wiring v Law Society of Alberta*, 2025 ABCA 413 at ¶¶95-112, Appellant’s BOA, Tab 11.

Justice correctly held, the decision to deny continued access to supervised consumption services, regardless of the reason and method employed, was subject to *Charter* review.<sup>82</sup>

55. His Majesty refused to produce any witness or evidence on the reasons behind the impugned state action. With no evidence on the objective behind the decision, the court below relied on a press release issued by the Minister that was tendered by the Appellant.<sup>83</sup> However, a press release does not demonstrate the objective behind government action; it is not direct evidence. Neither does it demonstrate if the state's actions were reasonable, minimally impairing, or proportional, particularly when it increases the likelihood of death and grievous bodily injury to a vulnerable and highly marginalized class of persons. If the Court had undertaken a section 1 analysis to determine if His Majesty's actions were justified, it would fail for lack of evidence.

56. There is also no authority for the proposition that the state's right to legislate over a particular policy area makes its conduct immune from *Charter* review under section 15. This includes health policy, funding decisions, and any other policy justifications. In fact, *Charter* jurisprudence is rife with decisions where courts have found that the right to equality supersedes a government's right to implement laws to pursue a particular policy objective. *PHS* specifically involved the federal government's discretion to set addictions health policy and to no longer permit access to supervised consumption services as part of its discretion. The courts in *Eldridge, G(J)*, and *Fraser* all found that state policy decisions around funding breached the *Charter* and directed the state to fund specific measures to address the violations. No deference was afforded the state actors based on any general policy discretion or budgetary considerations. None should have been provided here, especially with the *Charter* rights at stake.

### **C. The Chambers Justice Erred in Incorporating His Majesty's Justification Arguments Into the Deprivation Analysis to Find No Breach of Section 7 of the *Charter***

57. The Chambers Justice held that there was no breach of section 7 of the *Charter* because:<sup>84</sup>
- a. His Majesty "made a decision to address the problem of illegal injection drugs, associated substance use disorders, and harm and deaths from overdoses by implementing options focused on health, wellness and

---

<sup>82</sup> *Brown v Alberta*, 2025 ABKB 495 at ¶42, Appellant's BOA, Tab 1.

<sup>83</sup> *Brown v Alberta*, 2025 ABKB 495 at ¶¶37-42, Appellant's BOA, Tab 1 and Appellant's EKE, Tab 4, A54 at Exhibit "8".

<sup>84</sup> *Brown v Alberta*, 2025 ABKB 495 at ¶¶52-68, Appellant's BOA, Tab 1.

recovery and transitioning away from safe consumption services,” and “in the public interest” it had “the right to do so”;

- b. the decision occurred “concurrently with the implementation and enhancement of other services to address the opioid crisis,” which afforded some benefits to the Appellant; and
- c. absent a free standing *Charter* right to health care, there is no *Charter* right to continued access to “life-saving” health care services.

58. At the deprivation stage of a section 7 *Charter* claim, courts consider: (a) is there a deprivation of life, liberty, or security of the person; and if so, (b) did the deprivation occur in accordance with the principles of fundamental justice.

59. Establishing a deprivation involves an application of the sufficient causal connection standard. It “does not require that the impugned government action or law be the only or the dominant cause of the prejudice suffered by the claimant, and is satisfied by a reasonable inference, drawn on a balance of probabilities.”<sup>85</sup> The focus is on whether the impugned state action is more likely than not to contribute to the deprivation of a claimant’s life, liberty, or security of the person interest. If it does, the first prong of the deprivation analysis is made out.

60. In *Bedford*, the Supreme Court of Canada specifically rejected the requirement of an “active,” “foreseeable,” and a “necessary” connection between the impugned state action and the deprivation of a section 7 interest.<sup>86</sup> It found that this causation standard was too stringent and not a fair and workable approach in the dynamic context of state action and the life, liberty, or security of the person interests of an individual. Causation is satisfied if a claimant can prove that state action contributes to the deprivation of their section 7 *Charter* interests.

61. After establishing a deprivation of a section 7 interest, a court must then consider if the deprivation accords with the principles of fundamental justice. It is only at this stage of the analysis that the objective behind the impugned state actions is considered. However, this is dependent on the principles of fundamental justice advanced by a claimant, as arbitrariness, gross disproportionality, and overbreadth require an assessment of the purpose behind the state action and the means employed to achieve it. For other principles of fundamental justice, such as shocks the conscience, the state’s purpose is not a relevant factor under the analysis.

---

<sup>85</sup> [\*Canada \(Attorney General\) v Bedford\*](#), 2013 SCC 72 (“*Bedford*”) at ¶76, Appellant’s BOA, Tab 12.

<sup>86</sup> [\*Bedford\*](#) at ¶¶74-78, Appellant’s BOA, Tab 12.

62. If a claimant establishes that state action deprived them of their section 7 *Charter* interests in a manner that does not accord with the principles of fundamental justice, then the burden shifts on the state to justify its actions. The state must prove justification at section 1.

63. The Chambers Justice's finding that the policy objective His Majesty is pursuing through its actions is in the public interest does not mean that there is no deprivation of the section 7 *Charter* interests. It is irrelevant at the first prong of the deprivation analysis, where the court examines if the impugned state action interferes with the life, liberty and security of the person interests of a claimant. Assessing whether an interference has occurred does not involve the court considering the purpose behind the state's conduct.

64. Although the state's purpose may be relevant in assessing if a deprivation occurred in accordance with the principles of fundamental justice, which is the second prong of the deprivation analysis, the decision on appeal does not engage in any analysis of the principles of fundamental justice. It does not because the section 7 claim is dismissed on the grounds that His Majesty is pursuing a legitimate policy objective that is in the public interest and has introduced measures to mitigate the harms that will result from its conduct. A state can pursue a legitimate policy objective, but the means employed can nonetheless be arbitrary, overbroad, or grossly disproportionate, resulting in an infringement of a claimant's section 7 *Charter* right. This was precisely the ruling in *PHS*, and the argument advanced by the Appellant in the court below.

65. If the purpose behind His Majesty's conduct is to improve the health outcomes of those living with substance use disorder, then it is arbitrary, as the record demonstrates it will cause them greater harm. In the alternative, if His Majesty's purpose is to deny access to supervised consumption services because it does not support or believe them to be effective, then its actions are grossly disproportionate. The decision increases the risk of overdose death, grievous bodily injury, and numerous other health and social harms to extremely vulnerable people amid an overdose crisis, outraging the standards of decency.

66. The purpose behind the impugned state action and availability of alternative treatment options are also considerations at section 1. At the justification stage, His Majesty must prove that it is pursuing a pressing and substantial objective. Then, it must establish that the means chosen to pursue the aim are rationally connected to it, the rights of patients of the Red Deer OPS are

minimally impaired in the circumstances, and there is sufficient proportionality between the infringement and objective.

67. Access to alternative treatment options may be relevant to whether there has been a deprivation of a claimant's life, liberty, or security of the person interests if the alternative therapies serve the same purpose or provide the same benefits. If the Red Deer OPS was closed but supervised consumption services were provided to the same patients at a different clinic in the same manner then there would be no deprivation of their section 7 *Charter* interests. However, the Chambers Justice did not make this finding. She held that there was no evidence that alternative therapies replaced supervised consumption services or addressed the harms depriving access to the treatment would cause.<sup>87</sup> Things may change in the future, but at the time of the hearing, the evidence establishes that the denial of treatment would cause patients of the Red Deer OPS serious, potentially fatal harms.

68. The Chambers Justice held that patients of the Red Deer OPS would be harmed by denying them continued to access supervised consumption services and that the alternative therapies will not fully mitigate the harms, but that there is no section 7 *Charter* deprivation. This line of reasoning defies logic.

69. All witnesses unanimously testified that the health and social outcomes of patients would deteriorate with the withdrawal of the supervised consumption services. The objectives and effects of the alternative treatments are not the same as supervised consumption services. They unanimously held that the loss of supervised consumption services will create a gap in the spectrum of medical interventions available to treat the condition and cause harms that include an increased risk of death, grievous bodily injury, and other injuries.

70. The Respondents' own witnesses conceded both points. Stagg advised the Respondents in advance of the closure that it would cause deaths because there would be no access to comparable primary line treatments to prevent individuals from overdosing and dying from contaminated street-sourced substances.<sup>88</sup> Internal Recovery Alberta records outline that there's a highly probably and significant likelihood of patients of the Red Deer OPS dying or suffering grievous

---

<sup>87</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶45, Appellant's BOA, Tab 1.

<sup>88</sup> Appellant's EKE, Tab 5, A66-73 at page 36, line 1 to page 43, line 7.

bodily injury due to no longer being able to access supervised consumption services.<sup>89</sup> Stagg confirmed these harms were predicted and had been occurring since the closure of the service.<sup>90</sup>

71. Dr. Gursky conceded that not all patients of the Red Deer OPS could be admitted into the NTS, particularly those with stimulant use disorder, as the program does not treat that condition.<sup>91</sup> Patients using stimulants would be left without the protections supervised consumption services provided while consuming street-source stimulants. An accurate reading of the record before the Chambers Justice is that a large number of patients would be significantly and seriously harmed through the denial of supervised consumption services. No contrary evidence was submitted.

72. In relation to the Appellant specifically, the Chambers Justice did not find that the alternative treatments he was accessing after the closure of the Red Deer OPS fully mitigated his harms. According to the Chambers Justice, the Appellant has “experienced certain disadvantages and increased risks following the closure” of the site and received some “measurable benefits” after enrolling in the NTS.<sup>92</sup> The closure meant that the Appellant consumes street-sourced substances more frequently and faces an increased risk of overdose death whenever he does. The benefits the Appellant experienced from the NTS were “a significant reduction in his opioid consumption, improved management of withdrawal symptoms through medication, and access to a range of supportive services.”<sup>93</sup> As the Chambers Justice accepted, the Appellant is consuming toxic-street sourced opioids more frequently, but now without safeguards to prevent an overdose death.<sup>94</sup> He has no protections when he consumes stimulants. The NTS does not address nor mitigate the immediate harms he is exposed to by no longer accessing supervised consumption services.

73. The court below erred in finding that the denial of access to supervised consumption services meant that the Appellants and other patients of the Red Deer OPS would suffer harms, including an increased risk of death, and then holding causation under section 7 of the *Charter* was not made out. If the impugned state action contributed to patients of the sites experiencing health harms —

---

<sup>89</sup> Appellant’s EKE, Tab 13, A203-207.

<sup>90</sup> Appellant’s EKE, Tab 19, A137-138 page 14, line 15 to page 16, line 9 and Appellants’ EKE, Tab 11, A171 at ¶14

<sup>91</sup> Appellant’s EKE, Tab 9, A100 at page 9, lines 19-20.

<sup>92</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶46, Appellant’s BOA, Tab 1.

<sup>93</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶46, Appellant’s BOA, Tab 1.

<sup>94</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶29, Appellant’s BOA, Tab 1.

an undisputed and accepted fact on the record — then based on the sufficient causal standard, it deprives them of their section 7 *Charter* interests.

74. The record establishes that the denial of supervised consumption services means that an already vulnerable population of substance users faced an increased risk of harms, including death. Section 7 can be raised preventatively, to avoid harms that state action has the potential to cause.<sup>95</sup> There is no authority that requires a claimant to endure the prospective harms they raise in a section 7 *Charter* action to prove a breach. In fact, section 7 *Charter* jurisprudence establishes that an increased risk of harm can ground a section 7 *Charter* claim as much as actual harm.

75. In *PHS*, the claimants had not been deprived of their access to supervised consumption services by the time they commenced action and obtained a decision that the Minister's decision to not extend operations of Insite breached their section 7 *Charter* rights. The Court did not hold that it would need to see the actual effects of the closure, including if the predicted deaths materialized, to ground a breach. It relied on the expert evidence tendered to rule that because there was an increased possibility of harm, there was a deprivation of the security of the person and life interests of Insite patients. It made the ruling despite the Minister ensuring the availability of alternative, recovery-oriented treatments to the same patient population. The same approach was followed in *Bedford* and *Carter v Canada (Attorney General)*;<sup>96</sup> section 7 of the *Charter* can be used to prevent harm from materializing.

76. The Appellant and patients of the Red Deer OPS are also highly vulnerable, marginalized individuals living with a serious medical condition and in a region that experiences elevated rates of overdoses and overdose deaths. Requiring proof that harms such as overdose death, brain damage, and the spread of blood born illnesses such as Hepatitis C and HIV have occurred to find a breach of section 7 raises a variety of ethical and moral issues. It is particularly problematic in this case, as the Appellant did suffer a near overdose death due to being denied access to supervised consumption services. The Chambers Justice committed a variety of errors in both holding that section 7 of the *Charter* requires a claimant to suffer harms to ground a breach, and the Appellant

---

<sup>95</sup> [G\(J\)](#), [1999] 3 SCR 46, at ¶94, Appellant's BOA, Tab 9.

<sup>96</sup> [2015 SCC 5](#).

and other patients who accessed did not suffer harms in the weeks following the site's closure, when the evidence established the opposite.

77. The availability of alternative treatments that provide some but not the same benefits of supervised consumption services is a consideration under the justification stage. Since the court below found that the alternative treatments were not a replacement for supervised consumption services in terms of their focus and health benefits, it serves as part of His Majesty's defence that its actions are minimally impairing and proportional. Alternative therapies may mitigate some of the harms caused by consuming street-sourced substances but not all the harms that supervised consumption services prevent.

78. The analytical error committed by the Chambers Justice is that she collapsed and incorporated the minimal impairment prong of the justification framework into the deprivation assessment. She found that there was no deprivation of the "right to life, liberty, or security of the person under section 7 of the *Charter*" because the "decision to discontinue access to supervised consumption services at the Red Deer OPS concurrently with the implementation and enhancement of other services to address the opioid crisis."<sup>97</sup> The "alternatives available" were not the same in purpose, effect, or scope as supervised consumption services but still existed "to address their disorder."<sup>98</sup> According to the court below, no deprivation occurred because there were other treatments that could provide health benefits to some patients, which would mean that the denial of supervised consumption services would minimally impair their section 7 interests.

79. The state has the burden of justifying its actions under the *Charter*. By merging the minimal impairment and proportionality analysis into the deprivation framework, the court shifted this onus on to the Appellant. Instead of having His Majesty establish that the introduction of the alternative measures would impair the patients' life, liberty, and security of the person interests as minimally as possible, the Appellant was required to establish that the alternative treatments were not minimally impairing to prove a deprivation of his section 7 interests.

80. If the Chambers Justice properly apprehended and applied the legal test under section 7 of the *Charter*, she would have found a deprivation of the life, liberty, and security of the person

---

<sup>97</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶64, Appellant's BOA, Tab 1.

<sup>98</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶65, Appellant's BOA, Tab 1.

interests of patients of the Red Deer OPS through the denial of continued access to supervised consumption services. She would have then considered the availability of alternative treatments at section 1 but encountered evidentiary limitations in completing the analysis as His Majesty tendered no evidence on the effectiveness of the alternative therapies in mitigating against the harms that supervised consumption services addressed.

**D. The Chambers Justice Erred in Finding That Section 7 of the *Charter* Does Not Recognized a Right to Health Care Services**

81. The second rationale provided for dismissing the Appellant’s section 7 *Charter* claim is that the Chambers Justice held that:<sup>99</sup>

in the absence of a constitutional right requiring the government to act in the first place (fund specific health services), there can be no constitutional right to the continuation of measures that were voluntarily taken. Further, if there is no constitutional right to specific health services, there can be no deprivation. The cases make no distinction for health services that are life-saving.

82. The Chambers Justice’s ruling that there is no section 7 *Charter* right to continue to access medical services is directly at odds with extensive *Charter* jurisprudence establishing the opposite. As the Supreme Court of Canada’s confirmed in *PHS*, state action that restricts access to essential health services deprives an individual of their security of the person and life interests.<sup>100</sup>

Where a law creates a risk to health by preventing access to health care, a deprivation of the right to security of the person is made out. Where the law creates a risk not just to the health but also to the lives of the claimants, the deprivation is even clearer.

83. This understanding of the scope of section 7 of the *Charter* in the health care realm is recognized by courts across Canada and emerges from a long line of *Charter* jurisprudence in the area.<sup>101</sup> Among the authorities relied upon in *PHS* was *R v Morgentaler*,<sup>102</sup> which involved challenge to limits on accessing abortion in Canada. At the time, abortions were only available if a hospital committee determined that it was medically necessary. Although there was no free-standing *Charter* right to abortion, Justice Dickson, in his landmark reasons, ruled that the delay caused by having a hospital committee review the request for an abortion “is an infringement of the purely physical aspect of the individual's right to security of the person,” as delays could cause

---

<sup>99</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶¶66-67, Appellant’s BOA, Tab 1.

<sup>100</sup> [PHS](#), at ¶93, Appellant’s BOA, Tab 2

<sup>101</sup> See: [Ontario Health Coalition and Advocacy Centre for the Elderly v His Majesty the King in Right of Ontario](#), 2025 ONSC 415 at ¶¶221-223, Appellant’s BOA, Tab 13.

<sup>102</sup> [\[1988\] 1 SCR](#), Appellant’s BOA, Tab 14.

undermine the health of pregnant girls and women.<sup>103</sup> Beyond the harms delays caused, Justice Dickson also found that denying access to abortion deprives girls and women of their section 7 interests because it forces them “to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations.”<sup>104</sup> This constituted a “profound interference” with their security of the person interests.<sup>105</sup>

84. In the abortion context, there is no *Charter* right to the medical procedure. However, attempts to restrict or deny access to abortion services engage and infringe the section 7 *Charter* interests of those seeking access to it. Forcing people to carry foetuses against their will to term violates the security of the person interest. Prohibitions on accessing abortion, including wholesale ban on abortion procedures, would have the same effect, because it would impose the same harm.

85. Having a *Charter* right to continue to access a specific essential medical care is not dependent on there being a free-standing right to the service or health care services generally. Upholding this reasoning challenges settled law, plunges established precedent into uncertainty. The Chambers Justice is incorrect in holding that “if there is no constitutional right to specific health services, there can be no deprivation” of section 7 of the *Charter* if access is denied.

86. The Chambers Justice also held that His Majesty “did not create barriers” to accessing supervised consumption services by suspending them.<sup>106</sup> In reaching this conclusion, she distinguished *PHS*:<sup>107</sup>

the issue in *PHS* was not whether harm reduction or abstinence-based programmes are the best approach to resolving illegal drug use. Instead, the issue was whether the Minister’s refusal to grant an exemption under section 56 of the *CDSA*, engaged section 7. The Court found that the *CDSA* was valid, but the refusal to grant an exemption prevented access to a health service otherwise available and supported by both the City and the Province. The denial of the exemption was found to be arbitrary and grossly disproportionate, thereby violating section 7. Importantly, *PHS* did not impose a positive obligation on the government to fund supervised consumption sites. Rather, it held that once such a service is made available, the state cannot arbitrarily interfere with access to it.

87. The impugned state action in *PHS* was the Minister refusing to grant an exemption that would have allowed Insite from continuing to operate. The refusal was issued only for Insite, and the Minister was open to grant approvals to other providers in the area. The Minister decided that

---

<sup>103</sup> [R v Morgentaler](#), [1988] 1 SCR at page 59, Appellant’s BOA, Tab 14.

<sup>104</sup> [R v Morgentaler](#), [1988] 1 SCR at pages 56-57, Appellant’s BOA, Tab 14.

<sup>105</sup> [R v Morgentaler](#), [1988] 1 SCR at pages 56-57, Appellant’s BOA, Tab 14.

<sup>106</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶68, Appellant’s BOA, Tab 1.

<sup>107</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶58, Appellant’s BOA, Tab 1.

it was not in the public interest to grant Insite a further license due to a shift in the federal government's addictions policy to focus on recovery-oriented treatment over providing supervised consumption services.

88. Although the decision was limited to Insite, it effectively meant that supervised consumption services would no longer be provided to patients of the site. Insite was the only provider of supervised consumption services in Vancouver. Not extending its exemption meant that the treatment would no longer be offered to anyone in the region, despite the possibility of others applying to provide the service.

89. As the court below found, the refusal to grant an exemption for Insite to continue to operate created a barrier to access health care that resulted in an increased risk of harm to its patients. Since they depended on supervised consumption services, the Minister could not deny continued access to them. This is because supervised consumption services engaged the patients' life and security of the person interest. Although the Minister had discretion to deny patients access to supervised consumption services, he could not exercise it in a manner that did so because it would deprive them of their section 7 interests. "Once such a service is made available, the state cannot arbitrarily interfere with access to it."<sup>108</sup> This is a correct statement of the ruling in *PHS*.

90. The Chambers Justice's articulation of the scope of section 7 in the health realm is wrong. If "absence of a constitutional right requiring the government to act in the first place" results in there being "no constitutional right to the continuation of measures," then there would be no section 7 *Charter* breach found in *PHS*. The reasoning in the decision on appeal on this point warrants this Court's intervention to remedy.

91. The impugned state action in *PHS* was the federal Health Minister refusing to exercise his discretion to allow supervised consumption services to continue to be provided in Vancouver's Downtown Eastside. The decision was rooted in an underlying shift in addictions policy, which was within the discretion of the Minister. The federal government was elected on a mandate to shutdown supervised consumption services and shift focus to recovery-oriented therapies.

92. Here, the impugned state action is a decision of the provincial Mental Health and Addictions Minister to no longer offer supervised consumption services in Red Deer as part of "a targeted

---

<sup>108</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶58, Appellant's BOA, Tab 1.

shift in addictions strategy.”<sup>109</sup> The new addictions strategy focuses on recovery-oriented therapies over providing access to supervised consumption services. The means taken to implement the decision was gradually shutting down the service and not renewing grant funding. Theoretically, other site operators can apply for approval to deliver supervised consumption services in central Alberta, but only the Red Deer OPS was granted that authority at the time of the decision. It effectively meant that the treatment would no longer be provided in the region, which is expressly stated as the Minister’s aim in closing the site in his press release.<sup>110</sup>

93. Similar to *PHS*, it was within the discretion of the Minister here to implement an addictions policy that transitions treatment away from supervised consumption services to other therapies. However, the decision impacts the health of existing patients of the Red Deer OPS, engaging and depriving them of their section 7 *Charter* interests. It does not matter if the impugned state action was a policy choice relating to addictions treatment or if it is in the public interest. As the held in *PHS*, this is immaterial to whether the impugned state action breaches section 7 of the *Charter*:<sup>111</sup>

The issue of illegal drug use and addiction is a complex one which attracts a variety of social, political, scientific and moral reactions... It is for the relevant governments, not the Court, to make criminal and health policy. However, when a policy is translated into law or state action, those laws and actions are subject to scrutiny under the *Charter*. The issue before the Court at this point is not whether harm reduction or abstinence-based programmes are the best approach to resolving illegal drug use. It is simply whether Canada has limited the rights of the claimants in a manner that does not comply with the *Charter*.

94. The barrier in *PHS* was that the Minister exercising his discretion in a manner that refused to allow supervised consumption services to be continued to be offered to patients of the site. Here, the barrier is the Minister exercising his discretion to refuse supervised consumption services to be provided to patients of the Red Deer OPS. It was a palpable and overriding error for the Chambers Justice to find that His Majesty erected no barrier to accessing supervised consumption services because the Minister exercised his discretion in a manner that pursued a specific policy objective. This is analogous to what occurred in *PHS*.

95. A potential difference between the state actions at issue in *PHS* and this case is the means to implement the decisions. In this case, His Majesty’s decision was enacted through refusing to grant

---

<sup>109</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶42, Appellant’s BOA, Tab 1.

<sup>110</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶¶37-42, Book of Authorities of the Appellant (“Appellant’s BOA”), Tab 1 and Appellant’s EKE, Tab 4, A54 at Exhibit “8”.

<sup>111</sup> [PHS](#), Appellant’s BOA, Tab 2 at ¶105.

further funding to the Red Deer OPS. However, as the Chambers Justice correctly noted, “a funding-related policy decision... is capable of engaging *Charter* scrutiny.”<sup>112</sup> As such, the means employed to give effect to the Minister’s decision has no bearing on the court below finding that the Appellant’s section 7 *Charter* claim is not actionable.

**E. The Chambers Justice Did Not Identify the Correct Legal Test Under Section 12 of the *Charter* or Apply it to the Appellant’s Section 12 *Charter* Claim**

96. The Chambers Justice dismissed the Appellant’s section 12 *Charter* claim because it failed to satisfy the “the burden of showing that the government’s decision to cease funding and operating the Red Deer OPS constitutes ‘treatment’” for the purposes of securing the safeguards the protection provides from cruel and unusual state action.<sup>113</sup>

97. The court below held that the Appellant was not “subject” to treatment for purposes of advancing a viable section 12 *Charter* claim. It articulated the Appellant’s argument around treatment as being a patient accessing a health care service funded by His Majesty. Since the Appellant “was not compelled to attend the OPS by the government, nor was he subject to any form of detention, supervision, or legal restraint,” he was not subject to treatment that entitles him to protection under section 12 of the *Charter* when His Majesty decided to defund the service.<sup>114</sup>

98. This was not the argument advanced by the Appellant. The Chambers Justice erred in law and principle by misconstruing the Appellant’s section 12 *Charter* claim and then finding that it did not satisfy the framework.

99. Section 12 of the *Charter* requires a claimant to prove that the state has treated them in a cruel and unusual manner, “intrinsically incompatible with human dignity.”<sup>115</sup> There are two elements that must be established: (a) treatment that falls within the scope of the provision and (b) that undermines the human dignity and inherent worth of each individual.

100. In *Rodriguez v British Columbia (Attorney General)*,<sup>116</sup> the Court held that “‘treatment’ within the meaning of s. 12 may include that imposed by the state in contexts other than that of a

<sup>112</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶42, Appellant’s BOA, Tab 1.

<sup>113</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶73, Appellant’s BOA, Tab 1.

<sup>114</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶72, Appellant’s BOA, Tab 1.

<sup>115</sup> [R v Bissonnette](#), 2022 SCC 23 at ¶60, Appellant’s BOA, Tab 15.

<sup>116</sup> [Rodriguez v British Columbia \(Attorney General\)](#), [1993] 3 SCR 519, Appellant’s BOA, Tab 16.

penal or quasi-penal nature... [t]here must be some more active state process in operation, involving an exercise of state control over the individual, in order for the state action in question, whether it be positive action, inaction or prohibition, to constitute ‘treatment’ under s. 12.”<sup>117</sup>

101. The Chambers Justice held that section 12 of the *Charter* is only engaged if the state exercises administrative control akin to “imprisonment” or “detention.”<sup>118</sup> That is not the law. *Refugee Care*,<sup>119</sup> the first— and perhaps currently the only— decision that interprets the scope of section 12 in the civil, non-penal context, applied the protection to a situation where the state had not detained a claimant. The case involved the federal government’s decision to cancel health care funding for refugee claimants. Refugee claimants are not detained by the state; they are provided temporary status in Canada while their claims to asylum are being assessed, yet move freely in the country without supervision. However, they are dependent on the state to access health care.

102. In *Refugee Care*, “the decision... to limit or eliminate a benefit previously provided to a discrete minority of poor, vulnerable and disadvantaged individuals coming within the administrative control of the Government of Canada subjects these individuals to ‘treatment’ for the purposes of section 12 of the *Charter*.”<sup>120</sup> A combination of the claimants’ dependence on the state on a class-wide basis and vulnerability led the denial of continued access to health care funding to constitute “treatment” for the purposes of section 12 of the *Charter*.

103. The Appellant’s section 12 *Charter* claim is analogous to the one advanced in *Refugee Care*. It centres around the control His Majesty exerts over him in accessing a safe space to consume illegal, street-sourced substances. Both the possession and consumption of street-sourced opioids and stimulants are criminalized acts. At the same time, people consuming street-sourced substances face a high risk of death and grievous bodily injury in consuming them, which is an uncontrollable physical and psychological compulsion. The criminalization of street-sourced substance use forces substance users to consume them in ways that increase their risk of harm.<sup>121</sup>

---

<sup>117</sup> [Rodriguez v British Columbia \(Attorney General\)](#), [1993] 3 SCR 519 at 522, Appellant’s BOA, Tab 16.

<sup>118</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶71, Appellant’s BOA, Tab 1.

<sup>119</sup> [Canadian Doctors For Refugee Care v Canada \(Attorney General\)](#), 2014 FC 651 (“*Refugee Care*”), Appellant’s BOA, Tab 17.

<sup>120</sup> [Refugee Care](#) at ¶610, Appellant’s BOA, Tab 17.

<sup>121</sup> [PHS](#), at ¶10, Appellant’s BOA, Tab 2.

104. Supervised consumption services provide both medical supervision and a non-criminalized setting for substance users to consume street-sourced substances. Both components – medical supervision and a non-criminalized setting – are critical to the effectiveness of the treatment. Without trained medical staff, patients cannot be properly monitored. If individuals were subject to criminal prosecution, staff and patients of a site would not attend because it could result in jail time. The effectiveness of supervised consumption services is predicated on ensuring that those who access and provide the treatment are not criminalized for their conduct.<sup>122</sup>

105. Patients of the Red Deer OPS are “a particularly vulnerable subpopulation of people who use opioids, and who are at the highest risk of negative outcomes” from their substance use.<sup>123</sup> They are among the most vulnerable and marginalized residents of central Alberta during a drug poisoning epidemic that claims the lives of nearly 5 Albertans each day.

106. The Red Deer OPS was the only location in central Alberta where illegal street sourced substances can be used without the risk of prosecution. The site was exempt from Canada’s criminal laws in part due to His Majesty, as provincial legislation requires its approval for the federal government to authorize a facility to provide supervised consumption services.<sup>124</sup>

107. The Appellant was under the administrative control of His Majesty because he required the Minister’s authorization to legally consume unlawful street-sourced opioids and stimulants in a clinical environment to prevent the adverse effects associated with them. This placed the Appellant dependent on His Majesty to access a non-criminalized setting to consume illegal substances lawfully and safely. Only through its approval could the Appellant access effective medical treatment to prevent and mitigate against these significant harms.

108. The Chambers Justice found that His Majesty did not expressly compel the Appellant to attend the Red Deer OPS. Neither did the federal government in *Refugee Care* require refugee claimants to access state funded healthcare if they fell ill. But, failing to do so would increase their risk of harm. Health care funding was not forced on refugee claimants, but in case they needed it, they were dependent on the federal government to access it or risk serious harm. The state went

---

<sup>122</sup> [PHS](#), at ¶19 and ¶109, Appellant’s BOA, Tab 2.

<sup>123</sup> [Brown v Alberta](#), 2025 ABKB 495 at ¶22, Appellant’s BOA, Tab 1.

<sup>124</sup> [Mental Health Services Protection Regulation](#), Alta Reg 114/2021, s 4, Appellant’s BOA, Tab 18.

from providing funding for medical treatment if a refugee claimant sought it to not providing it under any circumstances if they required it. This breached their section 12 *Charter* rights.

109. Although it is true that His Majesty has not passed a law requiring substance users to attend the Red Deer OPS, they still depend on the Minister's authorization to access the supervised consumption services. They went from having eradicated the risk of harm from consuming street-sourced substances through supervised consumption services to not being able to do so at all after being denied the treatment. This pushes the Appellant and others back to a place where every consumption could be their last as there is no longer a safe space for them to lawfully use street-sourced substances. It reimposes the marginalization that the treatment alleviated.

110. The combination of patients of the Red Deer OPS being dependent on His Majesty to consume street-sourced substances lawfully and safely and their significant vulnerability results in the denial of supervised consumption services constituting treatment at section 12 of the *Charter*. It reflects "the intentional targeting of an admittedly poor, vulnerable and disadvantaged group" that "takes this situation outside the realm of ordinary *Charter* challenges" to a government program.<sup>125</sup> His Majesty has granted and now taken away vital safeguards for those living with substance use disorder to continue to live. This undermines their human dignity and inherent worth, breaching the Appellant's section 12 *Charter* right.

#### **PART V – RELIEF SOUGHT**

111. The Appellant seeks the following in relief:

- a. a declaration that the decision below is set aside;
- b. a declaration that His Majesty's decision to deny continued access to supervised consumption services in central Alberta breaches his rights and the rights of other patients of the Red Deer OPS at sections 7, 12, and 15 of the *Charter of Rights and Freedoms* and cannot be saved pursuant to section 1;
- c. a direction that His Majesty resume supervised consumption services in central Alberta without delay;

---

<sup>125</sup> [Refugee Care](#) at ¶689, Appellant's BOA, Tab 17.

- d. costs, including costs on a full-indemnity basis; and
- e. such further and other relief deemed appropriate by this Honourable Court.

Estimate of time required for the oral argument: 45 minutes.

## TABLE OF AUTHORITIES

Tab	Jurisprudence	Cited At
1.	<a href="#"><i>Brown v Alberta</i></a> , 2025 ABKB 495	¶2, ¶3, ¶6, ¶7, ¶9, ¶11, ¶16, ¶17, ¶29, ¶30, ¶38, ¶43, ¶49, ¶50, ¶54, ¶55, ¶56, ¶57, ¶67, ¶72, ¶78, ¶81, ¶86, ¶89, ¶92, ¶95, ¶96, ¶97, ¶101, ¶105
2.	<a href="#"><i>Canada (Attorney General) v PHS Community Services Society</i></a> , 2011 SCC 44	¶7, ¶46, ¶51, ¶52, ¶82, ¶93, ¶103, ¶104
3.	<a href="#"><i>Eldridge v British Columbia (Attorney General)</i></a> , [1997] 3 SCR 624	¶40, ¶51
4.	<a href="#"><i>Fraser v Canada (Attorney General)</i></a> , 2020 SCC 28	¶41, ¶42, ¶51,
5.	<a href="#"><i>Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux</i></a> , 2018 SCC 17	¶42, ¶43
6.	<a href="#"><i>Quebec (Attorney General) v. A.</i></a> , 2013 SCC 5	¶42
7.	<a href="#"><i>Black v Alberta</i></a> , 2023 ABKB 123	¶67
8.	<a href="#"><i>Ontario (Disability Support Program) v. Tranchemontagne</i></a> , 2010 ONCA 593	¶46
9.	<a href="#"><i>New Brunswick (Minister of Health and Community Services) v G(J)</i></a> , [1999] 3 SCR 46	¶51, ¶74
10.	<a href="#"><i>R v Ndhlovu</i></a> , 2022 SCC 38	¶53
11.	<a href="#"><i>Wiring v Law Society of Alberta</i></a> , 2025 ABCA 413	¶53
12.	<a href="#"><i>Canada (Attorney General) v Bedford</i></a> , 2013 SCC 72	¶59, ¶60
13.	<a href="#"><i>Ontario Health Coalition and Advocacy Centre for the Elderly v His Majesty the King in Right of Ontario</i></a> , 2025 ONSC 415	¶83
14.	<a href="#"><i>R v Morgentaler</i></a> , [1988] 1 SCR	¶83, ¶86
15.	<a href="#"><i>R v Bissonnette</i></a> , 2022 SCC 23	¶99
16.	<a href="#"><i>Rodriguez v British Columbia (Attorney General)</i></a> , [1993] 3 SCR 519,	¶100, ¶101
17.	<a href="#"><i>Canadian Doctors For Refugee Care v Canada (Attorney General)</i></a> , 2014 FC 651	¶101, ¶102, ¶110