

**COURT OF APPEAL OF ALBERTA**

<b>COURT OF APPEAL FILE NUMBER</b>	<b>2501-0087AC</b>
<b>TRIAL COURT FILE NUMBER</b>	<b>2410 01231</b>
<b>REGISTRY OFFICE</b>	<b>CALGARY</b>
<b>APPLICANT</b>	<b>AARON BROWN</b>
<b>STATUS ON APPEAL</b>	<b>APPELLANT</b>
<b>RESPONDENTS</b>	<b>HIS MAJESTY THE KING IN RIGHT OF ALBERTA and RECOVERY ALBERTA: MENTAL HEALTH AND ADDICTION SERVICES</b>
<b>STATUS ON APPEAL</b>	<b>RESPONDENTS</b>




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**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**

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**FACTUM OF THE RESPONDENT,  
HIS MAJESTY THE KING IN RIGHT OF ALBERTA**

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## PART I – FACTS

### Overview

1. This is an appeal from a decision dismissing the Appellant’s application for declaratory and injunctive relief based on sections 7, 12, and 15 of the *Charter*.
2. His Majesty the King in right of Alberta (Alberta) provides funding for many services and programs for individuals suffering from opioid addiction. Funding for services varies year by year based on numerous factors. One service formerly funded was an overdose prevention site (OPS) in Red Deer. Funding for the OPS was provided under a grant agreement with Recovery Alberta that effectively ended on March 31, 2025. Alberta continues to expand funding for numerous other services in Red Deer for individuals who are addicted to opioids.
3. The Appellant, a former client of the OPS, sought an order compelling Alberta to fund the OPS despite the expiry of the grant agreement. He argued that the closure of the OPS infringed his *Charter* rights.
4. The Chambers Judge dismissed the Appellant’s claims for two main reasons.
5. First, she found that the Appellant was benefitting significantly from other services that Alberta was providing and was “making meaningful progress in his recovery through the supports now available.”<sup>1</sup> She relied primarily on the Appellant’s own evidence in making these findings.
6. Second, she found that, even *if* the Appellant had been worse off, there was no right under any of sections 7, 12, or 15 of the *Charter* to continued funding for a particular health service. She relied on well-established jurisprudence to make these conclusions.

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<sup>1</sup> [Brown v Alberta](#), 2025 ABKB 495 at para 46 [Chambers Decision].

7. A preference for a particular type of health service does not create a right to government funding for that service. The Chambers Judge did not err in dismissing the Appellant's claim, and this appeal ought therefore to be dismissed.

### **Position on Appellant's statement of facts**

8. Alberta rejects the Appellant's statement of the facts as misrepresentative of the evidence, of the parties' submissions, and of the Chambers Judge's findings. A statement of facts in a factum "is not a summary of the evidence, but of the facts that are found by the trial judge or are otherwise not in dispute."<sup>2</sup> The Appellant's statement of facts omits most of the Chambers Judge's factual findings, particularly with respect to the Appellant himself, and misrepresents the few factual findings that it does cite. A complete restatement of the facts is therefore appropriate.

### **History of OPS funding**

9. Alberta, through the Department of Mental Health and Addiction, provides oversight and funding for addiction services, which are primarily provided through the Respondent, Recovery Alberta.<sup>3</sup>

10. Alberta previously funded Recovery Alberta to operate the OPS through the Provincial Supervised Consumption Services Grant (Provincial Grant) – a term-limited grant that was effectively set to expire on March 31, 2025.<sup>4</sup> The expiry date was set in an amending agreement dated March 28, 2024.<sup>5</sup>

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<sup>2</sup> *Equustek Solutions Inc v Jack*, 2022 BCCA 194 at para 6. See also *Tulsa Heaters Inc v Syncrude Canada Ltd*, 2009 ABCA 414 at paras 16-17: "[I]n the part of its factum setting out the Statement of Facts, Syncrude did not cite the facts as found by the trial judge. Rather, it recited the evidence at trial. It is not the function of this Court to retry cases on the evidence adduced at trial."

<sup>3</sup> Chambers Decision at para 13.

<sup>4</sup> Chambers Decision at para 15.

<sup>5</sup> Respondent's Extracts of Key Evidence [EKE] at 14, 16 – Affidavit of Kenton Puttick filed May 22, 2025, Exhibit "A" – March 31, 2022 Agreement, clause 2(a); Exhibit "C" – March 28, 2024 Amending Agreement, clause 1(b).

11. On September 23, 2024, Alberta announced funding changes for services addressing substance use, which would result in new services being provided, as well as increased funding for existing services.<sup>6</sup> As part of the press release, Alberta announced that it would transition the OPS out of Red Deer.<sup>7</sup>

12. Alberta intended to phase out the OPS gradually by incrementally reducing operating hours. However, on January 13, 2025, the Appellant was granted an interim injunction by Justice G. Marriott to prevent the hours being reduced while the grant remained in effect.

13. On March 26, 2025, Justice C.A. Rickards denied the Appellant a further injunction to compel the Respondents to continue funding and operating the OPS beyond March 31, 2025.<sup>8</sup> This Court upheld that decision on appeal.<sup>9</sup>

14. On March 31, 2025, the Provincial Grant expired.<sup>10</sup> No other entity applied for funding to provide supervised consumption services in Red Deer.<sup>11</sup>

### **Effect of OPS closure on general user population uncertain and contested**

15. The parties agreed, as did the Chambers Judge, that the OPS “provided some benefits” to individuals who use opioids.<sup>12</sup>

16. However, the Chambers Judge declined to find that the closure of the OPS would lead to an increased risk of harm. In particular, the Chambers Judge concluded that it was “too early to determine with any certainty” the impact of the closure of the OPS, that the evidence was “anecdotal,” that “statistics are limited and challenged by the opposing party,” and that there was “not enough reliable data to allow the Court to make any definitive conclusions on the full impact of the closure of OPS.”<sup>13</sup>

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<sup>6</sup> Chambers Decision at para [16](#).

<sup>7</sup> Chambers Decision at para [16](#).

<sup>8</sup> *Brown v Alberta*, 2025 ABKB 179.

<sup>9</sup> *Brown v Alberta*, 2025 ABCA 146.

<sup>10</sup> Chambers Decision at para [15](#).

<sup>11</sup> Chambers Decision at para [15](#).

<sup>12</sup> Chambers Decision at para [22](#).

<sup>13</sup> Chambers Decision at para [43](#).

17. The Chambers Judge also found it was inappropriate to consider the closure of the OPS in isolation. Considering the Appellant's argument that alternative programs and services could not effectively replace the benefits the OPS provided, she noted "[t]his *may* be the case," but that the *combined* effect of the closure of the OPS with the implementation of other services could only be properly analyzed following the passage of time.<sup>14</sup>

18. The evidence on which the Chambers Judge declined to rely was disputed. The parties contested the likely impact of the closure of the OPS. The evidence on this point was effectively limited to the two-month period between the closure of the OPS on March 31, 2025, and May 27, 2025 – the last day that evidence could be filed for the hearing. Both parties attempted to adduce evidence on the statistics that had become available in that short window. These attempts were met with difficulties. For example, on May 9, one of the Appellant's witnesses claimed in an affidavit that an increase in EMS responses to opioid-related events was attributable to the closure of the OPS.<sup>15</sup> On cross-examination one week later, she was shown an additional week of data indicating that EMS responses had again dropped significantly. She conceded the increases were instead likely due to variations in the toxicity of the drug supply.<sup>16</sup> She also agreed that there had previously been increases in EMS responses even while the OPS was operating.<sup>17</sup>

19. The Chambers Judge similarly declined to make general findings about other services that Alberta provided. As an example, one of Alberta's witnesses detailed several replacement programs and services, citing statistics that those services had reversed *more* overdoses than the OPS – however, this data was limited to one month following the closure of the OPS.<sup>18</sup>

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<sup>14</sup> Chambers Decision at para 45. [emphasis added]

<sup>15</sup> Appellant's EKE at 38 – Affidavit of Elaine Hyshka.

<sup>16</sup> Respondent's EKE at 23-24, 27 – Questioning on Affidavits of Elaine Hyshka, Exhibit 2.

<sup>17</sup> Respondent's EKE at 22, 26 – Questioning on Affidavits of Elaine Hyshka, Exhibit 1.

<sup>18</sup> Respondent's EKE at 7-11 – Affidavit of Kenton Puttick.

### **Appellant benefitted from alternative treatments**

20. Given the unreliability of short-term statistical data, the Chambers Judge found it was appropriate to focus on the most concrete evidence available – that of the Appellant himself.<sup>19</sup>

21. The Appellant has opioid use disorder.<sup>20</sup> He accessed the OPS throughout its time of operation, though less frequently towards its closure for various reasons.<sup>21</sup> When not attending the OPS, he used street drugs at home in the presence of his girlfriend as a safety measure.<sup>22</sup>

22. The Chambers Judge took particular note of the benefits the Appellant received from attending the Narcotic Transition Services program (NTS), which he started attending around the time the OPS closed.<sup>23</sup> NTS is a program that one of Alberta's expert witnesses, Dr. Lucas Gursky, a doctor who served as medical lead for Red Deer's NTS program, described as "a treatment of last resort – for when all other interventions have been tried and failed."<sup>24</sup> NTS uses full opioid agonists to help patients to moderate, reduce, or stop their use of street drugs, engage with psychosocial support, and participate in other activities that promote physical and mental health.<sup>25</sup>

23. The Appellant's evidence was inconsistent on its face. At first, he indicated in his May 3, 2025 affidavit that NTS had not addressed his withdrawal symptoms.<sup>26</sup> However, the Appellant was cross-examined on his affidavit using his medical records. This included clinical notes from the doctor overseeing his treatment that suggested that the Appellant was benefitting substantially from attending NTS.<sup>27</sup>

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<sup>19</sup> Chambers Decision at para [46](#).

<sup>20</sup> Chambers Decision at para [1](#).

<sup>21</sup> Chambers Decision at para [26](#).

<sup>22</sup> Chambers Decision at para [26](#).

<sup>23</sup> Chambers Decision at para [28](#).

<sup>24</sup> Respondent's EKE at 33 – Affidavit of Dr. Lucas Gursky, filed Feb 7, 2025, at para 26.

<sup>25</sup> Respondent's EKE at 32 – Affidavit of Dr. Lucas Gursky, filed Feb 7, 2025, at para 23.

<sup>26</sup> Chambers Decision at para [29](#); Appellant's EKE at 181 – Affidavit of Aaron Brown at para 7.

<sup>27</sup> Chambers Decision at para [30](#).

24. When questioned, the Appellant confirmed that NTS was both helping with withdrawal symptoms and providing several other benefits. Specifically, the Appellant admitted that:

- he had dramatically decreased his consumption of illicit fentanyl – from between 3.5 and 14 grams per day to about 1 gram per day, and only injected fentanyl “probably three, four times a week;”<sup>28</sup>
- he reported to his physician that he had “less cravings;”<sup>29</sup>
- the medication manages his withdrawal through the night until the morning;<sup>30</sup>
- he reported that NTS has been “awesome,” and has resulted in his marked reduction in opioid use;<sup>31</sup>
- NTS has helped address the Applicant’s withdrawal symptoms;<sup>32</sup>
- he reported feeling “quite close” to having 24-hour long relief from withdrawal symptoms;<sup>33</sup>
- when the Appellant raised the issue with Dr. Hackett that he still felt withdrawal symptoms in the morning, his doctor responded by adjusting his medication doses;<sup>34</sup> and
- the Appellant received other benefits through NTS, such as rides to appointments, renewal of identification documents, and referrals to medical and social services.<sup>35</sup>

25. The Chambers Judge accepted the evidence adduced on cross-examination, noting it was consistent with what Dr. Gursky had described as the aims of NTS.<sup>36</sup>

<sup>28</sup> Respondent’s EKE at 44 – Questioning on Affidavits of Aaron Brown.

<sup>29</sup> Respondent’s EKE at 38 – Questioning on Affidavits of Aaron Brown.

<sup>30</sup> Respondent’s EKE at 38-39 – Questioning on Affidavits of Aaron Brown.

<sup>31</sup> Respondent’s EKE at 39 – Questioning on Affidavits of Aaron Brown.

<sup>32</sup> Respondent’s EKE at 42 – Questioning on Affidavits of Aaron Brown.

<sup>33</sup> Respondent’s EKE at 40 – Questioning on Affidavits of Aaron Brown.

<sup>34</sup> Respondent’s EKE at 42 – Questioning on Affidavits of Aaron Brown.

<sup>35</sup> Chambers Decision at para [30](#).

<sup>36</sup> Chambers Decision at paras [30-31](#).

26. While she noted that the Appellant “*may* have experienced certain disadvantages and increased risks,” she found that the results of his participation in NTS constituted “*measurable benefits*.”<sup>37</sup> She also noted that the Appellant’s doctor had offered him medication that would have been “even more effective at treating his withdrawal symptoms,” but that the Appellant had refused this medication.<sup>38</sup> The evidence of Dr. Gursky was that this medication, Sublocade, also acts as a “blockade,” making it much more difficult to overdose on other opioids while using the medication.<sup>39</sup>

## PART II – RESPONSE TO GROUNDS OF APPEAL

27. Alberta responds to the Appellant’s grounds of appeal stated in his factum as follows:

**Ground 1:** the Chambers Judge identified and applied the correct legal framework for sections 7, 12, and 15 of the *Charter*;

**Ground 2:** the Chambers Judge correctly identified the scope of section 15;

**Ground 3:** the Chambers Judge correctly declined to expand the scope of section 15 to recognize the Appellant’s novel claim;

**Ground 4:** the Chambers Judge reasonably applied the test for section 7 to the circumstances of this case;

**Ground 5:** the Chambers Judge correctly declined to expand the scope of section 7 to recognize the Appellant’s novel claim;

**Ground 6:** the Chambers Judge correctly declined to expand the scope of section 12 to recognize the Appellant’s novel claim.

## PART III – STANDARD OF REVIEW

28. Whether a *Charter* right has been breached in a particular case is a question of mixed fact and law, to which the standard of palpable and overriding error applies.<sup>40</sup> If

<sup>37</sup> Chambers Decision at para [46](#). [emphasis added]

<sup>38</sup> Chambers Decision at para [30](#).

<sup>39</sup> Respondent’s EKE at 47-48 – Affidavit of Dr. Lucas Gursky, filed May 26, 2025, at paras 6-10.

<sup>40</sup> *R v Blyan*, 2025 ABCA 213 at para [20](#).

a question of pure law arises, such as the scope of a *Charter* right, the standard of correctness applies.<sup>41</sup> Stated another way, interpreting the *Charter* is a question of law, but “the application of those constitutional standards may involve questions of fact or mixed fact and law which attract deference on appeal.”<sup>42</sup>

29. Factual findings, including findings as to the insufficiency of evidence, are subject to the standard of palpable and overriding error.<sup>43</sup> Appellate courts should not “second-guess the weight to be assigned to the various items of evidence” and must not interfere with factual conclusions where its disagreement “stems from a difference of opinion over the weight to be assigned to the underlying facts.”<sup>44</sup> Appellate courts may not make factual findings that the lower court judge declined to make.<sup>45</sup>

#### **PART IV – ARGUMENT**

30. Constitutional judicial review is about the legality of state action. It is necessary to demonstrate a nexus between the state action in question and the *Charter* right alleged to be infringed. The characterization of the state action at issue is therefore common to all three *Charter* claims.

31. This factum will therefore first address the proper subject of constitutional review in this case: namely, that the conduct at issue is the non-funding of the Red Deer OPS, not an abstract policy choice regarding the provision of supervised consumption services. It will then address the Chambers Judge’s adjudication of the *Charter* claims in the order the Chambers Judge addressed them: section 7, section 12, section 15.

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<sup>41</sup> *Ibid.*

<sup>42</sup> *Hillier v Ontario*, 2025 ONCA 259 at para [24](#).

<sup>43</sup> *Housen v Nikolaisen*, 2002 SCC 33 at para [10](#).

<sup>44</sup> *Ibid* at para [23](#).

<sup>45</sup> *R v Wakefield*, 2019 SCC 26 at para [1](#).

### Characterization of the state action at issue

32. The relevant state action at issue is that Alberta allowed the Provincial Grant to lapse after its effective expiry on March 31, 2025. The Provincial Grant ended on March 31, 2025, because that was the date specified in the 2024 amending agreement.

33. The lapse of funding occurred independently of any particular policy decision or announcement. The Chambers Judge concluded that Alberta made a “decision ... not to renew” the agreement.<sup>46</sup> Whether or not Alberta made a formal decision to that effect is, respectfully, irrelevant to the legal issues in this case. The impugned state of affairs is that the OPS *was* operating until March 31, 2025, and did not operate after that date. This would have been the state of affairs whether Alberta made a deliberate decision to end funding or whether the grant agreement had happened to lapse through mere inadvertence. Alberta did not have to make a decision in order for funding to end.

34. Alberta’s policy choice not to renew grant funding is not *separately* justiciable from the lapse of funding itself. Policy choices are a legislative function, the results of which are implemented and administered by the executive branch.<sup>47</sup> It is not policy choices that are subject to constitutional judicial review, however, but only the *result* of the policy choices – namely, their translation into law or state action, as the case may be.<sup>48</sup> It is for the same reason that the law-making *process*, as distinct from legislation itself, is immune from judicial review.<sup>49</sup>

35. The state action at issue is thus the *non*-provision of funding, and the Appellant’s *Charter* claims are therefore *positive* rights claims. A positive right features a claim that “the government must legislate or otherwise act to support or enable an expressive activity.”<sup>50</sup> A negative right, on the other hand, is one where the claimant “seek[s] freedom from government legislation or action suppressing an . . . activity in which

<sup>46</sup> Chambers Decision at para 40.

<sup>47</sup> *Ontario v Criminal Lawyers’ Association of Ontario*, 2013 SCC 43 at para 28.

<sup>48</sup> *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 105 [PHS], *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35 at para 107 [Chaoulli].

<sup>49</sup> *McDonald v Alberta*, 2025 ABCA 175 at para 12.

<sup>50</sup> *Baier v Alberta*, , 2007 SCC 31, at para 35 [Baier].

people would otherwise be free to engage, without any need for any government support or enablement.”<sup>51</sup>

36. A negative rights claim in similar circumstances might be the claim made in *PHS*, where the claimants sought freedom *from* government legislation (the *Controlled Drugs and Substances Act*), which suppressed an activity (operating a supervised consumption site) in which they would otherwise have been free to engage. The Supreme Court vindicated the negative right in that case by requiring that the Minister exempt the site from the provisions in the *Controlled Drugs and Substances Act* that would have otherwise prohibited the site from operating.

37. In this case, the Appellant does not seek to be free *from* government intervention. Alberta has not *deprived access, denied access, or restricted access* to supervised consumption services. Those terms imply active government interference from which the claimant wishes to be free. On the contrary, Alberta has not prohibited or otherwise interfered with any potential provider of supervised consumption services – it has merely not renewed funding for one service in Red Deer that it funded previously. It would not assist the Appellant to have the “decision” quashed or overturned, since in the absence of Alberta’s announcement on September 23, 2024, the funding would still have lapsed.

38. Rather, the effect of the Appellant’s claim is that the government must act to *support* him – namely, by funding or otherwise providing the particular health service he requests. This Court has confirmed that the relief the Appellant seeks, previously on an interlocutory injunctive basis and now on a permanent injunctive basis, is to have the court “direct Alberta to allocate public funds to a specific service, and that the court require Alberta to execute an agreement for the provision of that service, the terms of which would have to be established by court order for any period after the expiry of the existing agreement on March 31, 2025.”<sup>52</sup>

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<sup>51</sup> *Baier* at para 35.

<sup>52</sup> *Brown v Alberta*, 2025 ABCA 146.

### The Chambers Judge reasonably assessed the section 7 claim

7. *Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.*

39. The dominant purpose of section 7 is to “guard . . . against certain kinds of deprivation of life, liberty and security of the person, namely those ‘that occur as a result of an individual’s interaction with the justice system and its administration.’”<sup>53</sup>

Section 7 does not typically protect against all measures that may impact an individual’s life, liberty or security, but rather only those attributable to “the state’s conduct in the course of enforcing and securing compliance with the law.”<sup>54</sup>

40. The current state of the law is that section 7 does not place positive obligations on the state “to ensure that each person enjoys life, liberty or security of the person” – it only “restrict[s] the state’s ability to *deprive* people of these.”<sup>55</sup> Over two decades of appellate jurisprudence since *Gosselin* have confirmed this principle with respect to health care – section 7 does not positively obligate the state to provide health care, much less particular health services.<sup>56</sup>

41. The Chambers Judge faced two issues in assessing the Appellant’s section 7 claim:

- whether the discontinuation of funding negatively impacted the Appellant’s life, liberty, or security of the person; and
- whether, even if life, liberty, or security of the person were affected, the mere lack of funding for a particular health service can be said to *deprive* the Appellant for the purpose of section 7.

42. She found that the answer to both questions was *no*.

<sup>53</sup> *Gosselin v Québec (Attorney General)*, 2002 SCC 84 at [para 77](#) [*Gosselin*], citing *New Brunswick (Minister of Health and Community Services) v G(I)*, [1999] 3 SCR 46 at [para 65](#).

<sup>54</sup> *Gosselin* at [para 77](#).

<sup>55</sup> *Gosselin* at [para 81](#). [emphasis in original]

<sup>56</sup> See authorities cited below at footnote 74.

*The Chambers Judge reasonably assessed causation*

43. Courts must assess whether any risk to life, liberty, or security of the person that a claimant faces is caused by the law or state action in question. According to the Supreme Court's decision in *Bedford*, the standard is "a sufficient causal connection" – "a flexible standard, which allows the circumstances of each particular case to be taken into account."<sup>57</sup> The "sufficient causal connection" standard is "sensitive to the context of the particular case and insists on a real, as opposed to a speculative, link."<sup>58</sup> "What is required is a sufficient connection, having regard to the context of the case."<sup>59</sup>

44. The availability of alternative services is an important part of the context of this case, as the Chambers Judge appropriately recognized.<sup>60</sup> This is particularly so given that she found that the "most compelling evidence" was from the Appellant himself.<sup>61</sup> The context of this case included that

- the Appellant gained "measurable benefits" from his participation in other services,<sup>62</sup>
- he experienced a "significant reduction in his opioid consumption" and "improved management of withdrawal symptoms through medication,"<sup>63</sup>
- he "is making meaningful progress in his recovery through the supports now available,"<sup>64</sup>
- Alberta "has provided multiple treatment options" and the Appellant "acknowledged that these services are helping him,"<sup>65</sup> and
- "the replacement services are providing benefits to Mr. Brown that appear to be assisting Mr. Brown with his health, wellness and recovery."<sup>66</sup>

<sup>57</sup> *Canada (Attorney General) v Bedford*, 2013 SCC 7 at [para 75](#) [*Bedford*].

<sup>58</sup> *Bedford* at [para 76](#).

<sup>59</sup> *Bedford* at [para 78](#).

<sup>60</sup> Chambers Decision at [para 44](#).

<sup>61</sup> Chambers Decision at [para 46](#).

<sup>62</sup> Chambers Decision at [para 46](#).

<sup>63</sup> Chambers Decision at [para 46](#).

<sup>64</sup> Chambers Decision at [para 46](#).

<sup>65</sup> Chambers Decision at [para 62](#).

<sup>66</sup> Chambers Decision at [para 63](#).

45. The context of alternative services was relevant because the alleged harm in this case was the harm resulting from the Appellant's opioid use disorder – the other treatments and services that Alberta provides for individuals suffering from opioid use disorder form a logical part of that determination. The Appellant presented no evidence to support the notion that supervised consumption services were the only services capable of addressing his opioid use disorder.

46. To the extent there is any other risk at issue, which the Chambers Judge did not specify, it is also notable that such risk “arises from, among other things, the underlying substance use disorder, the potency of street drugs, and the commitment of the affected user to access services.”<sup>67</sup> In other words, given the existence of other services that are accessed voluntarily, an individual's refusal to access those services may mean that any resultant harm is not sufficiently connected to the withdrawal of funding from a *different* service. No such analysis was necessary in this case, since the Appellant *did* access alternative treatments through the NTS program.

47. The Appellant's argument that the Chambers Judge incorporated “justification” arguments into the deprivation analysis is effectively an argument, contrary to paragraph 44 of the decision under appeal,<sup>68</sup> that the Chambers Judge *should* have ignored the above context and instead considered the closure of the OPS in isolation, without any reference to other services that Alberta provides.

48. The Appellant's argument on this point contradicts *Bedford*. To the contrary, it was reasonable for the Chambers Judge to take context into account as she did.

49. Further, the Chambers Judge reasonably confined her analysis to the central question in section 7: whether state action caused a deprivation of a protected interest. She did not make a finding as to whether other services could “replace” the OPS because the test in *Bedford* did not require her to. The Appellant attempts to isolate the

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<sup>67</sup> Chambers Decision at para 61. [emphasis added]

<sup>68</sup> Chambers Decision at para 44: “Further, it would be wrong to consider the OPS closure in isolation, because the additional funds and services provided concurrently with the closure cannot be properly assessed until they have been in operation for a reasonable period of time.”

effect of the OPS closure by mistakenly claiming that the Chambers Judge found that the other services could not replace the benefits provided by the OPS and that OPS patients would therefore be harmed. The Chambers Judge made no such findings. She addressed the Appellant's argument as follows:

There is much evidence from the experts relied on by Mr. Brown to the effect that the spectrum of services that have been put in place cannot replace the benefits provided by the OPS for many reasons. *This may be the case*, but only the passage of time will permit a thorough analysis of the effect of the closure of the Red Deer OPS *along with the impact of the benefits provided by the recently implemented new spectrum of services when combined with the enhancement of previously existing services*. The most compelling evidence ... comes from Mr. Brown himself.<sup>69</sup>

Though Mr. Brown has *argued* that the existing services cannot replace the benefits provided by the OPS, there is evidence that the replacement services are providing benefits to Mr. Brown that appear to be assisting Mr. Brown with his health, wellness and recovery.<sup>70</sup>

50. It was reasonable for the Chambers Judge to address the section 7 issue through a holistic assessment of all available services to treat or otherwise address the Appellant's opioid use disorder. The Chambers Judge's reluctance to accede to the Appellant's emphasis on "replacement" was reasonable given how narrowly the Appellant construes what would constitute an acceptable replacement – namely, if "supervised consumption services were provided to the same patients at a different clinic in the same manner."<sup>71</sup> Since the Appellant adduced no evidence to show that supervised consumption services were the *only* service that could address his opioid use disorder (aside from the evidence that showed there were other services that *were* addressing his opioid use disorder), it was reasonable for the Chambers Judge to reject the Appellant's argument that his claim turned only on the availability of supervised consumption services.

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<sup>69</sup> Chambers Decision at paras [45-46](#). [emphasis added]

<sup>70</sup> Chambers Decision at para [63](#). [emphasis added]

<sup>71</sup> Appellant's Factum at para 67.

*There is no right to continued funding for particular health services*

51. Regardless of whether there was a deprivation of section 7 interests, the Chambers Judge correctly concluded that there is no underlying right to the relief that the Appellant requests – namely, funding for a particular health service. Her conclusion was two-fold:

- there is no constitutional right to specific health services, even if “life-saving;”<sup>72</sup> and
- in the absence of a constitutional right requiring the government to act in the first place (that is, to fund specific health services), there can be no constitutional right to the continuation of measures that were voluntarily taken.<sup>73</sup>

52. These conclusions were correct and based on well-established jurisprudence. Courts across Canada, including this Court, have repeatedly affirmed the principle that the *Charter* does not create a positive or freestanding right to health care, let alone a right to a particular health service.<sup>74</sup> This is so even where the health service in question could be life-saving.<sup>75</sup>

53. Courts have also confirmed that “a *Charter* violation cannot be grounded on a mere change in the law.”<sup>76</sup> This is because, “in the absence of a constitutional right that requires the government to act in the first place, there can be no constitutional right to the continuation of measures voluntarily taken, even where those measures accord with

<sup>72</sup> Chambers Decision at para [67](#).

<sup>73</sup> Chambers Decision at para [66](#).

<sup>74</sup> *Chaoulli* at para [104](#), McLachlin CJC and Major J, concurring; *Lewis v Alberta Health Services*, 2022 ABCA 359 at paras [48-49](#) [*Lewis*], leave to appeal to SCC refused, 40549 (8 June 2023); *Flora v Ontario Health Insurance Plan*, 2008 ONCA 538 at para [108](#) [*Flora*]; *Chung v British Columbia (Minister of Health)*, 2023 BCCA 294 at paras [62-68](#), leave to appeal to SCC refused, 40921 (18 April 2024) [*Chung*]; *Yashcheshen v Saskatchewan (Ministry of Health)*, 2022 SKCA 68 at paras [60-62](#) [*Yashcheshen*].

<sup>75</sup> *Lewis* at para [49](#); *Flora* at para [108](#); *Chung* at para [67](#).

<sup>76</sup> *Flora* at para [104](#), citing *Ferrel v Ontario (Attorney General)*, 1998 CanLII 6274 (ON CA); see also *Canadian Doctors for Refugee Care v Canada (Attorney General)*, 2014 FC 651 at paras [557-563](#) [*Refugee Care*]

or enhance *Charter* values.”<sup>77</sup> The Supreme Court in *Baier* confirmed that, when the claim is for government support or enablement and is thus a positive rights claim, the fact that claimants may have previously had access to the support in question “cannot convert their claim into a negative one.”<sup>78</sup> Such a claim is effectively a claim “to constitutionalize the prior regime.”<sup>79</sup>

*This case is distinguishable from PHS*

54. In contrast to the federal government in *PHS*, Alberta has done nothing to prevent anyone, including the Appellant, from accessing health care. *PHS* stands for the principle that “[w]here 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.”<sup>80</sup> Not funding a particular service does not *prevent access* to that service, even where the funding was provided previously. As one judge has distinguished *PHS*, there is “a world of difference between requiring the state to grant an exemption that would allow a health care provider to provide medical services funded by others and requiring the state itself to fund medical care.”<sup>81</sup>

55. The distinction between preventing access to a service and declining to fund a service is further visible upon closer inspection of the reasoning in *PHS*.

56. First, the ministerial decision in *PHS* did not limit section 7 on its own. The primary challenge in *PHS* was to a provision of the *Controlled Drugs and Substances Act* (CDSA) prohibiting possession of drugs and thus making it illegal to access supervised consumption services.<sup>82</sup> The Supreme Court upheld the constitutionality of the CDSA because it allowed for the possibility of an exemption whenever applying the

<sup>77</sup> *Flora* at para [104](#), citing [Lalonde v Ontario \(Commission de restructuration des services de santé\)](#), 2001 CanLII 21164 at para [94](#), 56 OR (3d) 505 (ON CA).

<sup>78</sup> *Baier* at para [36](#).

<sup>79</sup> *Ibid* at para [38](#).

<sup>80</sup> *PHS* at para [93](#). [emphasis added]

<sup>81</sup> *Refugee Care* at para [538](#).

<sup>82</sup> *PHS* at para [92](#).

prohibition “would be arbitrary, overbroad or grossly disproportionate in its effects.”<sup>83</sup> The Minister’s decision not to exempt Insite from the *CDSA*, on the other hand, was unconstitutional because it “result[ed] in an application of the *CDSA* that limits the s. 7 rights of individuals in a manner that is not in accordance with the *Charter*.”<sup>84</sup>

57. In this case, **there is no underlying statute**. In *PHS*, the result of the Minister’s decision was that the *CDSA* effectively prohibited the operation of the site. In this case, the expiry of the grant agreement left no underlying law preventing the provision of supervised consumption services. Service providers remain free to provide services in accordance with applicable laws.

58. Second, *PHS* dealt with government interference (by applying the *CDSA*’s prohibitions) with a health service that another party would have *otherwise* provided. Drug users would have been free to access the site *but for* federal legislation prohibiting them from doing so. The site in *PHS* was operated by a non-profit organization that received funding under a contractual arrangement with a provincial health authority. It required no involvement, support, or funding from the federal government to operate. However, the *interference* of federal legislation, combined with the refusal to grant an exemption from that legislation, meant that the federal government *prevented* access to the site. As a result, the non-profit organization had to bring an action to compel the federal government to *allow* the site to keep operating. It sought recognition of a negative right – “freedom from government legislation or action suppressing an ... activity in which people would otherwise be free to engage, without any need for any government support or enablement.”<sup>85</sup> Nothing in *PHS* compelled any party, let alone the government, to fund or to provide the services at issue.

59. Unlike the federal government in *PHS*, **Alberta has not prohibited the provision of supervised consumption services in Red Deer**. Alberta has done nothing to prevent any person from seeking to provide supervised consumption services. Alberta has

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<sup>83</sup> *Ibid* at para [113](#).

<sup>84</sup> *Ibid* at para [117](#).

<sup>85</sup> *Baier* at para [35](#).

passed no law and taken no action, the enjoining of which would result in the resumption of supervised consumption services. If Alberta had not announced its policy direction on September 23, 2024, it is still the case that the grant agreement would have expired on March 31, 2025, and the Appellant would still require, as this Court noted, an order that Alberta “allocate public funds to a specific service, and that the court require Alberta to execute an agreement for the provision of that service, the terms of which would have to be established by court order.”<sup>86</sup>

60. Third, the “decision” at issue in this case is not the same type of “decision” featured in *PHS*. The decision in *PHS*:

- was an exercise of *statutory* discretion – namely, the Minister’s ability to grant an exemption under section 56 of the *CDSA*;
- was based on a formal application made to the Minister to grant a three-year exemption;<sup>87</sup>
- was a decision that the Minister had a duty to make, and therefore one that could attract a remedy in the nature of *mandamus*;<sup>88</sup>
- had a distinct and challengeable legal component, as distinct from the underlying government policy choice.<sup>89</sup>

61. The “decision” in this case, to the extent that there was one, was not based on any identifiable statute and therefore was **not an exercise of statutory discretion**. No application for funding was made to any entity in the Government of Alberta. No entity has been identified who may owe a duty to make any decision regarding funding of the OPS.

62. As noted above, to the extent that Alberta undertook a policy shift to increase focus on recovery-oriented programs alongside other addiction-related services, it is not

<sup>86</sup> *Brown v Alberta*, 2025 ABCA 146 at para [13](#).

<sup>87</sup> *PHS* at para [121](#).

<sup>88</sup> *Ibid* at paras [124](#), [150](#).

<sup>89</sup> *Ibid* at para [105](#).

the policy shift itself that is reviewable – rather, it is the law or state action that results from the choice of policy.<sup>90</sup> The “action” in this case was that Alberta took no action regarding the OPS and allowed the grant agreement to expire.

### **The Chambers Judge applied the correct test for the section 12 claim**

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

63. Section 12 protects against treatment or punishment that is “incompatible with human dignity.”<sup>91</sup> As the Chambers Judge identified, the main issue is a threshold issue – namely, whether the cessation of funding for the OPS constitutes “treatment” within the meaning of section 12.

64. The Chambers Judge correctly identified that “treatment” requires an “active state process in operation, involving an exercise of state control.”<sup>92</sup> The claimant must be “within the special administrative control of the state.”<sup>93</sup> Modifying a government-provided benefit, on the other hand, does not constitute “treatment,” nor does the mere cessation of public funding.<sup>94</sup>

65. The Chambers Judge reasonably determined that the Appellant was not under any active state process or administrative control. She did not restrict this determination to imprisonment or other forms of detention, but rather considered whether the Appellant met the definition of “treatment” set out in *Rodriguez*. The Chambers Judge found that the Appellant was not compelled to attend any government program or service, “nor was he subject to any form of detention, supervision, or legal restraint.”<sup>95</sup> Alberta funded the OPS, but “neither its operation nor its closure placed Mr. Brown

<sup>90</sup> *PHS* at para [105](#): “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* ...”; *Chaoulli* at para [107](#), McLachlin CJC and Major J, concurring: “While the decision about the type of health care system Quebec should adopt falls to the Legislature falls to the Legislature of that province, the resulting legislation, like all laws, is subject to constitutional limits, including those imposed by s. 7 of the *Charter*.”

<sup>91</sup> *R v Hills*, 2023 SCC 2 at paras [35-36](#).

<sup>92</sup> *Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519 at [612](#) [*Rodriguez*].

<sup>93</sup> *Ibid* at [611](#).

<sup>94</sup> *AC and JF v Alberta*, 2021 ABCA 24 at para [104](#), Slatter JA, concurring.

<sup>95</sup> Chambers Decision at para [72](#).

under state control.”<sup>96</sup> As a result, she found that the Appellant “was not under the administrative control of the state.”<sup>97</sup>

66. The Appellant cites the lower court decision in *Refugee Care* in support of his claim. Read properly, it provides no support. *Refugee Care* does not stand for the proposition that mere dependency on government services can create administrative control. Rather, the claimants in *Refugee Care* were under Canada’s administrative control because they were refugee claimants who were subject to federal legislation restricting their rights and movements. The claimants were subject to detention, reporting requirements, and limits on their right to work and receive other benefits.<sup>98</sup> It was *these* conditions that subjected the claimants in *Refugee Care* to an “active state process.”

67. If, as the Appellant claims, mere dependence on the state to access health care were sufficient, this would mean that *most* Canadians are under the “special administrative control” of the state by virtue of receiving some form of health care, given the near monopoly of publicly-funded health services in most areas of health care. Section 12, however, was not intended to apply to broadly-applicable schemes or legislation.<sup>99</sup>

### **The Chambers Judge applied the correct test for the section 15 claim**

*15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

68. Section 15 is intended to promote “a society in which all are secure in the knowledge that they are recognized *at law* as human beings equally deserving of concern, respect and consideration.”<sup>100</sup> To show discrimination under section 15(1), the

<sup>96</sup> Chambers Decision at para [72](#).

<sup>97</sup> Chambers Decision at para [73](#).

<sup>98</sup> *Refugee Care* at para [585](#).

<sup>99</sup> *Rodriguez* at [612](#).

<sup>100</sup> *R v Kapp*, 2008 SCC 41 at para [15](#). [emphasis added]

Applicant must demonstrate that a state law or action creates a distinction based on an enumerated or analogous ground that imposes burdens or denies a benefit in a manner that reinforces, perpetuates, or exacerbates disadvantage.<sup>101</sup>

69. The Chambers Judge rejected the section 15(1) claim for two reasons. First, the claim was not within the scope of section 15(1), because the Appellant was not seeking equal access to a benefit the law provided to others,<sup>102</sup> and because section 15(1) does not oblige governments to continue a benefit-providing scheme where there is no underlying legal entitlement to the scheme.<sup>103</sup> Second, expanding the scope of section 15(1) to include the Appellant's claim would constitutionalize benefit programs, improperly entrench policy choices, and undermine the separation of powers.<sup>104</sup>

70. The Appellant claims that the Chambers Justice erred in characterizing his claim as one seeking equal access to a benefit – he instead argues that he suffers from the imposition of a burden, and that his claim is an adverse impact discrimination claim. This argument is without merit.

71. The Appellant's claim is not an adverse impact discrimination claim because the Appellant has not identified any law as the source of the purported impact. Rather, the Appellant's claim is one that seeks access to a benefit. This claim must fail, however, since the benefit he seeks is not one that the law provides. Section 15(1) does not guarantee access to a benefit merely because an individual has received that benefit previously.

*The claim is not an adverse impact discrimination claim*

72. Adverse impact discrimination occurs “when a seemingly neutral law has a disproportionate impact on members of groups protected on the basis of an enumerated or analogous ground ... . Instead of explicitly singling out those who are in the

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<sup>101</sup> *R v Sharma*, 2022 SCC 39 at para 28 [*Sharma*].

<sup>102</sup> Chambers Decision at para 79.

<sup>103</sup> Chambers Decision at para 81.

<sup>104</sup> Chambers Decision at para 80.

protected groups for differential treatment, the law indirectly places them at a disadvantage.”<sup>105</sup>

73. There was no disproportionate impact because, as the Chambers Judge identified, the “cessation of funding applied equally to all residents.”<sup>106</sup> The “cessation of funding” is not a “seemingly neutral law.” Rather, it is the default state of affairs in the *absence* of any particular law. Governments do not generally fund all possible medical treatments. For some time, Alberta did fund the OPS. When it stopped doing so, the Appellant returned to the same position as any other Albertan with medical needs not provided for by law – setting aside for the moment the other treatments that Alberta provides and that the Appellant *is benefitting from*.

74. The fact that the closure of the OPS represented a return to the default state of affairs is significant because section 15(1) “is not a general guarantee of equality.”<sup>107</sup> It does not require the state to act positively – that is, “to enact benefit schemes to redress social inequalities.”<sup>108</sup> Rather, in order to succeed, a claimant must show unequal treatment “under the law” – that the claimant “failed to receive a benefit that the law provided, or was saddled with a burden the law did not impose on someone else.”<sup>109</sup> The promise of section 15(1) “is confined to benefits and burdens ‘of the law’”<sup>110</sup> – whatever benefit claimed or burden imposed must “emanate from law.”<sup>111</sup> Because section 15(1) does not apply in the absence of law, it “does not impose a general, positive obligation on the state to remedy social inequalities or enact remedial legislation.”<sup>112</sup>

<sup>105</sup> [Fraser v Canada \(Attorney General\)](#), 2020 SCC 28 at para [30](#).

<sup>106</sup> Chambers Decision at para [79](#).

<sup>107</sup> [Andrews v Law Society of British Columbia](#), [1989] 1 SCR 143 at [163](#) [Andrews].

<sup>108</sup> Sharma at para [63](#), citing [Quebec \(Attorney General\) v Alliance du personnel professionnel et technique de la santé et des services sociaux](#), 2018 SCC 17 at para [42](#).

<sup>109</sup> [Auton \(Guardian ad litem of\) v British Columbia \(Attorney General\)](#), 2004 SCC 78 at para [27](#) [Auton].

<sup>110</sup> *Ibid* at para [27](#).

<sup>111</sup> *Ibid* at para [29](#).

<sup>112</sup> Sharma at para [63](#)

75. The Appellant has not identified any law applicable to this case, including any law from which state action imposing a burden might emanate. Alberta's "decision" to no longer fund the OPS is not a decision made under law. It was a policy choice.

76. Section 15(1), however, does not apply to policy choices *unless* those choices crystallize into law or state action arising under law.<sup>113</sup> Rather, the state "is free to target the social programs it wishes to fund as a matter of public policy, provided the benefit itself is not conferred in a discriminatory manner."<sup>114</sup>

77. Similarly, the "burden" referred to in the section 15(1) test does not refer to pre-existing disadvantages. Rather, it refers to a *further* disadvantage experienced as a result of a law or a state action taken pursuant to law. Supreme Court jurisprudence on discrimination is illustrative. In *Andrews*, Justice McIntyre refers to the burdensome impact of a law as "*restrictions, penalties or burdens*"<sup>115</sup> and to a discriminatory distinction as one that "has the effect of *imposing burdens, obligations, or disadvantages*."<sup>116</sup> In *Miron v Trudel*, Justice McLachlin refers to discriminatory laws as "*imposing limitations, disadvantages or burdens*."<sup>117</sup> In the human rights context, the Supreme Court characterized adverse effect discrimination as including the imposition of "*obligations, penalties or restrictive conditions*."<sup>118</sup>

78. Therefore, even if Alberta's choice to no longer fund the OPS constituted state action taken under law, it is not action that can be said to *impose* a burden. A lack of funding for a particular service does not penalize, restrict, obligate, limit, or disadvantage the Appellant relative to other individuals. Rather (setting aside once more the other services available for his condition), it represents a return to the status quo experienced by society at large – namely, that "the legislature is under no

<sup>113</sup> *PHS* at para [105](#); *Chaoulli* at para [107](#).

<sup>114</sup> *Auton* at para [41](#).

<sup>115</sup> *Andrews* at [165](#).

<sup>116</sup> *Andrews* at [174](#).

<sup>117</sup> *Miron v Trudel*, [1995] 2 SCR 418 at para [131](#), McLachlin J, concurring.

<sup>118</sup> *Ont. Human Rights Commission and O'Malley v Simpson-Sears Ltd*, [1985] 2 SCR 536 at para [12](#).

obligation to create a particular benefit.”<sup>119</sup> There is no law or state action imposing on the Appellant an ongoing burden that exacerbates or perpetuates any disadvantage he may face.

79. Similar to the section 7 claim above, the Appellant is not seeking to be *free* from a law imposing discriminatory burdens or seeking equal access to a benefit that the law withholds in a discriminatory manner. Rather, he is asking, in the absence of law, that Alberta provide a benefit that he received previously.

*The scope of section 15(1) should not be expanded*

80. The Chambers Judge recognized that accepting the Appellant’s claim would expand the scope of section 15(1) in a way that would “effectively constitutionalize any program that services a disadvantaged group, creating a chilling effect on innovation and flexibility in public policy,” and would “improperly entrench policy choices and undermine the separation of powers.”<sup>120</sup> She therefore declined to alter the section 15(1) framework to incorporate the Appellant’s claim.

81. The Chambers Judge took note of the same policy concerns that courts have previously relied on to dismiss section 15(1) claims seeking to impose positive obligations on governments. The Supreme Court in *Sharma* affirmed that section 15(1) imposes no positive obligations on the state because, “[w]ere it otherwise, courts would be impermissibly pulled into the complex legislative domain of policy and resource allocation, contrary to the separation of powers.” In *Alliance*, the Supreme Court rejected the argument that modifying or repealing provisions addressing pay equity could, by itself, violate section 15(1), because accepting that argument “would constitutionalize the policy choice embodied in the first version of the Act.”<sup>121</sup>

82. The Appellant mischaracterizes the Chambers Judge’s reasoning as importing policy considerations *into* the section 15(1) framework. This is not what the Chambers

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<sup>119</sup> *Auton* at para [41](#).

<sup>120</sup> Chambers Decision at para [80](#).

<sup>121</sup> *Alliance* at para [33](#).

Judge did. The Chambers Judge did not find, nor does Alberta contend, that the presence of policy choices or budgetary constraints completely immunizes Alberta's laws or actions from *Charter* scrutiny. Rather, the Chambers Judge appropriately concluded that the Appellant sought "to transform a time-limited, discretionary initiative into a constitutionally-entrenched entitlement," and that this attempt ran contrary to settled law based on sound constitutional principles.<sup>122</sup>

83. The novelty of the Appellant's section 15(1) claim is apparent in the implications it would have, if accepted, for the vast array of social and health programming that Alberta funds. The logic of the Appellant's claim is that merely not funding a program that caters to a specific mental or physical disability is *ipso facto* discrimination. Accepting the Applicant's claim would constitutionally entrench funding for *every* program Alberta funds that seeks to ameliorate the conditions of a disadvantaged group - this would include programs serving children, seniors, women, indigenous peoples, ethnic and racial minorities, as well as *any* health care service that treats a condition constituting or analogous to a mental or physical disability. In other words, any ameliorative program that could meet the test for section 15(2), once provided, would have to be provided in perpetuity. Section 15(1) was not intended to have this effect.

84. Further, if the Appellant were correct in arguing that section 15(1) applies even to abstract policy choices in the absence of law, it would dramatically rewrite the jurisprudence on section 15(1). Contrary to *Auton*, it would lead to a finding of discrimination whenever a claimant demonstrates that the government made a policy choice *not* to fund a particular social program. It would impose a positive obligation to fund a remedial program every time the government became aware of a social inequality, since not funding the beneficial program at issue would necessarily "impose a burden," according to the Appellant's argument.

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<sup>122</sup> Chambers Decision at para [81](#).

85. It is trivial, in other words, that not funding a particular service will *always* disproportionately affect the individuals who would otherwise have benefitted from the service, as compared to individuals who have no need for the service. However, per *Auton*, this does not lead to discrimination for the purposes of section 15(1) *unless* the individuals consequently lose a benefit *that the law provides to others*. No such law, and therefore no such benefit, has been identified.

### **Conclusion**

86. Alberta submits, primarily, that existing *Charter* jurisprudence clearly highlights why the Appellant's claim cannot succeed.

87. In the alternative, if this Court finds that the Appellant's *Charter* rights have been limited, Alberta requests, as it did in the court below, the opportunity to adduce evidence and make further submissions in the court below on justification under section 1 with the benefit of this Court's reasoning. If, as the Appellant asserts, the *Oakes* test applies to a limitation of the *Charter* in this case, then further information is required to identify the *law* at issue. The *Oakes* test assumes that the limit comes from law, as it asks whether the legislative goal is pressing and substantial and whether the means of achieving the goal are proportionate. Since the Appellant has not identified any applicable law, Alberta requires guidance in order to be able to advance a section 1 justification argument.

### **PART V - RELIEF SOUGHT**

88. Alberta requests that the appeal be dismissed.

**Estimate of time for oral argument: 45 minutes**

## TABLE OF AUTHORITIES

- [AC and JF v Alberta](#), 2021 ABCA 24
- [Auton \(Guardian ad litem of\) v British Columbia \(Attorney General\)](#), 2004 SCC 78
- [Baier v Alberta](#), 2007 SCC 31
- [Brown v Alberta](#), 2025 ABCA 146
- [Brown v Alberta](#), 2025 ABKB 179
- [Brown v Alberta](#), 2025 ABKB 495
- [Canada \(Attorney General\) v Bedford](#), 2013 SCC 72
- [Canada \(Attorney General\) v PHS Community Services Society](#), 2011 SCC 44
- [Canadian Doctors for Refugee Care v Canada \(Attorney General\)](#), 2014 FC 651
- [Chaoulli v Quebec \(Attorney General\)](#), 2005 SCC 35
- [Chung v British Columbia \(Minister of Health\)](#), 2023 BCCA 294
- [Equustek Solutions Inc v Jack](#), 2022 BCCA 194
- [Ferrel v Ontario \(Attorney General\)](#), 1998 CanLII 6274 (ON CA)
- [Fraser v Canada \(Attorney General\)](#), 2020 SCC 28
- [Gosselin v Quebec \(Attorney General\)](#), 2002 SCC 84
- [Hillier v Ontario](#), 2025 ONCA 259
- [Housen v Nikolaisen](#), 2002 SCC 33
- [Lalonde v Ontario \(Commission de restructuration des services de santé\)](#), 2001 CanLII 21164
- [Lewis v Alberta Health Services](#), 2022 ABCA 359
- [McDonald v Alberta](#), 2025 ABCA 175
- [Miron v Trudel](#), [1995] 2 SCR 418
- [New Brunswick \(Minister of Health and Community Services\) v G\(J\)](#), [1999] 3 SCR 46
- [Ont. Human Rights Commission and O'Malley v Simpson-Sears Ltd](#), [1985] 2 SCR 536
- [Ontario v Criminal Lawyers' Association of Ontario](#), 2013 SCC 43
- [Quebec \(Attorney General\) v Alliance du personnel professionnel et technique de la santé et des services sociaux](#), 2018 SCC 17
- [R v Blyan](#), 2025 ABCA 213

[R v Hills](#), 2023 SCC 2

[R v Kapp](#), 2008 SCC 41

[R v Sharma](#), 2022 SCC 39

[R v Wakefield](#), 2019 SCC 26

[Rodriguez v British Columbia \(Attorney General\)](#), [1993] 3 SCR 519

[Tulsa Heaters Inc v Syncrude Canada Ltd](#), 2009 ABCA 414

[Yashcheshen v Saskatchewan \(Ministry of Health\)](#), 2022 SKCA 68