

**COURT OF APPEAL OF ALBERTA**

COURT OF APPEAL FILE NUMBER: 2501-0254AC

TRIAL COURT FILE NUMBER: 2410-01231

REGISTRY OFFICE: CALGARY

PLAINTIFF/APPLICANT: Aaron Brown

STATUS ON APPEAL: Appellant

STATUS ON APPLICATION: Respondent

DEFENDANT/RESPONDENT: His Majesty the King in Right of  
Alberta and Recovery Alberta:  
Mental Health and Addiction  
Services

STATUS ON APPEAL: Respondent

STATUS ON APPLICATION: Respondent

DOCUMENT: **MEMORANDUM OF ARGUMENT OF THE  
CHARTER COMMITTEE ON POVERTY  
ISSUES, THE CANADIAN HEALTH  
COALITION, AND FRIENDS OF MEDICARE  
(ALBERTA)**

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## I. INTRODUCTION

1. The Charter Committee on Poverty Issues (“CCPI”), the Canadian Health Coalition (“CHC”), and Friends of Medicare (Alberta) (collectively, the “Proposed Interveners”) apply for leave to intervene in this appeal.
2. The appeal raises issues of significant public importance that extend beyond the interests of the parties regarding access to health care necessary for the protection of life and the interpretation of ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* (the *Charter*).
3. The Proposed Interveners seek to assist the Court on two legal issues:
  - (a) whether the absence of a freestanding *Charter* right to health care forecloses the application of s. 7 in cases, like the present one, where the failure to provide a particular health service exposes individuals to serious risks to life and security of the person; and
  - (b) whether s. 15 claims by persons with disabilities must be understood and assessed through the well-established duty-to-accommodate lens including, as in this case, where accommodation may require provision or continuation of meaningful access to necessary health care services.

## II. THE TEST

4. Permission to intervene may be granted under Rules 14.37(2)(e) and 14.58(1) of the *Alberta Rules of Court*, Alta Reg 124/2010.
5. The principal considerations are whether the proposed interveners have a particular interest in the appeal and bring expertise, perspective, or information that will assist the

Court, and whether the intervention would delay proceedings, prejudice the parties, widen the dispute, expand the record, or transform the Court into a political arena.<sup>1</sup>

6. The proposed interveners' expertise and distinct perspective weigh in favour of granting them leave to intervene in this appeal.<sup>2</sup>

### III. PROPOSED CONTRIBUTION

7. If granted leave, the Proposed Intervenors will make two arguments.

8. First, they will submit that the chambers judge erred in treating the absence of a freestanding constitutional right to health care as determinative of whether s. 7 rights are engaged in this case. Supreme Court of Canada jurisprudence distinguished between a general constitutional entitlement to a benefit and the application of s. 7 in specific situations, such as the present one, where state action or inaction creates foreseeable risks to life or security of the person.<sup>3</sup>

9. They will refer to *Toussaint v Canada (Attorney General)*<sup>4</sup> where the Ontario Superior Court cautioned against mischaracterizing claims concerning access to essential health care as claims to a freestanding right to “free health care” or a socio-economic right that is beyond the scope of the *Charter*. They will also refer to the UN Human Rights Committee's decision in *Toussaint v Canada*,<sup>5</sup> recognizing that the right to life may require positive measures to ensure access to essential health care where there is a reasonably foreseeable risk of loss of life.

10. Second, the Proposed Intervenors will submit that, as affirmed in *Eldridge*, the s. 15 analysis must engage the established duty-to-accommodate obligations applicable in

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<sup>1</sup> *Hamm v Canada (Attorney General)*, 2019 ABCA 389 at paras 5–6.

*Pedersen v. Alberta*, 2008 ABCA 192 at para 3.

<sup>2</sup> *Papaschase Indian Band (Descendants of) v Canada (Attorney General)* 2005 ABCA 320 at para 2.

<sup>3</sup> *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 653 (SCC), at paras 107-108; *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 at para 136; *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35 at para. 104.

<sup>4</sup> *Toussaint v. Canada (Attorney General)*, 2022 ONSC 4747 at paras 133-136.

<sup>5</sup> *Toussaint v Canada*, UN Human Rights Committee Communication No 2348/2014 (2018) at para 10.9.

disability cases. The Supreme Court has established that a failure to fund services required by persons with disabilities may produce discriminatory adverse effects where they deny persons with disabilities meaningful access to essential services, including health care.<sup>6</sup>

11. While *Auton (Guardian ad litem of) v British Columbia (Attorney General)*<sup>7</sup> confirms that legislative choices regarding the provision of benefits do not offend s. 15 absent discriminatory purpose or effect, a failure to accommodate disability-related needs by denying funding for particular health care services may itself constitute such a discriminatory effect, requiring governments to fund or otherwise ensure access to necessary services.<sup>8</sup>

12. The Proposed Interveners will submit that where a service operates as a necessary accommodation enabling persons with disabilities to access essential health care, a decision not to fund or the withdrawal of that service must be assessed through the adverse-effects and accommodation framework that as the Supreme Court affirmed in *Eldridge*, that the Supreme Court has recognized as a cornerstone of s. 15's substantive equality guarantee.<sup>9</sup>

#### IV ARGUMENT

13. The Proposed Interveners bring distinct expertise and perspective that will assist the Court in resolving the legal issues raised in this appeal.

14. CCPI is a national committee founded 1988 to bring together low-income representatives and experts in human rights and constitutional law to advance the rights of people living in poverty and homelessness under the *Charter*, human rights legislation and international law. CCPI has been granted leave to intervene in fourteen appeals

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<sup>6</sup> *Eldridge v. British Columbia (Attorney General)*, 1997 SCC 327 (*Eldridge*), at paras 72-73.

<sup>7</sup> *Auton (Guardian ad litem of) v British Columbia (Attorney General)*, 2004 SCC 78 at para 41.

<sup>8</sup> *Eldridge* at paras 72-73; *Fraser v. Canada (Attorney General)*, 2020 SCC 28 at para 54; *Convention on the Rights of Persons with Disabilities*, Adopted 12 December 2006, UN General Assembly Resolution A/RES/61/106, Article 2.

<sup>9</sup> *Eldridge* at para 79.

before the Supreme Court of Canada addressing the need to interpret the *Charter* in a manner that includes protection of the rights of disadvantaged groups, including those who rely on publicly funded health care. CCPI's expertise is widely recognized both nationally and internationally, having been relied upon by government officials, the National Judicial Institute, the Constitutional Assembly of South Africa and United Nations bodies, among others.<sup>10</sup>

15. Founded in 1979, the Canadian Health Coalition ("CHC") is dedicated to preserving and enhancing Canada's public health care system for the benefit of all residents of Canada, regardless of economic, social, citizenship or other status. CHC assesses public policy and legislation linked to access to health care, based on reliable evidence and full consideration of the interests and needs of disadvantaged groups. CHC has organized national and regional conferences, made numerous presentations to parliamentary and legislative committees and met with provincial and federal politicians as well as First Nations' leaders to promote the maintenance and enhancement of Canada's public health care and health insurance system. CHC was granted intervener status jointly with CCPI before the Supreme Court of Canada in the *Chaoulli* case.<sup>11</sup>

16. Friends of Medicare is a non-partisan, member-driven organization founded in 1979 to defend and strengthen Alberta's publicly funded health care system. It has engaged Albertans through research, public education, policy analysis, and advocacy. Its work encompasses mental health and addictions, and responses to the drug poisoning crisis. It has examined the impact of legislative and policy reforms within Alberta's health system, with particular attention to the effects on marginalized and medically vulnerable populations. It has issued policy briefs, media statements, and submissions addressing mental health and addictions services, continuity of care, and the integrity of universal coverage under the *Canada Health Act* framework.<sup>12</sup>

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<sup>10</sup> Affidavit of Bruce Porter, affirmed March 6, 2026, paras 4–5, 9–10.

<sup>11</sup> Affidavit of Steven Staples, affirmed March 9, paras 3, 8, 13.

<sup>12</sup> Affidavit of Chris Galloway, affirmed March 6, paras 3, 7–9.

17. The experience of the three proposed interveners provides a unique perspective on the link between the rights to life, security of the person and equality under the *Charter* and access to essential health care services required by persons with substance use disorders that will be of benefit to the Court in this case.

18. The Proposed Intervenors' submissions are confined to the issue of the appropriate legal framework to apply to the *Charter* claims in this case. They will rely exclusively on the existing record and will coordinate with the parties to ensure concise and distinct submissions, without risk of delay or prejudice to the parties.

## V. CONCLUSION AND REMEDIES

19. The Proposed Intervenors respectfully request an order:

- Granting leave to intervene pursuant to Rules 14.37(2)(e) and 14.58(1);
- Permitting the filing of a factum not exceeding 20 pages and oral argument not exceeding 15 minutes;
- Ordering that the Proposed Intervenors neither receive nor pay costs; and
- Granting such further relief as this Court deems appropriate.

All of which is respectfully submitted,



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Anna Lund



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Martha Jackman

Counsel for the Proposed Intervenors

## LIST OF AUTHORITIES

<b>Case Law</b>
<i>Auton (Guardian ad litem of) v British Columbia (Attorney General)</i> , 2004 SCC 78.
<i>Baier v. Alberta</i> , 2006 ABCA 137
<i>Canada (Attorney General) v. PHS Community Services Society</i> , 2011 SCC 44
<i>Chaouilli v. Quebec (Attorney General)</i> , 2005 SCC 35 2005 SCC 35
<i>Eldridge v. British Columbia (Attorney General)</i> , 1997 SCC 327
<i>Fraser v. Canada (Attorney General)</i> , 2020 SCC 28
<i>Hamm v Canada (Attorney General)</i> , 2019 ABCA 389
<i>New Brunswick (Minister of Health and Community Services) v. G. (J.)</i>
<i>Papaschase Indian Band (Descendants of) v Canada (Attorney General)</i> , 2005 ABCA 320
<i>Pedersen v. Alberta</i> , 2008 ABCA 192
<i>Toussaint v. Canada (Attorney General)</i> , 2022 ONSC 4747
<b>International Documents</b>
<i>Toussaint v Canada</i> , UN Human Rights Committee Communication No 2348/2014 (2018)
<i>Convention on the Rights of Persons with Disabilities</i> , Adopted 12 December 2006, UN General Assembly Resolution A/RES/61/106