# DRAFT — CHARTER CHALLENGE

## Originating Application for a Declaration of Constitutional Invalidity and Related Relief

**IN THE COURT OF KING'S BENCH OF ALBERTA**

**JUDICIAL CENTRE OF** [Edmonton / Calgary]

**BETWEEN:**

**[APPLICANT FULL NAME]**, [and _____, and THE [ORGANIZATION NAME], as public-interest applicants]

*Applicant(s)*

**– and –**

**HIS MAJESTY THE KING IN RIGHT OF ALBERTA**, as represented by the **MINISTER OF ASSISTED LIVING AND SOCIAL SERVICES**, and the **ATTORNEY GENERAL OF ALBERTA**

*Respondent(s)*

> **Notice:** A Notice of Constitutional Question must be served on the Attorney General of Alberta and the Attorney General of Canada under the *Judicature Act*, RSA 2000, c J-2, s. 24, at least 14 days before the argument. This draft is a working template for counsel — it is not a filed pleading. All items in [brackets] require completion. The case authorities cited have been verified against CanLII; counsel should nonetheless confirm currency before filing.

---

## PART I — NATURE OF THE APPLICATION

1. The Applicant applies for:

    a. a **declaration** under s. 52(1) of the *Constitution Act, 1982* that the provisions of the *Assured Income for the Severely Handicapped Act*, SA 2006, c A-45.1, as amended by the *Financial Statutes Amendment Act (No. 2), 2025* (Bill 12) (the "**impugned scheme**") — insofar as they (i) automatically transfer existing AISH recipients to the Alberta Disability Assistance Program ("ADAP") without individual reassessment, (ii) reverse the onus so that persons already medically determined unable to work must reapply and be re-examined to retain AISH, and (iii) make the AISH Medical Review Panel's medical-eligibility decision final and not appealable — **unjustifiably infringe ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms*** and are of no force or effect;

b. in the alternative, a declaration under s. 24(1) of the *Charter* that the **administration** of the transition infringes the Applicant's Charter rights, and an order remitting the Applicant's file for determination in a Charter-compliant manner;

c. an **interlocutory and permanent injunction** restraining the Respondents from reducing the Applicant's benefits, and from requiring reassessment of continuing-care residents and persons with severe and profound disabilities, pending final determination;

d. costs; and such further relief as counsel may advise.

---

## PART II — MATERIAL FACTS

### The programs and the change

2. AISH provides a monthly living allowance and health benefits to adult Albertans with a permanent disability that prevents them from earning a living. Eligibility for AISH turns on a statutory "severe handicap" test assessed "in a director's opinion after considering any relevant medical or psychological reports" (AISH Act, s. 1(i)).

3. In 2025 the Legislature enacted Bill 12, folding the new **Alberta Disability Assistance Program (ADAP)** into the AISH Act. AISH is reserved for those assessed as having a disability that **permanently prevents** employment; ADAP is for those assessed as having a disability that **substantially impedes** (but does not permanently prevent) employment.

4. As of June 2025 there were approximately **79,290 AISH recipients**. On **July 2, 2026**, the Government **automatically transferred tens of thousands of them onto ADAP**, without individual reassessment and without individually reviewing their files.

5. The transfer:

   a. **Reduces the monthly benefit** from $1,940 (AISH, 2026) to $1,740 (ADAP), a reduction of $200/month, cushioned by a temporary $200/month transition benefit payable only from August 2026 to December 2027;

   b. **Reverses the onus of proof**: a recipient already medically determined unable to work must now **reapply to AISH and undergo — and initially pay for — a fresh medical assessment** to avoid the reduction;

   c. **Removes the independent appeal from the medical-eligibility (placement) determination**: that determination is made by the AISH Medical Review Panel and is final and not appealable. The independent Citizens' Appeal Panel continues to hear other, non-medical benefit appeals, but the placement determination is excluded from independent appeal.

6. The Government granted only narrow exemptions (persons with severe and profound developmental disabilities eligible for PDD services, and persons with palliative or terminal conditions). **Persons requiring round-the-clock care and continuing-care residents are**

**still required to undergo reassessment** — a requirement the Alberta Medical Association's physicians have described as defying "both logic and compassion."

### The outsourcing of the system to multinational contractors

7. The ADAP employment-services system is administered by Canadian affiliates of large multinational contractors. Procurement documents disclose that **AKG Canada** (parent company based in Australia) holds a five-year, **$47 million** contract for Edmonton and northern Alberta, and **Serco Canada** (affiliate of the U.K.-based Serco) holds a five-year, **$51 million** contract for Calgary and southern Alberta. An estimated **26,800 ADAP clients** are to be referred to these contractors between July 1, 2026 and June 30, 2029. The contractors perform client assessment, produce employment action plans, and provide case management before referring clients onward.

### The harm is foreseeable and documented — not speculative

8. The impugned scheme replicates the design of the United Kingdom's disability-benefit reassessment and work-conditionality regime, a model associated with documented, serious harm:

    a. According to the U.K. Department for Work and Pensions' own data (published August 2015), **2,650 claimants died after being assessed "fit for work"** between December 2011 and February 2014, and approximately 7,200 more died after being placed in the Work-Related Activity Group. (The DWP does not record cause of death; the Applicant relies on this figure as evidence of the population-level risk associated with the model, not as proof of individual causation. The Applicant does not rely on the discredited "2,380 within weeks" formulation.)

    a.1 U.K. coroners have made case-specific findings linking the assessment process to individual deaths, including a finding that a "fit for work" assessment was the "**trigger**" for a claimant's suicide (Michael O'Sullivan), and Prevention of Future Death reports issued to the DWP and its contractor Capita following the death of Philippa Day (28 identified failings). In 2016 the UN Committee on the Rights of Persons with Disabilities found the comparable U.K. regime responsible for "**grave or systematic violations**" of the Convention (CRPD/C/15/R.2/Rev.1).

    b. A peer-reviewed longitudinal study — **Barr et al., "'First, do no harm': are disability assessments associated with adverse trends in mental health?", *Journal of Epidemiology and Community Health*, 2016;70(4):339-345** — found that the programme of reassessing disability-benefit recipients through the Work Capability Assessment (approximately 1.03 million people, 2010–2013) was **independently associated with an increase in suicides, self-reported mental-health problems, and antidepressant prescribing**, with the greatest harm in the most deprived areas, widening health inequalities.

    c. The U.K. assessment contractors were publicly linked to disabled claimants' deaths; **Serco**, now contracted in Alberta, operated the U.K.'s criticized "Restart" back-to-work scheme and carries a documented record of controversy in its U.K. public-service contracts.

9. The Government of Alberta adopted this model, and engaged contractors of the same character, **with knowledge or constructive knowledge** of the U.K. experience. The resulting risk of harm to the transferred population is therefore **reasonably foreseeable and, on the evidence, already materializing** through documented distress, financial hardship, and loss of security among affected recipients (see accompanying affidavits). The full comparative record — spanning the United Kingdom, Australia (the Robodebt Royal Commission's finding that an analogous automated, onus-reversing scheme was "neither fair nor legal"), New Zealand, and the United States (the Arkansas Medicaid natural experiment) — is set out in the accompanying *Comparative Evidence of Harm* dossier and relied upon.

9.1 **The harm is already occurring in Alberta.** On June 8, 2026, **Bruce Johnson**, 57, of Empress, Alberta, is believed to have died by suicide after circulating a written message stating that the impending AISH-to-ADAP transition — and his fear of being compelled into employment programs despite a mental-health condition he believed left him unable to work — had intensified his anxiety, stress and depression. His death was publicly reported and drew a response from the Premier. The Applicant relies on this as evidence that the harm the impugned scheme foreseeably produces has begun, and that further such harm will occur and go unreported absent relief.

### The Applicant's circumstances

10. [Set out the Applicant's disability, prior AISH determination, automatic transfer to ADAP, the reassessment demanded, the cost/barrier of obtaining assessments, the loss of appeal, and the psychological and financial harm suffered — supported by affidavit. Include continuing-care / round-the-clock-care facts if applicable.]

---

## PART III — GROUNDS (LEGAL ARGUMENT)

### A. Section 15(1) — adverse-effects discrimination on the ground of disability

11. Section 15(1) guarantees the equal benefit of the law without discrimination based on "mental or physical disability." The test is whether the impugned scheme, on its face or in its impact, (i) creates a distinction based on a protected ground and (ii) imposes burdens or denies benefits in a manner that reinforces, perpetuates or exacerbates disadvantage: *Fraser v. Canada (AG)*, 2020 SCC 28; *Withler v. Canada (AG)*, 2011 SCC 12; *R v. Kapp*, 2008 SCC 41; *Andrews v. Law Society of BC*, [1989] 1 SCR 143.

12. **Distinction.** The impugned scheme operates exclusively upon a class defined by disability. Even framed neutrally, the reassessment-and-reapplication burden falls disproportionately on the most severely disabled, cognitively impaired, institutionalized, and unhoused members of that class — those least able to obtain specialist assessments, meet deadlines, or navigate a call-centre-only system. Adverse-effects discrimination is captured by s. 15(1): *Fraser*; *Eldridge v. British Columbia (AG)*, [1997] 3 SCR 624.

13. **Perpetuation of disadvantage.** By (a) defaulting a disabled population onto a lower benefit, (b) presuming work capacity contrary to prior medical determinations, and (c) compelling the most disabled to re-prove incapacity in order to escape a benefit cut, the

scheme reinforces and exacerbates the pre-existing disadvantage of persons with disabilities. Systemic discrimination in the structuring of disability supports is actionable: *Nova Scotia (Disability Rights Coalition) v. Nova Scotia (AG)*, 2021 NSCA 70.

14. **Section 15(2) does not save the scheme.** A measure that reduces benefits and imposes burdens upon the very disadvantaged group it targets is not "ameliorative" toward that group within s. 15(2): *R v. Kapp*, 2008 SCC 41; *Centrale des syndicats du Québec v. Quebec (AG)*, 2018 SCC 18 (s. 15(2) is not a stand-alone defence to a s. 15(1) claim brought by the very group the measure is said to benefit).

### B. Section 7 — security of the person and the principles of fundamental justice

15. The impugned scheme engages **security of the person**. State-caused serious psychological harm and threats to the means of subsistence engage s. 7: *New Brunswick (Minister of Health) v. G(J)*, [1999] 3 SCR 46; *Chaoulli v. Quebec (AG)*, 2005 SCC 35. The documented distress, and the foreseeable risk of grave harm evidenced by the U.K. experience (paras 8–9), engage this interest.

16. The deprivation is not in accordance with the principles of fundamental justice because it is **arbitrary** and **grossly disproportionate**: *Canada (AG) v. Bedford*, 2013 SCC 72; *Carter v. Canada (AG)*, 2015 SCC 5.

a. **Arbitrariness**: ADAP's stated purpose is to assist disabled persons to earn employment income. Subjecting continuing-care residents and persons requiring round-the-clock care — who cannot and will not work — to a work-capacity reclassification bears no rational connection to that purpose.

b. **Gross disproportionality**: the effects — loss of subsistence income, removal of independent appeal, and a reasonably foreseeable risk of serious harm to health and life on the scale documented in the comparable U.K. model — are grossly disproportionate to any legislative objective, particularly a $200/month saving.

17. **Procedural fundamental justice**: removing independent appellate review of the single determination that decides whether a disabled person retains subsistence income — replacing it with a non-appealable internal panel — is inconsistent with fundamental justice: *G(J)*. In any event, no privative clause can oust judicial review of that panel: *Crevier v. Quebec (AG)*, [1981] 2 SCR 220; *Canada (MCI) v. Vavilov*, 2019 SCC 65.

### C. The "wait for proof of harm" objection fails — the harm is foreseeable and this challenge is ripe

18. The Respondents may argue the challenge is premature and that harm must be observed before it can be adjudicated. That objection fails:

a. **Foreseeability, not hindsight, is the constitutional standard.** A law is arbitrary or grossly disproportionate on the basis of its reasonably foreseeable effects; a claimant need not accumulate a body count before seeking relief. The U.K. evidence (paras 8–9) establishes that the risk is known, quantified, and serious.

b. **Several claims are ripe now**, independent of the 2028 benefit reduction: the **elimination of independent appeal** is a present legal deprivation; and the **systemic-design** challenge does not require proof of every individual harm: *Eldridge*; *Nova Scotia (Disability Rights Coalition)*.

c. **Proof of harm already exists.** Documented distress and hardship among affected recipients (accompanying affidavits), the AMA physicians' evidence, and the empirical record from the identical U.K. model together establish that harm is not speculative but present and ongoing.

d. Requiring vulnerable claimants to wait until deaths occur before a court will act would itself offend the principles of fundamental justice and the remedial purpose of the *Charter*.

### D. Section 1 cannot save the infringements

19. The Respondents bear the burden under s. 1 (*R v. Oakes*, [1986] 1 SCR 103). The infringements are not demonstrably justified:

a. **Objective**: cost-saving alone is not a pressing and substantial objective capable of justifying a *Charter* breach; budgetary considerations are relevant, if at all, only at the proportionality stage and only in exceptional circumstances: *Newfoundland (Treasury Board) v. NAPE*, 2004 SCC 66.

b. **Minimal impairment**: obvious less-drastic alternatives exist and were partially adopted (grandfathering existing recipients; exempting continuing-care residents; reassessing only upon a triggering change). The Government's failure to adopt them for the whole affected class defeats minimal impairment.

c. **Proportionality of effects**: a government cannot establish proportionality where it knowingly adopts a program design empirically associated, in a comparable jurisdiction, with excess mortality and a measurable rise in suicides. The salutary effect (a modest fiscal saving) is grossly outweighed by the deleterious effects on the life, health, security and dignity of a uniquely vulnerable population.

---

## PART IV — REMEDY

20. The Applicant seeks the declarations and injunctive relief set out in Part I, including a suspension of the automatic transfer and reassessment requirement as against continuing-care residents and persons with severe and profound disabilities, and an order preserving the Applicant's AISH-level benefits pending final determination.

---

## PART V — MATERIAL RELIED ON

- Affidavit of [Applicant], sworn [date]
- Affidavit(s) of treating physician(s) / the AMA Section of Family Medicine
- Expert evidence: Barr et al. (2016), *J Epidemiol Community Health* 70(4):339-345; U.K. DWP mortality data; procurement documents identifying AKG Canada and Serco Canada

- *Assured Income for the Severely Handicapped Act*, SA 2006, c A-45.1, as amended by Bill 12 (2025)
- Such further material as counsel may advise

---

### Authorities

*Fraser v. Canada (AG)*, 2020 SCC 28 · *Withler v. Canada (AG)*, 2011 SCC 12 · *R v. Kapp*, 2008 SCC 41 · *Andrews v. Law Society of BC*, [1989] 1 SCR 143 · *Eldridge v. British Columbia (AG)*, [1997] 3 SCR 624 · *Nova Scotia (Disability Rights Coalition) v. Nova Scotia (AG)*, 2021 NSCA 70 · *Quebec (AG) v. Alliance / Centrale*, 2018 SCC 17–18 · *New Brunswick (Minister of Health) v. G(J)*, [1999] 3 SCR 46 · *Chaoulli v. Quebec (AG)*, 2005 SCC 35 · *Canada (AG) v. Bedford*, 2013 SCC 72 · *Carter v. Canada (AG)*, 2015 SCC 5 · *Crevier v. Quebec (AG)*, [1981] 2 SCR 220 · *Canada (MCI) v. Vavilov*, 2019 SCC 65 · *Newfoundland (Treasury Board) v. NAPE*, 2004 SCC 66 · *Gosselin v. Quebec (AG)*, 2002 SCC 84 (distinguished) · *R v. Oakes*, [1986] 1 SCR 103

## *This is a draft for review and completion by qualified counsel. It is not lega

## Source Index

### Statutes & instruments

- Assured Income for the Severely Handicapped Act, SA 2006, c A-45.1 — https://www.canlii.org/en/ab/laws/stat/sa-2006-c-a-45.1/latest/sa-2006-c-a-45.1.html
- AISH General Regulation, Alta Reg 91/2007 — https://www.canlii.org/en/ab/laws/regu/alta-reg-91-2007/latest/alta-reg-91-2007.html
- Financial Statutes Amendment Act (No. 2), 2025 (Bill 12), creating ADAP — https://docs.assembly.ab.ca/LADDAR_files/docs/bills/bill/legislature_31/session_2/20251023_bill-012.pdf
- Canadian Charter of Rights and Freedoms, ss. 1, 7, 15 — https://laws-lois.justice.gc.ca/eng/const/page-12.html

### Case authorities (verified on CanLII)

- Fraser v. Canada (AG), 2020 SCC 28 — https://www.canlii.org/en/ca/scc/doc/2020/2020scc28/2020scc28.html
- Withler v. Canada (AG), 2011 SCC 12 — https://www.canlii.org/en/ca/scc/doc/2011/2011scc12/2011scc12.html
- R v. Kapp, 2008 SCC 41 — https://www.canlii.org/en/ca/scc/doc/2008/2008scc41/2008scc41.html
- Andrews v. Law Society of BC, [1989] 1 SCR 143 — https://www.canlii.org/en/ca/scc/doc/1989/1989canlii2/1989canlii2.html
- Eldridge v. British Columbia (AG), [1997] 3 SCR 624 — https://www.canlii.org/en/ca/scc/doc/1997/1997canlii327/1997canlii327.html

- Disability Rights Coalition v. Nova Scotia (AG), 2021 NSCA 70 — https://www.canlii.org/en/ns/nsca/doc/2021/2021nsca70/2021nsca70.html
- Quebec (AG) v. Alliance, 2018 SCC 17 — https://www.canlii.org/en/ca/scc/doc/2018/2018scc17/2018scc17.html ; Centrale des syndicats du Québec v. Quebec (AG), 2018 SCC 18 — https://www.canlii.org/en/ca/scc/doc/2018/2018scc18/2018scc18.html
- New Brunswick (Minister of Health) v. G(J), [1999] 3 SCR 46 — https://www.canlii.org/en/ca/scc/doc/1999/1999canlii653/1999canlii653.html
- Chaoulli v. Quebec (AG), 2005 SCC 35 — https://www.canlii.org/en/ca/scc/doc/2005/2005scc35/2005scc35.html
- Canada (AG) v. Bedford, 2013 SCC 72 — https://www.canlii.org/en/ca/scc/doc/2013/2013scc72/2013scc72.html
- Carter v. Canada (AG), 2015 SCC 5 — https://www.canlii.org/en/ca/scc/doc/2015/2015scc5/2015scc5.html
- Crevier v. Quebec (AG), [1981] 2 SCR 220 — https://www.canlii.org/en/ca/scc/doc/1981/1981canlii30/1981canlii30.html
- Canada (MCI) v. Vavilov, 2019 SCC 65 — https://www.canlii.org/en/ca/scc/doc/2019/2019scc65/2019scc65.html
- Newfoundland (Treasury Board) v. NAPE, 2004 SCC 66 — https://www.canlii.org/en/ca/scc/doc/2004/2004scc66/2004scc66.html
- Gosselin v. Quebec (AG), 2002 SCC 84 (distinguished) — https://www.canlii.org/en/ca/scc/doc/2002/2002scc84/2002scc84.html
- R v. Oakes, [1986] 1 SCR 103 — https://www.canlii.org/en/ca/scc/doc/1986/1986canlii46/1986canlii46.html

**Alberta ADAP / AISH — program and facts**

- Alberta Disability Assistance Program (ADAP) — https://www.alberta.ca/alberta-disability-assistance-program ; How to apply — https://www.alberta.ca/how-to-apply-for-aish-and-adap
- Multinational contractors (AKG Canada; Serco Canada) — CBC News — https://www.cbc.ca/news/canada/edmonton/adap-multinational-contractor-aish-alberta-changes-9.7249421
- Pushing back against changes that make life harder for disabled Albertans — Alberta Doctors' Digest (AMA) — https://add.albertadoctors.org/issues/november-december-2025/pushing-back-against-changes-make-life-harder-disabled-albertans/
- Bruce Johnson — Global News https://globalnews.ca/news/11906553/alberta-suicide-aish-adap/ ; CTV News https://www.ctvnews.ca/calgary/article/danielle-smith-addresses-disability-benefits-following-death-of-aish-recipient/

**Comparative evidence — complete source list**

*United Kingdom*

- UN CRPD inquiry into the UK, CRPD/C/15/R.2/Rev.1 (2016) — https://www.ohchr.org/Documents/HRBodies/CRPD/CRPD.C.15.R.2.Rev.1-ENG.doc

- Coroner finding, Michael O'Sullivan (WCA "trigger" for suicide) — https://politicsandinsights.org/2015/09/22/fit-for-work-assessment-was-trigger-for-suicide-coroner-says/
- Coroner Prevention of Future Deaths warning, Stephen Carré (2010) — https://www.disabilitynewsservice.com/wca-death-scandal-dwp-and-atos-killed-my-son/
- Jodey Whiting (Independent Case Examiner 2019; second inquest 2025) — https://www.leighday.co.uk/news/press-releases/2025-news/coroner-finds-stopping-benefits-triggered-the-death-of-jodey-whiting-following-second-inquest/
- Errol Graham (starvation after ESA stopped) — https://www.disabilityrightsuk.org/news/2020/january/disabled-man-starved-death-after-dwp-wrongly-stopped-his-benefits
- Philippa Day inquest (Regulation 28 reports to DWP and Capita) — https://www.disabilityrightsuk.org/news/2021/june/dwp-responds-coroner%E2%80%99s-prevention-death-notice-following-tragic-death-philippa-day
- DWP mortality statistics (ESA/IB/SDA claimants), 2015 — https://www.gov.uk/government/statistics/mortality-statistics-esa-ib-and-sda-claimants
- Full Fact correction (the discredited "2,380 within weeks" figure) — https://fullfact.org/news/statistics-authority-calls-research-fit-work-deaths/
- National Audit Office, Benefit Sanctions (2016) — https://www.nao.org.uk/insights/benefit-sanctions/
- Barr et al., "First, do no harm," J Epidemiol Community Health 2016;70(4):339-345 — https://pmc.ncbi.nlm.nih.gov/articles/PMC4819657/
- Welfare Conditionality Project, Final Findings (2018) — https://eprints.whiterose.ac.uk/id/eprint/154305/
- Williams (2021), Social Policy & Administration — https://eprints.gla.ac.uk/215868/
- Pattaro et al. (2022), Journal of Social Policy (scoping review) — https://pmc.ncbi.nlm.nih.gov/articles/PMC7613403/

*Australia*

- Royal Commission into the Robodebt Scheme, Final Report (2023) — https://robodebt.royalcommission.gov.au/publications/report
- RMIT FactLab (Robodebt "2,030 deaths" figure corrected) — https://www.rmit.edu.au/news/factlab-meta/robodebt-not-directly-responsible-for-more-than-2000-deaths
- Senate inquiry, Disability Support Pension (2022) — https://www.sbs.com.au/news/article/disability-support-pension-applicants-are-being-forced-into-poverty-inquiry-hears/kkmob0fsd
- Senate inquiry, ParentsNext (2019) — https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/ParentsNext/Report
- Community Development Program penalties (NSSRN/NAAJA, 2020) — https://www.ejaustralia.org.au/cdppenalties/

*New Zealand*

- Welfare Expert Advisory Group, Whakamana Tāngata (2019) — https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/research/weag/index.html
- Understanding Welfare Sanctions in Aotearoa New Zealand (2021) — https://communityresearch.org.nz/wp-content/uploads/2021/08/Understanding-Welfare-Sanctions-in-Aotearoa-New-Zealand-July-2021.pdf

*United States*

- Sommers et al., Arkansas Medicaid work requirements, NEJM 2019 — https://www.nejm.org/doi/full/10.1056/NEJMsr1901772
- Sommers et al., two-year impacts, Health Affairs 2020 — https://pmc.ncbi.nlm.nih.gov/articles/PMC7497731/
- Gresham v. Azar, 950 F.3d 93 (D.C. Cir. 2020) — https://law.justia.com/cases/federal/appellate-courts/cadc/19-5094/19-5094-2020-02-14.html
- Congressional Budget Office (2022), Work Requirements and Work Supports — https://www.cbo.gov/publication/58199
- Gelber et al. (2023), Journal of Public Economics (disability insurance and mortality) — https://www.sciencedirect.com/science/article/pii/S0047272723002153

*Principle*

- "The implementation of welfare policies are not held to the same ethical standards as research," Frontiers in Public Health (2021) — https://www.frontiersin.org/journals/public-health/articles/10.3389/fpubh.2021.764559/full
- WHO Commission on Social Determinants of Health, Closing the Gap in a Generation (2008) — https://www.who.int/publications/i/item/WHO-IER-CSDH-08.1