

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

A PLAIN LANGUAGE GUIDE FOR DISABLED ALBERTANS

WHAT THIS DOCUMENT COVERS

- What the Charter is and where it comes from
- Every section that protects you -- in plain language
- How the ADAP transition violates your Charter rights
- What Section 6 says about your right to move
- What Section 7 says about your right to survive
- What Section 15 says about disability discrimination
- How to reference the Charter in your own submission
- What the courts have already said about these rights
- What comes next and how to use this document

The Alberta Disability System Breakdown

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PART ONE -- WHAT IS THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS?

Most Canadians have heard of the Charter. Fewer have actually read it. This guide is going to change that -- because the Charter is not just a government document. It is a promise. A legally binding promise that Canada made to every person who lives here, about how they will be treated by the people in power.

The Canadian Charter of Rights and Freedoms was signed into law on April 17, 1982 as part of the Constitution Act. That date matters. The Constitution is not a policy. It is not a regulation. It is not something a government can repeal when it becomes inconvenient. It is the highest law in Canada. Every other law -- federal, provincial, municipal -- must be consistent with it. Any law that violates it can be struck down by a court.

Where Does It Come From?

Before 1982, Canada had rights protections but they were not constitutional. They could be overridden by a simple majority vote in Parliament. Prime Minister Pierre Elliott Trudeau led the push to entrench rights in the Constitution so that no government -- no matter how powerful -- could take them away with a single vote.

The Charter was the result of years of negotiation between the federal government and every province. It was debated publicly, amended, challenged, and ultimately signed by Queen Elizabeth II on behalf of the Crown. It is part of the supreme law of Canada and cannot be changed without a constitutional amendment -- an extremely high bar that requires agreement from both Parliament and most provincial legislatures.

Who Does It Protect?

The Charter protects everyone in Canada -- not just citizens. Most Charter rights apply to any person on Canadian soil. Some rights, like voting and mobility rights, are specifically limited to citizens and permanent residents. But the core protections -- equality, security of the person, fundamental justice -- apply to all people.

Who Does It Apply TO -- What Can It Stop?

CRITICAL POINT:

The Charter only applies to GOVERNMENT actions. It protects you from what governments do to you -- federal, provincial, territorial, and municipal governments, and any body acting on behalf of the government. It does not apply to disputes between private individuals or corporations. This is important: because the ADAP transition IS a government action. It is exactly what the Charter was designed for.

The Government of Alberta is the entity enacting the ADAP transition. That makes every decision they have made -- cutting benefits, removing appeal rights, imposing employment requirements on people assessed as permanently unable to work -- subject to Charter scrutiny. They cannot hide behind a policy document. The Charter is higher than any policy document.

What Happens When a Law Violates the Charter?

Under Section 52 of the Constitution Act, any law that is inconsistent with the Charter is of no force or effect to the extent of the inconsistency. In plain language: a court can strike it down. Courts can also order governments to remedy a violation, require them to reconsider decisions, and in some cases award damages to people whose rights were violated.

Section 24 of the Charter gives courts the power to grant any remedy they consider appropriate and just when someone's rights have been violated. This is a broad and powerful provision.

"The Constitution is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect."

-- Constitution Act, 1982, Section 52(1)

PART TWO -- SECTION 1: THE REASONABLE LIMITS CLAUSE (THE GOVERNMENT'S ESCAPE HATCH)

Before we go through each individual right, you need to understand Section 1. It is the government's main defence when accused of a Charter violation. Every person defending their rights will face it. You need to know what it says and what it does NOT say.

"The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

-- Charter, Section 1

What this means: the government CAN limit your Charter rights -- but only if the limit meets a very high legal test. The Supreme Court of Canada set out this test in a 1986 case called R. v. Oakes. It is called the Oakes Test and it has two main parts.

The Oakes Test -- How Courts Decide if a Limit is Justified

Part 1 -- The government must show the limit has a **PRESSING AND SUBSTANTIAL** objective.

The goal behind the limit must be important enough to justify overriding a constitutional right. Saving money is generally not considered pressing and substantial enough on its own. The government would need to show something more significant.

Part 2 -- The means must be **PROPORTIONAL**. This has three sub-parts:

- The limit must be rationally connected to the objective -- it has to actually achieve what it claims.
- It must minimally impair the right -- the government must choose the option that restricts rights as little as possible while still achieving the goal.
- The effects of the limit must be proportional to the objective -- the harm done to rights-holders cannot be greater than the benefit gained.

WHY THIS MATTERS FOR ADAP:

The Government of Alberta would need to demonstrate that automatically transitioning 79,290 permanently disabled Albertans into an employment program -- while removing their appeal rights and cutting their income -- is the **MINIMUM** necessary step to achieve a pressing and substantial government objective. An administrative cost reduction is not a pressing and substantial objective. And removing the only independent appeal mechanism available to disabled Albertans is almost certainly not the minimum necessary impairment of their rights.

Section 33 -- The Notwithstanding Clause

There is one more thing you should know. Section 33 of the Charter allows a government to pass a law that overrides certain Charter rights for up to five years, even if it violates them, by including a declaration that the law operates 'notwithstanding' the Charter.

IMPORTANT:

The notwithstanding clause **CANNOT** be used to override Section 6 (mobility rights), Section 15 (equality rights), or democratic rights. It **CAN** be used to override Section 7 (security of the person) -- but using it is politically explosive and signals that the government knows its law cannot survive a Charter challenge. To date, Alberta has **NOT** invoked Section 33 in relation to ADAP.

PART THREE -- SECTION 6: MOBILITY RIGHTS

"(1) Every citizen of Canada has the right to enter, remain in and leave Canada. (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right (a) to move to and take up residence in any province; and (b) to pursue the gaining of a livelihood in any province."

-- Charter, Section 6

What This Means in Plain Language

Section 6 is your right to move. It is your right to pick up your life and go to any province in this country and make a life there. No provincial government can build a wall -- legal, financial, or bureaucratic -- that prevents you from exercising this right.

Section 6(2)(b) goes further: it protects your right to pursue the gaining of a livelihood in any province. For disabled Albertans, a livelihood does not mean employment. It means stable income and supports sufficient to live with dignity. The Supreme Court has interpreted livelihood broadly.

The Financial Trap Argument

Here is the Charter argument that applies directly to the ADAP situation. You have a constitutional right to move. But if the Government of Alberta's policy decisions leave you without enough money to exercise that right -- no funds for first and last month's rent, no money for a moving truck, no ability to pay deposits or bridge the gap in benefits while you reapply in a new province -- then your Section 6 right exists on paper but not in reality.

Courts have recognized that formal rights mean nothing if there are systemic barriers to exercising them. A government that creates the conditions of financial destitution and then says 'you are free to leave' is not actually respecting Section 6. It is using poverty as a cage.

What Section 6(3) Says -- The Government's Limits

Section 6(3) says provinces CAN impose reasonable residency requirements before providing social services. This is why most provinces have a 3-month waiting period for benefits. That is constitutional. What is NOT constitutional is using the residency requirement as a permanent barrier, or designing a system that makes leaving so costly that the right to move becomes theoretical.

How to Use Section 6 in Your Submission

IN YOUR OWN WORDS:

The ADAP transition has reduced my income to a level at which I cannot afford the costs of interprovincial relocation -- first and last month's rent, a damage deposit, moving costs, and the financial gap between leaving Alberta and qualifying for supports in a new province. My Section 6 right to move to and take up residence in any province is constitutionally guaranteed. The Government of Alberta's policy decisions have created an economic barrier that makes that right inaccessible. This is a violation of Section 6 of the Canadian Charter of Rights and Freedoms.

PART FOUR -- SECTION 7: LIFE, LIBERTY AND SECURITY OF THE PERSON

"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."

-- Charter, Section 7

What This Means in Plain Language

Section 7 is one of the most powerful and most litigated sections of the Charter. It has three components: the right to life, the right to liberty, and the right to security of the person. A government can only take any of these away if it follows the principles of fundamental justice -- and those principles are demanding.

Security of the Person -- The Economic Survival Argument

The Supreme Court of Canada has consistently held that security of the person protects more than physical safety. It includes serious psychological harm caused by government action, and -- critically -- it may extend to economic rights that are fundamental to human survival.

In *Chaoulli v. Quebec* (2005), the Supreme Court held that a law preventing access to private health insurance violated security of the person because it threatened the physical and psychological integrity of individuals. The principle extends here: a government policy that cuts income to a level below what is needed for food, shelter, and medication threatens the physical survival of the people it affects. That is a Section 7 violation.

For someone on AISH, the loss of \$200 to \$400 per month -- combined with rising rents and the end of the earned income exemption -- is not an abstract policy outcome. It is a decision about whether they can eat this month, heat their home this winter, or refill their prescriptions. That is security of the person.

Fundamental Justice -- Fairness, Arbitrariness, and the Right to Be Heard

Even if a government violates your right to life, liberty, or security, it may still be constitutional if it does so in accordance with the principles of fundamental justice. Those principles include:

- Procedural fairness -- you have the right to know the case against you and to respond to it.
- Non-arbitrariness -- a law cannot be arbitrary. It must have a real connection between its means and its ends.
- Non-overbreadth -- a law cannot be broader than necessary to achieve its purpose.
- Proportionality -- the effects of a law cannot be grossly disproportionate to its stated objective.

HOW ADAP FAILS THE FUNDAMENTAL JUSTICE TEST:

Bill 12 removed the independent Citizens Appeal Panel -- the only external mechanism for challenging AISH and ADAP program decisions. Without an independent appeal, decisions by government-appointed Medical Review Panels are final. A person who disagrees with an assessment that says they have 'some ability to work' has no meaningful avenue to challenge it. That is a violation of procedural fairness. It is also arguably arbitrary: automatically transitioning 79,290 people without individual assessment has no rational connection to determining who actually has capacity for employment.

Liberty -- The Right Not to Be Compelled

Liberty under Section 7 includes freedom from government compulsion over fundamental personal choices. ADAP's requirement to participate in 'personalized action plans,' career planning, simulated worksites, and supported job placements -- for people whose disabilities were assessed as permanently preventing gainful employment -- raises a serious liberty concern. Compelling a person with a permanent disability to participate in employment programming as a condition of receiving income support may be an unjustified interference with liberty.

PART FIVE -- SECTION 15: EQUALITY RIGHTS

"(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. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

-- Charter, Section 15

What This Means in Plain Language

Section 15 is the equality guarantee. It says every person has the right to be treated equally by the law -- and specifically names mental or physical disability as a protected ground. This is not a guarantee of identical treatment. It is a guarantee of equal dignity and equal benefit of the law.

The Supreme Court's test for a Section 15 violation, established in cases like *Law v. Canada* (1999) and refined in *Withler v. Canada* (2011), asks: does the law create a distinction based on an enumerated ground (like disability) that has the effect of perpetuating disadvantage, prejudice, or stereotyping?

The Two-Tier System Argument

The ADAP framework creates two categories of disabled Albertans. Those in the narrow exemption categories (severe developmental disability, palliative care, continuing care, or over 60) remain on AISH. Everyone else -- including people with serious, permanent, documented physical and psychiatric disabilities -- is moved to ADAP, with lower income, employment requirements, and no independent appeal.

This distinction is made based entirely on the TYPE of disability and the government's assessment of employment potential. It creates a hierarchy of disabled people: those whose disabilities are deemed 'serious enough' and those who are not. That is discrimination based on disability under Section 15.

The Stereotyping Argument

Section 15 specifically prohibits laws that perpetuate stereotypes about marginalized groups. The ADAP framework is built on a foundational assumption: that people on AISH have 'some capacity for work' that has not been explored. That assumption is a stereotype. 83.9 percent of AISH recipients report zero employment income (Government of Alberta Open Data, September 2025). The eligibility criteria for AISH require a finding of permanent inability to earn a livelihood. The assumption that these people can work -- if only given the right supports and action plan -- is not evidence-based. It is a stereotype about disability, and applying it at a policy level is exactly what Section 15 was designed to prevent.

Section 15(2) -- Positive Obligations

Section 15(2) -- sometimes called the ameliorative purpose clause -- says the equality guarantee does not prevent governments from creating programs specifically designed to help disadvantaged groups. AISH was exactly that kind of program: a targeted support designed to recognize the particular disadvantage faced by people with permanent disabilities. Dismantling it in favour of a generic employment-support framework moves away from a targeted ameliorative program toward a one-size-fits-all model that ignores the specific disadvantage it was designed to address. That is a regression in equality, not a neutral policy change.

PART SIX -- OTHER CHARTER SECTIONS THAT MAY APPLY

Sections 6, 7, and 15 are the most directly applicable to the ADAP situation. But the Charter is a complete document. Other sections may also be relevant depending on your circumstances.

Section 2 -- Fundamental Freedoms

"Everyone has the following fundamental freedoms: (b) freedom of thought, belief, opinion and expression..."

-- Charter, Section 2(b)

Section 2(b) protects freedom of expression. This includes the right to speak publicly about government policy, to organize, to advocate, and to share your story. The Government of Alberta cannot punish you for participating in advocacy, speaking to the media, or joining a campaign like this one. Every post you make, every letter you send, every form you submit is protected expression under Section 2(b).

Section 12 -- Protection Against Cruel and Unusual Treatment

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

-- Charter, Section 12

Section 12 is most often applied in criminal law, but its scope is not limited to it. Courts have considered whether government actions in non-criminal contexts -- including the withdrawal of essential supports from vulnerable people -- can constitute cruel and unusual treatment. The standard is high, but for people whose medical conditions are severe and whose ability to survive depends on benefit income, the argument deserves to be made.

Section 11(d) -- The Right to an Independent Tribunal

Section 11(d) guarantees the right to be presumed innocent and to have a fair and independent hearing. While Section 11 is primarily about criminal proceedings, the principle of an independent decision-maker is foundational to Canadian administrative law. The elimination of the Citizens Appeal Panel under Bill 12 removes the only independent external body that could review AISH and ADAP program decisions. All reviews now remain within the same government structure that made the original decision.

Section 28 -- Equality of Rights Regardless of Sex

Section 28 guarantees that Charter rights apply equally to men and women. Research consistently shows that women are disproportionately represented among people with disabilities living in poverty. Policies that cut disability income and impose employment requirements have a disproportionate impact on women with disabilities. A Section 28 argument, made in conjunction with Section 15, may be relevant in some circumstances.

Section 36 -- Equalization and Regional Disparities

Section 36 commits the federal and provincial governments to promoting equal opportunities for Canadians and providing essential public services of reasonable quality to all Canadians. It is not a right that can be directly enforced by individuals in the same way as other Charter sections, but it creates a constitutional framework within which the federal government has obligations to Albertans with disabilities that the Province of Alberta's actions may be undermining. This is part of the argument for federal intervention.

PART SEVEN -- WHAT THE COURTS HAVE ALREADY SAID

You are not arguing for new rights. You are citing rights that courts have already recognized and enforced. Here are the key cases that establish the legal foundation for your Charter arguments.

Eldridge v. British Columbia (1997) -- Supreme Court of Canada

The Supreme Court held that the failure to provide sign language interpreters in medical settings violated Section 15 of the Charter. This is one of the foundational cases establishing that Section 15 requires governments to take positive steps to ensure equal access for people with disabilities. The government cannot be neutral -- it must accommodate. This case directly supports the argument that cutting disability supports violates Section 15.

Gosselin v. Quebec (2002) -- Supreme Court of Canada

The Court considered whether Section 7 of the Charter creates positive obligations to provide a minimum level of social assistance. The majority did not find a violation in that case, but four justices explicitly left open the possibility that Section 7 could protect a right to a minimum level of income necessary for survival. That door remains open. The ADAP cuts push people toward the threshold where that argument becomes viable.

Chaoulli v. Quebec (2005) -- Supreme Court of Canada

The Supreme Court held that a Quebec law prohibiting private health insurance violated the right to life and security of the person because it prevented people from accessing timely medical care. The key principle: when government policy creates conditions that put life and physical security at risk, Section 7 is engaged. For people whose income is cut to a level that threatens food, shelter, and medication, the same logic applies.

R. v. Oakes (1986) -- Supreme Court of Canada

The foundational case establishing the test for when a Charter violation can be justified under Section 1. It requires the government to show a pressing and substantial objective and that the means are proportional. Administrative cost savings have consistently been held insufficient to justify Charter violations.

Vriend v. Alberta (1998) -- Supreme Court of Canada

The Supreme Court held that the Alberta government's failure to include sexual orientation in the Individual Rights Protection Act violated Section 15. This case is significant because it involved Alberta specifically, and because it established that the Charter can require Alberta to include protections it deliberately omitted. What a government leaves out can violate the Charter just as much as what it puts in.

Nova Scotia (Workers Compensation Board) v. Martin (2003) -- Supreme Court of Canada

The Supreme Court found that provisions of Workers Compensation legislation that discriminated against workers with chronic pain violated Section 15. This case directly addresses disability discrimination in benefit programs and is highly relevant to arguments about ADAP's differential treatment of different disability types.

PART EIGHT -- HOW TO USE THE CHARTER IN YOUR SUBMISSION

You do not need to be a lawyer to reference the Charter. You do not need to cite case law. You do not need to use legal language. What you need to do is connect your lived experience to the rights the Charter promises -- and state clearly that you believe those rights are being violated.

What a Charter Reference Does

- It places your submission on a different legal footing than a policy complaint.
- It signals that you understand your rights and are prepared to enforce them.
- It creates a documented record that the government received notice of a potential Charter violation.
- It invites the government to respond to the legal argument, not just the policy complaint.
- It contributes to a growing body of evidence that may support future court challenges.

A Template Charter Statement You Can Use

COPY THIS INTO YOUR SUBMISSION -- PERSONALIZE THE BRACKETED SECTIONS:

I am writing to draw your attention to what I believe is a violation of my rights under the Canadian Charter of Rights and Freedoms. The ADAP transition, as implemented by the Government of Alberta through Bill 12 and the associated regulatory changes, engages Sections 6, 7, and 15 of the Charter.

Section 6: The financial impact of the ADAP transition leaves me without the means to exercise my constitutional right to move to and take up residence in another province. A right I cannot afford to exercise is not a right being respected.

Section 7: The reduction in my monthly income threatens my ability to afford [food / medication / housing -- describe your specific situation]. This constitutes a threat to my security of the person. The removal of the independent Citizens Appeal Panel denies me procedural fairness.

Section 15: I am a person with a permanent disability. The ADAP framework treats me as less deserving of stable income and independent appeal rights based solely on the type of disability I have and a government assessment of my employment potential. This is discrimination based on disability.

I am not asking you to resolve this in a letter. I am placing this on the public record.

What to Do Next

- **File your submission.** Send your personal impact statement and Charter statement to your MLA, MP, Premier Smith, Minister Nixon, and the ADAP program. Keep copies of everything including email receipts.
- **Contact the Alberta Human Rights Commission.** After July 1, 2026 -- when the transition becomes effective -- you can file a human rights complaint if you believe you have been discriminated against based on disability. The AHRC cannot act before the transition date but you can prepare your file now.
- **Contact a legal aid organization.** Legal Aid Alberta, the Public Interest Law Clinic, and community legal clinics can provide advice on Charter challenges. You do not need money to access these services.
- **Connect with advocacy organizations.** Inclusion Alberta, Voice of Albertans with Disabilities (VAD), and the Can Man Dan Foundation are active in this space. Your story adds to the collective record.
- **Document everything.** Keep every piece of correspondence. Date every interaction. Record every phone call you are permitted to record. A strong Charter challenge is built on evidence.

- **Keep going.** Charter challenges take time. Individual submissions may feel small. But every name on the record, every letter filed, every formal complaint submitted builds the case. Courts respond to documented patterns of government behaviour.

PART NINE -- THE BIGGER PICTURE

The Canadian Charter of Rights and Freedoms was written because Canadians decided -- collectively, constitutionally -- that some things are too important to leave to the shifting winds of politics. The right to live in security. The right to be treated equally. The right to move freely in your own country. The right to have a fair hearing before a government takes something from you.

Those rights do not disappear when a government decides they are inconvenient. They do not disappear when a budget is under pressure. They do not disappear when the people whose rights are being violated are poor, disabled, and have fewer resources to fight back with. If anything, they matter most precisely in those circumstances. That is the entire point of constitutional rights.

"A constitutional guarantee of rights is only as meaningful as the willingness of ordinary people to invoke it. The Charter belongs to Canadians. It is theirs to use."

-- Paraphrase of the foundational principle of constitutional democracy

The ADAP transition is one government's decision. The Charter is the whole country's promise. Those two things are in conflict. That conflict belongs on the public record. It belongs in every MLA's inbox, every Premier's office, every federal minister's awareness, and ultimately -- if it comes to it -- before the courts.

You did not create this conflict. You did not ask to fight this battle. But you are Canadian. You have rights. And the document that proves it has been the supreme law of this country since April 17, 1982.

FINAL NOTE:

This document is for informational purposes only and does not constitute legal advice. The law is complex and individual circumstances vary. If you are considering a formal legal challenge, please consult with a lawyer or legal aid organization. Many of the organizations listed in this guide offer free consultations for people in financial need.

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