

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)**

BETWEEN:

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SIGNIFICATION**

**THE ATTORNEY GENERAL OF BRITISH COLUMBIA and THE MEDICAL SERVICES
COMMISSION OF BRITISH COLUMBIA**

**Appellants
(Appellants/Respondents on Cross-Appeal)**

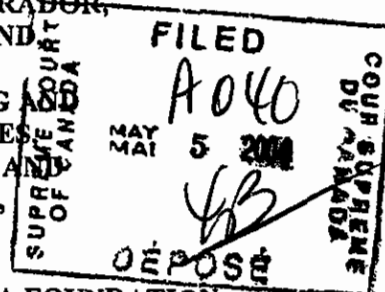
-and-

**CONNOR AUTON, an Infant by his Guardian Ad Litem, MICHELLE AUTON, and the said
MICHELLE AUTON in her personal capacity, MICHELLE TAMIR, an Infant, by her Guardian Ad
Litem SABRINA FREEMAN, and the said SABRINA FREEMAN in her personal capacity, JORDAN
LEF AIVRE, an Infant by his Guardian Ad Litem, LEIGHTON LEF AIVRE, and the said LEIGHTON
LEFAIVRE in his personal capacity, RUSSELL GORDON PEARCE, an Infant, by his Guardian Ad
Litem, JANET GORDON PEARCE, and the said JANET GORDON PEARCE in her personal capacity**

**Respondents
(Respondents/Appellants on Cross-Appeal)**

-and-

**ATTORNEY GENERAL OF CANADA,
ATTORNEY GENERAL OF NEW BRUNSWICK,
ATTORNEY GENERAL OF MANITOBA,
ATTORNEY GENERAL OF QUEBEC,
ATTORNEY GENERAL OF ONTARIO,
ATTORNEY GENERAL OF ALBERTA,
ATTORNEY GENERAL OF SASKATCHEWAN,
ATTORNEY GENERAL OF NEWFOUNDLAND AND LABRADOR,
ATTORNEY GENERAL OF PRINCE EDWARD ISLAND,
ATTORNEY GENERAL OF NOVA SCOTIA,
CANADIAN ASSOCIATION FOR COMMUNITY LIVING AND
THE COUNCIL OF CANADIANS WITH DISABILITIES
WOMEN'S LEGAL EDUCATION AND ACTION FUND AND
THE DISABLED WOMEN'S NETWORK CANADA,
AUTISM SOCIETY CANADA,
MICHELLE DAWSON,
FAMILIES FOR EFFECTIVE AUTISM TREATMENT OF ALBERTA A FOUNDATION,
FRIENDS OF CHILDREN WITH AUTISM, AND
FAMILIES FOR EARLY AUTISM TREATMENT OF ONTARIO**



Interveners

AMENDED

JOINT FACTUM OF THE INTERVENERS, FEAT OF ONTARIO AND ALBERTA

**FACTUM OF THE INTERVENERS
F.E.A.T. of ALBERTA and F.E.A.T. of ONTARIO**

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OVERVIEW OF THE POSITIONS OF FEAT ALBERTA AND FEAT ONTARIO

1. The government's submissions in support of this Appeal attempt to distract this Honourable Court from the substantive issues, with exaggerated claims about the impact of an adverse ruling. Similar predictions were made in *Eldridge* but failed to materialize. The Appellants also warn of the dangers of judicial interventionism. These submissions ignore the Court's legitimate role reviewing government action for *Charter* compliance. This Honourable Court has already responded definitively on this issue:

"From this have sprung the warnings of the dangers of a judicial "super-legislature" beyond the reach of Parliament....This argument was heard countless times prior to the entrenchment of the *Charter* but which has in truth, for better or for worse, been settled by the very coming into force of the *Constitution Act, 1982*. It ought not be forgotten that the historic decision to entrench the *Charter* in our Constitution was taken not by the courts but by the elected representatives of the people of Canada. It was those representatives who extended the scope of constitutional adjudication and entrusted the courts with this new and onerous responsibility. Adjudication under the *Charter* must be approached free of any lingering doubts as to its legitimacy."

Reference Re Motor Vehicle Act (British Columbia) s.94(2), [1985] 2 S.C.R. 486 (S.C.C.) at para 15, [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 18].

2. The government resurrects this argument despite being repeatedly forewarned that it is without merit:

"Quite simply, it is not the courts which limit the legislatures. Rather, it is the Constitution, which must be interpreted by the courts, that limits the legislatures. This is necessarily true of all constitutional democracies."

Vriend v. Alberta, [1998] 1 S.C.R. 493 (S.C.C.), para 56, [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 23].

3. We take the position that adverse effects discrimination issues are central to the s.15 *Charter* issues raised in this appeal. We also take the position that the facts in this case establish a breach of s.7 of the *Charter*. These violations cannot be saved under a s.1 analysis.

PART I: STATEMENT OF FACTS

4. The Interveners, FEAT Alberta and FEAT Ontario, adopt the facts as set out by the Respondent and add the following submissions:

5. **Applied Behavioural Analysis/Intensive Behavioural Intervention [specifically Lovaas-based] ("ABA/IBI")** was found to be, "beyond debate", the only effective treatment available for autism. There was no evidence to support the notion that children with autism recover or improve without effective treatment. The finding was that the vast majority of individuals with autism, untreated, go on to require residential or institutional placement.

Book of Authorities of the Intervener, the Attorney General of Alberta, [Tabs 15-18] and 20; Book of Authorities of the Intervener, Attorney General of Canada, [Tab 19]; Book of Book of Authorities of the Intervener, the Attorney General of Ontario, [Tab 1].
Reasons for Judgment of Allan, J., July 26, 2000, B.C.S.C., A.R. Vol. I, p. 73, par. 18; p.88, par. 49; p. 89, par. 52, and par. 51, p. 128, par. 156; relying on Aff. of Dr. Sallows, A.R. Vol. XXVI, p.4896-4898, par. 8-16 and p. 4913; and Dr. Gresham, cross-examination, A.R. Vol. III, p.425, II.30.
Exh. A, Aff. of Dr. Davies, A.R. Vol. XI-XIII, p. 2022-2289.
Exh. B, Aff. of Dr. Davies, A.R. Vol. XXI-XXII, p. 3977-4101.

6. **ABA/IBI** has a proven scientific foundation, is user-validated and finds legitimacy in many legal forums where it is deemed worthy of public funding.

Factum of the Intervener, the Attorney General of Alberta, par.15.
Book of Authorities of the Intervener, the Attorney General of Alberta, Tab 21, p. 51; Tab 23, p. i and 20; Tab 26, p. 9, 11-12.
Reasons for Judgment of Allan, J., July 26, 2000, A.R. Vol. I, p.80, par. 30; p.89, para. 52; Aff. of Dr. Sallows, A.R. Vol. XXVI, p.4896-4898, par. 8-16 and p. 4913.
Reasons for Judgment of Allan, J., July 26, 2000, A.R. Vol. I, p.80, par. 30; p.89, para. 52; Aff. of Dr. Sallows, A.R. Vol. XXVI, p.4896-4898, par. 8-16 and p. 4913.
Newfoundland and Labrador v. Sparkes, [2004] N.J. No. 34 (NLSC-TD), [Book of Authorities of the Interveners, Attorney General of PEI, Tab 8].
C.R. v. Alberta (Director of Child Welfare), [1996] A.J. No. 760 (Alta. Q.B.), [Book of Authorities of the Respondents on Cross Appeal, Tab 3].
Hood v. Alberta (Child Welfare Appeal Panel), [1999] A.J. No. 518 (Q.B.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 10].
Rivard v. Alberta (Child Welfare Appeal Panel), [2000] A.J. No. 1119 (Q.B.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 20].
Zachary Deal v. Hamilton County Department of Education, [2001] No. 99-59 at p. 9-23 and 31-33 (TENN. State Dept. Ed.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 24].
L.K. v. Alberta (Child Welfare Appeal Panel) (2004), A.J. No. 89 (Q.B.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 11].
L.S. v. Alberta (Child Welfare Appeal Panel), [2002] A.J. No. 1604 (Q.B.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 12].
Lowrey v. Ontario (2003), 64 O.R. (3d) 222, [Book of Authorities of the Intervener, Attorney General of Ontario, Tab 6].
Burrows (Litigation guardian of) v. Ontario (October 20, 2003) (Sup. Ct). [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 4].
Fleischmann (Litigation guardian of) v. Toronto District School Board, [2004] O.J. No. 160 (Ont.S.C.J.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 8].

7. The submissions in support of this Appeal attempt to discredit ABA/IBI as "new" and "experimental". The same submissions reveal that the state has funded the treatment for more than a decade because it is effective, having "...benefited children and families...in many ways such as improved functioning, self-efficiency and quality of life for children ...". The New York Department of Health Clinical Guidelines for best practice in autism treatment and the U.S. Surgeon General's Report on Mental Health both support the medical necessity of IBI and its unique effectiveness in treating the condition of autism. Sixty-three B.C. licensed psychiatrists endorsed the treatment as medically necessary.

U.S. Surgeon General Report on Mental Health, A.R. Vol. XXI-XXII, pp.3977-4101.
Factum of the Intervener, the Attorney General of Ontario, par.42.
Book of Authorities of the Intervener, the Attorney General of Alberta, Tabs 21, 26 (pp.9, 11-12).
Exh. A, Aff. of Dr. Davies, A.R. Vol. XI - XIII, pp. 2022 - 2289.
Exh. B, Aff. of Dr. Davies, A.R. Vol. XXI - XXII, pp. 3977 - pp. 4101.
Aff. of S. Freeman, A.R. Vol. V, p. 886, Vol. VI, p. 968, Exhibit V.
Aff. of Dr. E.J. Garland, A.R. Vol. XXIII, p. 4274.
Reasons for Judgment of Allan J., BCSC, July 26, 2000, A.R. Vol. I, p. 74 - 76, paras. 21, 22, 25.
C.R. v. Alberta (Director of Child Welfare), [1996] A.J. No. 760 (Alta. Q.B.), [Book of Authorities of the Respondents on Cross Appeal, Tab 3].

8. The Appellants and Attorneys General misapprehend the findings of the Courts below regarding 'age limitation'. At para. 66 of their factum, the Attorney General of Canada states that Justice Allan found the infringement was "a failure to provide early IBI for children up to age 6." which is in error, as both lower courts declined to support an age limitation.

9. The Appellant's facts, as adopted by the various Attorneys General, attempt to reargue the evidence, to indirectly challenge findings of fact and to introduce new evidence. The Attorneys General of Alberta, Canada and Ontario attempt to introduce budgetary information through the Greschner-Lewis Article and by classifying provincial budgets and financial documents as "Academic Materials".

10. This Honourable Court prohibited Interveners from introducing new evidence on appeal. The intervening Attorneys General must be held to the same standard and this evidence must be ignored.

Book of Authorities of the Intervener, the Attorney General of Alberta, [Tabs 15-18 and 20]; Book of Authorities of the Intervener, Attorney General of Canada, [Tab 19]; Book of Authorities of the Intervener, the Attorney General of Ontario, [Tab 1].
Reasons for Judgment of Allan, J., July 26, 2000, B.C.S.C., A.R. Vol. 1, p. 73, par. 18; p.88, par. 49; p. 89, par. 52.

PART II: ISSUES ON APPEAL

11. In order to fully address the Constitutional Questions in this appeal, the Interveners present the following propositions for consideration:

- a. ABA/IBI treatment is required to provide children with autism with equal access to publicly funded services including education and health care. Denial of funding for ABA/IBI fails to accommodate the needs of children with autism and violates s.15(1) of the *Charter of Rights and Freedoms*.
- b. Section 7 of the *Charter* protects the right to physical safety, psychological integrity and freedom from institutionalization. In this case, the Petitioners' rights to liberty and security of person have been violated, in a manner contrary to the fundamental principles of justice.
- c. The interests of justice and the need to ensure public confidence in the justice system deem it to be appropriate for this Honourable Court to provide a just and meaningful remedy to the infant Petitioners. Based on particular facts of this case, it is also consistent with the intent of s. 24 (1) of the *Charter* that the Petitioners' receive compensation for the violation of their rights.
- d. This Honourable Court must determine 'what the law should be'. F.E.A.T. Ontario submits that the law should be interpreted so as to impose a positive obligation on the state to protect and promote the best interests of autistic children through the provision of insured or free necessary medical treatment in the form of ABA/IBI. Such interpretation does not "constitutionalize" health issues, rather it provides a progressive and just application of the law to fulfill the aim of fundamental constitutional rights.

PART III: ARGUMENT

a) Principles of Charter Interpretation

12. We adopt the Respondent's and supporting Intervener's submissions in this regard and add the following:

13. *Charter* analysis and interpretation must be informed by Canada's international law obligations. As a signatory to the *UN Convention on Economic, Social and Cultural Rights* and the *Convention on the Rights of the Child*, Canada is obligated to act in the best interests of children, to provide the care necessary to meet their treatment needs to attain the highest standard of health and optimum personal development. In relation to children with disabilities, Canada must "ensure dignity, promote self-reliance and facilitate the child's active participation in the community." Assistance must "ensure that the disabled child has effective access" to education and health care services in a manner conducive to the child's achieving the fullest possible social integration and individual development..."

UN Convention of the Rights of the Child, Articles 3 (1) (2), 6 (2), 23 (1) (2) (3), 24 (1), [Book of Authorities of the Interveners, Attorney General of Canada, Tab 20].
UN Convention on Economic, Social and Cultural Rights, Article 12, [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 27].
R. v. Sharpe, [2001] 1 S.C.R. 245, 2001 SCC S.C.J. No. 3 at par. 175-178 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 21].
Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General) 2004 SCC 4 at par.186, [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 5].

14. This Honourable Court has accepted that *Charter* decisions regarding children must be guided by the child's best interests, including the promotion of their healthy development through to adulthood.

R. v. Sharpe, [2001] 1 S.C.R. 45, par. 174 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 21].

b) **Discrimination contrary to s. 15 (1) of the *Charter***

15. An underinclusive ameliorative program can violate s. 15 (1) of the *Charter*. If the *Medicare Protection Act*, R.S.B.C. 1996, c.286 and the *Health Care Services Regulation*, B.C. Reg. 426/97 fail to provide children with autism with necessary treatment when it provides necessary treatment to others, the legislation violates s. 15 of the *Charter* and the omission is reviewable.

Lovelace v. Ontario, [2000] 1 S.C.R. 950 at par. 60, [Book of Authorities of the Appellants, Tab 17].
Vriend v. Alberta, [1998] 1 S.C.R. 493 at par. 57 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 23].

16. Government has a positive obligation to ensure that disadvantaged individuals have equal access to and benefit from government services. This Honourable Court has acknowledged that disabled persons have, historically, been disadvantaged and marginalized in our society. This Court has also proclaimed that children are one of the most vulnerable societal groups.

Eldridge v. B.C. (Attorney General), [1997] 3 S.C.R. 624 at par. 54-56 and 66 (S.C.C.).
[Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 7].
Lovelace v. Ontario, [2000] 1 S.C.R. 950 at par. 60, [Book of Authorities of the Appellants, Tab 17].
R v. Sharpe, [2001] 1 S.C.R. 45 (S.C.C.) at par. 169, [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 21]

i.) Direct Discrimination

17. FEAT Alberta and FEAT Ontario adopt the submissions of the Respondents and supporting Interveners regarding direct discrimination.

ii.) Adverse Effects Discrimination

18. ABA/IBI is essential to the ability of many autistic children to communicate with others. Without treatment, they cannot equally access public services, such as education, health care and community supports.

Handicapped Children's Services Program Manual, pp.3-30, [Book of Authorities of the Intervener the Attorney General of Alberta, Tab 19].
Intensive Behavioural Interventions Pilot Project Comparative Evaluation, pp.3, [Book of Authorities of the Intervener the Attorney General of Alberta, Tab 21].
C.R. v. Alberta (Director of Child Welfare), [1996] A.J. No. 760 (Alta. Q.B.), [Book of Authorities of Respondent on Cross Appeal, Tab 3].
Rivard v. Alberta (Child Welfare Appeal Panel), [2000] A.J. No. 1119 (Q.B.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 20].

19. Section 15(1) of the *Charter* requires government to recognize the disabled individual's actual characteristics and take steps to reasonably accommodate those characteristics in providing services. Once government funds a service such as Medicare, it is obligated to ensure that disadvantaged groups benefit equally from the service.

Eldridge v. B.C. (Attorney General), [1997] 3 S.C.R. 624 at par. 65-66 and 77 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 7].
Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143 at p. 164, 166-169 and 171 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 1].

Eaton v. Brant County Board of Education, [1997] 1 S.C.R. 241 at par. 66-67 (S.C.C.).
[Book of Authorities of the Appellants, Tab 7]
Nova Scotia (Workers' Compensation Board) v. Martin, [2003] SCC 54 at par. 81 and 93.
[Book of Authorities of the Appellants, Tab 19 (a)].

20. The Appellants and Attorneys General claim that the disabled children are subject to the same funding limitations as others and are thus treated "equally". This Court has resoundingly rejected the notion that treating disabled persons in an identical way to others avoids impugned differential treatment.

Reasons for Judgment of Allan, J., July 26, 2000, B.C.S.C., A.R. Vol. I, p. 105, par. 101.
Eldridge v. B.C. (Attorney General), [1997] 3 S.C.R. 624 at par. 64 (S.C.C.), Book of Authorities of the Appellants, Tab 10].
Eaton v. Brant County Board of Education, [1997] 1 S.C.R. 241 at par. 66 (S.C.C.),
[Book of Authorities of the Appellants, Tab 7].
Vriend v. Alberta [1988] 1 S.C.R. 493 at par. 75-76 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 23].
Factum of the Intervener, the Attorney General of British Columbia, par. 2, 4, and 52-55.
Factum of the Intervener, the Attorney General of Newfoundland, par. 28 and 33.

21. Classifying ABA/IBI as an "extra" service which can be compared to, for instance, uninsured massage therapy, is offensive to the ruling of this Court in *Eldridge* and to all individuals living with autism.

Eldridge v. B.C. (Attorney General), [1997] 3 S.C.R. 624 at par. 71 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 7].
Factum of the Intervener, the Attorney General of British Columbia, par. 49-50 and 60.

22. The Appellant's arguments reproduce the systemic attitudes inherent to their position in *Eldridge* and "recycle" arguments this Court has firmly rejected. Once again, the Crown may be admonished for promoting these "thin and impoverished" views of s. 15 (1) of the *Charter*.

Eldridge v. B.C. (Attorney General), [1997] 3 S.C.R. 624 at par. 72-73 (S.C.C.), [Book of Authorities of the Appellants, Tab 10].
Vriend v. Alberta [1988] 1 S.C.R. 493 at par. 75-76 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 23].

23. The submissions of the Appellants and several Attorneys General also improperly inject the justification analysis into the discrimination analysis. This Honourable Court has expressly rejected this approach. Although the concept of reasonable accommodation is considered in the s. 1 analysis, it cannot be used to limit the scope of s. 15 (1) itself.

Factum of the Intervener, the Attorney General of British Columbia, par. 35-40 par. 73 and 77-81.
Factum of the Intervener, the Attorney General of Canada, par. 28-42.
Factum of the Intervener, the Attorney General of Newfoundland, par. 19.
Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143 at p. 178-179 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 1].
Eldridge v. B.C. (Attorney General), [1997] 3 S.C.R. 624 at par. 79 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 7].

c) **Section 7 of the Charter**

24. Section 7 must be interpreted generously, in accordance with the infant petitioner's best interests and with the aim of securing the full benefit of the *Charter's* protection for the claimants. The Appellant's s.7 analysis is narrowly constructed and will "stunt the growth" of the "living tree" which is the *Charter*.

Reference Re Motor Vehicle Act (British Columbia) s. 94(2), [1985] 2 S.C.R. 486 at par. 21 and 52 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 18].
New Brunswick (Minister of Health and Community Services) v. G.J., [1999] 3 S.C.R. 46 at par. 115 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 15].
Gosselin v. Quebec (Attorney General), [2002] 4 S.C.R. 429 at par. 316-318, [Book of Authorities of the Intervener, Attorney General of Canada, Tab 4].
R. v. Sharpe, [2001] 1 S.C.R. 45, par. 174 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 21].

25. This Court has not rejected the possibility that s.7 creates positive rights in appropriate cases. In *G.J.*, s.7 was relied upon to require government to fund the specific service of state funded legal counsel.

New Brunswick (Minister of Health and Community Services) v. G.J., [1999] 3 S.C.R. 46 at par. 91 and 107-108 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 15]; also see *Schachter v. Canada*, [1992] 2 S.C.R. 679 at par. 721.

26. In *B.R.*, the Court's analysis relied on positive international human rights obligations. In *Gosselin*, Justice Arbour (dissent) suggested that underinclusive legislation may trigger s.7's application. In this case, underinclusive legislation fails to provide the highest attainable standard of health care and fullest possible social integration and individual development, as required by Canada's international law obligations.

Gosselin v. Quebec (Attorney General), [2002] 4 S.C.R. 429 at par. 81-82, and 319-328 [Book of Authorities of the Intervener, Attorney General of Canada, Tab 4].

R.B. v. Children's Aid Society of Metropolitan Toronto, [1995] 1 S.C.R. 315 at par. 38, [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 17]

a.) *Life, Liberty and Security of Person*

27. Liberty, personal security, psychological integrity, dignity and autonomy are protected by s.7 when they are "intrinsically concerned with the well-being of the living person...based on the intrinsic value of human life and on the inherent dignity of every human being." State action that has a "serious and profound" effect on psychological integrity and interferes with basic human dignity will violate the right to security of person. In *Singh*, Wilson, J posited that s.7 may include protection of a standard of living and medical care that is necessary for health and well-being.

Blencoe v. British Columbia (Human Rights Commission), [2000] 2 S.C.R. 307, [Book of Authorities of the Intervener, Attorney General of PEI, Tab 4].

Singh v. Canada (Minister of Employment and Immigration) (1985), 1 S.C.R. 177 at par. 46-48 and 56. [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 22].

R. v. Morgentaler, [1988] 1 S.C.R. 30 at par.18-22, [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 14].

R.B. v. Children's Aid Society of Metropolitan Toronto, [1995] 1 S.C.R. 315 at par. 80, [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 17]

New Brunswick (Minister of Health and Community Services) v. G.J., [1999] 3 S.C.R. 46 at par. 58-60 (S.C.C.), [Book of Authorities of the Appellants, Tab 19].

Rodriguez v. British Columbia (Attorney General), [1993] 3 S.C.R. 519 at par. 129 and 136 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 19].

28. The Ontario Court of Appeal in *Parker* held that the liberty interest extends to choices in medical care if it is "a matter of fundamental personal importance".

R. v. Parker (2000), 49 O.R. (3d) 481 at par. 84-93, 97 and 152 (OCA), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 16].

29. Autism affects all aspects of the disabled person's life and, untreated, results in physical, emotional, social and intellectual isolation. Characteristics of autism include self-injurious behaviour and insensitivity to danger. ABA/IBI treatment results in "improved functioning, self-efficiency and quality of life for the children". The failure to provide ABA/ IBI will have a profound deleterious impact on the health, safety, psychological integrity, dignity and autonomy of children with autism.

Reasons for Judgment of Allan, J., July 26, 2000, B.C.S.C., A.R. Vol. I, p. 13, par. 12; p. 67, par. 4; p. 70, par. 10-13.

Factum of the Intervener, the Attorney General of Alberta, par.15.
***C.R. v. Alberta (Director of Child Welfare)*, [1996] A.J. No. 760 at par. 3 and 30 (Alta. Q.B), [Book of Authorities of Respondent on Cross Appeal, Tab 3].**

30. This Court has recognized that interference with the parent-child relationship affects the psychological integrity and well-being of family members. Failure to fund ABA/IBI treatment isolates children with autism socially and emotionally, both in society and within their families. Moreover, without treatment children with autism face grave risk of institutionalization.

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), 2004 S.C.C. 4 at par.114-115, [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 5].
New Brunswick (Minister of Health and Community Services) v. G.J., [1999] 3 S.C.R. 46 at par. 76 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 15].

31. The risk of institutionalization directly triggers the liberty and security rights of the claimants. Where a child is refused necessary treatment, the child is at risk of becoming a child in need of state protection and is vulnerable to state control, apprehension and possibly institutionalization. In *G.J.*, this Court held that civil committal to a mental institution could deprive a person of their s. 7 rights.

Child and Family Services Act, R.S.O. 1990, c. C.11, s. 30(2) and 37(2),[Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 25].
Child Welfare Act, R.S.A. 2000, c. C. 12, s. 2(i) and 106,[Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 26].
New Brunswick (Minister of Health and Community Services) v. G.J., [1999] 3 S.C.R. 46 at par. 65 (S.C.C.), [Book of Authorities of the Intervener, the Attorney General of Canada, Tab 8].

32. State conduct which causes "stress and anxiety" resulting from disruption of family, social life, work, legal costs and uncertainty as to an outcome may constitute a violation of security of person. Here, as in *G.J.*, the security of the parent must encompass protection against stress and anxiety directly caused by the "overlong subjection to the vexations and vicissitudes" of fighting for government-funded necessary treatment for their autistic children.

New Brunswick (Minister of Health and Community Services) v. G.J., [1999] 3 S.C.R. 46 at par. 59, 61-62 (S.C.C.), [Book of Authorities of the Intervener, the Attorney General of Canada, Tab 8].

33. The Courts in Alberta have recognized that parents are entitled to certainty and protection from gaps in the delivery ABA/IBI services. This reasoning is consistent with the reasoning of the Courts in s. 7 cases and further supports a finding of a breach of s. 7 in this appeal.

L.K. v. Alberta (Child Welfare Appeal Panel) (2004), A.J. No. 89 (Q.B.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 11].

34. In this case, underinclusive legislation, or interpretation thereof, jeopardizes the physical safety of children with autism, risks the psychological integrity and well-being of children and parents, and creates the likely outcome of institutionalization for children with autism, thereby affecting liberty, dignity and autonomy.

b.) *Principles of Fundamental Justice*

35. We submit that the evidence before the lower courts established the s. 7 infringements as set out above, and that such deprivations were contrary to the principles of fundamental justice in that they violate the principles of equality enshrined in s.15(1) of the *Charter*, fail to protect the infant Petitioners from harm or promote their well-being, violate fundamental principles of the health care system and are generally contrary to the societal notions of justice and fairness.

36. The principles of fundamental justice are informed by the basic tenets and values of our legal system. Tenets and values may be reflected in the common law, in statutes, in the *Charter*, and in international instruments. A principle of fundamental justice must be a legal principle, must be consensually viewed as vital to our societal notion of justice and must be capable of identification "with precision".

Reference Re Motor Vehicle Act (British Columbia) s. 94(2), [1985] 2 S.C.R. 486 at par. 62 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 18].

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General) 2004 SCC 4 at par.8, [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 5]

37. We submit that a decision found to infringe s.15(1) of the *Charter* violates the principles of fundamental justice. The decision by the Appellants not to fund necessary

medical treatment is based, in whole or in part, on systemic attitudes that depict autistic children as incurable, less valued and less appreciative of the notion of dignity. This perpetuates a stereotype of unworthiness, reinforces social vulnerability and exclusion and promotes conformity with the abled, ignoring the legal duty to accommodate. *Charter* principles meet all three criteria for a principle of fundamental justice.

38. The common law *parens patriae* doctrine and international law each recognize the paramount importance of the best interests of the child in matters before a Court. The B.C. Court of Appeal below asserted its *parens patriae* jurisdiction in upholding the trial Court's findings. It is also a basic tenet of our legal system that children's rights to life and health will be eminently protected. This includes fostering healthy development of the child to adulthood and protecting a child from harm, even if it is self-inflicted. This Court has declared that: "Children's rights and attention to their interests, are central humanitarian and compassionate values in Canadian society."

B. (R.) v. Children's Aid Society of Metropolitan Toronto, [1995] 1 S.C.R. 315 at par. 88, [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 17].
R. v. Sharpe, [2001] 1 S.C.R. 45 at par. 169, 171 and 174 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 21].
Baker v. Canada (Minister of Citizenship and Immigration), [1999] S.C.J. No. 39 at par. 67-71 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 2].

39. International values require signatory states, such as Canada, to provide for a child's well being and extend to promoting dignity, self-reliance, participation in the community, and effective access to, *inter alia*, health care and education in order to facilitate the fullest possible social integration and individual development. Protection of children from harm and the promotion of their well-being meet all three criteria for the establishment of a principle of fundamental justice.

UN Convention of the Rights of the Child, Article 3 (1) (2), 6 (2), 23 (1) (2) (3), 24 (1), [Book of Authorities of the Interveners, Attorney General of Canada, Tab 20].
UN Convention on Economic, Social and Cultural Rights, Article 12, [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 27].

40. The Appellant's failure to fund ABA/IBI treatment is also offensive to the principles underlying our health care system. The Romanow report concludes: "Taken

together, the principle of accessibility and the principle of universality confirm the conviction of Canadians that essential health care services must be available to all Canadians on the basis of need and need alone."

Commission on the Future of Health Care in Canada, Building on Values, The Future of Health Care in Canada Final Report, November 2002 ("Romanow Commission Report") at p.61, [Book of Authorities of the Intervener, Attorney General of Ontario, Tab 8].

41. Decisions which "shock the conscience" of the reasonable person are more likely to be contrary to principles of fundamental justice. Certainly, the denial of the only effective treatment for children with autism, thereby resigning children to a life of isolation, with no prospect for meaningful equality, shocks the public conscience.

United States v. Burns, [2001] 1 S.C.R. 283 at par. 59, 60, 65-71, par. 123-128 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 3].

42. Deprivations must be "fundamentally just, not only in the terms of the process...but also in terms of the ends they seek to achieve...". Arbitrary, vague and unfair decisions and decisions that fail to reflect the fundamental values of Canadian society, *Charter* values, international law obligations or that are inconsistent with the objectives of the legislation at issue violate the principles of fundamental justice.

Godbout v. Longeil (City), [1997] 3 S.C.R. 844 at par. 74, [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 9].

Rodriguez v. British Columbia (Attorney General), [1993] 3 S.C.R. 519 at par. 175 and 203 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 19].

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General) 2004 SCC 4 at par.191-192, [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 5]

d.) Commentary on the Facta of the Attorneys General of Alberta and Ontario

(i) FEAT Alberta's Comments on the Attorney General of Alberta's Factum

43. The Attorney General of Alberta (par. 27-31) submits that the Respondents seek *Charter* protection for economic rights. However, simply because government funding or benefits are involved does not mean the interests at stake are merely economic:

"Beyond the financial benefits at stake, injured workers ... are denied an opportunity to access a compensation scheme on the basis of the nature of their disability. They are also

deprived of ameliorative benefits ... which would clearly assist them in preserving and improving their dignity"

Nova Scotia (Worker's Compensation Board) v. Martin, [2003] SCC 54 at par. 104, [Book of Authorities of the Appellants, Tab 19 (a)].
Gosselin v. Quebec (Attorney General), [2002] 4 S.C.R. 429 at par. 312-313 and 310, [Book of Authorities of the Intervener, Attorney General of Canada, Tab 4].

44. Despite suggestions that ABA/IBI treatment is experimental, the materials filed by the Attorney General of Alberta indicates ABA/IBI has been funded in the province for approximately a decade. In 2001, 318 children were receiving funding for ABA/IBI treatment in Alberta. Notably, the services were not limited to pre-school children with autism. Of the 318, 48% were school age children.

Factum of the Intervener, the Attorney General of Alberta, par. 1, 11-12.
Book of Authorities of the Intervener, the Attorney General of Alberta, *A System of Care for Children with Autism: Expert Panel Report*, Tab 26, p. 9-11).
Factum of the Intervener, the Attorney General of Alberta, par. 13-15.
A System of Care for Children with Autism: Expert Panel Report, [Book of Authorities of the Intervener, the Attorney General of Alberta, Tab 26, p. 44].

45. The services that are funded in Alberta have been provided, in part, because of a long history of parental advocacy in Alberta including challenging refusals of funding before the Child Welfare Appeal Panel and the Court of Queen's Bench of Alberta. In Alberta, the Courts have now repeatedly awarded funding for ABA/IBI to school age children, up to and including age 18 if the treatment is required. While these cases may not have been decided on *Charter* grounds, they are relevant and provide a valuable resource in this appeal, as funding was awarded was based on findings of the necessity and effectiveness of ABA/IBI. The awards were not simply based upon a jurisdictional issue, as suggested by the Attorney General of Alberta. These decisions also reject an arbitrary cut off of funding after age six.

Factum of the Intervener, the Attorney General of Alberta, para. 45
System of Care for Children with Autism: Expert Panel Report, [Book of Authorities of the Intervener, the Attorney General of Alberta, Tab 21, p. 3; Tab 26, p. 9-10].
L.K. v. Alberta (Child Welfare Appeal Panel) (2004), A.J. No. 89 at par. 9-12 (Q.B.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 11].
L.S. v. Alberta (Child Welfare Appeal Panel), [2002] A.J. No. 1604 at par. 43 (Q.B.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 12].
C.R. v. Alberta (Director of Child Welfare), [1996] A.J. No. 760 (Alta. Q.B.), [Book of Authorities of Respondent on Cross Appeal, Tab 3].
Rivard v. Alberta (Child Welfare Appeal Panel), [2000] A.J. No. 1119 (Q.B.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 20].

Hood v. Alberta (Child Welfare Appeal Panel) [1999] A.J. No. 518 (Q.B.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 10].

46. One of the most unpalatable statements by the Attorney General of Alberta is one that harkens back to the narrow-minded and misguided views that were seen in cases like *Bliss*, long since been rejected by this Court. These arguments were also rejected in a section 7 context in *Rodriguez*. A comparison is instructive:

"The Respondents' children...suffer a devastating disability, autism, and it is that disability which impacts their liberty or security interests not any government action."

Factum of the Intervener, the Attorney General of Alberta, par.31.

"If section 46 treats unemployed pregnant women differently...it is, it seems to me because they are pregnant, not because they are women."

Passage from *Bliss v. Attorney General of Canada* [1979] 1 S.C.R. 183, rejected by this Court in *Brooks v. Canada Safeway* [1989] 1 S.C.R. 1219 at par. 39-40 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 32].

Rodriguez v. British Columbia (Attorney General), [1993] 3 S.C.R. 519 at par. 128 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 19]

47. The statement at paragraph 52 of the Attorney General of Alberta's factum is also improper. The Attorney General of British Columbia makes similar, albeit more subtle, submissions. The implication is that a positive decision for the Respondents in this appeal will start the "race to the bottom" and will pit disability groups against one another. This Court has spoken out against such behaviour. Statements of this tenor should be a factor in the Court's decision regarding an appropriate remedy.

Factum of the Intervener, the Attorney General of British Columbia, par. 117.

Factum of the Intervener, the Attorney General of Alberta, par. 52.

Granovsky v. Canada (Minister of Employment and Immigration), [2000] 1 S.C.R. 703 at par. 67, [Book of Authorities of the Intervener, the Attorney General of Canada, Tab 5].

Lovelace v. Ontario, [2000] 1 S.C.R. 950 at par. 69, [Book of Authorities of the Appellants, Tab 17].

(ii.) FEAT Ontario's Response to the Factum of the AG of Ontario

48. In 1999, Ontario established the IEIP program to deliver IBI treatment under the auspices of social services to as many as 1200 children aged 2-6 yrs. The program cannot service those in need and there is a substantial waiting list. The government, in most

cases but not all, terminates the service at 6 yrs. whether or not the child still requires the treatment.

Factum of the Intervener, the Attorney General of Ontario, par.22 and 24.

49. Litigation abounds--over 150 families have commenced human rights claims against the government on the basis that the failure to provide IBI is a violation of the Ontario *Human Rights Code*. The Human Rights Commission is proceeding to the Human Rights Tribunal with allegations of discrimination and failure to accommodate these children's special needs. Several families have obtained interim funding Orders for IBI treatment after seeking injunctive relief.

"Autism Fight Continues", (April 10, 2004), *The Globe and Mail* [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 29].

50. Prior to the last provincial election, the government took the position it takes before this Court. Although Ontario's current Premier of Ontario, The Hon. Dalton McGuinty directed a strong critique against the former government's record regarding treatment for autistic children in his role as health critic, he has since directed the Attorney General to pursue litigation and opposes the comprehensive delivery of ABA/IBI treatment.

Hansard: Legislative Assembly of Ontario, No. 37:2, October 29, 2001, at 1350 [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 30].

51. The Attorneys General rely an article by Donna Greschner and Steven Lewis ("GL") which compels us to respond. The article relies heavily on the treatment analysis conducted by CCOHTA, which relied heavily on analysis conducted by its provincial arm, BCOHTA. The analysis was soundly rejected by Allan J. as biased and unhelpful. The Attorneys General omit any mention of the BCOHTA report.

Science arguments- IBI is health care

52. Findings of fact are not reviewable without palpable and overriding errors. None such have been shown in this case. Instead, the Attorney Generals and GL imply that the judges below lacked sophistication and were improperly influenced by excessive sympathy for the claimants. In its search for autism treatment programs that met minimum criteria for inclusion in its report, *no* B.C. government funded programs met

those criteria. After the government's own health technology analysts "exhaustive" literature review, only Lovuus and replications had enough science to warrant examination, with the exception of the TEACCH program, which did not have the quality of experimental design that Lovuus and replications possess. All the alternative treatment options in British Columbia were thoroughly discredited, even by the Crown's own expert witness, Dr. Frank Gresham.

Reasons for Judgment of Allan J., July 26, 2000 BCSC, A.R. Vol. I, para. 51 and para. 66; Dr. Gresham, cross-examination, A.R. Vol. III, p. 425, ll. 30.

53. Diagnosed as early as 18 months of age, autism treatment is most effective when commenced as early as possible and before school enrollment. There is no basis for the assumption an academic curriculum ameliorates autism. Rather, evidence before the Court demonstrated that children in "special education" classes cannot access an education and may regress as compared to children receiving ABA/IBI treatment.

Reasons for Judgment of Allan, J., July 26, 2000, B.C.S.C., A.R. Vol I, para. 26-27, 75, 82 and 153.

Doomsday Predictions and The Bankrupt State

54. Although the Attorneys General rely on the GI. article to paint a frightening picture of a health care system in crisis, none of them establish on the evidence that funding effective autism treatment will lead to disaster for B.C. Medicare. They fail to mention the fact that substantial health care resources are currently being allocated to psychiatric wards where autistic individuals are chemically or physically restrained. Mere reference to limited resources, without more, cannot be sufficient to avoid meaningful constitutional remedies. Curiously, the Attorneys General fail to mention the considerable government resources devoted to defeating claims for effective autism treatment.

Aff. of Dr. J. McEachin, A.R. Vol. XIX, p. 3594.

Aff. of Dr. E.J. Garland, A.R., Vol. XXIII, p. 4272.

Reasons for Judgment of Allan J., BCSC, July 26, 2000, A.R. Vol. I, pp. 65 - 130, at 66, paras. 2 - 4, and at 70 - 71, paras. 10 - 11.

55. The court of first instance undertook a detailed review of the health care legislation and concluded that it left ample room for funding of treatment for the core health care need of children with autism.

Reasons for Judgment of Allan J., July 26, 2000, A.R. Vol. I, pp. 101 – 108, paras. 88 – 109.

56. For the infant petitioners, the therapeutic criterion of effectiveness was also met. Allan J. had direct evidence from their health care professionals (not simply letters attached to parents' affidavits, as GL erroneously assume).

Aff. of Dr. Garland, Clinical Associate Professor and Child Psychiatrist, A.R. Vol. XXVII, p. 5064 – 5068 (re Miki Tamir).

Aff. of Dr. de Levie, Pediatrician, A.R. Vol. XXVII, pp. 5033 – 5048 (re Connor Auton and Jordan Lefavre).

Discrimination arguments

57. Contrary to GL, when there is only one effective treatment available for a core health care need, comprehensiveness and universality become one and the same: to exclude the treatment is to exclude the person, thus resulting in discrimination on the basis of disability.

Reasons for Judgment of Allan J., July 26, 2000, A.R. Vol. I, pp. 119 – 120, paras. 134 – 135.

58. GL adopts the discriminatory view and attitude (the socially constructed disability) that autism is a disorder with no hope and no treatment, as does the government. Such attitude is also an attempt to portray parents of children with autism as manipulating and resourceful litigators who play on "heartfelt sympathy" rather than a strong evidentiary record.

Governments are accountable for their allocation decisions

59. Governments set budgets and allocate resources to different areas. Courts refrain from engaging in this process. However, if government fails to take *Charter* rights into account, or to accommodate disability, courts have a role in compensating for violations, with a view to preventing and correcting future transgressions. *Charter* remedies frequently require some expenditure on the part of government; such is the reality of a modern, constitutional democracy.

60. Discretionary decisions as to funding are subject to judicial review. In *Clough*, the parents of autistic children sought review of narrow funding decisions by the government for the provision of services out of resources allocated for this purpose. The Ministry did

not provide any budget evidence or take the position that it was financially impossible to fund services, including IBI. It took the position that the decisions were based on available Ministry funding relative to the families' circumstances. The Court inferred that funding was available. The *Clough* judgment clearly cautions the government that the historical defence of scarce resources is now a precarious one.

Clough (Litigation guardian of) et al. v. Ontario (Minister of Community, Family and Children's Services), (March 18, 2003)(Ont. Div. Ct.). [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 6].

Separation of powers/institutional competence arguments

61. Under the *Charter*, the judiciary must engage in the legitimate exercise of review of government decisions or failure to make decisions. Apparently, Donna Greschner agrees, since she has written elsewhere that, with the establishment of medicare, health care is firmly ensconced as a central area of public law; that public law is about public interest; that rights are the primary method of regulating relationships between governments and citizens; that the *Charter of Rights and Freedoms* regulates all governmental activity pertaining to health care, and that the adjudication of *Charter* rights by courts can resolve government-citizen disputes.

D. Greschner, Public Law in the Romanow Report, (2003), 66 Sask. L. Rev. 565 – 576, at paras. 3, 7, 11, 23 [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 31].

e.) Justification under s. 1 of the *Charter*

62. The Interveners adopt the Respondents' and supporting Interveners' submissions with respect to the s. 1 analysis.

63. In addition, we submit that section 7 violations are extremely difficult to justify under s.1. The Appellants properly concede that if there is a breach of s. 7 of the *Charter*, the breach cannot be justified.

New Brunswick (Minister of Health and Community Services) v. G.J., [1999] 3 S.C.R. 46 at par. 99 (S.C.C.), [Book of Authorities of the Appellants, Tab 19].
Factum of the Attorney General of British Columbia, par. 91.
Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143 at p. 153-154 (S.C.C.), [Book of Authorities of the Interveners FEAT Alberta and FEAT Ontario, Tab 1].

64. The Court of Appeal's application of its *parens patriae* and international law obligations are consistent with general principles that government will have a weighty onus in attempting to justify violations of the *Charter* rights of a disadvantaged and vulnerable group.

Reasons for Judgment, Court of Appeal of BC, October 9, 2002, A.R. Vol. II, p. 203-209, par. 60-65.

65. Regardless of any deference the Courts may grant to government in respect of the allocation of resources, financial considerations alone can never justify a *Charter* infringement. In any event, limited deference is due the Appellant as the evidence showed that the B.C. government failed to examine the evidence behind ABA/IBI on a systematic basis until it was faced with a lawsuit. Further, where the negative effects of the *Charter* violation outweigh any budgetary savings, a section 1 defence will fail. In any event, total denial of services or wholesale exclusion of a group of disabled individuals ~~can~~^{not} meet a minimal impairment test.

Eldridge v. B.C. (Attorney General), [1997] 3 S.C.R. 624 at par. 85 and 87 (S.C.C.), [Book of Authorities of the Appellants, Tab 10].

Nova Scotia (Worker's Compensation Board) v. Martin, [2003] SCC 54 at par. 109 and 112, [Book of Authorities of the Appellants, Tab 19 (a)].

Reasons for Judgment, Court of Appeal of BC, October 9, 2002, A.R. Vol. II, p. 202, par. 57-59.

New Brunswick (Minister of Health and Community Services) v. G.J., [1999] 3 S.C.R. 46 at par. 98 (S.C.C.), [Book of Authorities of the Appellants, Tab 19].

f.) Remedy

66. FEAT Alberta and FEAT Ontario adopt the submissions of the Respondents regarding remedy.

PART IV: NATURE OF ORDER REQUESTED

67. The Interveners FEAT Alberta and FEAT Ontario request that Questions 1 and 3 be answered in the affirmative and that Questions 2 and 4 be answered in the negative.

68. The Interveners request that the appeal be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

This 4th day of May, 2004.

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**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)**

BETWEEN:

THE ATTORNEY GENERAL OF BRITISH COLUMBIA, ET AL.

-and-

**CONNOR AUTON, AN INFANT, BY HIS GUARDIAN AD LITEM,
MICHELLE AUTON, ET AL.**

**INFORMAL LIST OF AUTHORITIES
(as cited in the factum)**

TAB	Case/Statute/Secondary Material
1	<i>Andrews v. Law Society of British Columbia</i>
2	<i>Baker v. Canada (Minister of Citizenship and Immigration)</i>
3	<i>United States v. Burns</i>
4	<i>Burrows (Litigation guardian of) v. Ontario</i>
5	<i>Canadian Foundation for Children, Youth and the Law v. Canada</i>
6	<i>Clough (Litigation guardian of) et al. v. Ontario</i>
7	<i>Eldridge v. B.C. (Attorney General)</i>
8	<i>Fleischmann (Litigation guardian of)</i>
9	<i>Godbout v. Longeil (City)</i>
10	<i>Hood v. Alberta</i>
11	<i>L.K. v. Alberta (Child Welfare Appeal Panel)</i>
12	<i>L.S. v. Alberta (Child Welfare Appeal Panel)</i>
13	<i>Lowrey v. Ontario</i>
14	<i>R. v. Morgentaler</i>
15	<i>New Brunswick (Minister of Health and Community Services)</i>
16	<i>R. v. Parker</i>
17	<i>R.B. v. Children's Aid Society of Metropolitan Toronto</i>
18	<i>Reference Re Motor Vehicle Act</i>
19	<i>Rodriguez v. British Columbia</i>
20	<i>Rivard v. Alberta (Child Welfare Appeal Panel)</i>
21	<i>R. v. Sharpe</i>
22	<i>Singh v. Canada (Minister of Employment and Immigration)</i>
23	<i>Vriend v. Alberta</i>
24	<i>Zachary Deal v. Hamilton County</i>

Statutes

- 25 *Child and Family Services Act*
- 26 *Child Welfare Act*
- 27 *Economic, Social and Cultural Rights*
- 28 *Convention on the Rights of the Child*

Secondary Material

- 29 *Globe and Mail Article*
- 30 *Hansard Report*
- 31 *D. Greschner*