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

BETWEEN:

ALLAN CHAUDHRY

APPELLANT

-AND-

HER MAJESTY THE QUEEN

RESPONDENT

FACTUM OF THE APPELLANT

TEAM 6

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PART I – OVERVIEW

[1] The culture of risk aversion within Canada’s bail system results in the overapplication of excessive, onerous terms of release. Conditions of release can only be imposed where the Crown has satisfied the judicial official that the restrictions are required to secure the statutory goals under s. 515(10) of the *Criminal Code*.

[2] This case asks the Court to apply the principles of restraint and review. Allan Chaudhry is an alcoholic. He has spent the last 16 years suffering from the health, social, economic and legal consequences of his addiction. An enlightened criminal justice system protects the presumption of innocence at the pre-trial stage and safeguards the liberty of people accused of crime.

[3] Bail conditions must be consistent with the *Charter* to be justified in a free and democratic society. Restraint is required in applying bail conditions because they limit the liberty of someone who is presumed innocent. The Conditions cause an adverse impact on Mr. Chaudhry because of his disability that reinforces his pre-existing disadvantage.

[4] Onerous conditions disproportionately impact vulnerable and marginalized populations, including those living with addictions. Mr. Chaudhry is before the Court today asking for this cycle of incarceration to be broken. This challenge must be viewed in light of the historical disadvantage facing people living with disabilities and the social stigma associated with addiction.

[5] Mr. Chaudhry should not be criminalized for his struggles with alcohol addiction. The Conditions breach s. 15 and 11(e) of the *Canadian Charter of Rights and Freedoms* (“*Charter*”) by exposing Mr. Chaudhry to adverse health effects and criminalizing the existence of his addiction anywhere outside the confines of his home. These infringements cannot be justified in a free and democratic society. Justice Hooper’s decision must be reinstated.

PART II – FACTS

Mr. Chaudhry’s history with alcohol

[6] Mr. Chaudhry is a 39-year-old man who has struggled with alcoholism for most of his adult life. He began drinking at twelve or thirteen years old. In university, he started drinking heavily to cope with stress and his alcohol use soon became habitual. By age 25, he would often drink two or three 26-ounce bottles of vodka over the course of a single weekend.

Official Problem, Wilson Moot 2021 at paras 1, 12(a)(d)(f)(h) [Official Problem].

[7] Mr. Chaudhry’s addiction has caused him significant social, economic and legal consequences. He was fired from his first job after university for drinking at his desk. He has since been fired from four or five subsequent jobs due to his alcohol use.

Official Problem, *supra* para 6 at para 12(g).

[8] Mr. Chaudhry faced the first legal consequence of his drinking in 2004 when he plead guilty to driving while intoxicated. In 2012, Mr. Chaudhry served a 6-month suspended sentence for possession of cocaine. In 2017, Mr. Chaudhry was arrested while intoxicated and was found guilty of assault causing bodily harm, for which he served an 18-month conditional sentence.

Official Problem, *supra* para 6 at para 12(i-k).

Mr. Chaudhry’s attempts at recovery

[9] Mr. Chaudhry’s attempts to recover from his alcohol addiction have been unsuccessful. He has checked himself into rehabilitation programs on at least five separate occasions, ultimately relapsing each time. His first recovery attempt was after his 2004 conviction for driving while intoxicated. After five months of sobriety, he resumed drinking.

Official Problem, *supra* para 6 at para 12(m).

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[10] In 2011, Mr. Chaudhry made a second attempt at sobriety by going “cold turkey”. He experienced serious withdrawal symptoms including vomiting, tremors, insomnia, and migraines which caused him to miss work. After running out of sick days he attempted to self-medicate by rationing alcohol, but ultimately relapsed. As a condition of his 2017 sentence, Mr. Chaudhry once again sought treatment for his addiction. He managed to remain sober for 10 months before relapsing.

Official Problem, *supra* para 6 at para 12(m).

The originating charge and conditions of release

[11] On August 1, 2019, the police were called to a report of a fight at The Gambler, a bar in East Vancouver. When they arrived, patrons explained that the people involved left on foot. An eyewitness described a man who had thrown a beer bottle and attacked another patron. The police found Mr. Chaudhry sitting outside the Gambler in a blue sedan with the engine off. Mr. Chaudhry matched the eyewitness’ description.

Official Problem, *supra* para 6 at paras 3-5.

[12] The police asked Mr. Chaudhry to exit his vehicle and he complied; he appeared flushed and smelled of alcohol. After being identified by the witness, Mr. Chaudhry was arrested and charged with assault with a weapon contrary to s. 267(a) and being in care or control of a vehicle while intoxicated contrary to s. 320.14(1) of the *Criminal Code*.

Official Problem, *supra* para 6 at paras 4-5.
Criminal Code, RSC, 1985, c C46 [*Criminal Code*].

[13] At a contested bail hearing, the Crown opposed Mr. Chaudhry’s release from custody, however, the justice granted him bail under s. 515 of the *Code*, subject to six conditions:

1. The accused will post a no cash bail of \$3000 and report to a bail supervisor within two days of release from the remand centre and thereafter as directed
2. The accused will remain in the province of British Columbia (“B.C.”) unless consent is granted by his bail supervisor.

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3. The accused will not attend any licenced establishment that serves alcohol
4. The accused will not possess or consume alcohol or any non-prescribed controlled substance during the term of his release, except within the confines of his home.
5. The accused will be subject to a curfew of 10:00pm.
The accused will present himself at the door of his residence for any bail supervisor or peace officer who attends to confirm his compliance with his curfew.

Official Problem, *supra* para 6 at paras 6, 10.

[14] Mr. Chaudhry sought review of the conditions under s. 520 of the *Criminal Code*. The reviewing judge found he had not shown cause to set aside the conditions of his release.

Official Problem, *supra* para 6 at para 13.

Clarifications to the 2020 Wilson Moot Problem at para 5 [Clarifications].

[15] On October 28, 2019 police attended The Gambler in response to a reported fight. The police observed Mr. Chaudhry holding a beer and he appeared mildly intoxicated. Mr. Chaudhry was arrested under s. 145(5) of the *Code* for failing to comply with the conditions of his release. Upon reviewing the surveillance footage, the officers determined Mr. Chaudhry was not involved in the fight that night. The only charge incurred was the breach of his conditions under s. 145(5).

Official Problem, *supra* para 6 at para 9.

Clarifications, *supra* para 14 at paras 3-4.

Criminal Code, *supra* para 14.

[16] In December 2019, the eyewitness recanted, and the Crown dropped the charges.

Official Problem, *supra* para 6 at para 8.

Challenging the Conditions

[17] In March 2020, Mr. Chaudhry pleaded not guilty to the charge of failure to comply with the Conditions before Justice Hooper. Mr. Chaudhry admitted to having a drink at The Gambler, contrary to the Conditions. In his defence, he challenged the constitutionality of the Conditions. Mr. Chaudhry argued that they infringed his rights to equality and reasonable bail under ss. 15 and 11(e) of the *Charter* and could not be demonstrably justified in a free and democratic society. As

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he explained in his affidavit: “what others see as a simple choice is for me a constant struggle that affects my mental and physical health”.

Official Problem, *supra* para 6 at paras 9, 13.

Canadian Charter of Rights and Freedoms, s 15(1), 11(e), being Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (UK), 1982, c.11, ss. 7, 15 [*Charter*]

[18] Justice Hooper held that the Conditions breached both of Mr. Chaudhry’s rights under ss. 15 and s. 11(e). Justice Hooper found that Mr. Chaudhry suffers from alcohol use disorder (“AUD”), and that AUD is a disability for the purposes of s. 15 of the *Charter*. Conditions 3 and 4, while neutral on their face, had a disproportionate effect on Mr. Chaudhry because of his disability, perpetuating his disadvantage. Justice Hooper stated the Conditions were not demonstrably necessary and effectively criminalized Mr. Chaudhry’s addiction anywhere but the confines of his home.

Official Problem, *supra* para 6 at paras 18, 9.

[19] The Crown appealed. The majority of the British Columbia Court of Appeal (“COA”) overturned the trial decision and found no violation of ss. 11(e) or s. 15. Justice Schaefer, writing for the majority, was satisfied that the conditions were reasonable and consistent with the ladder principle. Justice Krelborn, dissenting, held for that AUD is a disability under s. 15 and the infringement under s. 15 was not justified under s. 1.

Official Problem, *supra* para 6 at paras 9, 19, 20.

PART III – STATEMENT OF POINTS IN ISSUE

[20] This appeal raises the following issues, which the Appellant answers as summarized below:

1. Do the conditions of Mr. Chaudhry’s release infringe his equality rights under section 15 of the Charter?

Yes. The conditions of Mr. Chaudhry’s release create a discriminatory distinction based on his disability. Condition 3 and 4, which prohibit the possession or consumption of alcohol outside of the home and attendance at licensed establishments cause serious adverse effects to Mr. Chaudhry. These effects are not felt by an accused without AUD facing the same terms. The distinction disadvantages Mr. Chaudhry by perpetuating stereotypes about alcohol addiction, exacerbating the side effects of his disability, and keeping him trapped in the cycle of incarceration.

2. Do the conditions of Mr. Chaudhry’s release infringe his rights to reasonable bail under s. 11(e) of the Charter?

Yes. The conditions of Mr. Chaudhry’s release are unreasonable because they are insufficiently linked to the statutory risks under s. 515(10). They are not the least onerous in the circumstances and do not attenuate the risks that would otherwise prevent release unconditional release. Due to his disability, Mr. Chaudhry’s ability to comply with these conditions is minimal. By restricting how he can manage his addiction, the Conditions simply make it more likely that he will breach. The Conditions invite breach and therefore cannot protect the public.

3. Can these infringements be demonstrably justified in a free and democratic society?

No. The *Charter* infringements cannot be justified in a free and democratic society. The Conditions were an arbitrary, overly intrusive, and disproportionate means to target the objectives of conditional release under s. 515(10) of the *Criminal Code*.

PART IV – ARGUMENT

Issue 1: The Conditions infringe s. 15 of the Charter

[21] The Conditions are discriminatory. Section 15 of the *Charter* promotes substantive equality which aims to ensure that all individuals receive the equal benefit and protection of the law (*Fraser; Withler; Andrews*). At the heart of substantive equality is the recognition that facially neutral treatment may produce serious inequality through adverse effects (*Fraser; Andrews*). The Conditions impose adverse effects on Mr. Chaudhry that are not experienced by an accused person without AUD. This distinction is discriminatory because it exacerbates, reinforces, and perpetuates his pre-existing disadvantage as a person with a disability.

Fraser v Canada (Attorney General), 2020 SCC 28 at paras 42-48 [*Fraser*].
Withler v Canada (Attorney General), 2011 SCC 12 at para 2, [2011] 1 SCR 396 [*Withler*].
Law Society of British Columbia v Andrews, [1989] 1 SCR 143 at paras 164–71, 56 DLR (4th) 1 [*Andrews*].

The test for infringement under s. 15(1)

[22] The test for infringements under s. 15(1) has two stages (*Fraser*). The first considers whether the law or government action creates a distinction based on an enumerated or an analogous ground. A facially neutral action can create a distinction if it results in a disproportionate adverse effect for claimants in protected groups (*Withler; Alliance*). Adverse effects discrimination is especially relevant in the case of disability (*Eldridge*). The second stage asks whether the distinction is discriminatory in that it reinforces, perpetuates, or exacerbates disadvantage (*Fraser; Alliance*).

Eldridge v British Columbia (Attorney General), [1997] 3 SCR 624 at para 77 [*Eldridge*].
Fraser, supra para 21 at para 60.
Québec (AG) v Alliance du personnel professionnel et technique de la santé et des services sociaux, 2018 SCC 17 at paras 25, 60, 421 DLR (4th) 1 [*Alliance*].
Withler, supra para 21 at para 39.

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1. Stage 1: The conditions create a distinction based on the enumerated ground of disability

[23] Disability is an enumerated ground under s. 15(1). In the disability context, the “true focus” of the s. 15(1) analysis is not the claimant’s impairment or functional limitations, but the state’s response to these circumstances (*Granovksy*). Failure to consider the adverse effects of generally applicable laws on disabled people can result in discrimination (*Eldridge*).

Granovsky v Canada (Minister of Employment and Immigration), 2000 SCC 28 at para 26, [2000] 1 SCR 703 [*Granovsky*].
Eldridge, supra para 22 at para 64.

[24] Substance addiction is a mental and physical disability, recognized by Supreme Court *obiter* (*Boudreault*) and human rights law (*Canada Human Rights Act; Elk Valley*). The WHO recognized that substance dependence is a disorder of the brain, akin to any other neurological or psychiatric illness. The majority of the COA failed to analyze AUD as a disability and erred in adopting reasoning from analogous grounds jurisprudence (*Malmo-Levine; Egan*).

R v Boudreault, 2018 SCC 58 at para 70 [*Boudreault*].
Canada Human Rights Act, RSC 1985, c H6, s. 25 [*CHRA*].
Official Problem, *supra* para 6 at para 14(v).
Stewart v Elk Valley Coal Corp, 2017 SCC 30 at para 105, 118-119 [*Elk Valley*] (dissenting, not on this point).
R v Malmo-Levine; R v Caine, 2003 SCC 74 at para 184 [*Malmo-Levine*].
Egan v Canada, [1995] 2 SCR 513 at 515 [*Egan*].

A. The Court of Appeal erred in failing to recognize alcohol use disorder as a disability

[25] The majority of the COA failed to engage with Justice Hooper’s finding that AUD is a disability for the purposes of s. 15(1). The Court mischaracterized the basis of Mr. Chaudhry’s claim and substituted considerations of immutability which are not required for protection under s. 15(1). While immutability may signal the existence of a protected characteristic, its presence is not necessary to find analogous or enumerated grounds (*Miron; Lavoie*).

Miron v Trudeal, [1995] 2 SCR 418 at paras 148–149 [*Miron*].
Lavoie v Canada, 2002 SCC 23 at para 2, [2002] 1 SCR 769 [*Lavoie*].

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[26] Under human rights law, the nature of a disability does not change the legal principles applicable to claims of discrimination (*Elk Valley*). Disabilities are not always permanent - they may be acquired and vary in severity as time goes on (*Granovsky*). Alcoholism is a mental and physical disability that stays with an individual for life (*Foley; Handfield*). By invoking immutability to reject Mr. Chaudhry's claim, the COA departed from Supreme Court precedent and denied the reality of his disability.

Elk Valley, supra para 24 at para 22.

Granovsky, supra para 23 at para 27.

Foley v Local Venture, 2018 BCHRT 232 at para 42 [*Foley*].

Handfield v Board of School Trustees, School District No 26 (North Thompson), (1995) 25 CHRR D/452 at para 40, 95 CLLC 230-015 (British Columbia Human Rights Tribunal) [*Handfield*].

Official Problem, *supra* para 6 at para 19.

B. Alcohol addiction is a disability, as recognized by human rights jurisprudence and Supreme Court *obiter*

[27] The *CHRA* explicitly recognizes previous or existing dependence on alcohol as a disability. Where provincial statutes are silent, courts have accepted addiction under the general definition of disability (*BCGSEU; Wright*). The Supreme Court has upheld findings that addiction is a disability, for the purposes of human rights law (*Elk Valley*).

CHRA, supra para 24 at s. 25.

British Columbia (Public Service Agency) v British Columbia Government and Service Employees Union, 2008 BCCA 357 at para 50 [*BCGSEU*].

Wright v College and Association of Registered Nurses of Alberta (Appeals Committee), 2012 ABCA 267 at paras 50–56 [*Wright*].

Elk Valley, supra para 24 at paras 3, 22.

[28] Human rights legislation pre-dates the *Charter* and guides its interpretation (*Andrews; Ontario*). Although they have different legislative functions, human rights principles of equality are generally applicable to questions of discrimination under s. 15(1) (*Andrews; Tranchemontagne*).

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Andrews, supra para 21 at para 20 and paras 18-21.

Ontario (Disability Support Program) v Tranchemontagne, 2010 ONCA 593 at paras 88–89 [*Tranchemontagne*].

Ontario (Human Rights Commission) v Ontario, [1994] OJ No 1732 at paras 30, 18-21, 19 OR (3d) 387 (Ont CA) [*Ontario*].

[29] Outside of the human rights context, the Supreme Court has recognized addiction as a disability in *obiter*. In *Boudreault*, the Court held that people who “suffer from addictions or other disabilities” face difficulties attending court. In *Norberg*, the appellant was described as “subject to the disability of drug addiction”. Further, in *PHS*, Canada conceded that addiction is an illness. The Court upheld the finding that while addicts retain the ability to make some choices, the central feature of addiction is impaired control over the use of the substance.

Boudreault, supra para 24 at para 70.

Norberg v Wynrib, [1992] 2 SCR 226 at para 20, 92 DLR (4th) 449 [*Norberg*].

Canada (Attorney General) v PHS Community Services Society, 2011 SCC 44 at paras 100–101 [*PHS*].

C. The Conditions make a distinction through their adverse effects on Mr. Chaudhry

[30] Adverse effects discrimination occurs when seemingly neutral laws or decisions create distinctions through their disproportionate impacts on groups identified by enumerated or analogous grounds (*Fraser; Alliance*). Identifying distinctions is not “an onerous hurdle designed to weed out claims on technical bases” (*Alliance*).

Fraser, supra para 21 at para 30.

Alliance, supra para 22 at paras 26, 70.

[31] The Conditions impose burdens on Mr. Chaudhry that would not be experienced by an accused without AUD. To abide by his conditions, Mr. Chaudhry must either risk experiencing severe withdrawal symptoms, or face unreasonable social and financial costs. The rights protected by ss. 8-14 of the *Charter* are specific instances of fundamental principles of fairness upon which our legal system is breached. As per Justice Hooper, these principles of fundamental justices are

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entrenched by the minimum standard of s. 7. The Conditions force Mr. Chaudhry to choose between unacceptable options and, in effect, criminalize his disability outside the confines of his home and restrict his liberty to live as a person with an addiction.

Official Problem, *supra* para 6 at para 18.

[32] As a person with severe AUD, Mr. Chaudhry is physically dependent on alcohol and could experience withdrawal symptoms within a few hours of his last drink. Condition 4 severely impairs his ability to go about his life – to attend work, visit family and friends, or seek in-person treatment – because he must periodically return home to manage his disability.

Official problem, *supra* para 6 at para 14(t).

[33] Further, Condition 3 prohibits Mr. Chaudhry's attendance at any *licensed* establishment that *serves* alcohol. In British Columbia, the sale of alcohol is regulated by the *Liquor Control and Licensing Act*. Every liquor licence permits the licensee to both sell and serve liquor (*Liquor Regulations*). Condition 3 therefore prevents Mr. Chaudhry from entering liquor stores, restaurants, and grocery stores, in effect operating as a full prohibition against purchasing alcohol. This means that while on bail, Mr. Chaudhry would have to ration any alcohol already in his home, and rely on friends, family, or pricey delivery services for additional alcohol to manage withdrawals.

Liquor Control and Licensing Act, SBC 2015, c 19 [*Liquor Licensing Act*].

Liquor Control and Licensing Regulation, 2020 B.C. Reg. 283/2020, 54(1)(2-3) and 70(1) [*Liquor Regulations*].

Official problem, *supra* para 6 at para 14(t).

[34] These burdens arise because of Mr. Chaudhry's disability – an accused without AUD would face no adverse health consequences if their access to alcohol was similarly restricted.

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2. Stage 2: The Conditions are discriminatory because they reinforce, perpetuate, and exacerbate Mr. Chaudhry’s disadvantage

[35] The second stage of the s. 15(1) analysis asks whether the distinction has the effect of reinforcing, perpetuating, or exacerbating the claimant’s disadvantage (*Fraser; Alliance*). The goal is to examine the impact of the harm experienced by the claimant in light of any systemic or historical disadvantages (*Fraser*). Social prejudices or stereotypes are not necessary for finding discrimination but may assist in illuminating the law’s adverse effects (*Fraser; Quebec v A*).

Fraser, supra para 21 at paras 76–78.

Alliance, supra para 22 at paras 25, 73, 94.

Quebec (Attorney General) v A, 2013 SCC 5 at para 329 [*Quebec v A*].

[36] The majority of the COA ignored the well-established disadvantage faced by addicts as people with disabilities, instead playing into stereotypes that they can simply “choose” to overcome their addiction at any time (*Eldridge; Granovsky; Elk Valley*). Any “choice” available to Mr. Chaudhry exists in the context of his impaired control over addiction (*PHS*).

Official problem, *supra* para 6 at paras 14(y), 19.

Eldridge, supra para 22 at para 56.

Granovsky, supra para 23 at paras 79–80.

PHS, supra para 29 at paras 99–101

Elk Valley, supra para 24 at para 58.

[37] In assessing Mr. Chaudhry’s claim, the majority of the COA further erred in considering the statutory objectives of bail. As the Supreme Court directed in *Fraser*, “there is no burden on a claimant to prove a distinction is arbitrary” – it is for the government to “demonstrate the law is *not* arbitrary” under s. 1. However, even if arbitrariness was an appropriate consideration, the Conditions would be insufficient because they fail to mitigate the statutory risks set out in s. 515(10). The majority of the COA acknowledged that because of his addiction, Mr. Chaudhry is at greater risk of breaching the Conditions. If the purpose of the Conditions was to protect public safety, imposing a condition that invites breach fails to protect anyone.

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Fraser, supra para 21 at paras 79–80 (emphasis in original).
Official Problem, *supra* para 6 at para 19.

A. The “choices” available to Mr. Chaudhry are irrelevant to finding discrimination

[38] Differential treatment that arises through choices made by an individual will not protect against a finding of discrimination (*Fraser; Quebec v A*). Focusing on Mr. Chaudhry’s “choice” to comply with the Conditions shields them from constitutional scrutiny and reinforces stereotypes about people with substance abuse issues (*Fraser*). Instead, substantive equality requires attention to his full context, the actual impact of the law on his situation, and the persistent systemic disadvantages he faces as a person with a disability (*Fraser; Alliance*).

Fraser, supra para 21 at paras 86, 90-92, 42.
Quebec v A, supra para 35 at para 336
Alliance, supra para 22 at para 28.

[39] Systemic inequalities shape the choices available to individuals in enumerated and analogous groups, often pushing them in one direction or another (*Fraser*). Similarly, in *Boudreault*, the Supreme Court found that defendants’ personal circumstances severely constrain their choice to comply. The recognition that personal circumstances may restrict freedom of choice should equally apply to charges for breach of bail conditions.

Fraser, supra para 21 at paras 90, 91.
Boudreault, supra para 24 at paras 1–6.
Official problem, *supra* para 6 at para 14(y).

[40] Mr. Chaudhry’s choice to abide by the Conditions was constrained by the realities of his disability. He could return home every few hours to drink, avoiding withdrawal symptoms, but severely effecting his ability to earn an income and engage in social activities. Or, he could abide by the conditions while going about his life as normal, risking the potentially fatal symptoms of withdrawal. If Mr. Chaudhry wants to drink, he is forced to rely others to purchase and transport

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the alcohol to him which may expose him to further social stigma and increased costs associated with delivery services.

[41] While alcohol abuse may involve choice and learned behaviours, addiction is a disease in which the central feature is impaired control over the use of the addictive substance (*PHS*). Compliance comes at unreasonable cost to Mr. Chaudhry, that would not be experienced by an able-bodied accused. The Conditions restrict Mr. Chaudhry's ability to attend to his addiction and the "choice" to breach was beyond his "effective control" (*Miron; Quebec; Fraser*).

Official Problem, *supra* para 6 at para 14.

PHS, *supra* para 29 at para 1.

Miron, *supra* para 25 at para 153.

Quebec v A, *supra* para 35 at para 316.

Fraser, *supra* para 21 at paras 90, 91.

B. People disabled by addiction experience disadvantage and stereotyping

[42] People with disabilities have been excluded from the labour force, denied access to social interaction, and subjected to stereotyping (*Eldridge*). Their entrance into the social mainstream has been conditional upon their ability to emulate able-bodied norms (*Eldridge*). Further, the Court of Appeal for Ontario has accepted that addiction is a disability that causes significant social stigma and prejudice (*Tranchemontagne*). The Conditions demand that Mr. Chaudhry act as if he is able-bodied, though "addiction is not cured merely by threatening state sanction" (*Boudreault*).

Eldridge, *supra* para 22 at para 56.

Tranchemontagne, *supra* para 28 at paras 121, 126.

Boudreault, *supra* para 24 at para 86.

Official problem, *supra* para 6 at para 18.

[43] People with mental illnesses are over-represented in the criminal justice system (*EB*) and have been the historic subjects of isolation, abuse, neglect, and discrimination (*Swain*). The majority of the COA acknowledged that Mr. Chaudhry was at greater risk of breaching the Conditions because of his disability. By imposing terms that cannot reasonably be met, the

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Conditions reinforce Mr. Chaudhry's pre-existing disadvantage, subjecting him to further health consequences, unreasonable social and financial costs, and criminal sanction.

R v EB, 2020 ONSC 4383 at para 26 [*EB*].

R v Swain, [1991] 1 SCR 933, 47 OAC 81 at pp 973-974 [*Swain*].

[44] In *Elk Valley*, Justice Gascon canvassed the stereotypes facing people living with addiction. Although drug dependence is a protected ground of discrimination in human rights law, stigmas about people with addictions "sometimes impair the ability of courts and society to objectively assess the merits of their discrimination claims" (*Elk Valley*). The majority of the COA reinforced the stereotype that individuals suffering from addiction are the "authors of their own misfortune" (*Elk Valley*) because they have the potential to "voluntarily overcome" their addiction.

Elk Valley, *supra* para 24 at para 58.

Official Problem, *supra* para 6 at para 19.

[45] The Conditions restrict Mr. Chaudhry's ability to enter and participate in society. They prohibit his attendance in social spaces, limit his engagement in the workforce, and criminalize his addiction outside the confines of his home. The Conditions are discriminatory because they reinforce the pre-existing disadvantage experienced by Mr. Chaudhry as a person with a disability and therefore infringe s. 15(1) of the *Charter*.

Issue 2: The Conditions violate s. 11(e) of the Charter

[46] Section 11(e) protects accused persons from unreasonable bail conditions and forms of release (*Antic*). In *Zora*, the Supreme Court unanimously affirmed that conditions of release may only be imposed where they are necessary to attenuate the risks identified by s. 515(10). Release on an undertaking, without conditions, is the default position (*Zora*). Mr. Chaudhry accepts the imposition of *some* conditions to address his background. However, Conditions 3 and 4 are

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unreasonable, and therefore unconstitutional, because they were unnecessary to protect the public, overly intrusive, and disproportionate to any risk he posed.

R v Antic, 2017 SCC 27 at paras 21, 67(c), [2017] 1 SCR 509 [*Antic*].
R v Zora, 2020 SCC 14 at paras 1, 21, 87 [*Zora*].

[47] *Zora* provides five considerations to guide the s. 11(e) analysis: whether there is a demonstrated need for conditional release, the necessity and reasonableness of the imposed conditions, whether they are sufficiently linked to grounds for detention under 515(10)(c), and their cumulative effect. These questions are inter-related and need not be asked in every case.

Zora, *supra* para 46 at paras 87–90.

1. Condition 3 and 4 are unnecessary for the protection of the public

[48] Bail conditions must attenuate risks that would otherwise prevent release (*Zora*). Conditions are necessary only where they address the specific risks outlined in s. 515(10) of the *Code*: failure to attend in court; harm to public protection and safety; or maintenance of confidence in the administration of justice. The majority of the COA identified the goal of the Conditions as public protection.

Zora, *supra* para 46 at paras 87–89.
Official Problem, *supra* para 6 at para 19

[49] Condition 3 and 4 place impractical restrictions on Mr. Chaudhry’s liberty and ability to manage his addiction, effectively inviting breach. The Conditions were therefore incapable of mitigating any risk to the public, becoming nothing more than a personal source of criminal liability. Where compliance is unrealistic, public protection remains illusory (*Zora*; *Omeasoo*).

Zora, *supra* para 46 at paras 88–89, 54.
R v Omeasoo, 2013 ABPC 328 at para 39, [2014] 5 WWR 598 [*Omeasoo*].
Official Problem, *supra* para 6 at para 19.

[45]

2. Conditions 3 and 4 are unreasonable

[50] Only conditions specifically tailored to the individual circumstances of the accused are reasonable (*Zora*). Terms of release must be “minimally intrusive and proportionate to any risk” posed by Mr. Chaudhry - conditions that simply set him up for failure are unreasonable (*Zora*; *Omeasoo*). Assessments of reasonableness should contemplate that failures to comply become separate crimes against the administration of justice, potentially resulting in the loss of liberty (*Zora*; *Antic*).

Zora, supra para 46 at paras 1, 87-94, 25, 73-76, 82.

Omeasoo, supra para 49 at para 37.

Antic, supra para 46 at para 30.

[51] An accused who is presumed innocent must not “needlessly suffer on being released” (*Antic*). In *Omeasoo*, the Alberta Provincial Court found that imposing abstinence conditions on a person with alcoholism is “tantamount to ordering the clinically depressed to ‘just cheer up’” (*Omeasoo*). The Conditions do not absolutely prohibit alcohol consumption; however, they unreasonably limit Mr. Chaudhry’s access to alcohol, similarly interfering with his ability to manage his addiction.

Omeasoo, supra para 49 at para 37.

Antic, supra para 46 at para 66.

[52] The Conditions further expose Mr. Chaudhry to serious health consequences resulting from his physical dependence on alcohol. He must rely on others to help manage his disability, a burden which is neither safe nor reasonable (*Zora*). While presumed innocent, he cannot leave his house for prolonged periods of time, interfering with his employment prospects and daily life (*Zora*). Due to his disability, Mr. Chaudhry cannot reasonably or realistically abide by the Conditions – ensuring that he will fail and be subject to criminal sanction

Official Problem, *supra* para 6 at paras 19, 12(m)-13.

[45]

Zora, supra para 46 at paras 79, 88–89.

[53] Mr. Chaudhry accepts that *some* conditions were required to respond to the modest risk to the public posed by his interim release. However, the Conditions are not tailored to the realities of his addiction, presenting an unreasonable limit on his freedom. These restrictions are disproportionate to any risk posed by Mr. Chaudhry, and are, therefore, unreasonable.

Official Problem, *supra* para 6 at para 13.

Zora, supra para 46 at paras 90-92.

3. Conditions 3 and 4 were not imposed to maintain confidence in the administration of justice

[54] Any condition imposed to maintain confidence in the administration of justice must consider of the combined effect of all the relevant circumstances, and the four factors set out in 515(10)(c) (*Zora*). These risks were not canvassed by the bail justice and the majority of the COA accepted that the Conditions' purpose was public protection. The Conditions were not imposed to address the harm to confidence in administration of justice, so this indicia of the *Zora* framework does not apply.

Zora, supra para 46 at paras 90-92.

Official Problem, *supra* para 6 at para 19.

4. The cumulative effects of the bail conditions are unreasonable

[55] The cumulative effect of Mr. Chaudhry's Conditions is severe. The Conditions force Mr. Chaudhry to schedule his life around his alcohol consumption so he does not suffer withdrawal symptoms while away from home. He must rely on others for access to alcohol and cannot attend establishments that bear no link to his criminal history, like grocery stores (*Regulations*). Further, without sufficient reasons for the Conditions, he is denied the ability to pursue an effective bail review. Taken together, these conditions are not the least onerous required in the circumstances.

Zora, supra para 46 at paras 79, 89.

[45]

Liquor Regulations, supra para 33 at s. 56.

A. The reasons provided by the justice of the peace were insufficient

[56] The Conditions' detrimental effects were heightened by the bail justice's insufficient reasons. In a contested bail hearing, like Mr. Chaudhry's, it is an error of law for a justice to order a more restrictive form of release without justifying her decision to reject less onerous forms (*Zora, Antic*). While the justice was satisfied that the Conditions were the least onerous in the circumstances, she did not provide reasons to demonstrate that her decision was based on the statutory risks under s. 515(10).

Zora, supra para 46 at paras 84, 24.

Antic, supra para 46 at para 67(f).

Clarifications, *supra* para 14 at para 5.

[57] Through s. 493.2(b) of the *Code*, Parliament has further directed judicial officials to give particular attention to the circumstances of accused persons belonging to vulnerable populations that are overrepresented in the criminal justice system and disadvantaged in obtaining release. As an addict and person with a disability, Mr. Chaudhry is part of one such vulnerable group (*Zora*).

Zora, supra para 46 at para 92.

[58] Based on the justices' reasons, it is not clear whether she considered Mr. Chaudhry's alcohol addiction when imposing the Conditions, what specific statutory goals she thought were relevant, or why less onerous conditions of release were insufficient (*Zora; Antic*). Insufficient reasons make bail decisions difficult to review (*Sheppard*), obstructing Mr. Chaudhry's ability to make effective or "liberal use" of bail review processes and preventing him from seeking conditions that would accommodate his disability (*Zora*).

Clarifications, *supra* para 14 at para 5.

R v Sheppard, 2002 SCC 26, [2002] 1 SCR 869 at paras 66-67 [*Sheppard*].

[45]

Zora, supra para 46 at paras 24, 92.

Antic, supra para 46 at para 67(f).

[59] Mr. Chaudhry's bail strikes at the heart of the Supreme Court's concerns in *Zora*: the rising number of administration of justice charges caused by unnecessary and unreasonable bail conditions that were not tailored to the circumstances of the accused. Onerous conditions create a cycle of incarceration that disproportionately impacts vulnerable and marginalized populations including those living with addictions (*Zora*). Taken together, the Conditions are unreasonable because Mr. Chaudhry cannot realistically comply with them due to his disabling AUD.

Zora, supra para 46 at paras 76, 5, 57, 79.

Issue 3: The infringements of ss. 15 and 11(e) are not justified in a free and democratic society

[60] These infringements of Mr. Chaudhry's rights to equality and reasonable bail cannot be saved by s. 1 of the *Charter*. While public safety is important to a free and democratic society, the impracticality of Mr. Chaudhry's compliance with the conditions frustrates any connection to this goal. The justice of the peace did not justify why Mr. Chaudhry was given severely impairing measures despite the availability of more effective and less intrusive alternatives. The negative effects of the Conditions are significantly greater than the minimal benefits to public safety.

1. The Conditions must be justified according to criminal law standards

[61] Where bail conditions breach *Charter* rights, the state is obligated to justify any infringements through the application of the *Oakes* test, as employed by Justice Hooper and Justice Krelborne. While bail judges have significant statutory discretion to set "desirable" conditions per s. 515(4), the law of bail remains criminal, not administrative. Administrative decisions cannot result in findings of criminal liability, to do would infringe s. 96 of the *Constitution Act, 1867* (Mullan). An accused found in breach of bail conditions faces criminally liability (*Code*). With Mr. Chaudhry's liberty at risk, there is simply no room for a "margin of appreciation" as

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contemplated under the *Doré/Loyola* framework – the Conditions must be demonstrably justified in a free and democratic society.

R v Oakes, [1986] 1 SCR 103, 26 DLR (4th) 200 [*Oakes*].

Official Problem, *supra* para 6 at paras 18 & 20.

Criminal Code, *supra* para 12 at ss. 145(5) and 515(4).

Mullan, *Administrative Law: Essentials of Canadian Law* (Toronto: Irwin Law Inc, 2001), at 392 [Mullan].

Doré v Barreau du Québec, 2012 SCC 12 at para 57 [*Doré*].

Loyola High School v Quebec (Attorney General), 2015 SCC 12 [*Loyola*].

2. The *Oakes* Test

[62] Under *Oakes*, rights impairing measures must be prescribed by law, targeting a pressing and substantial objective. These measures must be (1) rationally connected to the objective; (2) minimally impairing of the rights at issue; and (3) have proportionate the salutary and deleterious effects (*Oakes*). Throughout the analysis, the burden lies on the Crown to show that the infringements of Mr. Chaudhry’s *Charter* rights are justifiable in a “free and democratic society” (*Oakes*).

Oakes, *supra* para 61 at paras 65-76, 82, 67.

[63] As noted by Justice Hooper, ss. 8-14 rights are specific instances of the “fundamental principles of fairness...entrenched as a constitutional minimum standard by section 7.” Violations of s. 11(e) therefore implicate rights protected by s. 7 and will suffer the same difficulties in justification under s. 1. It will be rare that “a violation of the principles of fundamental justice ... be upheld as a reasonable limit demonstrably justified in a free and democratic society” (*G(J)*).

New Brunswick (Minister of Health and Community Services) v G(J), [1999] 3 SCR. 46 at para 99, 177 DLR (4th) 124 [*G(J)*].

[64] Given its relationship with s. 7, it is unsurprising that the s. 11(e) analysis mirrors the *Oakes* test to a large extent. Appropriate bail conditions will be necessary, reasonable, narrowly focused on addressing specific statutory objectives, and proportionate to any risk posed by the accused

[45]

(*Zora*). These requirements are natural analogues to the rational connection, minimal impairment, and final balancing stages of the *Oakes* test. This analytical similarity means that, like a breach to s. 7 rights, a breach of s. 11(e) will only be justified “in cases arising out of exceptional conditions” (*G(J)*).

G(J), *supra* para 63 at para 99.

Oakes, *supra* para 61.

Zora, *supra* para 46 at para 89.

A. The Conditions target a pressing and substantial objective

[65] The Conditions must target a pressing and substantial objective to justify the infringement of Mr. Chaudhry’s rights to equality and reasonable bail (*Oakes*). Mr. Chaudhry accepts that protecting public safety is a pressing and substantial objective. However, the Conditions fail each remaining stage of the *Oakes* test.

Oakes, *supra* para 61 at para 73.

B. The Conditions fail the proportionality analysis

[66] The Conditions are not proportional. They are not rationally connected because they do not achieve the objective of public protection. They are not minimally impairing because less intrusive means of achieving the statutory objective were available but unacknowledged. Any speculative benefits of the Conditions are outweighed by their deleterious effects.

i. Without Mr. Chaudhry’s realistic ability to comply, the Conditions are not rational connected to protecting public safety

[67] As Chief Justice Dickson stressed in *Oakes*, the evidence necessary to justify a s. 1 analysis “should be cogent and persuasive” (*Oakes*; *Hutterian Brethren*). If the measure “has no impact in the quest to achieve [the] objective, or in fact works in opposition to these objectives” the law is “arbitrary, unfair or based on irrational considerations” and the measure cannot be demonstrably justified (*Keegstra*; *Oakes*).

[45]

Oakes, supra para 61 at paras 68, 70.

Alberta v Hutterian Brethren of Wilson Colony, 2009 SCC 37 at para 135 [*Hutterian Brethren*].

R v Keegstra, [1990] 3 SCR 697 at para 104 [*Keegstra*].

[68] There is no causal connection, by logic or reason, between prohibiting Mr. Chaudhry's public possession, purchase, or consumption of alcohol and protecting the public (*RJR; Carter*). While the studies cited by the Attorney General illustrate that some "alcohol problems" or "substance abuse issues" relate to increased recidivism, the relevance of these findings to Mr. Chaudhry is unclear. Alcohol use disorder, the severe disability that Mr. Chaudhry is diagnosed with, is characterized by physical dependence and neurochemical changes to the brain. "Problem drinking" is four times as common as physical dependence on alcohol, indicating that the studies did not directly analyze alcohol use disorder and recidivism. These studies do not provide an accurate prediction of Mr. Chaudhry's behaviour.

Carter v Canada (Attorney General), 2015 SCC 5 at para 99 [*Carter*].

RJR-MacDonald Inc. v Canada, [1995] 3 SCR 199 at para 153, 127 DLR (4th) 1 [*RJR*].

Official Problem, supra para 6 at para 14.

[69] Justices should tailor bail conditions to the individual accused (*Zora*). As no two people are the same, broad social science evidence with no clear relationship to the accused should not be used to justify onerous conditions. Mr. Chaudhry's specific disability cannot be compared to undefined "alcohol problems" or "substance abuse issues" that may be correlated to re-offending.

Zora, supra para 46 at paras 22, 23, 47, 88.

[70] The conditions bear no logical connection to the statutory objectives if the accused is unable to comply. Compliance is wholly unrealistic because of the complete prohibition of possession and purchase of alcohol. At some point, Mr. Chaudhry must purchase and possess alcohol in public to consume legally within his home, or suffer severe, potentially fatal, symptoms of withdrawal (*Denny*). Therefore, the Conditions are not rationally connected to public protection.

[45]

R v Denny, 2015 NSPC 49 at para 15 [*Denny*].

[71] Barring consumption or possession of alcohol in public does not prohibit Mr. Chaudhry from consuming alcohol at home and later entering public while intoxicated. Accordingly, the proposition that these Conditions are *necessary* to protect the public is unreasonable. It cannot be concluded that the Conditions protect the public from Mr. Chaudhry's intoxication because they do not prohibit Mr. Chaudhry from being intoxicated in public.

[72] At the time of bail, Mr. Chaudhry was a legally innocent person with a disability. The chosen conditions were overly restrictive and intrusive. Having little to no rational connection to the actual risk posed to the public, the Conditions only served as a barrier to Mr. Chaudhry's enjoyment of equality and reasonable bail. Requesting Mr. Chaudhry abstain from a manifestation of his disability outside his home is not cogent or persuasively connected to public safety (*Oakes*). With "no impact" on the objective sought, the Conditions are "arbitrary, unfair [and] based on illogical considerations" (*Keegstra; Oakes*).

Oakes, supra para 61 at paras 72, 74.

Keegstra, supra para 67 at para 104.

ii. *The Conditions are not minimally impairing*

[73] The infringement on Mr. Chaudhry's *Charter* rights is severe. As a person with a physical dependence on alcohol, he may experience withdrawal symptoms after a few hours since his last drink. The Conditions inhibit Mr. Chaudhry's ability to go to work, run errands, or live in society. Bail conditions should not be so restrictive that they resemble a detention order (*Antic; Penunsi*). Conditions 3 and 4 are unreasonable, impractical, and have the effect of reinforcing Mr. Chaudhry's pre-existing disadvantage as a person with a disability.

Official Problem, *supra* para 6 at para 14(t).

Antic, supra para 46 at para 56.

R v Penunsi, 2019 SCC 39 at para 80 [*Penunsi*].

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[74] The focus at the minimal impairment stage “is whether Parliament could reasonably have chosen an alternative means which would have achieved the identified objective as effectively” (*Chaulk*). The measure is unjustified where “the government fails to explain why a significantly less intrusive and equally effective measure was not chosen” (*RJR-MacDonald*).

R v Chaulk, [1990] 3 SCR 1303 at para 74, [1991] 2 WWR 385 [*Chaulk*].
RJR-MacDonald, *supra* para 73 at para 160.

a. Less intrusive measures were available

[75] Less impairing conditions were readily available. In *Joy*, the British Columbia Court of Appeal imposed a condition that the accused “shall not enter any liquor store, beer and wine store, bar, pub, lounge or any other business premise from which minors are excluded by the terms of their liquor license.” If subject to this type of condition, Mr. Chaudhry would be allowed to attend establishments where the primary commodity sold is food, for example restaurants and grocery stores. He would be able purchase alcohol and participate in some social activities, while being prevented from attending establishments that were linked to his arrest, for instance bars and pubs. Such a restriction is less impairing on Mr. Chaudhry while better serving the public because society can realistically expect his full compliance.

R v Joy, 2011 BCCA 189 at para 14 [*Joy*].
Liquor Licensing Act, *supra* para 33.

[76] In *Forrest*, the Court replaced an abstinence condition with a term specifying that the offender was “[n]ot to be found in a public place in an intoxicated condition”. This condition would also be less impairing, allowing Mr. Chaudhry to attend to his disability, while protecting the public. Mr. Chaudhry’s previous offences only occurred when he was inebriated. Alcohol abuse does not involve “a total loss of control”. People with a physical dependence on alcohol can drink more without feeling the same effects compared to someone without AUD. Restricting *any* alcohol

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consumption in public is unrelated to public safety. Mr. Chaudhry can safely consume alcohol in public without reaching the stage of inebriation, achieving the same public safety objective as a complete prohibition of public consumption.

R v Forrest, [1992] 10 BCAC 293 at paras 14, 21 WAC 293 (CA) [*Forrest*].
Official Problem, *supra* para 6 at paras 12(k),14(s).

b. The bail judges' decision should be given limited deference

[77] In *Antic*, the Supreme Court confirmed that “[i]t is an error of law for a justice or a judge to order a more restrictive form of release without justifying the decision to reject the less onerous forms.” Reviewing courts can vary the initial terms of release where the impugned decision contains an error of law or is clearly inappropriate (*St-Cloud*). In imposing a more restrictive form of release without justification, the justice of the peace made an error of law; therefore, no deference is owed to her determination.

Antic, *supra* para 46 at para 67(f) (emphasis added).
R v St-Cloud, 2015 SCC 27 at para 6 [*St-Cloud*].

[78] Deference is further inappropriate where “the government is the singular antagonist of the individual” (*Irwin Toy*), “as it usually will be where the violation occurs in the context of criminal law” (*McKinney*). In these circumstances, where the “issue is one of the state versus an individual's liberty, a more stringent standard will be imposed to ensure that the government has applied the least drastic measure” (*K Mart*). This court is in “as good a position” as a judicial official to assess “whether the least drastic means [...] have been chosen” (*Laba*).

Irwin Toy Ltd v Quebec (Attorney General), [1989] 1 SCR 927 at 994 [*Irwin Toy*].
McKinney v University of Guelph, [1990] 3 SCR 229 at 280-281 [*McKinney*].
UFCW, Local 1518, v K Mart Canada Ltd, [1999] 2 SCR 1083 at para 127, 176 DLR (4th) 607 [*K Mart*].
R v Laba, [1994] 3 SCR 965 at para 95, 120 DLR (4th) 175 [*Laba*].

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[79] For rights “enshrined in ss. 7 to 14 of the *Charter*, the state, on behalf of the whole community” will typically assert its “responsibility for prosecuting crime”. This Court can “assess with some certainty whether the ‘least drastic means’ for achieving the purpose have been chosen...” (*Irwin Toy*). In these circumstances, “there is no room for deference to the [justice]: the task of making ‘difficult choices’ falls squarely on the Court” (*Swain*).

Irwin Toy, *supra* para 78 at 994.

Swain, *supra* para 43 at para 188.

[80] Even if the Court finds that bail decisions generally warrant increased deference, the infringement brought before this Court is equality. In *Boulachanis*, a discriminatory decision from the Correctional Service of Canada was reviewed with close scrutiny. The Federal Court confirmed that a prison placement determination does “not call for the same level of deference” when the decision impairs substantive equality (*Boulachanis*).

Boulachanis c Canada (Procureur général), 2019 FC 456 at para 32 [*Boulachanis*].

iii. *The deleterious effects of the Conditions outweigh any speculative benefits to the public*

[81] In the final stage of the *Oakes* test, this Court must perform a broad assessment, weighing the actual benefits against the restriction on the individual (*KRJ*). The restriction’s benefits must outweigh the deleterious effects as measured against the values underlying the *Charter* (*KRJ*; *Dagenais*).

R v KRJ, 2016 SCC 31 at paras 77-79, 91, [2016] 1 SCR 906 [*KRJ*].

Dagenais v Canadian Broadcasting Corp, [1994] 3 SCR 835 at paras 78, 82, 1994 CanLII 39 (SCC) [*Dagenais*].

[82] The costs to Mr. Chaudhry are severe. The Conditions arbitrarily “criminalize behaviour that would otherwise be lawful.” The Conditions criminalize behaviour manifesting from his disability (*Zora*). Offences under s. 145 of the *Code* are very common for people with disabilities (*Zora*). The Conditions “create a cycle of incarceration, especially among the most vulnerable in

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our population” (*Zora*). Because the Conditions cannot reasonably be complied with, they lock Mr. Chaudhry, into the cycle of incarceration.

Zora, supra para 46 at paras 25, 5, 79.

[83] The protection afforded by the Conditions is merely conjecture. Compliance is nearly impossible. The Conditions violate the accused rights and freedoms while providing no actual benefit to public safety, the bail system, or the administration of justice.

[84] The government has not discharged its burden of showing that “the benefits society stands to gain” are not “marginal and speculative” (*KRJ*). Due to the “largely speculative salutary effects”, the Conditions do not outweigh their “tangible and substantial drawbacks” (*KRJ*).

KRJ, supra para 81 at para 92.

[85] The *Oakes* test requires “respect for the inherent dignity of the human person, commitment to social justice and equality.” The Conditions imposed on Mr. Chaudhry fail to respect his dignity and do not uphold the Crown’s commitment to equality. These infringements to Mr. Chaudhry’s right to equality and reasonable bail cannot be justified in a free and democratic society.

Oakes, supra para 61 at para 64.

PART V – ORDER SOUGHT

The Appellant seeks an order allowing the appeal and quashing the conviction.

All of which is respectfully submitted this 21st day of January 2021.

Team 6

PART VI – LIST OF AUTHORITIES AND STATUTES

LEGISLATION	SECTIONS
<i>Canadian Charter of Rights and Freedoms</i> , s 11(e), 15, being Part I of the <i>Constitution Act, 1982</i> , being Schedule B to the <i>Canada Act, 1982</i> (UK), 1982, c.11 [<i>Charter</i>].	11(e), 15(1), 15(2)
<i>Criminal Code</i> , RSC 1985, c C-46, s 515(10), 145(5) [<i>Code</i>].	515(10), 145(5)
<i>Canada Human Rights Act</i> , RSC 1985, c H6, s 25 [<i>CHRA</i>].	25
<i>Liquor Control and Licensing Act</i> , SBC 2015, c 19 [<i>Liquor Licensing Act</i>].	
<i>Liquor Control and Licensing Regulation</i> , 2020 B.C. Reg. 283/2020, ss. 54(1)(2-3), 56, and 70(1) [<i>Liquor Regulations</i>].	54, 56, 70

JURISPRUDENCE
<i>Fraser v Canada (Attorney General)</i> , 2020 SCC 28 [<i>Fraser</i>].
<i>Withler v Canada (Attorney General)</i> , 2011 SCC 12 [<i>Withler</i>].
<i>Law Society of British Columbia v Andrews</i> , [1989] 1 SCR 143 [<i>Andrews</i>].
<i>Eldridge v British Columbia (Attorney General)</i> , [1997] 3 SCR 624 [<i>Eldridge</i>].
<i>Québec (AG) v Alliance du personnel professionnel et technique de la santé et des services sociaux</i> , 2018 SCC 17, 421 DLR (4th) 1 [<i>Alliance</i>].
<i>Granovsky v Canada (Minister of Employment and Immigration)</i> , 2000 SCC 28, [2000] 1 SCR 703 [<i>Granovsky</i>].
<i>R v Boudreault</i> , 2018 SCC 58 [<i>Boudreault</i>].
<i>Stewart v Elk Valley Coal Corp</i> , 2017 SCC 30 [<i>Elk Valley</i>].
<i>R v Malmo-Levine; R v Caine</i> , 2003 SCC 74 [<i>Malmo-Levine</i>].
<i>Egan v Canada</i> , [1995] 2 SCR 513 [<i>Egan</i>].
<i>Miron v Trudeal</i> , [1995] 2 SCR 418 [<i>Miron</i>].
<i>Lavoie v Canada</i> , 2002 SCC 23, [2002] 1 SCR 769 [<i>Lavoie</i>].
<i>Foley v Local Venture</i> , 2018 BCHRT 232 [<i>Foley</i>].
<i>Handfield v Board of School Trustees, School District No 26 (North Thompson)</i> , (1995) 25 CHRR D/452, CLLC 230-015 (British Columbia Human Rights Tribunal) [<i>Handfield</i>].
<i>Ontario (Disability Support Program) v Tranchemontagne</i> , 2010 ONCA 593 [<i>Tranchemontagne</i>].
<i>Ontario (Human Rights Commission) v Ontario</i> , [1994] OJ No 1732, OR (3d) 387 (Ont CA) [<i>Ontario</i>].
<i>British Columbia (Public Service Agency) v British Columbia Government and Service Employees Union</i> , 2008 BCCA 357 [<i>BCGSEU</i>].
<i>Wright v College and Association of Registered Nurses of Alberta (Appeals Committee)</i> , 2012 ABCA 267 [<i>Wright</i>].
<i>Norberg v Wynrib</i> , [1992] 2 SCR 226, DLR (4th) 449 [<i>Norberg</i>].
<i>Canada (Attorney General) v PHS Community Services Society</i> , 2011 SCC 44 [<i>PHS</i>].
<i>Quebec (Attorney General) v A</i> , 2013 SCC 5 [<i>Quebec v A</i>].
<i>R v EB</i> , 2020 ONSC 4383 [<i>EB</i>].
<i>R v Swain</i> , [1991] 1 SCR 933, 47 OAC 81 [<i>Swain</i>].

<i>R v Antic</i> , 2017 SCC 27, [2017] 1 SCR 509 [<i>Antic</i>].
<i>R v Zora</i> , 2020 SCC 14 [<i>Zora</i>].
<i>R v Omeasoo</i> , 2013 ABPC 328, [2014] 5 WWR 598 [<i>Omeasoo</i>].
<i>R v Sheppard</i> , 2002 SCC 26, [2002] 1 SCR 869 [<i>Sheppard</i>].
<i>R v Le</i> , 2006 CarswellMan 225, 240 C.C.C. (3d) 130 (Man CA) [<i>Le</i>].
<i>R v Oakes</i> , [1986] 1 SCR 103, 26 DLR (4th) 200 [<i>Oakes</i>].
<i>Doré v Barreau du Québec</i> , 2012 SCC 12 [<i>Doré</i>].
<i>Loyola High School v Quebec (Attorney General)</i> , 2015 SCC 12 [<i>Loyola</i>].
<i>Alberta v Hutterian Brethren of Wilson Colony</i> , 2009 SCC 37 [<i>Hutterian Brethren</i>].
<i>R v Keegstra</i> , [1990] 3 SCR 697 [<i>Keegstra</i>].
<i>Carter v Canada (Attorney General)</i> , 2015 SCC 5 [<i>Carter</i>].
<i>RJR-MacDonald Inc. v Canada</i> , [1995] 3 SCR 199, 127 DLR (4th) 1 [<i>RJR-MacDonald</i>].
<i>R v Denny</i> , 2015 NSPC 49 [<i>Denny</i>].
<i>R v Penunsi</i> , 2019 SCC 39 [<i>Penunsi</i>].
<i>R v Chaulk</i> , [1990] 3 SCR 1303, [1991] 2 WWR 385 [<i>Chaulk</i>].
<i>R v Joy</i> , 2011 BCCA 189 [<i>Joy</i>].
<i>R v Forrest</i> , [1992] 10 BCAC 293, 21 WAC 293 (BCCA) [<i>Forrest</i>].
<i>R v St-Cloud</i> , 2015 SCC 27 [<i>St-Cloud</i>].
<i>Irwin Toy Ltd v Quebec (Attorney General)</i> , [1989] 1 SCR 927 [<i>Irwin Toy</i>].
<i>McKinney v University of Guelph</i> , [1990] 3 SCR 229 [<i>McKinney</i>].
<i>UFCW, Local 1518, v K Mart Canada Ltd</i> , [1999] 2 SCR 1083, 176 DLR (4th) 607 [<i>K Mart</i>].
<i>R v Laba</i> , [1994] 3 SCR 965, 120 DLR (4th) 175 [<i>Laba</i>].
<i>Boulachanis c Canada (Procureur général)</i> , 2019 FC 456.
<i>R v KRJ</i> , 2016 SCC 31, [2016] 1 SCR 906 [<i>KRJ</i>].
<i>Dagenais v Canadian Broadcasting Corp</i> , [1994] 3 SCR 835, 1994 CanLII 39 (SCC) [<i>Dagenais</i>].

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Clarifications to the 2020 Wilson Moot Problem [Clarifications].