

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**SOPHIA MATHUR, a minor by her litigation guardian CATHERINE ORLANDO, ZOE  
KEARY-MATZNER, a minor by her litigation guardian ANNE KEARY, SHAELYN  
WABEGIJG, SHELBY GAGNON, ALEXANDRA NEUFELDT, MADISON DYCK and  
LINDSAY GRAY**

Applicants

- and -

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO**

Respondent

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**FACTUM OF THE INTERVENER,  
DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS**

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September 12, 2025

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## **PART I — OVERVIEW**

1. The David Asper Centre for Constitutional Rights intervenes on this re-hearing on the issue of how the remedies available under s. 24(1) of the *Charter* can meaningfully vindicate the rights and freedoms of Canadians when the *Charter*-infringing state action relates to climate change.
2. Novel issues require novel remedies. Section 24(1) of the *Charter* provides courts with a versatile instrument capable of crafting “appropriate and just” remedies. This versatility is available even where — perhaps especially where — a *Charter* breach emerges from a complex factual matrix.
3. Climate change is one such matrix. In this context, courts have the ability and, indeed, the obligation, to leverage the plethora of tools available to them. Declining to do so risk blunting the Constitution’s ability to deliver justice where the need is sharpest and excluding the judiciary from the fight against climate change.

## **PART II — FACTS**

4. The David Asper Centre takes no position on the facts of this application.

## **PART III — ISSUES AND THE LAW**

5. The relief the Applicants seek in this case — a declaration that Ontario’s target is unconstitutional and an order requiring that Ontario implement a “science-based” greenhouse gas target — is within this Court’s remedial jurisdiction. The Asper Centre also submits that supervisory jurisdiction is constitutionally available and institutionally practical.

**A. DECLARATORY RELIEF**

6. The Supreme Court has long recognized declarations as “an effective and flexible remedy for the settlement of real disputes.”<sup>1</sup> Indeed, the availability of declaratory relief was a basis upon which the first iteration of this application survived the Attorney General’s motion to strike.<sup>2</sup> In addition to vindicating violations of claimant’s rights, declarations also serve to “provide the legal framework for the executive to exercise its functions and to consider what actions to take in respect of [the claimant], in conformity with the *Charter*,”<sup>3</sup> without wading in the pool of public policy.<sup>4</sup>

7. Importantly, declarations are in principle available even in the absence of consequential relief.<sup>5</sup> If for whatever reason the Court’s ultimate view is that other forms of relief are not appropriate, a declaration can nonetheless issue.

**B. ORDERING A “SCIENCE-BASED” TARGET**

8. The Applicants also seek an order directing Ontario to set a “science-based” target. While it did not determine the availability of this remedy, the Court of Appeal rejected Ontario’s submission that it amounted to a request “that the court assume judicial control over environmental and climate policy” or that it would be overly “vague and imprecise.”<sup>6</sup> Rather, the Court noted that such an order would be no different “than in *Khadr*, where the Supreme Court left it to Canada to determine the precise *Charter* compliant steps it needed to take.”<sup>7</sup>

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<sup>1</sup> *Canada (Prime Minister) v. Khadr*, [2010 SCC 3](#), at [para. 46](#), quoting *R. v. Gamble*, [\[1988\] 2 SCR 595](#), at p. 649.

<sup>2</sup> *Mathur v. Ontario*, [2020 ONSC 6918](#), at [para. 257](#).

<sup>3</sup> *Canada (Prime Minister) v. Khadr*, [2010 SCC 3](#), at [para. 47](#).

<sup>4</sup> *Mahe v. Alberta*, [\[1990\] 1 S.C.R. 342](#).

<sup>5</sup> *Ewert v. Canada*, [2018 SCC 30](#), at para. 81.

<sup>6</sup> *Mathur v. Ontario*, [2024 ONCA 762](#), at [paras. 67-68](#).

<sup>7</sup> *Mathur v. Ontario*, [2024 ONCA 762](#), at [paras. 67-68](#).

9. Courts can indeed direct the executive to exercise its functions in accordance with prescribed considerations. In *United States v. Burns*, the Court unanimously concluded that the Minister’s decision to decline to request the assurances of the State of Washington that the death penalty would not be imposed on the respondents as a condition of their extradition violated their s. 7 *Charter* rights.<sup>8</sup> Though later limited to its specific facts,<sup>9</sup> *Burns* demonstrates that courts can give specific directions to the executive without running afoul of the separation of powers.<sup>10</sup>

10. Accordingly, as long as it does not prescribe a specific greenhouse gas target, it is well within this Court’s constitutional role to order that Ontario develop a “science-based” target. To paraphrase *Khadr*, such an order adds constitutional value by providing the legal framework for the executive to exercise its functions and to consider what *Charter*-compliant actions to take in respect of climate change.<sup>11</sup>

### C. THE COURTS’ SUPERVISORY JURISDICTION

11. In some instances, a declaration of inconsistency with the *Charter* or an order directing the executive to consider certain factors, without more, risks ineffectiveness.<sup>12</sup> An ineffective declaration can undermine the courts’ legitimacy — a problem given that crafting constitutional remedies the courts’ “most meaningful function under the *Charter*.”<sup>13</sup> Under-resourced plaintiffs may also have to relitigate when the government’s response to the declaration fails to remediate

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<sup>8</sup> *United States v. Burns*, [2001 SCC 7](#), at [para. 132](#).

<sup>9</sup> See *Canada (Prime Minister) v. Khadr*, [2010 SCC 3](#), at [para. 42](#).

<sup>10</sup> See also *Chaoulli v. Quebec (Attorney General)*, [2005 SCC 35](#), referred to in *Mathur v. Ontario*, [2024 ONCA 762](#), at [para. 74](#), where the plurality did not dictate specific measures the government of Quebec was required to implement in order to render its health care scheme *Charter* compliant.

<sup>11</sup> See *Canada (Prime Minister) v. Khadr*, [2010 SCC 3](#), at [para. 47](#).

<sup>12</sup> See Kent Roach, “Judicial Remedies for Climate Change” (2021) [1:17 JL & Equality 106](#), at p. 123.

<sup>13</sup> *Canada (Attorney General) v. Power*, [2024 SCC 26](#), at [para. 31](#).

its noncompliance with the *Charter*.<sup>14</sup> These risks should not be taken lightly.

12. To address these risks, the Supreme Court has recognized that courts are competent to retain “supervisory jurisdiction” over constitutional matters in appropriate circumstances. This entails ongoing supervision of the government’s compliance with its constitutional responsibilities (e.g., through the review of progress reports). Retaining this jurisdiction strikes the best balance between the risks that declarations can pose and the respective roles of the judiciary, the executive, and the legislature.

13. Courts have retained supervisory jurisdiction in a variety of contexts including, notably, though not exclusively,<sup>15</sup> with respect to s. 23 of the *Charter*.<sup>16</sup> For example, in *Doucet-Boudreau*, the Court explained that the ability to remain seized is inherent to both the equitable jurisdiction of provincial superior courts and section 24(1) of the *Charter*, which provides for the power to order flexible remedies against governments to vindicate all constitutionally entrenched rights.<sup>17</sup>

14. *Doucet-Boudreau* demonstrates that supervisory jurisdiction is appropriate where two factors obtain. First, the record in that case showed “significant risk that such a declaration would be an ineffective remedy.”<sup>18</sup> Thus, maintaining supervisory jurisdiction reduced the risk that “minority language education rights would be smothered in additional procedural delay.”<sup>19</sup> Second, the application judge’s decision to maintain supervisory jurisdiction “did not depart unduly or unnecessarily from, the role of the courts in our constitutional democracy.”<sup>20</sup> The

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<sup>14</sup> See Roach, at p. 123, citing *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000 SCC 69](#).

<sup>15</sup> *Bacon v. Surrey Pretrial Services Centre*, [2010 BCSC 805](#), at [para. 357](#); *Abdelrazik v. Canada (Minister of Foreign Affairs)*, [2009 FC 580](#), at [paras. 167-68](#).

<sup>16</sup> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003 SCC 62](#).

<sup>17</sup> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003 SCC 62](#), at [para. 52](#).

<sup>18</sup> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003 SCC 62](#), at [para. 66](#).

<sup>19</sup> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003 SCC 62](#), at [para. 67](#).

<sup>20</sup> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003 SCC 62](#), at [para. 68](#).

*Charter* envisions more than declarations of rights, and courts have a long history of ensuring that rights are enforced, not merely declared.<sup>21</sup> Section 24(1) merely extends the flexibility inherent in the courts' remedial jurisdiction to the protection of constitutionally entrenched rights.<sup>22</sup>

15. These factors apply with equal force in the climate context. This Court can retain jurisdiction over Ontario's climate mandate without upsetting the institutional competences embodied in the separation of powers,<sup>23</sup> both because superior courts have long maintained remedial jurisdiction over the continuing relations of the parties<sup>24</sup> and because s. 24(1) explicitly vests these courts with broad remedial powers in the adjudication of constitutional disputes.<sup>25</sup>

16. Supervisory jurisdiction also avoids the pitfalls presented by bare declarations. Indeed, the risks of ineffective remedies are perhaps at their most acute in the environmental arena. Simply put, in its fight against climate change, humanity is running out of time. Thus, should this Court find that the current target violates the *Charter*, retaining jurisdiction allows this Court to evaluate the adequacy of Ontario's proposed solution for constitutional viability while still respecting the government actors' institutional role to choose how they fulfill their remedial obligations.

#### **PART IV — ORDER REQUESTED**

17. The David Asper Centre for Constitutional Rights requests that this application be adjudicated in accordance with the submissions above.

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<sup>21</sup> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003 SCC 62](#), at [paras. 70-71](#).

<sup>22</sup> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003 SCC 62](#), at [para. 73](#).

<sup>23</sup> See *Neubauer et al v. Germany*, [1 BvR 2656/18 \(2021\)](#), and *Urgenda Foundation v. State of the Netherlands*, [C-565/19 P, C/09/456689 / HA ZA 13-1396](#), where foreign apex courts concluded injunctive relief was appropriate in the climate change arena.

<sup>24</sup> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003 SCC 62](#), at [paras. 71-74](#).

<sup>25</sup> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003 SCC 62](#), at [para. 59](#).

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 12<sup>th</sup> day of September, 2025.



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## **SCHEDULE A — AUTHORITIES TO BE CITED**

### **Case Law**

1. *Canada (Prime Minister) v. Khadr*, [2010 SCC 3](#)
2. *R. v. Gamble*, [\[1988\] 2 SCR 595](#)
3. *Mathur v. Ontario*, [2020 ONSC 6918](#)
4. *Mahe v. Alberta*, [\[1990\] 1 SCR 342](#)
5. *Ewert v. Canada*, [2018 SCC 30](#)
6. *United States v. Burns*, [2001 SCC 7](#)
7. *Chaoulli v. Quebec (Attorney General)*, [2005 SCC 35](#)
8. *Canada (Attorney General) v. Power*, [2024 SCC 26](#)
9. *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000 SCC 69](#)
10. *Bacon v. Surrey Pretrial Services Centre*, [2010 BCSC 805](#)
11. *Abdelrazik v. Canada (Minister of Foreign Affairs)*, [2009 FC 580](#)
12. *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003 SCC 62](#)
13. *Neubauer et al v. Germany*, [1 BvR 2656/18 \(2021\)](#)
14. *Urgenda Foundation v. State of the Netherlands*, [C-565/19 P, C/09/456689 / HA ZA 13-1396](#)

### **Secondary Sources**

1. Kent Roach, “Judicial Remedies for Climate Change” (2021) [1:17 JL & Equality 106](#), at 123.

## **SCHEDULE B — RELEVANT LEGISLATIVE PROVISIONS**

### ***Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11.***

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

**24(1).** Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

**MATHUR ET AL.**  
Appellant

-and-

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO**  
Respondent

Court File No. CV-19-00631627-0000

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
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