Court File No. 41801

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR NOVA SCOTIA)

BETWEEN:

DURRELL DIGGS

Appellant

AND:

ATTORNEY GENERAL OF NOVA SCOTIA
NOVA SCOTIA HEALTH AUTHORITY

Respondents

AND BETWEEN:

RYAN TAYLOR WILBAND

Appellant

AND:

ATTORNEY GENERAL OF NOVA SCOTIA

Respondent

AND:

ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF SASKATCHEWAN, MENTAL HEALTH LEGAL ADVOCACY COALITION, ASSOCIATION DES AVOCATS.ES CARCÉRALISTES DU QUÉBEC, QUEEN'S PRISON LAW CLINIC, CANADIAN PRISON LAW ASSOCIATION, DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, CANADIAN CIVIL LIBERTIES ASSOCIATION, ALBERTA PRISON JUSTICE SOCIETY, INMATE WELFARE COMMITTEE OF STONY MOUNTAIN INSTITUTION, WEST COAST PRISON JUSTICE SOCIETY, BLACK LEGAL ACTION CENTRE, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Interveners

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(Pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada*)

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PART I & II – OVERVIEW AND POSITION ON QUESTIONS IN ISSUE

1. *Habeas corpus* is a powerful writ. It is fundamental to the rule of law and the protection of individual rights. It is within the constitutionally guaranteed jurisdiction of provincial superior courts. Incarcerated people are at the mercy of the state and the most vulnerable of anyone to potential abuses of power. This Court has repeatedly emphasized the significance of access to *habeas corpus* because it is a crucial right. It should be interpreted in a flexible and generous manner to protect the liberty of prisoners as a vulnerable group.

2. The David Asper Centre for Constitutional Rights ("the Centre) takes no position on the facts. With respect to the issues, the Centre submits the following:

   a. The writ of *habeas corpus* has been constitutionalized; all *habeas* applications are now *Charter* applications.

   b. *Habeas* litigants and courts should draw on established *Charter* principles and procedures to resolve unsettled jurisdictional questions and run expeditious, fair, and flexible hearings.

   c. Successful *habeas* applicants are entitled to remedies under s. 24(1) of the *Charter*. Relief under section 24(1) is well-suited to the *habeas* context precisely because of its flexible nature.[1] The default remedy is release to a lawful state of liberty, but other remedies are available, including declarations and hybrid declarative-injunctive relief ("declarations plus"). Declaratory and injunctive relief may be uniquely suited to solving the seemingly intractable problem of liberty deprivations in prisons.

PART III – STATEMENT OF ARGUMENT

A. *Habeas corpus* applications are *Charter* applications

3. *Habeas corpus* has deep roots in the history of the common law and has evolved in form and purpose since its inception as a "writ" in the twelfth century.[2] Its relationship to modern Canadian constitutional law has been imprecisely defined. This Court should clarify the structural relationship between *habeas corpus* applications and the *Charter*.

4. First, access to *habeas* is enshrined as a stand-alone right under s. 10(c) of the *Charter*. This section gives detainees the right "to have the validity of the detention determined by way of

[1] *R v Gamble*, [1988] 2 SCR 595, at pp. 645-66; Kent Roach, "Constitutional Remedies in Canada", Ch 9.49.

[2] Rowe, M. "The History of Administrative Law", (2021) 34 Can J Admin L & Prac 87, at p. 111.

habeas corpus and to be released if the detention is not lawful." It provides both a procedural guarantee – the right to a specific hearing – and a minimum, non-discretionary remedy – release from unlawful detention.[3] It also guarantees detainees access to the courts to challenge detention. *Habeas corpus* can provide access to justice for prisoners especially when compared to litigation in Federal Court.[4]

5. Second, all liberty deprivations engage s. 7. To trigger a *habeas* hearing, the applicant must prove the deprivation and "some basis" for concluding it is unlawful.[5] All *habeas* applications are, by definition, claims that the state has taken away liberty in a manner contrary to the principles of fundamental justice. The successful applicant will have proven a s. 7 rights violation regardless of whether the unlawfulness stems from recognized "common law" categories – procedural fairness, unreasonableness, *Charter* non-compliance – or something else altogether.[6]

6. Third, many *habeas* applications are rooted in claims that the state has violated other rights. Detentions must be *Charter*-compliant to be lawful – which means courts determining lawfulness on *habeas* applications must often decide other constitutional issues. As this Court held in *Chhina*:

> The review of legality under *habeas corpus* is broad, often protecting and interacting with other *Charter* rights, including: the right to life, liberty and security of the person, as guaranteed by s. 7; the right not to be arbitrarily detained or imprisoned, as guaranteed by s. 9; and the right not to be subjected to any cruel and unusual treatment or punishment, as guaranteed by s. 12.[7]

7. There is thus no substantive difference between a *Charter* proceeding and a *habeas* proceeding; it is impossible to isolate the constitutional and common law issues. The recent case of *Adams* exemplifies this interdependence.[8] Ms Adams had brought a *habeas* application, arguing that her two-week detention in solitary confinement was unlawful because it was authorized by an unconstitutional provision of the *Corrections and Conditional Release Act*. To determine the

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[3] *Dorsey v Canada (Attorney General),* 2025 SCC 38, at paras. 7, 47; *Mission Institution v Khela*, 2014 SCC 24, at paras. 44-49.
[4] Roach, K "Constitutional Remedies in Canada" at 9.49 with reference to failed litigation by a prisoner in *Latham v Canada,* 2020 FC 670; see also *R v Bird*, 2019 SCC 7, at paras. 62-74.
[5] *Dorsey v Canada (Attorney General),* 2025 SCC 38, at para. 46.
[6] *R v Gamble*, [1988] 2 SCR 595, at pp. 636-48; *R v Varennes,* 2025 SCC 22 at para 85; *Reference re Secession of Quebec,* 1998 CanLII 793 (SCC) at para 102; *Dorsey v Canada (Attorney General),* 2025 SCC 38, at para. 45.
[7] *Canada (Public Safety and Emergency Preparedness) v Chhina*, 2019 SCC 29, at para. 21.
[8] *Adams v Nova Institution*, 2021 NSSC 313.

habeas application, the court had to decide whether the law violated s. 15 of the *Charter*.[9] He could not have done this if he did not have the freedom to consider *Charter* issues as they arose.

8. Ultimately, to remain functional in the *Charter* era, *habeas* applications must proceed as *Charter* applications and there must be no categorical limits on the court's *Charter* jurisdiction.

B. *Charter* principles inform the *habeas* analysis and process

9. Like other rights and remedies that have been "constitutionalized,"[10] *habeas* applications ought to be pleaded and litigated under the *Charter*. This Court can draw on established *Charter* tests and processes to resolve unsettled jurisdictional questions and provide guidance about how to run expeditious, fair, and flexible hearings.[11]

a. Threshold deprivations must be easy to identify – any "significant" interference with the pleaded lawful liberty state will qualify

10. To access the *habeas* process, the applicant must prove a deprivation of liberty and "some basis" for concluding it is unlawful.[12] Because this is a threshold issue, the question of whether the pleaded state of affairs is a "deprivation" must be quick and easy to determine. If, as the Centre argues, access to a *habeas* hearing is *itself* a *Charter* right triggered by s. 10 "detention," then this Court can draw on its *Charter* jurisprudence – particularly ss. 9 and 10 – to distinguish between true "liberty deprivations" and trivial "interferences" (the prison equivalent of being "delayed" or "kept waiting").[13] In *Therens,* four of eight judges explicitly recognized that the term "detention" acts as a trigger for s. 10(c), and explained what kinds of liberty deprivations trigger s. 10 rights:

> [Section] 10 of the *Charter* must necessarily refer to a great variety of detentions of varying duration, in many of which it will not be possible to make effective use of *habeas corpus* because the detention will have ceased before the application can be made and determined.

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[9] The case was moot by the time of the ruling, so Justice Keith applied the *Borowski* framework; what would normally have been a mandatory constitutional analysis was discretionary in this case.

[10] *May v Ferndale Institution,* 2005 SCC 82, at para 42.

[11] *Dorsey v Canada (Attorney General)*, 2025 SCC 38.

[12] *Dorsey*, at paras. 45-48.

[13] *R v Grant,* 2009 SCC 32, at para. 26; *R v Mann,* 2004 SCC 52, para. 18. This was arguably the situation pleaded in *Ewanchuk v Canada (Attorney General)* 2017 ABQB 637*,* relied on in *Dorsey* for the proposition that temporary measures, like a "certain schedule of activities", are not deprivations: *Ewanchuk,* paras. 39, 41; cited at *Dorsey* para 56.

> *Habeas corpus* is to lie to determine the validity of a detention where that is possible. The fact that it may not be possible in some cases, because of the limited duration of the detention, is not, in my respectful opinion, a reason for limiting the meaning of the word "detention" to detentions of a certain duration.
>
> […]
>
> …In its use of the word "detention", s. 10 of the *Charter* is directed to a restraint of liberty other than arrest in which a person may reasonably require the assistance of counsel but might be prevented or impeded from retaining and instructing counsel without delay but for the constitutional guarantee.[14]

11. This Court has since reaffirmed that the "realities of confinement in prisons" continue to impede *habeas* applicants' access to justice.[15] In its other applications of ss. 9 and 10, it has established frameworks for quickly and easily identifying rights-engaging liberty deprivations. For investigative detentions, e.g., s. 10 is triggered by "suspensions" of a liberty interest via "significant…restraint." The concept of a "significant suspension" is in turn tethered to the "notion of choice that underlies our conception of liberty."[16] A deprivation is significant if a right to choose has been removed (or withheld) in a way that "may have legal consequences."[17]

12. The *Dorsey* framework requires a similarly simple s. 10 "trigger." This Court may wish to use the framework from its other ss. 9 and 10 applications to define "liberty deprivations" for the purposes of the threshold *habeas* test. It could supplement this framework by directing courts to consider factors common to recognized forms of liberty deprivations, such as the "different physical environment" or environment that "offers less freedom" from *Ewanchuk*, or the categories from *Dumas.*[18] Such an approach would both help *habeas* judges dispose of threshold applications quickly and correctly and provide guidance to prison officials in simple terms that are routinely understood and applied by other non-legally-trained state actors (*i.e.,* police officers).

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[14] *R v Therens,* [1985] 1 SCR 613, at paras. 50, 52.
[15] *Mission Institution v Khela*, 2014 SCC 24, at paras. 44-49.
[16] *R v Grant,* 2009 SCC 32, at para. 28.
[17] *R v Grant,* 2009 SCC 32, at paras. 26, 29, 44; *R v Mann,* 2004 SCC 52, para. 18.
[18] *Ewanchuk v Canada (Attorney General),* 2017 ABQB 237, at para. 21, *Dumas v Leclerc Institute*, [1986] 2 SCR 459.

b. Charter analyses are individualized

13. *Charter* rights are "presumptively individual in nature."[19] This Court should resist the call to prohibit *habeas* judges from addressing liberty deprivations arising from "systemic" operational decisions. It is antithetical to the *Charter* analysis to define a rights-engaging deprivation of liberty by referring only to the conditions of other inmates. The individualized approach to *Charter* litigation dovetails neatly with this Court's recent reminder that *habeas* claims must be assessed qualitatively, with a focus "on the actual effect of a particular form of confinement."[20] It also avoids the perverse consequences of the Respondent and Court of Appeal's proposed approaches. On that proposed analysis, the more people who are illegally detained, the harder it will be for *any* individual to access a *habeas* hearing. It would be wrong if the government could escape accountability for illegal conditions of detention by putting more people in those conditions. If there is a system-wide problem that raises a genuine issue that all inmates are being held in illegal conditions, the only response is to fix the system – not to bar access to challenging it. In other words, the concern should not be about opening the "floodgates", but about why there is a flood.

c. The nature of a habeas hearing is compatible with deciding Charter issues

14. The main objection to entertaining systemic misconduct claims on *habeas* applications is procedural. In this case, the Court of Appeal held that the expeditious nature of *habeas*, and the burden it puts on the state to justify liberty deprivations, are inherently incompatible with the scope and process of such evidence-heavy *Charter* claims.[21] That concern is overblown. While the onus and timeline built into *habeas* hearings make them technically different from other *Charter* applications, they remain *practically* similar, and workable, for three reasons.

15. First, because *Charter* applications are determined on a balance of probabilities, there is little practical difference between the evidence that is *legally* required to prove one's position and the evidence that is *tactically* required to rebut one's opponent. Regardless of where the onus lies, the state's tactical choice not to call evidence may jeopardize its position on a *Charter* application.

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[19] *Ewert v Canada* 2022 BCCA 131, at para. 86.
[20] *Dorsey,* at paras. 2, 40-44.
[21] *Nova Scotia (Attorney General) v Diggs and Wilband,* 2025 NSCA 20, at paras. 46-48, 53; see also *Toure v Canada (Public Safety & Emergency Preparedness)*, 2018 ONCA 681, at para. 79.

Even where the claimant bears the legal burden, the evidentiary burden of rebutting a *prima facie* breach often falls to the state as the party with exclusive control over relevant evidence.[22]

16. Second, the state can use the same tools it uses in other *Charter* litigation to control the volume, complexity, and flow of *habeas* cases. It can render claims moot by privately arranging the relief the applicant seeks. It can consent to blended or truncated hearings; violations of ss. 7-12 are rarely the subject of separate s. 1 justification hearings. Perhaps most importantly, it can prepare in advance for litigation it knows is coming. *Habeas* challenges to liberty restrictions arising from far-reaching policy or operational decisions are the very type of litigation that the state is likely to anticipate. Applying a normative framework, this Court must assume that such consequential decisions are carefully considered, backed by data, properly documented, and organized in a way that facilitates the litigation that inevitably flows from them. In other *Charter* contexts where litigation is routine or anticipated and the government has exclusive access to relevant institutional data, the state may even prepare a 'standard' responding record for repeat use on individual *Charter* motions.[23] There is no reason it cannot do so in *habeas* cases.

17. Third, *habeas* judges can be counted on to use both their inherent jurisdiction to control the process and their expertise as criminalists who are frequently called upon to run flexible *Charter* hearings.[24] *Charter* proceedings need not be exhaustive or prolonged to be legitimate; the task of determining complex constitutional questions on less-than-ideal records is the daily fare of superior courts. Many litigation management tools that keep *Charter* cases "on the rails" translate easily to the *habeas* context. Judges can exercise their jurisdiction to order production;[25] adjourn proceedings to give the state time to prepare; direct blended hearings; or consider moot issues. As argued in the next section, their *Charter* jurisdiction also allows them to replace or supplement

[22] *R v Nixon*, 2011 SCC 34, at para. 63; *R v Bartle*, [1994] 3 S.C.R. 173 at 210; *Peart v Peel Regional Police*, 2006 CanLII 37566 (ON CA) at paras. 149-151; *R v Khan,* 2005 CanLII 63749 (ON SC) at para. 126

[23] See, for example, the Respondent records filed s. 11(b) applications during early COVID: *R v Ajgirevitch*, 2022 ONCJ 237, at paras. 13-16; *R v Lawson*, 2021 ONCJ 389, at paras. 26-28.

[24] *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43, at paras. 17-26.

[25] *World Bank Group v Wallace,* 2016 SCC 15 (jurisdiction to order production); *R v Miller*, [1985] 2 SCR 613 (*certiorari* in aid available on *habeas*).

mandatory release orders with creative s. 24(1) remedies that achieve the same outcome – release to a lawful state of liberty.

C. Appropriate and just remedies in the *habeas* context: more than just "release"

18. If *Charter* relief is available to successful *habeas* applicants*,* then superior courts have jurisdiction under s. 24(1) of the *Charter* to issue flexible remedies. The default remedy is release to a lawful state of liberty, but other remedies are available, including declarations and hybrid declarative-injunctive relief ("declarations plus").

19. The historical operation of the writ should inform the scope of s. 24(1) relief. Courts need not shy away from positive, powerful remedies in this setting. *Habeas* is a uniquely powerful form of injunctive relief that combines features of the writs of *mandamus* and *certiorari* with the inherent jurisdiction to issue declarations. Importantly, it remains available within the federal prison system even though superior courts otherwise lack the jurisdiction to issue injunctive relief against federal administrative bodies.[26] The exceptional breadth and flexibility of the common law power to remedy deprivations in prisons ought to inform modern *habeas* judges' assessments of whether similar relief is available under s. 24(1) *Charter* for illegal deprivations in jail.

a. Declarations respect the separation of powers in the prison administration context

20. *Charter* jurisdiction includes the jurisdiction to issue remedies: "every *Charter* violation merits a remedy, even if that remedy is merely a judicial declaration recognizing the violation."[27] In the *habeas* context, s. 24(1) remedies *must* deliver a lawful degree of liberty to successful applicants.[28] Yet courts must also exercise remedial jurisdiction in a way that respects other branches of government; they cannot usurp or frustrate prison administrators' roles.

21. In cases where the impugned deprivation stems from broad policy or operational decisions, declaratory relief as an *interim* or auxiliary measure is an obvious solution. Declarations can provide legal guidance or suggest a constitutional state of affairs.[29] Indeed, some level of detail is

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[26] *Dorsey,* at paras. 84-89; *Steele v Mountain Institution,* [1990] 2 SCR 1385; *May v Ferndale Institution* [2005] 3 SCR 809; *Mission Institution v. Khela*, 2014 SCC 24.
[27] *R v Varennes,* 2025 SCC 22 at para 85; *Reference re Secession of Quebec,* 1998 CanLII 793 (SCC) at para 102.
[28] *Dorsey*, at para. 44.
[29] *Shot Both Sides v Canada*, 2024 SCC 12 at paras 66, 73–4; *Canada (Prime Minister) v Khadr* 2010 SCC 3 at para 45; *Eldridge v. British Columbia (Attorney General)*, [1997] 3 SCR 624;

arguably a democratic necessity: "the necessary process of dialogue…cannot occur if the legislature does not know how or why its enactments violate the *Charter*."[30] A declaration may be a particularly effective *Charter* remedy in prison *habeas* cases, given this Court's pronouncements in *Dorsey* that release orders may come with "conditions" and that "situations involving temporary lock downs" are not deprivations.[31] In such cases, a declaration may be necessary to explain when a lock down *does* become a "deprivation", or to identify proper release conditions.

22. Declarations can issue swiftly, achieving the goal of *habeas* (prompt remediation). They serve a communicative function that puts the state on notice of both its constitutional non-compliance and the prospect of more drastic remedies in future.[32] And they are "more deferential to the other branches of governments" than other kinds of *Charter* relief.[33]

23. Declarations have long been available in the *habeas* context to facilitate mandatory "release" without weighing in on the *minutia* of prison administration. In *Gamble*, this Court remedied a liberty deprivation by issuing a declaration that the applicant was parole eligible.[34] This was not novel: the Court cited with approval several lower-court cases in which judges had issued auxiliary s. 24(1) remedies as a way of facilitating release. In *Swan*, from which the *Gamble* Court quoted, the judge had granted the application but declined to order release. Instead, he declared his parole revocation unlawful and "reserved the decision", inviting "either party" to move for a "final determination" and warning that "if there is any unwarranted or unreasonable delay in convening and completing a proper post-revocation hearing then a writ of *habeas corpus* will issue."[35]

b. "Declarations plus": solving the intractable problem of liberty deprivations in jail

24. In appropriate cases, courts may issue a "declaration plus": an increasingly common s. 24(1) remedy that may be a uniquely appropriate way to remedy persistent or widespread liberty

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Justice Malcolm Rowe & Diane Shnier, "The Limits of the Declaratory Judgment" (2022) 67 McGill LJ 298 at 318.

[30] *British Columbia Civil Liberties Association v Canada (Attorney General*), 2019 BCCA 228 at paras 153, 213, 267.

[31] *Dorsey* at paras 56, 87-–88.

[32] For a comparable "iterative" approach, see *R v Grant,* 2009 SCC 32 in the s. 24(2) context.

[33] *Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, 2000 SCC 69 at para 258; *Canada (Prime Minister) v Khadr*, 2010 SCC 3 at para 39.

[34] *R v Gamble*, [1988] 2 SCR 595, at pp. 648-49.

[35] *R v Swan*, 1983 CanLII 332 (BC SC), at para. 41, cited in *Gamble* at p. 641.

deprivations in prisons.[36] This type of declaration directs the state to take action by, e.g., finding ways to comply with the *Charter,*[37] negotiating the terms and timetable of constitutional reform with the opposing parties,[38] or making "best efforts" to solve the problem and returning to court to report on progress or obtain rulings on unresolvable issues.[39] The remedy in *Swan, supra,* was arguably an early example of a declaration plus.

25. Declarations plus have a quasi-injunctive character. As such, they are most appropriate in cases when the government has a track record of failing to "comply with their well-understood constitutional obligations."[40] State misconduct that starts out as innocuous – and justifies a light remedial touch – can evolve into flagrant impropriety if it persists, eventually exposing the state to findings of systemic misconduct, bad faith, and more prescriptive remedial orders.[41] While courts may be reluctant to issue injunctions as a first recourse, injunctions may flow naturally as "follow-up" remedies if the state has ignored directives in an earlier declaration.[42]

26. The state has just such a track record in the prison context. Despite numerous successful *Charter* actions for prisoner rights violations,[43] "Canadian courts have generally failed to devise more systemic remedies for poor conditions in prisons."[44] This is in part because "traditional" forms of *Charter* litigation are inaccessible and ineffective. Individual applications (e.g., for damages) are largely inaccessible to claimants in locked prison cells; that is why *habeas* is so

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[36] Roach, K "Enforcement of the *Charter* - Sections 24(1) and 52(1)" in Errol Mendes & Stéphane Beaulac, eds, *Canadian Charter of Rights and Freedoms*, 6th ed (Montréal, Québec: LexisNexis Canada Inc., 2025) [Roach] at 1273–1283; Robert J. Sharpe & Kent Roach, *The Charter of Rights and Freedoms*, 8th ed (Canada, University of Toronto Press, 2026), ch 18 at 506–8.
[37] *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at paras 283–303. See also: *The Regional Municipality of Waterloo v. Named Respondents and Persons Unknown*, 2026 ONSC 2971 at paras 254-6.
[38] *Reference re Manitoba Language Rights,* 1992 CanLII 115 (SCC).
[39] *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62 at paras 71–74; *Association des parents de l'école Rose-des-vents v. British Columbia (Education),* 2015 SCC 21 at para 65.
[40] *Doucet-Boudreau v Nova Scotia (Department of Education)*, 2003 SCC 62, at paras 61, 66.
[41] *R v Bjelland*, 2009 SCC 38, at paras. 29-30; *Canada (Attorney General) v Power*, 2024 SCC 26, at paras. 108-110; *Ward v Vancouver (City)*, 2010 SCC 27, at paras. 64-66, 72.
[42] *Doucet-Boudreau v Nova Scotia (Department of Education)*, 2003 SCC 62, at paras. 37-40, 60-67.
[43] *Brazeau v Canada (Attorney General),* 2020 ONCA 184; *Francis v Ontario,* 2021 ONCA 197.
[44] Roach at 1290, 1292

important to guarantee access to the courts.[45] *Charter*-based class actions are similarly non-viable: the "individualized" nature of rights makes certification challenging[46], the state can resist damages by pleading "immunity" and "good governance"[47], and high rates of settlement immunize state action from judicial review.[48] In class actions that do succeed, low damage awards create an economic-exchange dynamic, enabling governments to continue breaching rights for a small fee.[49]

27. Against this backdrop, the emerging option of a declaration plus offers a new way to "meaningfully vindicate" breaches through "responsive" and "effective" remedies capable of "influencing government behaviour in order to secure state compliance with the *Charter* in the future".[50] As Prof. Roach observes, "[T]he declaration plus would allow courts to retain jurisdiction over the case and to recognize that they often do not have adequate information to issue mandatory and enforceable orders…The court would only have to devise enforceable mandatory orders if they became necessary."[51]

PART IV – SUBMISSIONS ON COSTS

28. The Centre does not seek costs and asks that none be awarded against it.

PART V – ORDER REQUESTED

29. The Centre requests permission to present oral argument on this appeal.

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[45] *Mission Institution v Khela*, 2014 SCC 24, at paras. 44-49.
[46] *Good v Toronto Police Services Board* 2016 ONCA 250; *Thorburn v British Columbia* 2013 BCCA 480; *Cirillo v Ontario* 2021 ONCA 353, at paras 66-67
[47] *Francis v Ontario* 2021 ONCA 197, at para 59; *Brazeau v Canada (Attorney General)* 2020 ONCA 184, at para 56.
[48] Iryna Ponomarenko, "The Devil is in the Scale: Revisiting the Commonality Requirement in Charter Class Actions" (2019) 57:1 Alta L Rev 69
[49] Nancy Sarmento Barkhordari "Palpable and Enforceable: A Normative Framework for a Stronger Damages Remedy under Section 24(1) of the Charter" (2024) 50:1 Queen's L.J. 32 at paras 31-33.
[50] *Henry v British Columbia (Attorney General)*, 2015 SCC 24, at paras. 112, 115-116; *Ward v Vancouver (City)*, 2010 SCC 27, at paras. 25, 28-29; *R c Demers*, 2004 SCC 46, at para. 104; *Doucet-Boudreau v. Nova Scotia (Department of Education)*, 2003 SCC 62, at para. 24-25, 52-58; *Canada (Attorney General) v. Power*, 2024 SCC 26, at paras. 37-38; *R. v. Varennes*, 2025 SCC 22, at paras. 75, 82.
[51] Roach at 1290, 1292.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 3rd day of July 2026.

____________________ (Agent)

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