Court File No. 41981

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

BETWEEN:

NAMED PERSONS

APPELLANTS

– and –

ATTORNEY GENERAL OF CANADA

RESPONDENT

– and –

ATTORNEY GENERAL OF BRITISH COLUMBIA,
ATTORNEY GENERAL OF SASKATCHEWAN,
ATTORNEY GENERAL OF ONTARIO,
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MEDIA GROUP (CANADIAN BROADCASTING CORPORATION,
BELL MEDIA INC., AND LA PRESSE INC.),
INDEPENDENT CRIMINAL DEFENCE ADVOCACY SOCIETY and
CANADIAN CIVIL LIBERTIES ASSOCIATION

INTERVENERS

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PART I – OVERVIEW AND FACTS

1. British Columbia Civil Liberties Association (**"BCCLA"**) intervenes in this appeal to address a single issue: the availability of damages against governments concurrently in tort and under the *Charter*. The Court last addressed this issue 25 years ago, in *Vancouver (City) v. Ward*.[1] That decision stands for two propositions: (a) concurrent damages under the *Charter* and in tort are in principle available because "[t]ort law and the *Charter* are distinct legal avenues";[2] but (b) *Charter* damages are not an appropriate and just remedy under s. 24(1) if they would result in "double compensation"—i.e. they "would be duplicative".[3]

2. *Ward* itself had no need to apply these principles, because Mr. Ward's concurrent claims in tort for assault and negligence were dismissed by the lower court and not pursued on appeal. But the Court in this case must grapple with *Ward*, because concurrent tort and *Charter* damages claims are squarely at issue in this proceeding. The trial judge and British Columbia Court of Appeal ("**BCCA**") dismissed the claim for compensatory *Charter* damages on the basis that the concurrent tort and *Charter* claims were purportedly "coterminous".[4] The parties disagree on the correctness of those holdings.[5] How the Court resolves this issue has broad implications in contexts beyond informer privilege.

3. BCCLA argues that the risk of double compensation only arises where concurrent tort and *Charter* causes of action are genuinely coterminous. It proposes an analytical framework to address the question of whether causes of action are indeed coterminous. The framework flows from *Taylor* and *Ahluwalia*, which conceptualized rights under both the *Charter* and in tort in terms of the interests they protect.[6] As a threshold matter, the Court must compare the interests

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[1] *Vancouver (City) v. Ward*, 2010 SCC 27 [***Ward***].
[2] *Ward*, para 36.
[3] *Ward*, paras 35–36.
[4] *Named Persons v. Canada (Attorney General)*, 2025 BCCA 197, paras 151, 157 [***BCCA Decision***]. However, the trial judge did award *Charter* damages for vindication: *BCCA Decision*, para 153 (citing the trial judgment at paras 740–742, 746).
[5] Factum of the Appellants, paras 107–110; Factum of the Respondent, paras 1, 7, 80–107.
[6] *Taylor v. Newfoundland and Labrador*, 2026 SCC 5, paras 66–67, 72–76, 79–83, 85, 93, 97–100, 106, 109, 119–120, 127, 134, 143–144, 148, 156, 158, 166, 175, 176, 180–181, and 247

protected by the *Charter* right and tort, to see if they are the same or different. If the interests are different, the concurrent claims are not coterminous, and *Charter* damages do not create the risk of double recovery. If the interests are the same, the concurrent claims may be coterminous, but not necessarily duplicative. To reach that conclusion, the Court must pose a second question: whether tort and *Charter* damages serve the same purposes. Only if the purposes for awarding damages under the *Charter* and in tort are the same should a court deny *Charter* damages to prevent double recovery. Conversely, if those purposes are different, concurrent *Charter* and tort damages are not duplicative.

PART II – ISSUES

4. BCCLA confines its submissions to the availability of damages against governments concurrently in tort and under the *Charter*. It does not address whether informer privilege is a principle of fundamental justice or the legal principles governing sealing orders.

PART III – ARGUMENT

Interest-based theories of *Charter* rights and torts

5. The Court's recent decisions in *Taylor* and *Ahluwalia* provide the basis for BCCLA's proposed analytical framework to assess whether concurrent claims for *Charter* and tort damages are duplicative. Those decisions both affirm interest-based theories of *Charter* rights and torts.

6. In *Taylor*, the Court reaffirmed *Big M*'s holding that specific *Charter* rights are meant to protect certain interests.[7] *Taylor* itself held that s. 6 of the *Charter* guarantees the right of citizens and permanent residents to move freely within Canada, including across provincial borders and within provinces. This right is not express on the face of s. 6. Nonetheless, the Court interpreted s. 6 as encompassing this right because the provision "is designed to protect a broad interest in human mobility … to facilitate individual autonomy and dignity, including growth and fulfillment, and to

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[***Taylor***]; *Ahluwalia v. Ahluwalia*, 2026 SCC 16, paras 5, 83–85, 87, 89, 91–95, 139, 179, and 200 [***Ahluwalia***].

[7] *Taylor*, paras 73, 75–76, 78, 83–84, 98, citing *R. v. Big M Drug Mart Ltd.*, 1985 CanLII 69, [1985] 1 SCR 295 [***Big M***].

promote national unity and a common Canadian identity"—i.e. "interests that are both an essential aspect of an individual's personal freedom and foundational to the nature of our free and democratic federal structure".[8]

7. *Ahluwalia* likewise held that torts create liability at common law for "wrongful conduct that offends a recognized legal interest in private law, or an interest around which there is 'emerging acceptance'".[9] The wrongful conduct is intimate partner violence. The legal interests offended by intimate partner violence are "[d]ignity, autonomy, and equality", which "are notions whose legal significance is well established, and about which the jurisprudence has offered ample commentary" and which "are central to the emerging acceptance of coercive control".[10] The Court defined dignity as "the respect that a person deserves because of their intrinsic worth as an individual", autonomy as "the capacity to make fundamental decisions in accordance with one's values, free from unjustified interference from others", and equality as the right to "equal standing" within an intimate partnership.[11]

The interests underlying the tort

8. When governments argue that *Charter* damages are duplicative of tort damages, the Court must first identify the interest underlying the tort, in a manner analogous to how the Court did so in *Ahluwalia*.

9. Below is an illustrative and non-exhaustive list of the torts that have been pled against governments, either directly or against their servants on behalf of whom governments are vicariously liable, alongside the interests those torts protect. In some cases, these torts are only applicable to governments:

a. **Negligence**: the tort of negligence protects a person's interest in their physical integrity (including their mental health) and property, and consequential economic

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[8] *Taylor*, para 148 (emphasis added).
[9] *Ahluwalia*, para 84 (emphasis added), quoting *Merrifield v. Canada (Attorney General)*, 2019 ONCA 205, para 25.
[10] *Ahluwalia*, para 127.
[11] *Ahluwalia*, paras 128 (dignity), 131 (autonomy), 135 (equality).

harms caused by another person's failure to exercise reasonable care when it acts or fails to act.[12]

b. **Misfeasance in public office**: the tort of misfeasance in public office protects the interest in maintaining the integrity of the use of public power. Actions taken in the administrative context become tortious when the use of public power serves an improper purpose outside of the proper scope of public law (i.e. bad faith).[13]

c. **Malicious prosecution**: the tort of malicious prosecution protects a person's interest in being free from unwarranted legal proceedings initiated without sufficient grounds and for an improper purpose.[14]

d. **False imprisonment/false arrest**: the tort of false imprisonment/arrest protects individuals' interest in freedom from physical restraint or confinement, and the deprivation of liberty.[15]

e. **Assault**: the tort of assault protects individuals' interest in being free from apprehension of imminent harmful physical contact, which interferes with one's psychological integrity and security.[16]

f. **Battery**: the tort of battery protects the individual's interest against inference with their personal physical autonomy.[17]

g. **Trespass to land and goods**: these torts protect a person's interest in property, specifically against entering or remaining on real property without permission or

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[12] *Nelson (City) v. Marchi*, 2021 SCC 41, para 15; *Saadati v. Morehead*, 2017 SCC 28, para 23.
[13] *Ashby v. White*, [1738] EngR 87; *Resler v. Anglin*, 2026 SCC 23, paras 81–85.
[14] *Savile v. Roberts*, [1792] EngR 2096; *Proulx v. Quebec (Attorney General)*, 2001 SCC 66, para 35.
[15] *Huckle v. Money*, [1799] EngR 225; *Koechlin v. Waugh and Hamilton*, 1957 CanLII 359 (ONCA), 11 DLR (2d) 447, p 450; *Carr v. Ottawa Police Services Board*, 2017 ONSC 4331, paras 65–67; *Ahluwalia*, para 159.
[16] *Mostyn v. Fabrigas*, [1774] EngR 104; *Ward v. City of Vancouver,* 2007 BCSC 3, para 48; *Ahluwalia*, para 146.
[17] *Elmardy v. Toronto Police Services Board*, 2017 ONSC 2074 (Div Ct), paras 24–27; *Ahluwalia*, para 145.

lawful authority (trespass to land) or wrongful interference with personal property (trespass to goods).[18]

h. **Breach of confidence**: the tort of breach of confidence protects persons' interest in maintaining the confidentiality of information in circumstances where such an obligation arises.[19]

i. **Defamation**: the tort of defamation protects a person's legal interest in their reputation. The good reputation of an individual represents and reflects the innate dignity and worthiness of the individual, where reputation is also tied to privacy.[20]

j. **Intentional infliction of mental suffering**: the tort of intentional infliction of mental suffering protects individuals' interest against harm to their mental wellbeing.[21]

k. **Intimidation**: the tort of intimidation protects persons' interest in freedom of action, specifically their liberty to exercise their economic, contractual, or personal rights without being coerced by unlawful threats.[22]

The interests underlying the *Charter* right

10. After identifying the interest underlying the tort, the Court must then turn to the interests underlying the *Charter* right which has been pled concurrently.

11. The appellants have pled s. 7 of the *Charter*. The Court has yet to set out an overarching theory of s. 7.[23] But even in the absence of such a theory, to assess whether *Charter* damages for

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[18] *Entick v. Carrington*, [1765] 95 ER 807.
[19] *Nissen v. Durham Regional Police Services Board*, 2017 ONCA 10, para 32 [***Nissen***].
[20] *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59, [1995] 2 SCR 1130, paras 107–108, 121.
[21] *Colistro v. Tbaytel*, 2019 ONCA 197, para 14; *Clark v. Canada (T.D.)*, 1994 CanLII 3479 (FCTTD), [1994] 3 FC 323, pp 349–354.
[22] *McIlvenna v. 1887401 Ontario Ltd.*, 2015 ONCA 830, para 23; *Gershman v. Manitoba Vegetable Producers' Marketing Board*, 1976 CanLII 1093 (MBCA), 69 DLR (3d) 114, p 119.
[23] The forthcoming appeal in *Attorney General of Canada v. Paul Drover*, 2026 CanLII 58917 (SCC No. 42005), granting leave to appeal from *Drover v. Canada (Attorney General)*, 2025 ONCA 468, provides an opportunity to address this question.

a violation of s. 7 would be duplicative of a concurrent claim in tort, a court must examine what falls within the scope of the three enumerated interests:

a. **Life**: "the right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly" (*Carter*).[24]

b. **Liberty**: liberty encompasses "the right to make fundamental personal choices free from state interference" (*Carter*, *Blencoe*) and "an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference" (*Godbout*).[25]

c. **Security of the person**: security of the person encompasses "physical or psychological integrity" (*Carter*), as well as "a notion of personal autonomy involving … control over one's bodily integrity free from state-imposed psychological and emotional stress" (*Rodriguez*).[26]

Comparing the interests underlying the tort and the *Charter* right

12. The Court must then compare the interests underlying the tort and the *Charter* right. If the interests underlying the *Charter* and tort claims are different, they are not coterminous and there is no concern regarding double recovery because "tort law and *Charter* damages are distinct legal avenues" (*Ward*).[27]

13. Consider the following hypothetical example regarding a breach of informer privilege. The Crown inadvertently discloses the identity of an informant, which interferes with the informant's interest in protecting their psychological wellbeing, as well as their interest in maintaining the confidentiality of that information. The disclosure also increases the risk of physical harm and death, but those harms have not occurred. Psychological harm is compensable in tort, under negligence, as the appellants seek here, or breach of confidence, as the Ontario Court of Appeal

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[24] *Carter v. Canada (Attorney General)*, 2015 SCC 5, para 62 [***Carter***].
[25] *Carter*, para 64, citing *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, para 54; *Godbout v. Longueuil (City)*, 1997 CanLII 335, [1997] 3 SCR 844, para 66.
[26] *Carter*, para 64, citing *Rodriguez v. British Columbia (Attorney General)*, 1993 CanLII 75, [1993] 3 SCR 519, pp 587–8.
[27] *Ward*, para 36.

("**OCA**") held in *Nissen*.[28] While the increased risk of physical harm and death do not give rise to liability under either tort, it is settled law that s. 7 engages the informant's interest in their physical integrity (i.e. security of the person), which includes any increased risk of harm thereto—even if that risk does not materialize.[29] *Charter* damages in principle address this interest (i.e. increased risk of harm), whereas tort damages do not.

14. In this hypothetical, the claims in tort and under the *Charter* are not coterminous. Concurrent damages liability in tort and under the *Charter* may arise for the same course of conduct, because they remedy state conduct that offends different interests.

The purposes underlying damages in tort and under the *Charter*

15. Finally, even if the interests underlying the tort and the *Charter* right are coterminous, the Court must ask if tort and *Charter* damages serve the same purposes. Only if they serve the same purposes would damages in tort and under the *Charter* be duplicative.

16. BCCLA adopts the submissions of the Appellants on this question of legal principle (but without taking a position on application of that principle in this proceeding) and offers the following additional points.

17. The OCA has been much more alert to the distinct functions of *Charter* and tort damages than the BCCA. *Charter* damages may serve the purposes of vindication and deterrence, which tort law does not necessarily address. The Court should prefer the approach of the OCA.

18. In this appeal the BCCA held that tort damages could in principle serve the purposes of vindication and deterrence through punitive and aggravated damages, relying on its previous decision in *Johnson*.[30] The BCCA overruled the trial judge, who had declined to award compensatory *Charter* damages to avoid double recovery with tort, but nonetheless awarded *Charter* damages for vindication—presumably on the basis that tort damages could not further that distinct purpose.

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[28] *Nissen*, para 51.
[29] *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17, para 56.
[30] *Johnson v British Columbia (Attorney General)*, 2022 BCCA 82, para 83 [***Johnson***]; *BCCA Decision*, paras 158–159.

19. Along similar lines to the trial judge in this proceeding, in the joined appeals of *Brazeau* and *Reddock*, the OCA upheld a damages award of $20 million by the Ontario Superior Court in *Reddock* (a class proceeding), of which $9 million was for compensatory damages in both tort and under the *Charter*, while the remaining $11 million was for *Charter* damages only (i.e. not in tort) for the purposes of vindication and deterrence.[31] As the Superior Court explained:

> [486] In the Reddock Case, the evidence put forward by Class Counsel is sufficiently reliable to permit an aggregate assessment of $20 million for *Charter* damages for the purposes of vindication, deterrence, and compensation. A portion of the $20 million, approximately $9 million, is for compensation and this compensation is for both the *Charter* damages and the systemic negligence claim.[32]
>
> [Emphasis added.]

20. *Reddock* impliedly presupposed that damages in systemic negligence were only available for compensation, but not for deterrence and vindication. By contrast, *Charter* damages were available for all three purposes, as *Ward* had held. Damages under the *Charter* and in tort claims were therefore not duplicative, and there was no risk of double recovery.

PART IV – COSTS

21. BCCLA does not seek costs and asks that no costs be awarded against it.

PART V – ORDERS SOUGHT

22. N/A

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[31] *Brazeau v. Canada (Attorney General)*; *Reddock v Canada (Attorney General)*, 2020 ONCA 184, para 102 [***Brazeau*** and ***Reddock***], affirming *Reddock v Canada (Attorney General)*, 2019 ONSC 5053 [***Reddock***].

[32] *Reddock*, para 486.

ALL OF WHICH IS RESPECTFULLY SUBMITTTED, this 15th day of September, 2026



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PART VII – AUTHORITIES

No.	Authority	Paragraph Reference
1.	*Ahluwalia v. Ahluwalia*, 2026 SCC 16	5, 83–85, 87, 89, 91–95, 127, 128, 131, 135, 139, 145, 146, 159, 179, and 200
2.	*Ashby v. White*, [1738] EngR 87	
3.	*Attorney General of Canada v. Paul Drover*, 2026 CanLII 58917 (SCC No. 42005)	
4.	*Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44	54
5.	*Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17	56
6.	*Carr v. Ottawa Police Services Board*, 2017 ONSC 4331	65–67
7.	*Carter v. Canada (Attorney General)*, 2015 SCC 5	62, 64
8.	*Clark v. Canada (T.D.)*, 1994 CanLII 3479 (FCTTD), 11 DLR (2d) 447	
9.	*Colistro v. Tbaytel*, 2019 ONCA 197	14
10.	*Drover v Canada (Attorney General)*, 2025 ONCA 468	
11.	*Elmardy v. Toronto Police Services Board*, 2017 ONSC 2074	24–27
12.	*Entick v. Carrington*, [1765] 95 ER 807	
13.	*Gershman v. Manitoba Vegetable Producers' Marketing Board*, 1976 CanLII 1093 (MB CA), 69 DLR (3d) 114.	
14.	*Godbout v. Longueuil (City)*, 1997 CanLII 335, [1997] 3 SCR 844	66
15.	*Hill v. Church of Scientology of Toronto*, 1995 CanLII 59, [1995] 2 SCR 1130	107–108, 121
16.	*Huckle v. Money*, [1799] EngR 225	
17.	*Johnson v British Columbia (Attorney General)*, 2022 BCCA 82	83
18.	*Koechlin v. Waugh and Hamilton*, 1957 CanLII 359 (ON CA), 11 DLR (2d) 447	
19.	*McIlvenna v. 1887401 Ontario Ltd.*, 2015 ONCA 830	23
20.	*Merrifield v. Canada (Attorney General)*, 2019 ONCA 205	25
21.	*Mostyn v Fabrigas*, [1774] EngR 104	
22.	*Named Persons v. Canada (Attorney General)*, 2025 BCCA 197	151, 153, 157, 158–159
23.	*Nelson (City) v. Marchi*, 2021 SCC 41	15
24.	*Nissen v. Durham Regional Police Services Board*, 2017 ONCA 10	32, 51
25.	*Proulx v. Quebec (Attorney General)*, 2001 SCC 66	35

26.	*R. v. Big M Drug Mart Ltd.*, 1985 CanLII 69 (SCC), [1985] 1 SCR 295	
27.	*Resler v. Anglin*, 2026 SCC 23	81–85
28.	*Reddock v Canada (Attorney General)*, 2019 ONSC 5053	486
29.	*Brazeau v. Canada (Attorney General)*; *Reddock v Canada (Attorney General)*, 2020 ONCA 184	102
30.	*Rodriguez v. British Columbia (Attorney General)*, 1993 CanLII 75 (SCC), [1993] 3 SCR 519	
31.	*Saadati v. Morehead*, 2017 SCC 28	23
32.	*Savile v. Roberts*, [1792] EngR 2096	
33.	*Taylor v. Newfoundland and Labrador*, 2026 SCC 5	66–67, 72–76, 79–83, 85, 93, 97–100, 106, 109, 119–120, 127, 134, 143–144, 148, 156, 158, 166, 175, 176, 180–181, and 247
34.	*Ward v. City of Vancouver,* 2007 BCSC 3	48
35.	*Vancouver (City) v. Ward*, 2010 SCC 27	35–36