Court File No: T- 797-18

FEDERAL COURT

B E T W E E N:

Tammie Lynn MAYES

-and-

JUSTICE FOR CHILDREN AND YOUTH

Applicants

-and-

MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

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OVERVIEW

1. The Applicant, Tammie Lynn Mayes ("Ms. Mayes"), was in and out of state care in Ontario starting from her infancy in 1969 until she became a permanent ward at age 11. Ms. Mayes was discharged from state care at age 18 without regularized immigration status – she is a citizen of the United States. This led to decades of profound precariousness for her, as set out in the facts below. On her third application for permanent residence on humanitarian grounds, she was finally granted status – in 2016. Ms. Mayes is now 49 years old and still not a citizen of Canada despite having also applied three times for this grant pursuant to s. 5(4) of the *Citizenship Act* – the legislative section which permits discretionary grants of citizenship. Her application has been returned/rejected because she cannot pay the adult application fee. Given the practical and symbolic importance of citizenship, most especially for children who were raised by the state, it is incumbent upon the Respondent to recognize and facilitate a pathway to citizenship for Tammie Mayes and others similarly situated.

2. Ms. Mayes seeks 1) an order of *mandamus* and/or 2) an order of *certiorari*, as well as 3) a *declaration*[1] that former children in state care have a unique relationship with the state and ought to be considered special cases under s. 5(4). Finally Ms. Mayes seeks 4) a declaration that the current legislative scheme violates the *Charter*[2] as it violates her security of the person, and is discriminatory as it relates to former children in care.

PART ONE: STATEMENT OF FACTS[3]

Tammie Mayes' childhood as a Crown ward

3. Ms. Mayes, though born in New York state, was in and out of Children's Aid care in Ontario three times before the age of 10, and became a permanent ward around age 11. Ms. Mayes' early

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[1] *Federal Courts Act*, RSC 1985, c. F-7, s 18(1).

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

[3] The Applicants repeat and rely upon the facts as contained in the affidavits sworn in support of the application for leave and for judicial review, namely: the Affidavit of Tammie Lynn MAYES, 1 June 2018, ["2018 Mayes Affidavit"] in Application Record ["AR"], pages 17-27 which includes Statutory Declarations of Tammie Lynn MAYES, 4 December 2014, ["2014 Mayes Affidavit"] in AR, pages 44-51 and 23 January 2018, ["Jan. 2018 Mayes Affidavit"] in AR, page 470; Affidavit of Annie IRWIN, 1 June 2018, ["JFCY Affidavit"] at paras 52-59, in AR, pages 489-623. Also relied upon are the further affidavits of Dr. Rebecca Bromwich, Dr. Kiaras Gharabaghi, Dr. Daniel Fitzgerald, and Teny Dikranian filed after leave was granted, and the cross-examination transcripts of Anne Irwin, Rebecca Bromwich, and Kiaras Gharabaghi.

childhood was very unstable. Her mother was violent and lived with substance abuse. She never knew her father. She endured sexual abuse at the hands of her stepfather, and as an adolescent Ms. Mayes endured sexual abuse perpetrated by her foster father.[4]

4. Throughout her time as a child in care, Ms. Mayes was issued numerous Minister's Permits, however no attempts were made to regularize her status. Ms. Mayes aged out of care at the age of 18 with no immigration status – this despite correspondence from the Respondent's predecessor agency, Employment and Immigration Canada ("EIC"), acknowledging that 18 year old Mayes was eligible for permanent residence due to having been on Minister's Permits for more than 5 years. It appears that consideration by EIC went nowhere after Ms. Mayes was discharged by CAS due to problems she was having following school and home rules.[5] [6] When she aged out of care she was provided with no financial or social support.

5. Prior to recent amendments to the *Citizenship Act*,[7] non-citizen children in care were prohibited from applying for and obtaining citizenship until they reached the age of 18, except for a generally unknown, uncertain, and burdensome option of seeking a Ministerial Waiver of the age requirement. The *Citizenship Act* previously prohibited children under the age of 18 from applying for citizenship as principal applicants and the Respondent's predecessor agencies did not accept applications signed by child welfare agencies (the legal guardians of children in care) and routinely sent back such applications.[8] Indeed, child welfare/ child protection agency training books informed agencies that children in their care could only obtain citizenship once they turned 18 years of age.[9] By contrast, children not in care of the state had access to citizenship through their parents.

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[4] 2014 Mayes Affidavit, *supra* note 3 at paras 11, 16-19;AR Exhibit A, *supra* note 3 at 400-401.

[5] 2018 Mayes Affidavit, *supra* note 3 at paras 15-16, 19-22; 2014 Mayes Affidavit, *supra* note 3 at paras 7-8, 32; AR, *supra* note 3 at44-51. See also, correspondence between Employment and Immigration Canada and Family & Children's Services of Oxford County in AR at 199-202, 204-205, 219.

[6] See Schedule A for a complete summary of Tammie's immigration history while a child in state care.

[7] *An Act to amend the Citizenship Act and to make consequential amendments to another Act,* SC 2017, c. 14, atss 5(1.04), 5(2). These sections now provide that children can be included on the citizenship application of their parents, even if they themselves do not meet all of the requirements. Parents or legal guardians can also still sign a citizenship application on behalf of the minor.

[8] JFCY Affidavit, *supra* note 3 at para 12. See also, *House of Commons Debates*, 42nd Parl, 1st Sess, Vol 150 (11 April 2017) [*HC Debates* (11 April 2017)](for remarks by Senator Kim Pate, generally).

[9] JFCY Affidavit, *supra* note 3 at para 12. See also, Exhibit "D" and "Immigration Status Matters: A Guide to Addressing Immigration Status Issues for Children and Youth in Care" in AR, *supra* note 3 at 585-613. See also, Francis Hare, "Transition without status: The experience of youth leaving care without Canadian citizenship" (2007) 2007:113 New Directions for Student Leadership 77 at 84.

Tammie Mayes' efforts to obtain permanent resident status; impact of precarity

6. Starting in or around 1988, Ms. Mayes began seeking permanent status in Canada on her own. Year after year she applied for temporary permits, 12 in all, most of which were granted only for a year or a few months' in duration. Ms. Mayes applied twice for permanent residence: once in 1992 (refused in 1997) and again in 2002 (refused in 2007). The exorbitant costs and paperwork burden she faced put up multiple barriers for her, these burdens exasperated by her having to repeatedly renew interim Minister's Permits and Work Permits, being requested to obtain a pardon for minor convictions despite that a humanitarian waiver from minor criminality was always possible and did not require a pardon;[10] and having to raise the Right of Landing fee which at that time was nearly $1000.[11] All of this made her unable to finalize these applications for permanent residence, which were refused for "non-compliance" with these multiple costly requests.[12]

7. In Ms. Mayes' immigration history, it appears that the Respondent never turned its mind to her particular vulnerabilities as a former child in state care in order to waive some of these onerous requirements and end her precarity of status.[13]

8. Re-applying for temporary documentation year after year on her own compounded all of the vulnerabilities she faced, and led her to fall out of status on a number of occasions. According to Ms. Mayes, this context placed her into a life of precarity which had real and profound consequences for her. In her 2014 Statutory Declaration[14] submitted with her first citizenship application, she describes how despite her desire and efforts to find meaningful work, her

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[10] See *An Act Respecting Immigration to Canada,* 1976, 25-26 Elizabeth II, c. 52 at s 19(2)(b), which provided that in relation to convictions for which under 10 years' sentence may be imposed, the inadmissible person could demonstrate their rehabilitation if 5 years had passed since the sentence and be relieved of the inadmissibility. Tammie was issued fines in 1990 and 1991 for her minor offences of mischief and attempted fraud under $1000. See also, Mayes 2018 Affidavit, *supra* note 3, Exhibit "A" in AR at 76. By 1996 it was clearly available to EIC to waive this inadmissibility.

[11] A $975 Right of Landing Fee was imposed 28 February 1995, but reduced in 2006 to $490. See, Government of Canada, "Fees: Right of permanent residence fee (RPRF) – R303" online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/fees/immigration/right-permanent-residence-rprf-r303.html>.

[12] See Schedule B, for a complete summary of Ms. Mayes' immigration history once she turned 18.

[13] 2018 Mayes Affidavit, *supra* note 3 at Exhibit A. See also, "GCMS Notes" in AR at 259-394.

[14] *Ibid*. See also, AR at 399-406.

temporary immigration status was a barrier to securing, maintaining, and progressing in employment (paras. 34, 36) as well as to her ability to assert her rights at work (para. 35, 37, 38) where she regularly experienced harassment and exploitation. Ms. Mayes' lack of permanent status barred her from accessing student loans or programs to further her studies (para. 24). Her application for subsidized housing was stymied by her lack of permanent status (para. 42) and her housing history is marked by transience, during which she has lost treasured possessions (para. 43) and ultimately ended up homeless. During the periods when she did not have temporary permits, she could not access Employment Insurance or health care (para. 40). The cumulative impact of Ms. Mayes' traumatic childhood, lack of supports, and precarity of immigration status have taken a toll on her physical and mental health, such that she has in recent years been found to be a person with a disability.[15]

8. In 2014, after seven years of living without status, Ms. Mayes filed a third application for permanent residence on humanitarian and compassionate grounds ("H&C") – this time with counsel, the first time she had legal representation since turning 18. Community agencies donated the $550 for her application fee.[16] At the time Ms. Mayes had no income supports, was living in a women's shelter, and had been without health coverage for many years.

Tammie Mayes' three refused applications for Canadian citizenship under s. 5(4)

9. In March 2015 Ms. Mayes also concurrently applied for Canadian citizenship, seeking a grant of citizenship on compassionate grounds to alleviate her special and unusual hardship, pursuant to s. 5(4) of the *Citizenship Act*. In submissions made that date and again over the next two years, she requested a compassionate waiver from the fee and the other minor deficiencies of her application,[17] given her extraordinary facts. On June 14, 2017 her application was refused/rejected

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[15] Note these harms Tammie experienced are consistent with those faced by other non-citizen former children in care. See, Ontario Association of Children's Aid Societies, "Immigration Status Matters: A guide to Addressing Immigration Status Issues for Children and Youth in Care," December 2014. See also, AR, *supra* note 3 at 591-592; JFCY Affidavit, *supra* note 3 at Exhibit D.

[16] Letter from Patricia Gardner, Christian Resource Centre (29 May 2014). See also, 2018 Mayes Affidavit, *supra* note 3 at Exhibit "A"; AR at 255-257.

[17] Other minor deficiencies she sought a waiver from under s. 5(4) discretion were the formal residency requirement, since she had resided continually in Canada – mostly with legal (if precarious) status - for nearly 40 years, and the requirement to submit a third-party (and costly) test result confirming her proficiency in English, since she was a few credits shy of completing high school. See 2018 Mayes Affidavit, *supra* note 3, Exhibits "F" and "H"; AR, at 450-473 and 477-485.

for processing without consideration of the s. 5(4) request. Her failure to provide the adult application fee of $630 was cited in the letter returning her application to her.[18] At this point, Tammie Mayes was 48 years old.

10. On February 5, 2018, Ms. Mayes re-submitted her application for a grant of Canadian citizenship further to s. 5(4) of the *Citizenship Act* and again requested a waiver from the fee. On February 13, 2018, that application was again refused/rejected for processing without consideration of the s. 5(4) request. Again, the sole factor stated for refusing to process the application was the missing $630 fee.[19]

11. On June 19, 2017, the *Citizenship Act* was amended to, *inter alia*, enable children to apply for citizenship without needing a parent applying at the same time.[20] On February 20, 2018, IRCC's acting Minister announced that minor children would be required only to pay a $100 application fee in support of their citizenship applications.[21] In his pronouncement regarding the changes, the Minister specified that acquiring citizenship for children "in the care of the state" is a priority for Canada.[22] A remission order ensured that any minors who applied with the higher fee would be reimbursed, because "the $530 fee still posed a barrier to a potentially vulnerable population."[23]

12. Following the Minister's announcement, Ms. Mayes paid the $100 child application fee and on February 22, 2018, re-submitted her application for citizenship for a third time.[24] She reiterated her request for processing pursuant to s. 5(4) of the *Citizenship Act* and urged the Minister to exercise his authority to extend the $100 fee for minors to former children in care. Ms. Mayes

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[18] 2018 Mayes Affidavit, *supra* note 3 at paras 26-30, Exhibit E., AR at 449. See *Citizenship Act*, RSC 1985, C-29, s 5(4).

[19] 2018 Mayes Affidavit, *supra* note 3 at paras 31-32, Exhibit G, AR at 475.

[20] *An Act to amend the Citizenship Act, supra* note 7. See also, *HC Debates, supra* note 8, which shows that when this amendment was voted upon in the Senate, several Senators (Pate, Omidvar, Sinclair, Enverga) noted that this amendment did not go far enough, i.e. to remedy the same vulnerability of those who have aged out of state care; the Applicants submit the declarations they seek would close this gap.

[21] The Schedule to s 31(1) of the *Citizenship Regulations* SOR/93-246 was last amended on February 12, 2018 to provide that minors can now apply for citizenship on their own upon payment of $100; adults still pay $530 plus a $100 Right of Citizenship fee.

[22] See IRCC, *Government of Canada facilitates access to Canadian citizenship for minors* ["Minister's Announcement"], online: <https://www.canada.ca/en/immigration-refugees-citizenship/news/2018/02/government_of_canadafacilitatesaccesstocanadiancitizenshipformin.html?_ga=2.196186601.459744412.1527800142-422317011.1521128334>.

[23] Exhibit A of the Affidavit of Teny Dikranian, dated 9 October 2018.

[24] 2018 Mayes Affidavit, *supra* note 3 at Exhibit H, AR at 476-86.

pointed out that the $100 fee applicable to minors was under-inclusive because it excludes former children in care like her, whose lifelong challenges, *which stem from her experience as a child in care of the state*, cause significant hardship in coming up with the adult fee of $630. As she stated in her Statutory Declaration submitted at that time:

> Presently my sole source of income is the Ontario Disability Support Program. My monthly income on this program is $1049, out of which I must pay my rent ($500), food ($300), transportation ($100) and other necessities which do not leave much left over. I do not live in an area where there are a lot of free services, such as meals. I simply cannot find an additional $630 to pay for citizenship out of this amount. I would have to not eat and not pay any other bills of any kind for a month in order to apply for citizenship if I had to pay the fee. Therefore I ask the government to waive the fee for me on compassionate grounds.[25]

13. By letter dated March 1, 2018, Ms. Mayes' application was again refused/rejected for processing without consideration of the s. 5(4) request. Again the letter returning the application provided no reasons except noted the missing $630 fee. This refusal is the subject of the herein application for judicial review.[26]

PART TWO: ISSUES

14. This application raises the following preliminary issue:
    - **A. JFCY meets the test for public interest standing in this matter**
15. This application raises the following issues:
    - **B. The Applicant Tammie Lynn Mayes seeks a decision, and asks the Court to issue an order of *mandamus***
    - **C. In the event she received a decision, the Applicant Tammie Lynn Mayes asks the Court to issue an order of *certiorari* because:**
        - i. It was unreasonable for the Respondent to refuse to accept her citizenship application for processing.
        - ii. The Respondent provided no reasons; in the alternative the reasons are neither justifiable, transparent, nor intelligible.

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[25] Jan. 2018 Mayes Affidavit, *supra* note 3 at para 4, AR at 470

[26] *Ibid* at paras 33-34.

D. **The Respondent's application of the scheme under s. 5(4) the *Citizenship Act* and the Regulations pertaining to fees for minors violates the Applicant Tammie Mayes' *Charter* rights under ss. 7 and 15 of the Charter and is not saved under s. 1**

PART THREE: LAW AND ARGUMENT

A. JFCY MEETS THE TEST FOR PUBLIC INTEREST STANDING IN THIS MATTER

16. As set out below, Justice for Children and Youth ("JFCY") meets the three prong test, as applied purposefully and flexibly, for public interest standing set out by the Supreme Court of Canada ("SCC").[27]

17. There is no question that this application raises serious and justiciable issues. It concerns the Respondent's fettering of their discretion and the Respondent's under-inclusive regulations and processes to protect the ss. 7 and 15 *Charter* rights of children formerly in care of the state who failed to meet their obligations under domestic and international law to ensure that the best interests of these children – in the short, medium, *and long term* – were met. These are important issues that are far from frivolous and need to be addressed by this Court.[28]

18. JFCY has a **real stake in the proceedings** as an established organization that is engaged with and has a genuine interest in the issues being raised, and has unique expertise on the rights of homeless and street-involved youth who are and were in state care.[29]

19. This is a **reasonable and effective way to bring the issues before this Court:** JFCY is committed to public interest litigation,[30] and is familiar with the extreme difficulty encountered in finding child and youth litigants generally. And as in this case, litigants with the additional vulnerabilities of being both formerly in care of the state and as migrants; who, as children, had no choice in where they lived, when and how they migrated, and who their caregiver was. In "aging out" of state care, these non-citizens continue to lack political power and access to resources, and are

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[27] *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society,* 212 SCC 45. Considered again in *Manitoba Metis Federation,* 2013 SCC 14 [*Manitoba Metis Federation*].
[28] JFCY Affidavit, *supra* note 3 at paras 52-59.
[29] *Ibid* at paras 9-51. See also, Irwin Cross-examination.
[30] *Ibid* at para 14-23.

marginalized such that it is easy to overlook their interests.[31]

20. JFCY is well positioned to provide "particularly useful or distinct perspectives to the resolution of the issue."[32] The issues raised in this litigation affect not only the Applicant, but all former children in care in similar circumstances. In the interest of judicial economy, JFCY's participation avoids the need for parallel proceedings as it would be inefficient, impractical, and ineffective, as well as inequitable to require litigants to advance these arguments individually.

B. MS. MAYES SEEKS A DECISION AND REQUESTS AN ORDER OF *MANDAMUS*

21. Section 13 of the *Citizenship Act* provides:

> **13** An application is to be accepted for processing under this Act only if all of the following conditions are satisfied:
>
> **(c)** it is accompanied by any supporting evidence and fees required under this Act.

22. Section5(4) of the *Citizenship Act* provides:

> **5(4) Despite any other provision of this Act**, the Minister may, in his or her discretion, grant citizenship to any person to alleviate cases of statelessness or of special and unusual hardship or to reward services of an exceptional value to Canada. [emphasis added]

23. The Applicants submit that the Minister is owed no deference on the question of statutory interpretation which underlies the request for *mandamus*, and the wording "despite any other provision of this Act" signals broad unfettered discretion granted by Parliament to the Minister. As such the standard of correctness should apply.[33]

24. The Federal Court has jurisdiction to grant a writ of *mandamus* pursuant to the *Federal Courts Act*, RSC 1985, c F-7, s. 18.1(3). *Mandamus* lies to compel the performance of a public legal duty which a public authority refuses or neglects to perform although duly called upon to do so.[34] The issuance of a writ or order of *mandamus* is subject to conditions being satisfied as established by the Federal Court of Appeal in *Apotex Inc.* v. *Canada (A.G.)*, a decision that was affirmed by

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[31] *Papassay v Ontario*, 2017 ONSC 2023 at para 85. See also, *Guidelines for the Alternative Care of Children*, UNGAOR, 64th Sess, UN Res 64/142 (2010)
; Fitzgerald Affidavit, *supra* note 3 at para 6-10; Gharabaghi Affidavit, *supra* note 3 at para 23-24; JYFC Affidavit, *supra* note 3 at paras 9-13 and 54-56.

[32] *Manitoba Metis Federation, supra* note 27 at para 43.

[33] *Toussaint and Ndungu v Canada (Minister of Citizenship and Immigration),* 2011 FCA 146 at para 29.

[34] *Dragan v Canada (MCI*), [2003] 4 FC 189.

the Supreme Court of Canada ("SCC").[35]

25. The Applicants submit that each of the elements of the *Apotex* test for *mandamus* have been met. As detailed above, each of Ms. Mayes' multiple requests were returned without the Minister exercising his discretion because the adult fee was not paid. It appears that the Minister's position is that the s. 5(4) discretion cannot be exercised without payment of the adult processing fee. This is incorrect in law and the Applicants ask the Court to compel the Minister to exercise his s. 5(4) discretion to accept Ms. Mayes' application for processing.

26. The Applicants submit that the Minister has a **legal duty to act under the circumstances and that duty is owed to Ms. Mayes**. The source for this public legal duty lies in the objects and purpose of the *Citizenship Act*, which has always signaled a compassionate framework[36] and further, Canada's obligations under international law, which animate all legislation and particularly legislation that concerns children. Recognition of the unique vulnerability or children, and attention to their unique interests has consistent and deep roots in Canadian law.[37] This vulnerability is compounded in multiple ways for people who as children were non-citizens and were in the care of a child protection agency. It is to be borne in mind that the best interests of the child principle is an established fundamental legal principle in Canadian law, is meaningfully articulated and discussed in international law, and is to be applied to all decision making that affects the interests of children – the short, *medium and long term interests*.[38] While Ms. Mayes and former children in care are no longer minors, it is well recognized that children in care are among the most vulnerable children in Canada,[39] and the obligation to protect the best interests of a

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[35] *Apotex Inc v Canada (AG)*, [1994] 1 FC 742 (CA), aff'd [1994] 3 SCR 1100.
[36] See, *Re Weiss*, 1998 FC 7376 at para 5: "Having regard to these special circumstances, I do not believe that denying the appellant Canadian citizenship can serve any purpose." See also,*Al Darawish v Canada*, 2011 FC 984 at para 32: "In my view compassion is a vital part of the Canadian makeup that makes Canada the best country in the world." *See also* note 56, below.
[37] *R v Sharpe*, 2001 SCC 2at paras 170, 174; *AB v Bragg Communications Inc*, 2012 SCC 46 at para 17; *R v DB*, 2008 SCC 25 at paras 41, 48, 61; *AC v Manitoba (Director of Child and Family Services)*, 2009 SCC 30 at paras 151, 2 SCR 181; *Baker v Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817 at para 67; *Gordon v Goertz*, [1996] 2 SCR 27 at para 44.
[38] *Canadian Foundation for Children Youth and the Law v Canada (Attorney General)* 2004 SCC 4 at para 9; *United Nations Convention on the Rights of the Child*, UNGAOR, Can TS 1992 No. 3, Art 3(1) [*UNCRC*]; Committee on the Rights of the Child, *General comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)*, UNGAOR, 62nd Sess, UN Doc CRC/C/GC/14 at paras 14-16, 32, 33 [UN Committee on the Rights of the Child, *General Comment No 14 (2013)*].
[39] *Papassay v Ontario*, 2017 ONSC 2023 at para 85; *Guidelines for the Alternative Care of Children,* GA Res 64/142, UNGAOR, 64th Sess, Supp No 49 [UN Res 64/142].

child[40] includes recognition that the short and medium term impact of being in state care will have a long term impact on their well-being and outcomes.[41] The enhanced vulnerability of children in state care and their increased dependence on adults and need for a sense of belonging[42] should be recognized in subsequent actions of the state, the same state that was their caregiver and legal guardian during childhood.

27. As such, the Minister is not entitled to simply refuse to accept her application under s. 5(4) without proper reasons, or refuse to choose to exercise his unfettered discretion. In *Canadian Union of Public Employees (C.U.P.E.) v Ontario (Minister of Labour)*,[43] the SCC approved the following passage from *Padfield v Minister of Agriculture, Fisheries and Food*, [1968] AC 997 (HL):

> ... if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion **as to thwart or run counter to the policy and objects of the Act**, then our law would be very defective if persons aggrieved were not entitled to the protection of the court. [emphasis added]

28. As Ms. Mayes facts so clearly demonstrate, the array of rights Canada recognizes as protected under international law[44] are forfeited without access to a procedure to become a citizen of the country where one remains indefinitely. Canada is the only place Ms. Mayes has lived since she can remember, the only place that counts as home. International law[45] recognizes that Tammie

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[40] *Kanthasamy v Canada (Citizenship and Immigration)*, [2015] 3 SCR 909; UN Committee on the Rights of the Child, *General Comment No 14 (2013)*, *supra* note 38.

[41] *Catholic Children's Aid Society of Metropolitan Toronto v CM* [1994] 2 SCR 165 at para 44; *Plyler v Doe* (1982), 457 US 202, 102 S.Ct. 2382 (US Sup Ct); UN Committee on the Rights of the Child, *General Comment No 14 (2013)*, *supra* note 38.

[42] UN Res 64/142, *supra* note 39. *See also*, M.A. Ali, "Children Alone: Seeking Refuge in Canada" (2006) 23:2 Refugee Diasporas and Transnationalism 68; Carla Valle Painter, "Sense of belonging: literature review" (2013) Government of Canada, online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/reports-statistics/research/sense-belonging-literature-review.html>; Hare, *supra* note 9.

[43] *Canadian Union of Public Employees (CUPE) v Ontario (Minister of Labour)*, 2003 SCC 29.

[44] *International Covenant on Economic, Social and Cultural Rights* 993 U.N.T.S. 3 ["*ICESCR"*] at Article 6 (Right to Work), Article 13 (Right to Education) and Article 2(2) (Non-Discrimination – "without discrimination of any kind as to…other status"). Office of the United Nations High Commissioner for Human Rights and World Health Organization, *The Right to Health: Fact Sheet No. 31*, June 2008, online: OHCHR <http: //www.ohchr.org/Documents/Publications/Factsheet31.pdf>. *Doctors for Refugee Care v Canada (Attorney General) 2014 FC 651* at 474. *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 at para 71, wherein this Court held the international instruments which Canada has ratified "reflect not only international consensus, but also principles that Canada has committed itself to uphold". See also *Baker*, *supra* note 37 at para 70: "[T]he values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review."

[45] *Universal Declaration of Human Rights*, GA Res 217 A (III) UNGAOR, 3rd Sess, 183rd Mtg, UN Doc A/810 (1948) [UN Res 64/142] at Article 15 (Right to a Nationality) [*UNDHR*]. See also for stateless persons, who are analogous in this situation because Tammie cannot leave Canada, the only country she has ever known, without risking inability to

Mayes, having been raised by the state in Canada and having spent nearly her entire life here, is in "her own country", and the Respondent has a duty to facilitate a legal recognition of her status by admitting her application for processing. Given her extreme challenges accessing permanent residence (which can be lost for various reasons[46]) and that these challenges stem from her experiences as a former child in state care, she asks the Court for an order of *mandamus* to accept her citizenship application for processing despite non-payment of the adult fee.

29. The breach of Ms. Mayes' *Charter* rights under the current *Citizenship Act* framework which enables her application to be rebuffed without consideration is set out further in arguments below. The SCC has repeatedly used international legal principles to interpret the *Charter*, and has made clear that the *Charter* will be seen to provide protections at least as great as those provided for in international human rights documents which Canada has ratified.[47]

30. The Applicant Ms. Mayes has a **clear right to the performance of that duty**, as she has made a clear application under the s. 5(4) compassionate provision, which was enacted for just such cases as hers, to "alleviate cases… of special and unusual hardship." She set out all of the factors underlying the special and unusual hardship the fee creates, and is entitled to a decision to waive the fee and admit her application for processing. She submitted the fee applicable to minors; she completed the forms and clearly explained any deficiencies in her application and asked for compassionate discretion taking all of her circumstances into account. She applied repeatedly, making **numerous prior demands for the performance of the duty**. She truly could not have done more.

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return but who can never gain citizenship: *Convention Relating to the Status of Stateless Persons,* at Article 32 (Naturalization); *Convention on the Reduction of Statelessness,* Article 8 (Deprivation of Nationality). Canada's obligations as state party to the *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331 ["Vienna Convention"] at Articles 26, 31-32 obligates states to meet its obligations in treaties/conventions it is party to and to give broad meaning to that. Also instructive are the views of the UN Human Rights Committee in *Jama Warsame v Canada,* CCPR/C/102/D/1959/2010 regarding the right to remain "in one's own country" and of the International Court of Justice in the *Nottebohm case (Liechtenstein v. Guatemala)* [1955] ICJ 1, which stands for the general principle of citizenship lying where one's genuine links exist.

[46] See the *Immigration and Refugee Protection Act*, SC 2001, c. 27 which sets out various grounds for loss of permanent residence at ss 28 (residency), 36 (criminality), and 40 (misrepresentation).

[47] *R v. Hape*, 2007 SCC 26, para 55

31. Ms. Mayes' source of income is the Ontario Disability Support Program which makes her unable to ever have sufficient surplus funds to pay for citizenship; as she explained, there is no alternative adequate remedy available to her. Having had her application for Canadian citizenship rebuffed consistently due to non-payment of the unaffordable fee, she has **no other alternative or adequate remedy** but to seek redress in the Federal court.

32. Further, the **order sought will be of some practical value or effect**. The harm that Ms. Mayes may suffer if *mandamus* is not granted may be irreparable; e.g., her likelihood of obtaining Canadian citizenship is substantially diminished. After multiple rejected attempts to seek the discretion of the Minister, the order of *mandamus* is the only practical way to protect her right to have her application assessed.

33. **There is no equitable bar for the Court to exercise discretion in favour of the Applicants**. The Minister is responsible for the under-inclusive Regulations in respect of fees. The Applicants have not been responsible for any delay nor has the Applicant Ms. Mayes compromised her cause in any way; she comes to the Court with "clean hands", and there is no equitable bar for an order of *mandamus*. For all of these reasons, **the balance of convenience** lies with the Applicants.

C. IF THIS IS A DECISION, MS. MAYES REQUESTS AN ORDER OF *CERTIORARI*

34. The Officer fettered his/her discretion by refusing to, at minimum, accept Ms. Mayes' application for processing; this given the discretionary power granted by s. 5(4) of the *Citizenship Act.* Additionally, the Respondent's failure to provide reasons for the refusal to process renders the decision further reviewable by this Court.

What is the appropriate standard of review?

35. The applicable standard of review on the issue of whether the Officer fettered discretion is not settled; however, under both the correctness and reasonableness standards, fettered discretion is impermissible and will result in the granting of the judicial review application.[48] The issue of

[48] *Gordon v. Canada (Attorney General)*, 2016 FC 643 at para 28, *per* Mactavish J.

adequacy of reasons is reviewable on reasonableness, unless no reasons were provided at all, in which case the applicable standard is correctness.[49]

The Minister fettered his discretion

36. At section 5(4), the *Citizenship Act* grants Respondent officers inherent discretion to retain and process applications for Citizenship on compassionate grounds in spite of any deficiencies. Ms. Mayes has attempted to have her application for Citizenship processed on *at least three* occasions. In each submission, she has repeated and specifically requested **exemptions** from the adult fee under s. 5(4).

37. The Minister's reduction of the citizenship fee for minors was a clear signaling from the government of the adoption of a flexible and compassionate approach with respect to citizenship and an admission that this is within the purview of the government.[50] Given her history of being in care, and the fact that no attempts had been made to regularize her status, Ms. Mayes re-submitted her application for citizenship and included a $100 fee payment – the amount required by children in care.[51] Again in her application, Ms. Mayes reiterated her request that her application not be returned in the face of any further deficiencies and that s. 5(4) discretion be exercised. Indeed, the Re line in her last application states "APPLICATION FOR A DISCRETIONARY GRANT OF CANADIAN CITIZENSHIP UNDER S. 5(4) - ADULT".

38. Despite this, by letter dated March 1, 2018, Ms. Mayes' application was again returned/not accepted for processing. The refusal letter lists the lack of fee and residency obligation as the reasons for return.[52] The refusal to accept the application for processing appears to be a substantive refusal; this evidenced through the Respondent's own verbiage. For instance, the Respondent's affiant - Mr. David DeMelo – refers to the refusal to process the application as a rejection, he states: "On March 1, 2018 the Applicant's citizenship grant was application was

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[49] *Ayyad v. Canada (Citizenship and Immigration)*, 2014 FC 1101 at paras 25-30, *per* Kane J [*Ayyad*]; (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*], citing *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*].
[50] "Minister's Announcement", *supra* note 22.
[51] 2018 Mayes Affidavit, *supra* note 3 at Exhibit H; AR, *supra* note 3 at 476-86.
[52] See Decision and Reasons pursuant to Rule 9 of the *Federal Court Rules*, 24 April 2018, ["Decision and Reasons"] in AR, pages 10-16.

rejected ….”[53] Additionally, during his cross-examination, Mr. DeMelo called the return of the Applicant's February 22, 2018 application (as well as prior applications), as a "rejection" of the application.[54] Accordingly, in these circumstances *certiorari* arises.

39. It is clear that the Reviewing Officer had the discretion to accept the application for processing despite any deficiencies. Indeed, the Respondent has admitted previously that Citizenship officers have discretion relating to "determining whether an application is completed" and that applications can be accepted despite deficiencies.[55] In this case, the Officer did not turn his/her mind to this and as a result, the Officer fettered their discretion. The Applicants rely on the cases of *Ayyad* (2014) and *Swerdlow* (2016),[56] where Citizenship officers were found to have too narrowly interpreted the *Citizenship Act* and were found to have fettered their discretion in failing to heed applicants' requests.

The Minister failed to provide reasons

While the content of the duty to provide reasons was refined in *Newfoundland Nurses*[57], the decision affirmed that the failure to provide reasons at all can amount to a breach of procedural fairness. In this case, no reasons are provided for the refusal to accept for processing Ms. Mayes' application: evaluated against the standard of correctness, this is certain error, warranting remittance of the application.

At best, the reasons provided were neither justifiable/transparent nor intelligible

40. When refusing an application, at the very least a decision maker is required to provide reasons which are justifiable, transparent and intelligible to explain their decision.[58] The standard required for reasons to be sufficient is a low bar.[59]

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[53] Affidavit of David DeMelo, sworn on July 4, 2018 at para 31.

[54] Transcript of Cross-Examination of David DeMelo, at 58.

[55] *Golichenko v Canada (Citizenship and Immigration)*, 2016 FC 657 *per* Southcott J at para 28.

[56] *Ayyad, supra* note 50 at paras 41-42, *per* Kane J; *Swerdlow v Canada (Citizenship and Immigration)*, 2016 FC 577, *per* Harrington J.

[57] *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 22 per Abella J (McLachlin CJ and LeBel, Deschamps, Fish, Rothstein and Cromwell JJ, concurring).

[58] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, *supra* note 50 at para 47, and *Khosa*, *supra* note 50at para 59.

[59] *Benko v. Canada (Citizenship and Immigration)*, 2017 FC 1032 (CanLII) at para 34, *per* Gascon J.

41. The reasons provided in Ms. Mayes' citizenship refusal fail even to meet this minimal requirement and this failure, *per* case law, constitutes a reviewable error.[60] Indeed, a review of the decision makes clear there are **no** discernable reasons provided to explain why discretion pursuant to s. 5(4) was not exercised.[61] In fact the reasons themselves make absolutely **no** mention of s. 5(4) or of discretion whatsoever. Certainly **no** rationale is provided as to why, in spite of Ms. Mayes' s. 5(4) request, the application was not accepted for processing. In light of the tremendous importance of this application for Ms. Mayes, given that she has been diligent in her attempts to obtain citizenship, given that she has paid a $100 application fee and given that she has specifically requested 5(4) discretion, it is submitted that the reasons for the refusal are plainly deficient and that this Court should intervene.

D. The Respondent's application of the scheme under s. 5(4) the *Citizenship Act* and the Regulations pertaining to a reduced fees for minors violates the Applicant's *Charter* rights under ss. 7 and 15 of the Charter and is not saved under s. 1

Section 7 of the Charter

42. Section 7 of the *Charter* is about the protection of each individual's interests as they relate to their right to life, liberty and personal security. The security of a non-citizen who was formerly in care of the state is *prima facie* of equal valuable and worthy of the concern, protection and respect as of others in Canada.[62]

43. The Applicants submit that where the Respondents have put in place a scheme to enact regulations regarding the application process for citizenship, that scheme must comply with the *Charter*.[63] In determining whether the scheme being challenged violates s. 7 of the *Charter*, a two-

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[60] *Ayyad, supra* note 50 at paras 38-42, *per* Kane J.; C*anada (Minister of Citizenship and Immigration) v Baron*, 2011 FC 480 at paras 17-18, *per* Bedard J [*Baron*]. In *Baron*, the Court set aside a citizenship judge's decision because his reasons were not adequate and were unclear. The Court was, therefore, not in a position to determine whether the decision fell within a range of possible, acceptable outcomes.

[61] See Decision and Reasons pursuant to Rule 9 of the *Federal Court Rules*, 24 April 2018, ["Decision and Reasons"] in AR at 10-16.

[62] *Ibid*.

[63] C*haoulli v Quebec,* 2015 1 SCR 791 at 104 [*Chaoulli*]; *R v White,* [1999] 2 SCR 417 [*White*]; *R v Morgentaler*, [1998] 1 SCR 30; *Carter v Canada (Attorney General)* (2015), 1 SCR 331 at para 55 [*Carter*]; *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624 [*Eldridge*]; *Auton (Guardian ad item of) v British Columbia (Attorney General)* (2004), 3 SCR 657 [*Auton*]. Withler v. Canada (Attorney General) 2011 SCC 12 at para 35-36; [Withler]; Auton v British Columbia*, 2004 SCC 78*

stage analysis is required: first, a determination that the state action deprived the Applicants of their right to life, liberty and personal security,[64] and that, second, these deprivations are not in accordance with the principles of fundamental justice.[65]

Infringement of the Applicants' Rights

44. Security of the person "encompasses 'a notion of personal autonomy involving ... control of one's bodily integrity free from state interference" … "and it is engaged by state interference with an individual's physical or psychological integrity, including any state action that causes physical or serious psychological suffering."[66]

45. This is not about an economic right, that is, the waiver or reduction of the fee itself, which may fall outside the ambit of s.7, but rather this is about the under-inclusivity of the regulatory scheme to permit an individual to seek a fee waiver or fee reduction, and to have their application for citizenship considered.

46. Similar to the Supreme Court's analysis in *Chaouilli*, a limitation to access citizenship which is demonstrably shown to cause, or create an additional risk to, psychological and physical harm, cannot be characterized as an infringement of an economic right, it is an infringement to personal inviolability.[67]

47. The evidence is that the harm is of a sufficiently serious level of psychological distress as a result of the difficulties and barriers causing delay or inability to apply for and acquire citizenship.[68] The effects of state interference are to be assessed objectively, with a view to the impact on the psychological integrity of a person of reasonable sensibility,[69] and the impact need not rise to the level of nervous shock or psychiatric illness, but must be greater than ordinary stress or anxiety.[70]

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[64] *Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177 at para 35.
[65] *Gosselin v Quebec (Attorney General)*, 2002 SCC 84 at para 75 [*Gosselin*]; *Re Charkaoui*, 2007 SCC 9 at para 21.
[66] *Carter, supra* note 63 at para 64.
[67] *Chaoulli*, *supra* note 63 at para 34; *Gosselin, supra* note 67at para 311.
[68] 2018 Mayes Affidavit, *supra* note 3; 2014 Mayes Affidavit, *supra* note 3; JFCY Affidavit, *supra* note 3; Fitzgerald Affidavit at paras 5, 12. See also, Judith Bernhard et al, "Living with Precarious Legal Status in Canada: Implications for the Well-Being of Children and Families" (2007) 24:2 Informing Integration 101; Ali, *supra* note 42.
[69] *New Brunswick (Ministry of Health and Community Services) v G (J)*, 1999, SCC at 58 [*NB v G(J)*]*; Blencoe v BC [New Brunswick],* 2000 SCC 44 at para 60 [*Blencoe*].
[70] *NB v G(J)*, *supra* note 71 at 59.

> "A sufficient causal connection standard does not require that the impugned government action or law be the only or the dominant cause of the prejudice suffered by the claimant, and is satisfied by a reasonable inference, drawn on a balance of probabilities.[71] A sufficient causal connection is sensitive to the context of the particular case and insists on a real, as opposed to a speculative, link."[72]

However, "to set the bar too high risks barring meritorious claims. What is required is a sufficient connection, having regard to the context of the case."[73]

48. The Applicant has suffered serious psychological distress.[74] The economic hardship experienced by the Applicant is *one* common and persistent facet of her lived experiences, and it is a result of having been a child in care. But it is not the fact of economic hardship alone that engages Ms. Mayes' s. 7 interests. The Applicant Ms. Mayes and those similarly situated face a sufficiently serious level of psychological stress based on the series of barriers that have existed and continue to exist – beginning with their ineligibility to seek citizenship when the state was their legal guardian, the host of negative social, health, educational, employment, and psychological circumstances and barriers faced by them because of their status as non-citizens formerly in care, and at this point being excluded from access to apply for citizenship.[75]

49. The consequences of the on-going delay[76] in accepting Ms. Mayes application for citizenship has created real and substantiated harm to her psychological and physical well-being. In her applications for a Ministerial waiver, Ms. Mayes clearly articulated the profound negative impact that further delays, lack of permanent, secure status (citizenship) were having on her human dignity and the level of distress the delays and inability to access citizenship were causing.[77]

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[71] *Canada (Prime Minister) v Khadr*, 2010 SCC 3 at para 21 [*Khadr*].
[72] *Canada (Attorney General) v Bedford,* [2013] 3 SCR 72 at paras 76-78.
[73] *Ibid*.
[74] 2018 Mayes Affidavit, *supra* note 3.
[75] 2018 Mayes Affidavit, *supra* note 3; Gharabaghi Affidavit, *supra* note 3 at para 14, 16, 19, 23-24; Bromwich Affidavit, *supra* note 3 at paras 23-24; Bromwich Cross-examination, *supra* note 3 at paras 32-33; Fitzgerald Affidavit, *supra* note 3 at paras 6-10.
[76] *Morgentaler*, *supra* note 63 at paras 549-50*; Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519 at paras 136-37 [*Rodriguez*]. Also see medical evidence, 2018 Mayes Affidavit, Exhibit "A", in particular Dr. Cavanaugh psychological assessment AR pp. 56-57; Dr. Kitai letter AR at p 58; and further medical records from Dr. Kitai and Dr. Harshman, AR at pp. 61-74
[77] *Morgentaler*, *supra* note 63 at para 59*; Rodriguez, supra* note 76 at para 589; *NB v G(J)*, [1999] 3 SCR 46 *supra note 69*; *Blencoe, supra* note 71; *Chaoulli, supra* note 63 at para 43; *Samimifar v Canada (Min of Citizenship & Immigration),* 2006 FC 1301. See also, medical evidence Tammie Mayes, *supra* note 76.

50. There is a sufficient connection between the Applicant Ms. Mayes and other non-citizens formerly in care encountering on-going barriers and difficulty accessing or being able to apply for citizenship, which rises above the level of ordinary stress of a person of reasonable sensibility. The lack of access to a fee waiver, or consideration of a waiver, should be understood as another barrier to the Applicant, and those similarly situated, that is only compounded by the other social inequities experienced from being formerly in care of the state. The Applicants submit that Ms. Mayes' case, and those of other non-citizens formerly in care, fall within the realm of "exceptional cases" for which s. 7 was designed to protect.

Infringement Not in Accordance with the Principles of Fundamental Justice

51. The lack of regulations for former children in state care has created a void in the system, resulting in the only avenue available for the Applicant Mayes', and those similarly situated, being to seek special Ministerial consideration under s. 5(4) of the *Citizenship Act*. This is contrary to the principles of fundamental justice as this is an uncertain application process that lacks procedural fairness, is both arbitrary[78] and vague[79]; results in delays that further exacerbate and extend psychological trauma;[80] and limits the Ms. Mayes' and others similarly situated, access to civic engagement, a passport, and security of residence.[81]

52. Further, "the principles of fundamental justice require that each person, considered individually, be treated fairly by the law."[82] The Applicants' circumstances are directly analogous to the case of *New Brunswick v G(J)*,[83] where the Supreme Court found that the barriers to accessing legal aid for

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[78] *Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519 at paras. 594-95 [*Rodriguez*]; *R v Malmo-Levine; R v Caine*, [2003] 3 SCR 571; *Chaoulli* (2015), above note 37at paras. 129-133; P.R. Lenard, "The Ethics of Deportation in Liberal Democratic States" (2015) 14:4 *European Journal of Political Theory* 464 at pages 464-80 [Lenard, "Ethics of Deportation"].

[79] *Ontario v Canadian Pacific Ltd*., [1995] 2 SCR 1031; *R v Nova Scotia Pharmaceutical Society*, [1992] 2 SCR 606, *R v Levkovic*, 2013 SCC 25 at para 2; Lenard, "Ethics of Deportation", above note 48.

[80] 2018 Mayes Affidavit, *supra* note 3; 2014 Affidavit, *supra* note 4; Jan. 2018 Mayes Affidavit, *supra* note 4; *Blencoe*, *supra* note 43 at para 42; Lenard, "Ethics of Deportation", *supra* note 48.

[81] 2018 Mayes Affidavit, *supra* note 3; 2014 Mayes Affidavit, *supra* note 3; Jan. 2018 Mayes Affidavit, above note 3; JFCY Affidavit, *supra* note 3; Hare, *supra* note 9; Painter, *supra* note 42; Jane Kovarikova, "Exploring Youth Outcomes After Aging-Out of Care" (2017) Office Of The Provincial Advocate For Children And Youth, online: <https://www.provincialadvocate.on.ca/reports/advocacy-reports/report-exploring-youth-outcomes.pdf>. See also, *Hassouna v Canada (Minister of Citizenship and Immigration)* 2017 FC 473 at para 77

[82] *Rodriguez*, *supra* note 78 at para 98.

[83] *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46 at paras55, 59.

a self-litigant mother while being separated from her children, added psychological strain and were an infringement of G(J)'s security of person. Here, the barriers faced by Ms. Mayes, and those similarly situated, by not being able to access a process to have a fee waiver request considered, thereby barred from making an application for citizenship, similarly should be understood as a 'psychological strain', above ordinary stress and an infringement of the Applicants' section 7 security of person right.[84]

53. The Applicant Ms. Mayes and those similarly situated have been left in a position where they continue to face uncertainty, and lack of access to social and political agency. The granting of citizenship is within the full control of the Respondents. This barrier exacerbates the Applicant Ms. Mayes' and those similarly situated, situation as she has limited practical means to act in preservation of her security of the person.[85] Ms. Mayes has never enjoyed security at a personal or political level, and Canada is the only place she has lived beyond early childhood and the only place that she regards as home. For Applicants whose place in society is marginalized as such, a process to seek citizenship matters all the more.[86]

Section 15 of the Charter

54. The purpose of s. 15 of the *Charter* is to ensure everyone is equal before the law and receives equal benefit of the law without discrimination. The Applicant Mayes and those similarly situated to her - people who were once in care of the state and who lack the benefits of citizenship – fall into a category of historically disadvantaged people for whom the law has exacerbated their circumstance of disadvantage, and thus merit this Court's attention and require declaratory relief.

55. In determining whether government action in question violates s. 15 of the *Charter*, a two-part test must be applied. It must be determined 1) whether the law creates a distinction that is based on an enumerated or analogous ground and 2) whether the law imposes burdens or denies benefit

[84] Gharabaghi Affidavit at para 14, 16, 19, 23-24; Bromwich Affidavit at para 23-24; Bromwich Cross-examination at para 32-33; Fitzgerald Affidavit at para 6-10.
[85] *Canada (Attorney General) v PHS Community Services Society (Insite)*, [2011] 3 SCR 134. See also JFCY Affidavit, *supra* note 3.
[86] Fitzgerald Affidavit at para 5 and 12.

in a manner that reinforces, perpetuates, or exacerbates disadvantage.[87] The key is whether a distinction has the effect of perpetuating disadvantage on an individual because of his or her membership in an enumerated or analogous group. If the state conduct perpetuates prejudice, stereotypes or widens the gap between a historically disadvantaged group and the rest of society rather than narrowing it, then it is discriminatory.[88] Both branches of the test are met in the case at bar.

Stage 1: Distinctions Based On Enumerated Or Analogous Ground

56. The first part of the test will focus on the social and economic context of the group, as well as the historical disadvantage lived by this group.[89] The merits of the discriminatory impact of the scheme should be left to the second stage of the analysis.[90] The disadvantage in this case is two-fold, being an individual who was care of the state and being a non-citizen. The Applicants submit that family status is an analogous group for the purposes of s. 15. The SCC has defined an analogous ground as one that is based on personal characteristics that are "immutable or changeable only at unacceptable cost to personal identity".[91] These characteristics are "typically not within the control of the individual".[92]

57. Being a person who was in the care of the state is a matter of family status. The family status of the Applicant and those similarly situated to her, specifically, non-citizen individuals formerly in care of the state, places them in an analogous ground for the purposes of s. 15 of the *Charter*. Family status is recognized as a protected ground in the *Canadian Human Rights Act,*[93] as well as parallel provincial human rights legislation, and is properly seen as an analogous ground in s. 15 analysis.

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[87] *Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 (CanLII) at para. 25 [*Quebec v. A* (2018)]; *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30 (CanLII), [2015] 2 S.C.R. 548 at paras. 19-20; *Withler v. Canada (Attorney General)* 2011 SCC 12 at para. 30 [*Withler*]; *R. v. Kapp,* 2008 SCC 41 at para. 17.

[88] *AG of Quebec v. A, 2013* SCC 5 [*Quebec v. A* (2013)].

[89] *Taypotat*, *supra* note 87 at 17;*Corbiere v. Canada* (*Minister of Indian and Northern Affairs*), [1999] 2 S.C.R. 203at para. 8; *Quebec v. A* (2018) at para. 26

[90] *Quebec v. A* (2018), *supra* note 87 at para. 26

[91] *Corbiere v. Canada* (*Minister of Indian and Northern Affairs*), [1999] 2 S.C.R. 203 at para. 13.

[92] *Andrews v. Law Society of British Columbia,* [1989] 1 SCR 143 at 67 [*Andrews*].

[93] *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, s. 3(1).

58. Children have been recognized as a distinct group on the basis of family status in various levels of courts. For example, In *Canada (AG) v McKenna* (1998),[94] the Federal Court of Appeal accepted that non-Canadian children who are adopted by Canadian citizens were discriminated against on the basis of family status when they were not given access to Canadian citizenship at the time of their adoption.[95] In *Inglis* (2013), the British Columbia Supreme Court held that being a child of an incarcerated mother constitutes an immutable characteristic of historic disadvantage, and was therefore an analogous ground for the purposes of s. 15.[96]

59. Children in care lack political power, are vulnerable, have had their interests compromised, and their right to equal concern and respect violated. Having been in the care of the state is an immutable characteristic; they are a disadvantaged group.

60. The immense volume of social science research and the affidavits put forward by the Applicants reveals that the impact of being a child in the care of the state is profound, overwhelmingly negative, results in a personal development "not comparable" to individuals who were not in care of the state, and a marked instability that reappears chronically throughout life.[97] K. Gharabaghi in his affidavit states that the experience results in a "much delayed and immeasurably less

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[94] *Canada (AG) v. McKenna*, [1998] 1 FC 401 at 6, 20, 61 (C.A.), *per* Robertson J.A. [*McKenna*]. Note: McKenna found adopted children were an analogous ground under the Canadian Human Rights Act; that case was not brought under the *Charter*.

[95] See also: *Worthington v. Canada (Minister of Citizenship and Immigration*), [2008] F.C.J. No. 673, 2008 FC 409 at 87; and *Grismer* v. *Squamish First Nation*, [2006] F.C.J. No. 1374, 2006 FC 1088, at 46, where the Federal Court found that the status of being adopted is an analogous ground under s.15 of the *Charter*.

[96] *Inglis v. British Columbia* (*Minister of Public Safety)*, 2013 BCSC 2309 at para. 567 [*Inglis*].

[97] Fitzgerald Affidavit at paras 7, 9, 10; Gharabaghi Affidavit at paras 10-11, 14, 16, 19, 25; Stephanie, Bryson, Emma, Gauvin, Ally, Jamieson, Melanie Rathgeber, Lorelei, Faulkner-Gibson, Sarah, Bell, Jana Davidson, Jennifer Russel, and Sharlynne, Burke, "What are effective strategies for implementing trauma-informed care in youth inpatient psychiatric and residential treatment settings? A realist systemic review" (2017) 11:36 *International Journal of Mental Health Systems* at 2; Alyssa, Byers, and David, Lutz, "Therapeutic Alliance With Youth in Residential Care: Challenges and Recommendations" (2015) 32:1 at 6, 7; Peter, Choate, and Sandra, Engstrom, "Parent: Implications for Child Protection" (2014) 20:4 *Child Care in Practice* at 373; Mary, Collins, and Cassandra Clay, "Influencing policy for youth transitioning from care: Defining problems, crafting solutions, and assessing politics" (2009) 31 *Children and Youth Services Review* at 743; Submission to the Residential Services Review Panel, Ontario Association of Children's Aid Societies (2016) Ontario Association Of Children's Aid Societies, p. 4; One vision, One voice, Changing the Ontario child welfare system to better serve African Canadians, Practice framework part 1: Research report (2016), Ontario Association Of Children's Aid Societies, pp. 51, 52; Speaking OUT:A Special Report on LGBTQ2S+ Young People in the Child Welfare and Youth Justice Systems (2017), Office of the Child and Youth Advocate Alberta, p. 4; B. Vinnerljung, A. Hjern, "Cognitive, Educational And Self-Support Outcomes Of Long-Term Foster Care Versus Adoption." A Swedish national cohort study (2011) Children and Youth Services Review 33 (2011) 1902–1910, at pp. 1908-1909. Dr. Rutman, B,; Hubberstey, C.; Feduniw, A.; Brown, E. "When Youth Age out of Care – Where to from There?" Social Change unit, School of Social Work, University of Victoria, BC Ministry of Children and Family Development, Greater Victoria Child and Youth Advocacy Society, National Youth in Care Network, p. 41.

supported establishment of stable foundations for life".[98] D. Fitzgerald states that "adults who have been Crown Wards are more likely to struggle with mental health issues, have difficulty maintaining employment and struggle with anxiety, depression and substance misuse."[99]

61. Research shows that individuals formerly in care are more likely to be unemployed or underemployed, comprise roughly 43% of the homeless youth population in Ontario, have higher rates of incarceration, suffer from mental health conditions, such as anxiety and substance misuse, and have poorer health than the general population.[100] The individual Applicant in this case affirms that during her time in care, she lacked necessary emotional support, and that this greatly affected her ability to lead stable life as an adult.[101]

62. Reaching the age of majority does not alter the fact that that an individual spent their formative years in the care of the state – a situation over which the individual had no control and the impacts of which continue into adulthood.

63. Lack of citizenship widens the disadvantage. Naturalized individuals have access to benefits and higher social determinants of health than non-citizens. For example, naturalized citizens have higher rate of employment, earning and higher status occupations compared to non-naturalized immigrants – each of which is a key determinant of health.[102] Citizens can vote, serve on a jury, run for political office, and have priority access to certain government jobs. There is a growing understanding that civic participation is connected to improved health.[103] Citizens have security against deportation. The record shows non-citizens formerly in care of the state face risk to deportation as young adults, in part due to the higher rates of involvement of individuals

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[98] Gharabaghi Affidavit at para 19.
[99] Fitzgerald Affidavit at para 7.
[100] Ontario Provincial Advocate for Children and Youth," 25 is the new 21" (2012) at pages 18, 20; A. Tweddle, "Youth Leaving Care – How Do They Fare?" (2005) Briefing Paper: Prepared for the Modernizing Income Security for Working Age Adults at 8 [Tweddle, "Youth Leaving Care"]; Kovarikova, "Youth Outcomes", *supra* note 51 at pages 9, 14-15, 18-19, 24; Gharabaghi Affidavit at paras 14, 16.
[101] 2018 Mayes Affidavit, *supra* note 3 at para. 18.
[102] Sultana, A. "Citizenship and Health: What role can citizenship play in the social determinants of Health?" (2017) Wellesley Institute at 2-3; M.F. Steinhardt "Does Citizenship Matter? The Economic Impact of Naturalizations in Germany " (2008) Centro Studi Luca D'agliano Development Studies Working Papers No. 266 at 21.
[103] Sultana, *Citizenship and Health*, *supra* note 102 at page 3.

formerly in care with the criminal justice system.[104] Courts have also recognized the value of citizenship, for example, in *Worthington v. Canada (MCI)*,[105] Justice O'Keefe of the Federal Court stated that "citizenship constitutes both a fundamental social institution and a basic aspect of full membership in Canadian society."

64. The SCC has already recognized citizenship as an analogous ground for the purposes of s.15.[106] The SCC states that non-citizens are "a group of person who are relatively powerless politically and whose interests are likely to be compromised by legislative decisions."[107] They are "a group lacking in political power and as such vulnerable to having their interests overlooked and their rights to equal concern and respect violated".[108] Increased accessibility to citizenship corrects this vulnerability.

65. The history of the *Citizenship Act* further compounds the profound disadvantage of this group. As outlined in the facts at paragraph 5 of this memorandum, prior to recent amendments to the *Citizenship Act*, non-citizen children in care were prohibited from applying for and obtaining citizenship until they reached the age of 18. By contrast, children not in care of the state had access to citizenship through their parents.[109] The result of the previous legislative scheme was that young adults were exiting state care without Canadian citizenship, despite the fact they had spent their formative years not only in Canada, going to Canadian schools and engaging in Canadian activities, but also as children under the guardianship of the state in Canada.

66. The independent and cumulative outcomes of these factors - being a person once in care of the state and a non-citizen – perpetuate marginalization, limit opportunity, and increase the precarious situation of this group of people.[110] The disadvantage felt by this group is exacerbated

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[104] JFCY Affidavit, *supra* note 3 at para. 10; Exhibit A of JFCY Affidavit, "Cross-over Youth: Care to Custody" in AR, pages 505-542; Exhibit D of JFCY Affidavit, *supra* note 3, "Immigration Status Matters: A Guide to Addressing Immigration Status Issues for Children and Youth in Care" in AR, pages 586-613
[105] *Worthington* , *supra* note 95 at para. 94.
[106] *Andrews*, *supra* note 92 at para 67
[107] *Andrews*, *supra* note 92 at para. 68.
[108] *Andrews*, *supra* note 92 at para, 68; *see also*: *Lavoie v. Canada,* [2002] 1 SCR 769 at para. 45.
[109] See *Citizenship Act*, *supra* note 8, ss. 5(1.04), 5(2). These sections provide that children can be included on the citizenship application of their parents, even if they themselves do not meet all of the requirements. Parents or legal guardians could also sign a citizenship application on behalf of the minor.
[110] In *Falkiner v. Ontario (Director of Income Maintenance, Ministry of Community & Social Service, (2002) 59 OR (3d) 481 at 72, 81*, the Court noted that an Applicant may assert discrimination on more than one characteristic –

by a citizenship fee that places the citizenship process further out of reach for people who already struggle to qualify for and access citizenship (for example, due to language barriers, varied learning abilities, or lack of ability to navigate the application process). The Applicant in her affidavit describes how the fee is a barrier to accessing citizenship due in part to the circumstances created from her time in care.[111]

67. It should be noted that the analysis regarding s. 15 applicability should not rest on finding a mirror comparator group as doing so may fail to capture situations of substantive equality.[112] Rather, the analysis should focus on the grounds of distinction, and the first stage of the analysis should only bar claims that have nothing to do with substantive equality and are not based on enumerated or analogous grounds.[113] This is not the case here. That said, a reasonable comparator group in this case is people who were not in care of the state and children who were adopted from outside of Canada into Canadian families.

Stage 2: Law Imposes Burdens in a Manner that Reinforces, Perpetuates, or Exacerbates Disadvantage

68. The second stage of the test considers whether the impugned law, in purpose or effect, perpetuates prejudice and disadvantage to members of the group.[114] In *Withler* (2011), the SCC stated that "perpetuation of a disadvantage typically occurs when the law treats a historically disadvantaged group in a way that exacerbates the situation of the group".[115] The SCC has noted that "identical treatment may frequently produce serious inequality"[116] Even if a law appears to treat everyone equally, an analysis of the impact of the law on a class of persons may reveal that differential treatment is required in order to ameliorate the situation of the claimant group.[117] This concept of substantive equality has been repeatedly affirmed by the SCC in s. 15 analysis.[118]

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interlocking characteristics – capturing differential treatment, and in such a case a set of comparisons may be appropriate.

[111] 2018 Mayes Affidavit, *supra* note 3 at para. 27.
[112] *Withler*, *supra*, note 63 at para 63
[113] *Withler*, *supra*, note 63 at para 63; *Quebec v. A*(2018), supra note 87 at 26
[114] *Withler*, *supra* note 63 at para. 35.
[115] *Withler*; *see also Quebec v. A* (2013) *supra* note 88 at paras. 327 and 330.
[116] *Andrews*, *supra* note 92 at para 26.
[117] *Withler*, *supra* note 63 at para. 39; *Inglis*, *supra* note 96 at paras. 598-99.
[118] *Taypotat*, *supra* note 87 at para. 17

69. The Applicants' argument that there is a violation of section 15 of the Charter is two fold. First, the *Citizenship Act* already has a fee waiver/reduction scheme and notably provides for a reduced citizenship fee of $100 for minor child applicants. As outlined in the facts, in 2017 amendments to the *Citizenship Act* removed the age requirement for applicants, which was later accompanied by corresponding regulatory amendments in February 2018 pertaining to the citizenship fee for children. Debates of the Senate and the government's Press Release show that both changes were intended to ameliorate the precarious situation of children in care, who were disadvantaged by the previous scheme by making citizenship more accessible to them.[119] However, it failed to consider non-citizens formerly in care of the state who continue to experience disadvantage, as outlined extensively in the record, and continue to be excluded from attaining citizenship due to ongoing burdens placed on them that their historical background makes difficult for them to overcome. As such, the scheme is under-inclusive because it fails to address the ongoing disadvantage of adults who were formerly children in care of the state, and discriminatory in its effect.

70. In *Auton v BC*[120] the SCC stated that "If a benefit program excludes a particular group in a way that undercuts the overall purpose of the program, then it is likely to be discriminatory: it amounts to an arbitrary exclusion of a particular group." That is the case here. The under-inclusivity perpetuates the disadvantage of non-citizens formerly in care of the state by placing the citizenship application process out of reach exacerbating marginalization. It fails to take account of principles of substantive equality that are the foundation of the s. 15 analysis.

71. Second, s. 5(4) of the *Citizenship Act* contains within it a scheme that allows and contemplates for the Minister to except requirements under the Act for citizenship, including a fee waiver, as discussed at paragraphs 23 to 39 of this memorandum.[121] The Minister's refusal to apply such a possibility to the Applicant Ms. Mayes results in a blanket application of the adult citizenship fee

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[119] *House of Commons Debates*, 42nd Parl, 1st Sess, Vol 150 (11 April 2017) [*HC Debates* (11 April 2017)](for remarks by Senator Kim Pate, generally); See IRCC, *Government of Canada facilitates access to Canadian citizenship for minors* ["Minister's Announcement"], online: <https://www.canada.ca/en/immigration-refugees-citizenship/news/2018/02/government_of_canadafacilitatesaccesstocanadiancitizenshipformin.html?_ga=2.196186601.459744412.1527800142-422317011.1521128334>.

[120] *Auton supra* note 63 at para 42.

[121] See Applicants' submissions at paragraphs 23-39 of this memorandum of argument; *and Toussaint, supra* note 33 at paras 35-55.

that is not reflective of the historical disadvantage of this group of individuals thus creating a distinction and is a violation of s.15 of the Charter.

72. The fee reflects an ongoing disregard of the Applicant's interests by the state. The impact of such disregard should not be underappreciated. The only appropriate measure at this point is to ease the burdens before former children in state care on their journey to obtain citizenship. While it is acknowledged that immigration has long been considered a privilege, not a right, a reduced citizenship fee falls well within reasonableness of outcomes when taking the Applicant's, and those similarly situated to her, grounds of discrimination into account.

PART FOUR: ORDERS SOUGHT

73. In addition to the orders of *mandamus* to compel the Respondent to accept Ms. Mayes' application for processing despite non-payment of the fee, and/or *certiorari* to quash the decision as incorrect and unreasonable and remit for redetermination, the Applicants also request systemic remedies to cure the legal and policy gaps exposed by Ms. Mayes' case. The proposed remedy is a declaration, either under s. 24(1) of the *Charter* or further to s.18.1 of the *Federal Courts Act.*

A DECLARATION UNDER S. 24(1) OF THE *CHARTER*

74. The appropriate remedy in this matter should be constructed under s. 24(1) of the *Charter*, which provides that:

    a. 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.

75. As described above, the government's action in this matter was to impose the blanket application of a set fee, and upon receipt of a request for a fee waiver refused to accept and consider the Applicant's citizenship application. A blanket application of a set fee, and the refusal to accept and consider the citizenship application, resulted from the government's underinclusivity of regulations or policy to ensure that fee waivers are available for former children in care, and a failure to enact policy guiding citizenship officers on the exercise of their discretion under s. 5(4). These failures breach the *Charter* rights of the Applicant Ms. Mayes, and others who are similarly identified as described above.

76. The identifying characteristics of those who experience a *Charter* breach is that they are people who are non-citizens who were formerly in the care of a child protection, child welfare, or children's aid or children's services agency.

77. The appropriate and just remedy in the circumstances is a declaration that Tammie Mayes' own *Charter* rights were breached, to clarify her rights and those of similarly situated persons, to demonstrate that the breach of her rights can not be saved under s. 1[122]; and an order under s 24(1) of the *Charter* that her application be accepted for processing by the Respondents.

78. This is the appropriate and just remedy as it provides for a nuanced cure of the *Charter* violation that can be specifically tailored to address the unique characteristics, including social and personal disadvantage of the Applicants. This is true especially in light of Canada's domestic and international legal obligations to children in light of their uniquely vulnerable position in society. While the Applicants are no longer children, their current situation is occasioned entirely because of what happened when they were children, or more significantly because as children they were not able to regularize their citizenship because they were in the care of a child protection agency.

A *DECLARATION* UNDER S. 18.1 OF THE *FEDERAL COURTS ACT* that former children in state care constitute "special cases" under s.5(4) of the *Citizenship Act*, and ought to have applications for citizenship accepted for processing despite non-payment of the adult fee.

79. IN THE ALTERNATIVE, the Applicants request a declaration by the Federal Court that former children in state care constitute "special" cases and their applications for grants of discretionary citizenship pursuant to s. 5(4) of the *Citizenship Act* can be accepted for processing despite non-payment of the adult fee.

Test for s. 18.1 Declaration

80. The Supreme Court restated the test for whether a declaration should be granted in *Khadr* (2010): A court can properly issue a declaratory remedy so long as it has the jurisdiction over the issue at bar, the question before the court is real and not theoretical, and the person raising it has a real

[122] *R v Oakes*, [1986] 1 SCR 103.

interest to raise it.[123] The Court affirmed and elaborated on this test in *Daniels* (2016) by including a requirement that "A declaration can only be granted if it will have practical utility, that is, if it will settle a 'live controversy' between the parties."[124]

81. Sections 2 and 22.1(1) of the *Citizenship Act* elect the Federal Court as the sole review body for citizenship matters; accordingly the issue of access to citizenship is certainly within the Federal Court's jurisdiction. Further, precedent shows that the Federal Court has jurisdiction to issue declaratory remedies under section 18 of the *Federal Courts Act*.[125]

i. The Question Before the Court is Real and not Theoretical

82. The Applicants submit that the question before the Court is real and not theoretical. The Application herein arises from a live controversy between the parties – namely the correct interpretation and application of s. 5(4) of the *Citizenship Act*. The issue of access to citizenship is not theoretical for the Applicants. Children in the care of child welfare agencies, or formerly in their care, have a unique relationship with the state - the state is or was their primary caregiver, responsible for their safety, education, development and transition into adulthood. Young persons in state care are vulnerable and the failure to receive secure citizenship creates and perpetuates the precarity of these individuals' lives.

83. The benefits attached to citizenship acquisition are not merely theoretical. Citizenship has been called "the right to have rights."[126] Providing the basic link between an individual and the state, citizenship or nationality differentiates "insiders" who may benefit from the protection of the state and actively participate in governance, from "outsiders" who remain vulnerable and largely

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[123] *Khadr*, *supra* note 71 at para 46.
[124] *Daniels v Canada (Indian Affairs and Northern Development)*, 2016 SCC 12 at para 11.
[125] See e.g. *Bilodeau-Massé v Canada (Attorney General)*, 2017 FC 604 at para 29; *Canada (Attorney General) v Jodhan*, 2012 FCA 161 at para 185. See also *Novopharm Limited v Eli Lilly Canada Inc,* 2009 FCA 138, where the Court held, "We therefore conclude that declaratory relief related to the validity of a law is not available in the context of an application brought under to the *NOC Regulations*. The proper course is for Novopharm to commence an application for judicial review under section 18.1 of the Federal Courts Act seeking a declaration that the *Amending Regulations* are *ultra vires*. We are not satisfied by Novopharm's arguments that it would be impractical or unworkable for it to proceed in this fashion."
[126] Masha Gessen,"'The Right to Have Rights' and the Plight of the Stateless," (3 May 2018) The New Yorker online: < https://www.newyorker.com/news/our-columnists/the-right-to-have-rights-and-the-plight-of-the-stateless>.

impotent in relation to the state and society. Further, as outlined above, significant research suggests that attainment of citizenship leads to significantly higher health outcomes.

84. The Respondent's own priorities indicate that the issue before the Court in this matter is real and not theoretical. Surely, Minister Hussein's own stated position during the Hansard debates of June 12, 2017 that "**the government's intent to facilitate citizenship for eligible immigrants with our commitment to remove barriers to citizenship, especially for the most vulnerable"**[127] speaks to that intention. A later announcement from the Minister made clear that acquiring citizenship for children "in the care of the state" is a priority for the government.

ii. Ms. Mayes and JFCY Have A Real Interest in Raising the Question

85. The Applicants, Ms. Mayes and JFCY, have a real interest in raising the issues before this Court. Ms. Mayes filed an application for a grant of citizenship, as a former child in care, under the discretionary and compassionate provisions 5(3) and 5(4) of the *Citizenship Act*. JFCY has a unique history of child rights advocacy in Ontario and Canada and is well poised to advance the interests of former children in care. Critical child rights issues are being raised. Accordingly, the Applicants submit that the test for declaration relief are met.

Grounds for Declaration

86. The failure of the government to recognize that former children in care constitute "special cases" in applications for grants of discretionary citizenship pursuant to s. 5(4) of the *Citizenship Act* effectively guts that legislative section, a provision which otherwise, the Applicants submit, is meant to accommodate vulnerability. It is hard to imagine the legislature's intent in writing this extraordinary provision (5(4)) would not be exactly to facilitate the acquisition of citizenship for former children in care who, based on their traumatic history, cannot afford the full application fee.

87. We submit that in the circumstances, a declaration by the Federal Court that former children in care constitute "special" cases and that their applications for grants of discretionary citizenship

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[127] *House of Commons Debates*, 42nd Parl, 1st Sess, Vol 150 (12 June 2017). Bill C-6 received Royal Assent a week later on June 19, 2017;

pursuant to s. 5(4) of the *Citizenship Act* can be accepted for processing despite non-payment of the adult fee is warranted. In seeking this remedy the Applicant relies on *Khadr* where the Supreme Court issued declaratory relief which, in that case, also informed the *Charter* rights deprivation.[128]

88. The Applicants submit that the circumstance of Ms. Mayes' case require a declaration – as justice will be realized only if this Court exercises its statutory power to ensure that similarly situated individuals do not face the same roadblocks. As explained by Ms. Mayes in her affidavit:

> "…. In the circumstances, I have a real and genuine interest in the Court's making a declaration that resolves this issue of Canada's failure to facilitate access to citizenship for me and other form children in care like me." [129]

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 16th DAY OF November 2018.

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JUSTICE FOR CHILDREN AND YOUTH (JFCY)

Per Emily Chan, B.A., LL.B.
Per Julia Huys B.A., LL.B.
Barristers and Solicitors

[128] *Khadr*, *supra* note 71 at para. 48.: "… This Court declares that through the conduct of Canadian officials in the course of interrogations in 2003-2004, as established on the evidence before us, Canada actively participated in a process contrary to Canada's international human rights obligations and contributed to Mr. Khadr's ongoing detention so as to deprive him of his right to liberty and security of the person guaranteed by s. 7 of the Charter, contrary to the principles of fundamental justice. Costs are awarded to Mr. Khadr."
[129] 2018 Affidavit, A.R., at para 39.

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SCHEDULE A – TAMMIE LYNN MAYES IMMIGRATION HISTORY AS A MINOR

# of Auth'ns	Immigration Document	Validity Dates	Tammie's age	Application Record
	Brought into Oxford County Children's Aid care	August 1969; May 1973, November 1980	1, 4, 11	254
#1	Permit to enter	1981/01/20 – 1981/07/20	12	168
#2	Extension of Permit	1981/07/21 – 1982/01/21	12	169
	Correspondence between Oxford County Child and Family Services and American Consulate re returning Tammie to US	March 3, 1981	12	178, 181
	Letter from CAS to Canada Immigration Centre Director	April 30, 1981	12	185
	EIC notified Tammie became a Court-ordered Crown Ward	**October 16, 1981**	**12**	**176**
(#3?)	GAP in record	1982-1983	13	
#4	Extension of Permit	1983/03/21-1984/03/21[1]	14	170, 171
(#5?)	GAP in record	1984-1985	15	
(#6?)	GAP in record	1985-1986	16	
(#7?)	GAP in record	1986-1987	17	
	Letter from EIC to Family & Child Services	30 January 1987 – "she is now eligible for permanent residence in Canada due to her being on a Permit for more than 5 years"	18	199-200
(#8?)	GAP in record	1987-1988	18	

SCHEDULE B – TAMMIE LYNN MAYES IMMIGRATION HISTORY AFTER TURNING 18

# of Auth'ns	Immigration Document	Validity Dates	Tammie's age	Application Record
#9 (continuing from approx. 8 permits issued while she was a minor)	Employment Authorization (EA) & Temporary Permit (TP)	10 June 1988 – 9 June 1989	19	261
#10	EA &Extension of Permit (EP)	28 June 1989 – 27 June 1990	20	261
#11	EA & EP	23 Aug 1990 – 22 Aug 1991	21	261, 307, 309, 313
#12	EA & EP	25 Oct 1991 – 31 Jan 1992	22	261, 303
	1st PR application rec'd	08 April 1992	23	261
#13	EA & EP	24 Jan 1992 – 31 March 1992	23	261, 300, 298
#14	EA & EP	24 April 1992 – 23 April 1993	23	260, 294
(#15?)	GAP	1993-1994	24	
#16	EA & EP	20 March 1994 – 28 March 1995	25	260, 290
	Interim applications for EA and EP made	16 Aug 1995	26	325
#17	EA & EP	06 Sept 1995 – 28 March 1997	26-27	260, 285, 287
(#18?)	GAP	1997-1998	28	
		9 June 1998 "HMP receipt of $550 in kit for EA, Minister's permit and reinstatement. Client's documents expired 28 March 1997."	29	321, 323
#19	EA and EP	09 Sept 1998 – 30 March 1999	29	260
	1stPR Application refused	25 October 1999 – "Refused for non-compliance; P/A has not obtained the pardon"[1]	30	278
No status	GAP	MARCH 1999-2002	30-33	

	2ndPR application received	31 Jan 2002	33	273, 320
AIP status	Interview this date - Approved in Principle	28 April 2003 – at Etobicoke CIC 10am. "Applicant has had minor convictions but will not be recommending TRP as under IRPA it is not required." AIP letter confirmed that **$975** must be paid.	34	273, 274, 340
#20	EA – Employment Authorization	08 Jan 2004 – 08 Jan 2005	35	259, 272
	Refusal of 2nd APR for non-compliance	22 Nov 2007 [note reference to no pardon]	38	273
No status	GAP	2007 – 2014	38-45	
#21	TRP & WP	2013/10/16 – 2015/10/15 Second time ever: 2-YEAR permit granted[1]	44	53-54, 259
	TRP	2014/05/30 – 2015/10/15 "Reissued TRP to change the case type to 86 so client can have access to OHIP."[1]	45	52
	3rd PR application received; 1st of 3 discretionary citizenship applications made	29 Sept 2014; 02 March 2015	45	29-406
	PR granted on H&C grounds	15 August 2016; see Exhibit A of David Demelo Affidavit, minor criminal inadmissibility waived as could have been done in 2 previous applications.	47	