2025 Hfx No. 545976

Supreme Court of Nova Scotia

Between:

CANADIAN CONSTITUTION FOUNDATION

Applicant

and

MINISTER OF THE DEPARTMENT OF NATURAL RESOURCES
representing His Majesty the King in right of the Province of Nova Scotia

Respondent

2025 Hfx No. 546181

Supreme Court of Nova Scotia

Between:

JEFFREY EVELY

Applicant

and

NOVA SCOTIA MINISTER OF NATURAL RESOURCES and THE ATTORNEY GENERAL OF NOVA SCOTIA REPRESENTING HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF NOVA SCOTIA

Respondents

Brief of the Applicant Jeffrey Evely
Hearing dates: March 17-19, 2026

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I. INTRODUCTION

1. The *Charter of the Forest* (1217),[1] issued alongside the re-confirmation of *Magna Carta*,[2] arose from centuries of public resentment toward the Norman kings' "forest law," under which vast tracts of England were declared royal preserves, and ordinary people were forbidden to hunt, gather wood, or even enter them.[3] Where *Magna Carta* curtailed arbitrary royal power over persons and property, the *Charter of the Forest* restored communal rights to forests, recognizing that the Crown held forests not as private dominion but for the benefit of the people.

2. The *Charter of the Forest* abolished mutilation and death for forest offences,[4] ordered the "disafforestation" of unlawfully enclosed lands,[5] and became the first legal acknowledgment that sovereign authority over common resources is bounded by the needs and liberties of the populace.[6] Its principles, public access, proportional regulation, and the subordination of executive fiat to law, echo through modern constitutionalism and environmental governance.

3. The "Fire Proclamation - Travel Ban" (the "Travel Ban"), imposed by ministerial proclamation and excluding citizens from vast wooded areas under risk of imprisonment and heavy fines, revives the very logic the *Charter of the Forest* was meant to extinguish: that the government may, by arbitrary decree, convert the commons into a forbidden realm. In that historical light, the Travel Ban is not merely overbroad, it represents a legal and constitutional regression to pre-*Charter* absolutism, contrary to eight centuries of legal evolution affirming that the land and its liberties belong to the people under law, not to the Crown by prerogative.

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[1] *Magna Carta,* 97 (UK), 25 Ed I, c 29 [*"Magna Carta"*].
[2] *Charter of the Forest*, (1217), 2 Hen. III [*"Charter of the Forest"*].
[3] John Charles Cox, LL.D, F.S.A., *The Royal Forests of England*, (London: Methuen & Co.. 1905) [*"Royal Forests"*], pp 4-6.
[4] *Charter of the Forest,* s 10.
[5] *Charter of the Forest,* s 1, 3.
[6] *Charter of the Forest*, "And all these customs and liberties aforesaid, which we have granted to be holden within this our realm, on our part towards our men, all men of this our realm, as well spiritual as temporal, shall observe on their part towards their men."

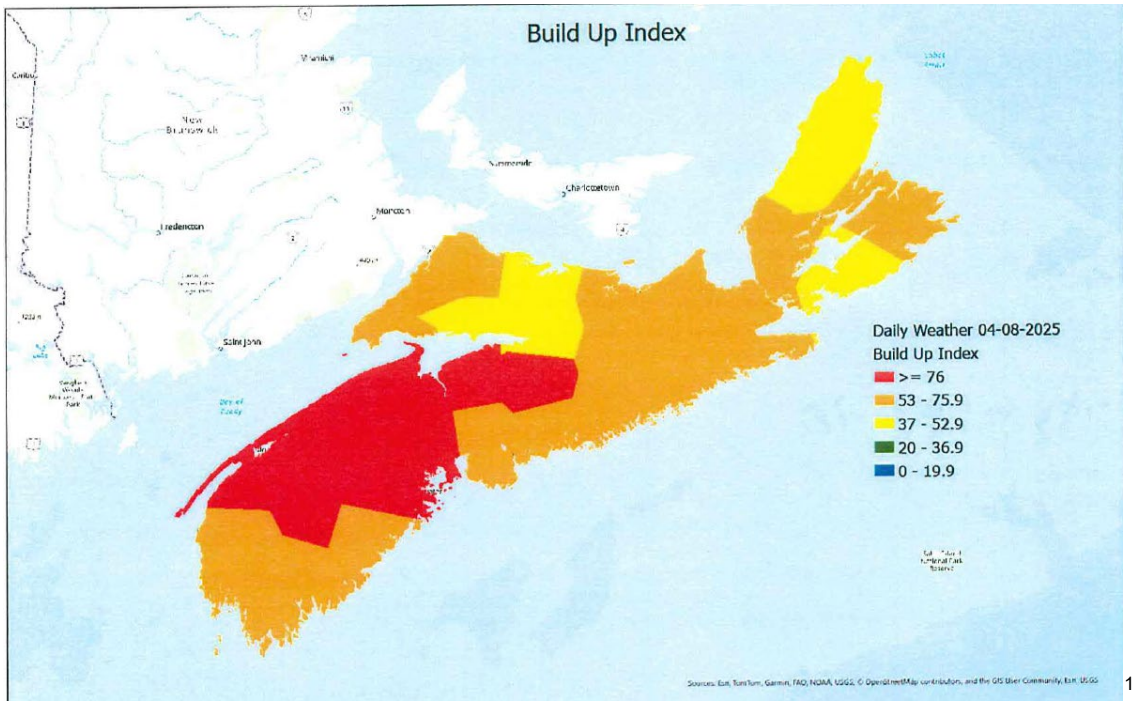
II. SUMMARY OF FACTS

A. Issuance of Travel Ban

4. On July 30, 2025, the Minister of Natural Resources (the "Minister") issued a proclamation under the *Forests Act*[7] to ban open fires across the Province "in order to reduce human caused wildfires and enhance public safety and awareness."[8]

5. On that same day, the Department of Natural Resources ("DNR") issued a "Decision Request" memo to the Minister recommending a ban on travel in the woods on the basis that "[d]ue to limited rain, there are extreme fire weather conditions across the province".[9]

6. On August 5, 2025, Department staff briefed the Minister with the following map showing conditions across the Province, ranging from extreme fire risk in parts of Nova Scotia, to very high fire risk and high fire risk in other areas of the Province:



[10]

[7] *Forests Act*, R.S.N.S. 1989, c. 179.
[8] Record, Tab 2, at PDF 10-11; Record, Tab 1, at PDF 6-8.
[9] Record, Tab 1, a PDF 6.
[10] Record, Tab 6, at PDF 57; See also: Affidavit of [redacted] sworn February 12, 2026 ["[redacted]"] at para 10.

7. On August 5, 2025, the Minister, the Premier and Scott Tingley, the Department's manager of forest protection, hosted a news conference to announce and explain the Travel Ban and take questions from the media.[11]

8. The Travel Ban states:

> **FIRE PROCLAMATION- TRAVEL BAN**
>
> **WHEREAS** Section 25(1) of the *Forests Act*, R.S.N.S. 1989, c. 179, authorizes the Minister of the Department of Natural Resources, whenever the Minister deems it necessary for the protection of the woods, to designate by proclamation a restricted travel zone in any area of the woods upon which no person shall enter for the purpose of travelling, camping, fishing or picnicking, or any other purpose, without a valid travel permit issued by the Minister, a conservation officer or other person authorized by the Minister during the period specified in the Proclamation.
>
> **AND WHEREAS** the Minister of Natural Resources now deems it necessary for the protection of the woods to make such a Proclamation;
>
> **NOW KNOW** that the Minister of Natural Resources, pursuant to Section 25(1) of the Forests Act, does hereby prohibit entry into the woods for the purposes of travelling, camping, fishing or picnicking, or any other purpose, without a valid travel permit in all counties in Nova Scotia.
>
> **THIS PROCLAMATION** shall be effective at 4:00pm on August 5, 2025, and ending at 2:00pm on October 15, 2025, unless and until this Proclamation is revoked or amended by further notice.
>
> **ANY PERSON** who contravenes this Proclamation may be liable to prosecution by virtue of the provisions of the *Forests Act.*[12]

B. Permits

9. The Decision Request recommendation that was approved outlined the following information regarding permits that would potentially be issued:

> Any access to the woods would require a permit, where the Department would use the same permitting and mitigation strategy used in 2016 and 2023, allowing limited access to Crown lands for essential industries and services under specific fire risk mitigation conditions.[13]

[11] Affidavit of [redacted] sworn February 13, 2026 ["[redacted]"], Exhibit "H", at PDF 261-269.
[12] Affidavit of Jeffrey Evely sworn February 13, 2026 ["Evely Affidavit #1"], Exhibit "A" at PDF 8.
[13] Record, Tab 1, at PDF 2.

10. The recommendation to "Proceed with Option 1 and develop clear public communication to answer questions and explain the process to obtain a travel permit" was approved by the Minister on August 5, 2025.[14]

11. The press release issued to announce the Travel Ban stated, in part:

> The restrictions, effective as of 4 p.m. today, August 5, include:
> - hiking, camping, fishing and the use of vehicles in the woods are not permitted
> - trail systems through woods are off limits[15]

12. The press release included notice that people engaged in certain kinds of activity could apply for a permit:

> Forestry, mining and any commercial activity on provincial Crown land are also restricted. People who conduct this kind of activity can apply for a permit at their local Department of Natural Resources office.[16]

C. The Applicant Jeffrey Evely

13. The Applicant, Jeffrey Evely, is a resident of Sydney, Nova Scotia.[17] He served in the Canadian Armed Forces for 20 years [redacted]

14. Mr. Evely discovered that immersing himself deep in the forest – "forest bathing" – is the most effective way [redacted][20] He chose to live in his current house because it is a couple of blocks from a forest trail in a provincial park, and he walks and hikes in the forest from two to six hours a day every day.[21] He doesn't walk on the street

[14] Record, Tab 1, at PDF 3.
[15] Record, Tab 8, at PDF 76; Record Tab 9, at PDF 79.
[16] Record, Tab 8, at PDF 76; Record Tab 9, at PDF 80.
[17] Evely Affidavit #1, *supra*, at para. 6.
[18] *Ibid*. at paras 6-8.
[19] *Ibid*. at para 9; Agreed Statement of Facts, February 20, 2026
[20] *Ibid.* at paras 13-17.
[21] *Ibid*. at paras 12-13.

because the noise from traffic [redacted][25]

15. After the Travel Ban was imposed, Mr. Evely purposely met with DNR officers on August 8, 2025, and entered the woods to get a ticket so that he could challenge the Travel Ban in court.[26] He did not apply for a permit, and he did not believe that he was eligible for a permit.[27] The Applicant believed that travel permits were only issued for commercial purposes due to the Respondents' public messaging about travel permits.[28] The Respondents have never offered a travel permit to Mr. Evely nor did any DNR officers suggest to him that he could apply for a travel permit the day he met with them and obtained his ticket.[29]

16. As will be explained further below, Mr. Evely endured [redacted] during the duration of the Travel Ban, as he could not access the forest [redacted]

[22] *Ibid*. at para 14.
[23] *Ibid*. at para 15.
[24] *Ibid*.
[25] *Ibid*. at para 16.
[26] Affidavit of Jeffrey Evely, sworn February 26, 2026 ["Evely Affidavit #2"], at para 9.
[27] *Ibid*. at paras 7-8.
[28] *Ibid*. at para 6.
[29] *Ibid*. at paras 9-12.
[30] Evely Affidavit #1, *supra,* at para 21.

III. APPLICABLE LAW

17. The Travel Ban purports to be based on section 25(1) of the *Forests Act*. Section 25 of the *Act* states:

> 25 (1) Whenever deemed necessary for the protection of the woods, the Minister may at any time by proclamation set aside for any period of time a restricted travel zone in any area of woods upon which no person shall enter for the purpose of travelling, camping, fishing or picnicking, or any other purpose, without a travel permit.
>
> (2) A travel permit may be issued by the Minister, a conservation officer or other person authorized by the Minister.
>
> (3) Subsections (1) and (2) do not apply to the owner or occupier of woods or the servants, agents or assigns thereof, conservation officers, surveyors and any other person designated from time to time by order of the Minister.
>
> (4) A forest travel permit may be cancelled or suspended at any time by the Minister, a conservation officer or other person authorized by the Minister.

18. The *Act* defines "woods" as follows:

> 3 In this Act,
> . . .
> (v) "woods" means forest land and rock barren, brush land, dry marsh, bog or muskeg.

19. Failure to comply with an order made under the *Act* is an offence and individuals convicted of such an offence are liable on summary conviction to "a fine not exceeding five hundred thousand dollars or to imprisonment for a term of not more than six months, or to both."

20. Additionally, Schedule 12 to the Summary Offence Tickets Regulations provides for an out of court settlement amount of $28 872.50, for the Offence of Entering woods without forest travel permit when travel proclamation is in effect pursuant to section 25(1) of the *Act*. [31]

[31] *Summary Offence Tickets Regulations*, NS Reg 281/2011.

IV. ISSUES

21. Mr. Evely's application raises the following issues:

A. Is the Travel Ban *ultra vires* section 25(1) of the *Forests Act?*

- Yes, the Travel Ban cannot reasonably be found "necessary for the protection of the woods".

B. Is the Travel Ban unreasonable?

- Yes, the Travel Ban lacks rationality, transparency and justification.

C. Is the Travel Ban an unreasonable limit on *Charter* protections?

i. Did the Travel Ban limit the right to liberty protected under section 7 of the *Charter*?

- Yes, the Travel Ban limited Nova Scotian's section 7 right to liberty.

ii. Did the Travel Ban limit Mr. Evely's right to security of the person protected under section 7 of the *Charter*?

- Yes, the Travel Ban limited Mr. Evely's section 7 right to security of the person.

iii. If the Travel Ban limited the section 7 right to liberty and/or security of the person, were those infringements in accordance with the principles of fundamental justice?

- No, the infringements were arbitrary, overbroad, and grossly disproportionate.

iv. Does the possibility of obtaining a travel permit remedy the Travel Ban's section 7 breaches?

- No, the possibility of obtaining a travel permit does not remedy the section 7 breaches.

v. If the Travel Ban's section 7 infringements were not in accordance with the principles of fundamental justice, is it necessary to undertake an analysis under section 1 of the *Charter*?

- No, it is not necessary.

V. ARGUMENT

Standards of Review and Burdens of Proof

22. In review of administrative decisions, *Canada (Minister of Citizenship and Immigration) v Vavilov*[32] announced a presumption that the standard of review is reasonableness.[33]

23. The reasonableness standard applies to whether the Travel Ban is *ultra vires* section 25(1) of the *Forests Act*; and whether the Travel Ban is a reasonable exercise of statutory authority. On these matters, the burden is on Mr. Evely to show that the Travel Ban is *ultra vires* and unreasonable (in the administrative law – as opposed to the constitutional – sense).[34]

24. The Supreme Court of Canada has recently provided clarity on when the presumption of reasonableness review is rebutted concerning constitutional questions. The correctness standard applies to the questions of: 1) whether the *Charter* applies[35]; and 2) whether a *Charter* protection is engaged, the scope of that protection and the appropriate framework of analysis.[36] The Court explained:

> The determination of constitutionality calls on the court to exercise its unique role as the interpreter and guardian of the Constitution. Courts must provide the last word on the issue because the delimitation of the scope of constitutional guarantees that Canadians enjoy cannot vary "depending on how the state has chosen to delegate and wield its power"[.][37]

25. Therefore, in reviewing the Travel Ban, the correctness standard of review applies to: 1) whether the *Charter* applies; 2) whether a *Charter* protection is engaged; 3) the scope of the *Charter* protections; and 4) the appropriate framework to analyze the *Charter* protections.

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[32] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ["*Vavilov*"].
[33] *Vavilov* at para 23.
[34] *Vavilov* at para 100.
[35] *York Region District School Board v Elementary Teachers' Federation of Ontario*, 2024 SCC 22 ["*York Region*"] at para 62.
[36] *York Region* at para 63.
[37] *York Region* at para 64 [internal citation omitted].

26. Failure of a decision maker to account for a *Charter* protection or value[38] engaged by its decision is a "fatal error."[39]

27. If in fact the Minister did attempt to balance the *Charter* protections engaged by the Travel Ban, this Court's review of that balance would be on a reasonableness standard.

A. The Travel Ban is *ultra vires*

28. The Supreme Court of Canada in *Dunsmuir* outlined foundational principles underlying the important role courts have on judicial review in determining whether administrative decision makers purporting to exercise statutory authority are doing so lawfully:

> Administrative powers are exercised by decision makers according to statutory regimes that are themselves confined. A decision maker may not exercise authority not specifically assigned to him or her. By acting in the absence of legal authority, the decision maker transgresses the principle of the rule of law. Thus, when a reviewing court considers the scope of a decision-making power or the jurisdiction conferred by a statute, the standard of review analysis strives to determine what authority was intended to be given to the body in relation to the subject matter. This is done within the context of the courts' constitutional duty to ensure that public authorities do not overreach their lawful powers [internal citations omitted].[40]

29. The decision in *Vavilov* provides applicable guidance on how courts are to determine whether a decision maker has jurisdiction or *vires* to make particular decisions, under the applicable reasonableness standard:

> Reasonableness review does not give administrative decision makers free rein in interpreting their enabling statutes, and therefore does not give them licence to enlarge their powers beyond what the legislature intended. Instead, it confirms that the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority. Even where the reasonableness standard is applied in reviewing a decision maker's interpretation of its authority, precise or narrow statutory

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[38] *See Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 ["*CSFTNO*"].

[39] See *York Region* at paras 69, 94; *Canadian Centre for Bio-Ethical Reform v South Coast British Columbia Transportation Authority*, 2018 BCCA 344, at paras 54-55; *Guelph and Area Right to Life v City of Guelph*, 2022 ONSC 43, at para 78-79.

[40] *Dunsmuir v. New Brunswick,* 2008 SCC 9 at para 29 [emphasis added]. While *Dunsmuir*'s standard of review analysis has been overruled by *Vavilov*, *Dunsmuir* remains good law as to the substantive elements of the rule of law. See *Vavilov* at para 82, citing *Dunsmuir*.

> language will necessarily limit the number of *reasonable* interpretations open to the decision maker — perhaps limiting it to one.[41]

30. The governing statutory scheme may be the key contextual factor in determining the reasonableness of a decision, as outlined in *Vavilov* from paragraphs 108-110:

> Because administrative decision makers receive their powers by statute, the governing statutory scheme is likely to be the most salient aspect of the legal context relevant to a particular decision. That administrative decision makers play a role, along with courts, in elaborating the precise content of the administrative schemes they administer should not be taken to mean that administrative decision makers are permitted to disregard or rewrite the law as enacted by Parliament and the provincial legislatures. . . . **Likewise, a decision must comport with any more specific constraints imposed by the governing legislative scheme, such as the statutory definitions, principles or formulas that prescribe the exercise of a discretion**. . . .
>
> As stated above, a proper application of the reasonableness standard is capable of allaying the concern that an administrative decision maker might interpret the scope of its own authority beyond what the legislature intended. … Although a decision maker's interpretation of its statutory grant of authority is generally entitled to deference, the decision maker must nonetheless properly justify that interpretation. **Reasonableness review does not allow administrative decision makers to arrogate powers to themselves that they were never intended to have, and an administrative body cannot exercise authority which was not delegated to it.** …
>
> Whether an interpretation is justified will depend on the context, **including the language chosen by the legislature in describing the limits and contours of the decision maker's authority**. If a legislature wishes to precisely circumscribe an administrative decision maker's power in some respect, it can do so by using precise and narrow language and delineating the power in detail, thereby tightly constraining the decision maker's ability to interpret the provision. Conversely, where the legislature chooses to use broad, open-ended or highly qualitative language — for example, "in the public interest" — it clearly contemplates that the decision maker is to have greater flexibility in interpreting the meaning of such language. … What matters is whether, in the eyes of the reviewing court, the decision maker has properly justified its interpretation of the statute in light of the surrounding context. **It will, of course, be impossible for an administrative decision maker to justify a decision that strays beyond the limits set by the statutory language it is interpreting.** [Emphasis added]

31. The governing statutory scheme in this case shows that the legislature intended to give the Minister authority to restrict travel in any area of the woods for the purpose of enumerated or

[41] *Vavilov* at para 68.

other activities, when deemed necessary for the protection of the woods.[42] There are a wide variety of areas included under the definition of "woods" in the *Act*, including not only forest land, but also "rock barren, brush land, dry marsh, bog or muskeg." In terms of protection, the *Act* lists insects, disease and forest fires as potential hazards.[43]

32. Section 25(1) shows that the Legislature has entrusted the Minister with the following responsibilities when imposing a "restricted travel zone":

a. Identify the *hazard* that poses a risk;

b. Identify the *areas* of the "woods" at risk from that hazard;

c. Identify what *activities* are necessary to restrict to protect those areas of the "woods";

d. Identify what *duration* is necessary to protect those areas of the "woods."

33. The Record in this case shows that the Minister only undertook the first and last of these responsibilities: 1) the Minister identified the hazard as fire; and 2) the Minister identified the duration as just over two months until October 15, 2025, unless revoked or amended.

34. The fact that the Minister identified fires as a hazard necessarily has an impact on what *areas* of the "woods" are at risk and what *activities* are necessary to restrict. While forestry activities on forest land while fire risk is extreme may be necessary to restrict to protect that area of the "woods" from the hazard of fire, it is impossible to conclude that banning fishing off of rock barren is "necessary" to protect that area of the "woods" from the hazard of fire.[44]

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[42] *Forests Act*, RSNS 1989, c. 179 ["*Act*"].
[43] *Act*, ss 5(1)(e); 9(i); 21.
[44] However, had the Minister identified another hazard, say a disease that can be spread by footwear that kills essential mosses, restricting travel to areas of the "woods" in which those mosses grow, including potentially rock barren, dry marsh, bog or muskeg may be appropriate.

35. Rather than indicating any attempt by the Minister to determine which *activities* in which *areas* were necessary to protect the "woods" from the risk of fire, the Travel Ban shows that the Minister simply reproduced the language of section 25(1) to impose a maximalist "restricted travel zone", not for any *areas* of the "woods" or for any *activities*, but rather for all *areas* of the "woods" for the purpose of all *activities*. The bolded language of the operative portion of the Travel Ban is simply lifted from section 25(1), as shown by the below comparison of the two:

25(1) Whenever deemed necessary for the protection of the woods, the Minister may at any time by proclamation set aside for any period of time a restricted travel zone in any area of woods upon which no person shall enter **for the purpose of travelling, camping, fishing or picnicking, or any other purpose, without a travel permit**.	NOW KNOW that the Minister of Natural Resources, pursuant to Section 25(1) of the Forests Act, does hereby prohibit entry into the woods **for the purposes of travelling, camping, fishing or picnicking, or any other purpose, without a** valid **travel permit** in all counties in Nova Scotia.

36. There is no indication that the Minister deemed it necessary - and in any event the Minister could not have reasonably deemed it necessary - to prohibit entry on rock barren to protect those areas from the risk of fire.

37. Likewise, there is no indication that the Minister deemed it necessary, and in any event the Minister could not have reasonably deemed it necessary, to prohibit entry to other areas of the "woods" for the purpose of activities that created no fire risk, such as hiking or fishing. Rather than their prohibition being "necessary for the protection of the woods", activities such as hiking could allow members of the public to notify officials about fires or fire risks, and actually help to prevent wildfires.[45] See also the discussion on 'Arbitrariness' below.

38. In press release quotes for the Minister and the Premier, approved by the Minister prior to his issuance of the Travel Ban, people were told to "stay out of the woods" in order to protect people and communities.[46] Likewise, in a subsequent news conference on August 13, 2025,

[45] See: [redacted] *supra*, at paras. 17-18
[46] Record, Tab 7, at PDF 72; Record, Tab 8, at PDF 80.

after the Travel Ban's categorical prohibition on people walking in the woods had been widely criticized across Canada, the Premier stated: "So, we're only concerned with keeping people safe. We'll do what's necessary to protect lives, and that's what we're doing in this case."[47]

39. Protecting people is a laudable goal, but the Minister's authority under section 25(1) of the *Act* is limited to the purpose of protecting the woods. The Minister is not entitled to essentially re-write the authorizing statute to insert the protection of people as the intended goal.

40. It cannot be concluded that the Minister reasonably deemed the complete prohibition of people from the "woods" in all counties in Nova Scotia for any purpose "necessary for the protection of the woods".

41. The Minister therefore lacked the jurisdiction to impose the Travel Ban, which is therefore *ultra vires.*

42. Even post *Vavilov*, decision makers must remain mindful that "[t]hey cannot wield powers they were never intended to have". [48] In *Cowichan Valley*, the British Columbia Court of Appeal considered the attempt of a regional district to categorically prohibit development in a riparian area when the relevant statutory scheme only allowed development to be prohibited if a qualified environmental professional found that there would be a harmful alteration, disruption or destruction relative to fish habitat (referred to as "HADD"). Justice Fitch, writing for the panel, rejected the district's argument that it could "exceed the level of protection" set out in the statutory scheme.[49] He held:

> Acceding to the position of the CVRD would permit a local government to refuse to authorize a development proposal even if there was no risk of HADD. It would permit a local government to operationalize a philosophical approach to the protection of fish habitat that is at odds with the harm-based approach that lies at the core of the provincial scheme.

[47] [redacted] Affidavit, *supra*, Exhibit "H", at PDF 278.
[48] *See Cowichan Valley (Regional District) v. Wilson*, 2023 BCCA 25 at paras 15 ["*Cowichan Valley"*].
[49] *Cowichan Valley* at para 77.

> For the foregoing reasons, and in light of the legal constraints under which it operates, it was unreasonable for the CVRD to conclude that it could prohibit any and all development in a SPEA regardless of whether the development would cause HADD. [50]

43. Similarly, in the present case, the Respondents seek to go well beyond the authorization for restricted travel zones set out in section 25(1) of the *Forests Act*, ignoring the requirement that Minister deem the *area* and *activities* captured by the restriction "necessary for the protection of the woods" in light of the hazard identified.

44. The Minister and the Premier asserted that the purpose of the Travel Ban is keeping people safe. That purpose that, like the categorical prohibition of development near fish habitat, has certain appeal, but nevertheless is simply not an authorized purpose for the Minister to pursue by imposing a Travel Ban under section 25(1) of the *Forest Act.*

45. In section 25(1), the Legislature did not grant the Minister the authority to prohibit entry to the Woods "in the public interest". Rather, it enacted circumscribing terms requiring a determination that the travel restrictions, with regard to their *area* and their *activities*, be "necessary for the protection of the woods".

46. In light of this legal constraint on the Minister's authority, it was unreasonable for the Minister to conclude that he could ban travel in areas of the "woods" not at risk from fire and ban activities that created no fire risk, like hiking and fishing—as necessary for the protection of the woods. As will be discussed further below, Mr. Evely submits that it is impossible for the Respondents to justify the Travel Ban which "strays beyond the limits set by the statutory language" on which it purports to be based.[51]

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[50] *Cowichan Valley* para 77.
[51] See *Vavilov* at para 110.

B. The Travel Ban is Unreasonable

47. Even if the Minister did have jurisdiction to issue the maximalist Travel Ban, the decision to do so lacks the hallmarks of reasonableness – transparency, intelligibility and justification.[52]

i. The rationale for the Travel Ban

48. Reasonableness review starts with considering the written reasons provided by the decision maker to understand the decision maker's reasoning process.[53] However, "[r]easons that simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion will rarely assist a reviewing court in understanding the rationale underlying a decision and are no substitute for statements of fact, analysis, inference and judgment".[54]

49. The reasons provided in the Travel Ban itself repeat the statutory language of section 25(1) of the *Act* without providing any facts, analysis, inferences or judgment.

50. To explain "an aspect of the decision maker's reasoning process that is not apparent from the reasons themselves," or to reveal a failure of justification, intelligibility or transparency, a reviewing court might consider evidence before the decision maker, including "publicly available policies or guidelines that informed the decision maker's work, and past decisions of the relevant administrative body."[55]

51. The rationale for Travel Ban set out in the DNR's Recommendation is as follows:

- it is "intended to reduce the risk of human-caused wildfires."[56]

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[52] *Vavilov* at para 99.
[53] *Vavilov*, at paras 83-84.
[54] *Vavilov*, at para 102 [internal quotations omitted]
[55] *Vavilov*, at para 94.
[56] Record, Tab 1, at PDF 5.

- **“**Strick controlled access to the woods corresponds to fire risk, where when conditions are extreme it takes very little to start a large fire**”.**[57]
- Access to the woods would be allowed for “essential industries and services”.[58]

52. To avoid the risk that the “public may perceive the proclamation and restrictions to travel in the woods to be too extreme”, it was recommended to the Minister that “[c]lear and transparent communication will be used to explain the rationale behind the approach and outline process to obtain a travel permit.”[59]

53. Prior to making the Travel Ban decision, on August 4, 2025, the Minister approved a press release to communicate the rationale for the Travel Ban to the public, including the following key points:[60]

- **“**The Province is restricting travel and activities in the woods because continued hot, dry conditions have greatly increased the risk of wildfires.”
- “Most wildfires are caused by human activity, so to reduce the risk, we're keeping people out of the woods until conditions improve.”
- “stay out of the woods and protect our people and communities.”
- “hiking, camping, fishing and the use of vehicles in the woods are not permitted”
- “trail systems through woods are off limits”
- “Forestry, mining and any commercial activity on provincial Crown lands are also restricted. People who conduct this kind of activity can apply for a permit at their local Department of Natural Resources office.”
- “While the restrictions are in place, people can still access beaches and parks, but not the trail systems.”

ii. The Travel Ban is not based on coherent reasoning

54. Decisions must be based on coherent reasoning, as described in *Vavilov* at para 102:

> To be reasonable, a decision must be based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a

[57] Record, Tab 1, at PDF 7.
[58] Record, Tab 1, at PDF 7.
[59] Record, Tab 1, at PDF 7.
[60] Record, Tab 7, at PDF 72.

> reviewing court to conclude that a decision must be set aside. Reasonableness review is not a "line-by-line treasure hunt for error": *Irving Pulp & Paper*, at para. 54, citing *Newfoundland Nurses*, at para. 14. However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived"[internal citations omitted].

55. There are a number of ways in which the Travel Ban fails to have internally coherent reasoning. For example:

a. As explained above in the *vires* argument, the Travel Ban applies to ban people from accessing *areas* of the "woods" where there is no risk of fire, e.g. "rock barren."

b. Also as explained above, the Travel Ban applies to ban people from the woods for the purpose of any *activities*, including activities like hiking and fishing that create no risk of fire.[61]

c. Despite this, the Travel Ban was issued with the express direction that people who conduct forestry, mining and commercial activity can apply for a permit to enter the woods, despite the fact that activities such as forestry pose a proven and significant risk of fire to forest land.[62]

d. The Travel Ban unreasonably and unjustifiably deems all people as constituting a fire risk to the "woods" regardless of the *activities* they conduct in the "woods". In fact, the Province benefits from people in the woods 1) reporting potential wildfires immediately and 2) reporting suspicious activity or other conditions in the "woods" that might pose a fire risk.

[61] See [redacted] Affidavit, Exhibit "C", at PDF 24-26; see also [redacted] Affidavit, *supra*, Exhibit "B", 2023 Annual Wildfire Statistics, at PDF 102-103.

[62] See [redacted] Affidavit, Exhibit "C", at PDF 24: 2023 "Debris Fire 39"; "Slash/Land Clearing 23"; 2024 "Debris Fire 13"; "Slash/Land Clearing 13" (note: the categories for 2025 are changed resulting in it being more difficult to identify which fires were caused by forestry operations); see also [redacted] Affidavit, *supra,* Exhibit "B", 2023 Annual Wildfire Statistics, at PDF 102.

56. Where a decision maker purporting to exert statutory authority acts without a rational and coherent link to the text of the enabling statute, it is a court's constitutional duty on judicial review to intervene to safeguard the rule of law and ensure that public authorities do not overreach their lawful powers.[63] As seen in Justice Rand's famous guidance in *Roncarelli v. Duplessis,* courts exercise an important role in not permitting arbitrary, capricious or irrelevant purposes to be the basis for public decision.[64]

57. On a fundamental level, it is arbitrary and capricious for the Minister to deem every resident of, and visitor to, Nova Scotia, such a significant fire risk to the "woods" that it is "necessary" to ban them from accessing the vast majority of all public land in all counties of Nova Scotia, regardless of their activities in the "woods". The Travel Ban banned Nova Scotians' from the "woods" because they are human (an irrelevant factor), not because their actions or presence constitutes any risk to the woods.

58. In order to find the Travel Ban rational, one must accept the following logic internally coherent:

- some humans in some *areas* of the "woods" engaged in some *activities* that create an unacceptable risk of fire to the "woods";
- and thus it is necessary to ban *all* people, from *all* areas, and for *all* activities (except industrial and commercial activities which pose a significant fire risk) from the woods.

59. This kind of logic, which undermines foundational principles of personal responsibility, the presumption of innocence and justice, is incompatible with the rule of law and the rationality, reasonableness and justification required of public decision makers pursuant to *Vavilov*.[65]

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[63] See *Dunsmuir* at para 29; *Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] S.C.R. 121 a p. 140.
[64] *Roncarelli* at p. 140.
[65] See *Vavilov* at paras 102-110.

60. If this kind of logic is acceptable, it could have massive impacts for other integral human experiences in our society.

61. For example, this logic might be used to justify regulatory action by Cabinet that prohibits all Nova Scotians' (except specially permitted commercial drivers) from driving during times the risk of drunk driving is high, for example between Christmas and New Years.

62. The case of *Dalton v. Sauciukas*[66] is illustrative of the impropriety of such logic. There, Justice Hilliard of the Ontario Superior Court addressed a request that a father, with an apparent drinking problem, be prohibited from driving with the son.[67] Justice Hilliard noted that she could make such an order if it was "necessary and appropriate" taking into consideration the best interests of the son.[68] Justice Hilliard noted that her order should not be "punitive in nature" or "overbroad in its scope" but rather must be "logically related to the concern raised".[69] Justice Hilliard held:

> I am satisfied that based upon Mr. Sauciukas' past actions and current denials of ever having any issues with alcohol or drug misuse that a prohibition is both necessary and justified.
>
> However, **the risk exists only if Mr. Sauciukas is driving Preston while under the influence**. There is far less risk if Mr. Sauciukas is driving while completely sober, although by no means is driving an activity that is without risk. **A blanket prohibition** on Mr. Sauciukas driving with Preston in the vehicle, particularly on a final basis, **would be overbroad and punitive**. **The purpose of the restriction is to eliminate risk, not punish past behaviour**.[70]

Justice Hilliard therefore limited the driving prohibition with the son to when the father was "under the influence of alcohol, drugs, or both."[71]

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[66] *Dalton v. Sauciukas*, 2021 ONCJ 13 ["*Dalton"*]
[67] *Dalton* at paras 6-9.
[68] *Dalton* at para 18.
[69] *Dalton* at para 19.
[70] *Dalton* at para 20.
[71] *Dalton* at para 25.

63. The principles Justice Hilliard applied to the requested order before her are similar to the principles the Minister's Travel Ban decision must respect in order to be reasonable. Like Justice Hillard, the Minister was required to determine if the requested order was "necessary" and logically related to the concern raised. Unlike Justice Hilliard, the Minister's order was not focused on an individual with a demonstrated history of engaging in activities directly related to the risk of concern, but rather every person in the Province of Nova Scotia. Further, the Minister was not dealing with the privilege of driving, but with the right to movement in approximate 75% of Province. And as Justice Hilliard found that an order prohibiting driving while the father when the risk did not exist was "overbroad and punitive," so too the Minister's Travel Ban, prohibiting people from the "woods" even when their actions pose no fire risk is overbroad and incredibly punitive – ordinary Nova Scotians were punished for the malicious or negligent past behaviour of *others*.

64. If Nova Scotians want to abandon foundational legal principles in favour of such an approach—whether in regard to drunk driving or the use of public land—at the least such a change must be authorized through Nova Scotians' elected representatives in the Legislature, and not undertaken by administrative action untethered from Legislative intent.[72]

iii. The Travel Ban is unreasonable in light of the evidence before the Minister

65. While the July 30, 2025 recommendation for the Travel Ban stated that "there are extreme fire weather conditions across the province",[73] on August 4, 2025, the Daily Weather Build Up Index map showed extreme fire conditions in about a third of the Province, very high in about half of the Province and high in three areas of the Province. Yet, the Travel Ban was imposed in

[72] Of course, Legislative action adopting this kind of reasoning ignores foundational principles of personal responsibility, the presumption of innocence and justice would still be subject to constitutional review under the *Charter*.
[73] Record, Tab 1, at PDF 6.

all *areas* of the "woods" and for all *activities*, in all counties in Nova Scotia, despite the fire risk not being extreme in all areas.

66. This broad-brush approach, in light of the regional differences in fire risk across the Provinces, is not reasonable, especially in light of the requirement that restricted travel areas be deemed "necessary" by the Minister for the protection of the woods.

iv. The Travel Ban is unreasonable in light of the legal context

67. In our legal tradition, limits on autocratic restrictions on public access to forests goes over eight centuries to the *Magna Carta*[74] and the *Charter of the Forest*.[75]

68. The *Magna Carta* itself, extracted from King John in 1215, deals quite extensively with concerns about autocratic rule over royal forests.[76] The *Magna Carta* stated that "[a]ll evil customs relating to forests and warrens, foresters, warreners, sheriffs and their servants, or river-banks and their wardens, are at once to be investigated in every county by twelve sworn knights of the county, and within forty days of their enquiry the evil customs are to be abolished completely and irrevocably."[77]

69. The *Charter of the Forest* issued by Edward and Henry shortly thereafter in 1217, went further, granting broader access to forests without impediment: "Every freeman may agest his own wood within our forest at his pleasure, and shall take his pawnage. Also we do grant, that every freeman may drive his swine freely without impediment through our demesne woods, for to agest them in their own woods, or else where they will."[78] The practice of killing or maiming

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[74] *Magna Carta*, ss 44, 47-48, 53.
[75] *Charter of the Forest* , ss 1, 3, 9.
[76] John Charles Cox, LL.D, F.S.A., *The Royal Forests of England*, (London: Methuen & Co.. 1905) ["*Royal Forests"*] at p 1-6 for a detailed explanation of the forest system.
[77] *Magna Carta* s 4l.
[78] See *Charter of the Forest* ss 1 and 9 ("(9) Every freeman may agest his own wood within our forest at his pleasure, and shall take his pawnage. Also we do grant, that every freeman may drive his swine freely

those who killed the King's deer was banned.[79] While imprisonment was listed as a potential punishment, in practice only fines were issued, and "fines were so apportioned to the position and means of the delinquents, that they could, as a rule, be readily paid."[80]

70. The *Crown Lands Act* reflects the heritage of the *Charter of the Forest*, in that Crown lands in Nova Scotia are not set aside for the benefit of those in power and their friends, but rather, Crown lands are to be "sustainably used, protected, and managed . . . for purposes that include wilderness conservation, recreation, economic opportunity in forestry, tourism and other sectors, community development, and for the cultural, social and aesthetic enjoyment of Nova Scotians.[81]

71. Some have termed the interest that citizens have in public land and water ways "public rights".[82] G.V. La Forest explained:

> By public rights is not meant rights owned by government, whether federal, provincial or municipal. These bodies may own land and water rights ... in the same way as private individuals, in which case they are, in a manner of speaking, public rights. But what is here called public rights are those vested in the public generally, rights that any member of the public may enjoy.[83]

72. Later, writing in his capacity as a Justice of the Supreme Court of Canada, La Forest J. explained that in the contextual analysis of a statute, "the relevant "context should not be too narrowly construed" before launching into consideration of "fundamental principles" and "the ancient common law public right of navigation".[84]

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without impediment through our demesne woods, for to agest them in their own woods, or else where they will….)

[79] *Charter of the Forest* s 10.

[80] *Royal Forests* at pp 11-12

[81] *Crown Lands Act*, R.S.N.S. 1989, c. 114, s. 2.

[82] Andrew Gage, *Public Rights and the Lost Principle of Statutory Interpretation* (2005) 15 J. Env. L. & Prac. 107 ["*Public Rights"*]

[83] *Public Rights*, citing Gerard V. La Forest, Q.C., *Water Law in Canada -- The Atlantic Provinces* (Ottawa: Information Canada, 1973) at 178 (which was written specifically in the context of public rights arising from navigable rivers, but which concept has a broader application).

[84] See *Friends of the Oldman River Society v. Canada* (Minister of Transport), [1992] 1 SCR 3, 1992 CarswellNat 1313 at paras 73-76.

73. While courts in Canada and in this Province have not formally adopted the "public trust doctrine", the fact that Crown lands are for recreation and enjoyment of Nova Scotians, informed by the ancient common law context concerning the use of forests, is a legal constraint in light of which the reasonableness of Travel Ban must be judged.

74. While the Minister took account of the economic interests of Nova Scotians who make their livelihoods in the woods in issuing the Travel Ban, there is an utter failure of the Minister to take account for the non-economic interests of Nova Scotians to use the "woods" for recreation and enjoyment.

C. The Travel Ban unreasonably infringed the *Charter*

Freedom of Movement in a Free Society

75. In the recent Supreme Court of Canada case *Taylor v Newfoundland*,[85] the court expressed the importance of the "freedom of movement." Writing for the majority, Justices Karakatsanis and Martin wrote:

> Mobility rights sit at the heart of what it means to be a free person. The ability to move freely throughout one's country, without restriction or need for government authorization, often differentiates a liberal democracy from an authoritarian dictatorship.
> …
> In interpreting other *Charter* rights, this Court has discussed the importance of "freedom of movement" to a free society more generally.
>
> **We have held that deprivations of freedom of movement can infringe the liberty interest under s. 7 of the *Charter*** ((*R. v. Ndhlovu*, 2022 SCC 38, [2022] 3 S.C.R. 52, at para. 7). More directly, **this Court's arbitrary detention jurisprudence under s. 9 has described "freedom of movement" as "one of the fundamental values of our democratic society"** (*R. v. Orbanski*, 2005 SCC 37, [2005] 2 S.C.R. 3, at para. 24)…
>
> The pervasiveness of freedom of movement elsewhere in the *Charter* echoes the common law's longstanding and zealous protection of mobility rights. Our cases interpreting those provisions reveal **a concern not only with physical restraint, but with the interference with personal**

[85] *Taylor v. Newfoundland and Labrador*, 2026 SCC 5 ["*Taylor*"].

> **autonomy inherent in any deprivation of a person's entitlement to decide where they want to be**.[86]

76. These significant comments about the "freedom of movement" from our highest court set the stage for the discussion below of liberty and the freedom to roam in public places.

77. Section 7 of the *Charter* states:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.[87]

78. To establish a violation of section 7 of the ***Charter***, Mr. Evely has the onus to prove that: 1) the law interferes with or deprives the right to life, liberty or security of the person; and 2) such deprivation is not in accordance with the principles of fundamental justice.[88]

79. Mr. Evely submits that the Travel Ban has engaged both liberty and security of the person interests. He argues that those rights ought to be interpreted broadly, remembering that the purpose of the liberty guarantee is to safeguard human dignity, personal autonomy, privacy and choice in decisions going to the individual's fundamental being,[89] and the purpose of the security of the person interest is to protect the right of individuals to be free from state action that threatens physical harm to their bodies, or a "serious and profound effect on a person's psychological integrity."[90]

80. Support for this position is found in *R. v. Big M. Drug Mart*, where Chief Justice Dickson of the Supreme Court of Canada discussed the purposive interpretation of *Charter* rights:

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[86] *Ibid.* at paras. 1, 135-137 [Emphasis added].
[87] *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 ["*Charter*"].
[88] See: *Godbout v. Longueuil (City)*, 1997 CanLII 335 (SCC), [1997] 3 S.C.R. 844, and *Rodriguez v. British Columbia (Attorney General)*, 1993 CanLII 75 (SCC), [1993] 3 S.C.R. 519 at 584.
[89] *Children's Aid Society* at para 80; See also: *R. v Morgentaler*, [1988] 1 S.C.R. 30, at pp. 36-37, per Wilson J, concurring.
[90] *New Brunswick (Minister of Health and Community Services) v. G(J),* [1999] 3 SCR 46, 1999 653 (SCC) at para. 60 ["*New Brunswick*"].

> …the proper approach to the definition of the rights and freedoms guaranteed by the *Charter* was a purposive one. The meaning of a right or freedom guaranteed by the *Charter* was to be ascertained by an analysis of the purpose of such a guarantee; it was to be understood, in other words, in the light of the interests it was meant to protect.
>
> In my view this analysis is to be undertaken, and the purpose of the right or freedom in question is to be sought by reference to the character and the larger objects of the *Charter* itself, to the language chosen to articulate the specific right or freedom, to the historical origins of the concepts enshrined, and where applicable, to the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the *Charter*. **The interpretation should be**, as the judgment in *Southam* emphasizes, **a generous rather than a legalistic one, aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the *Charter*'s protection.** At the same time it is important not to overshoot the actual purpose of the right or freedom in question, but to recall that the *Charter* was not enacted in a vacuum, and must therefore…be placed in its proper linguistic, philosophic and historical contexts.[91]

i. The Travel Ban Limits the Right to Liberty

81. Liberty includes (1) freedom from physical restraint, and (2) also applies when a law prevents a person from making "fundamental personal choices."[92] Mr. Evely argues that the Travel Ban limits liberty interests in both of these ways.

a. Travel Ban is akin to physical restraint

82. The Supreme Court of Canada in *R. v. Heywood* held that state prohibitions affecting one's ability to move freely violated liberty and security interests, especially when non-compliance with those prohibitions could result in a jail sentence.[93] At issue in *Heywood* was the constitutionality of a *Criminal Code*[94] provision that placed the respondent, a convicted child sex offender, under a permanent, unreviewable lifetime prohibition from attending certain areas where children may be found.

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[91] *R. v. Big M Drug Mart Ltd.,* 1985 CanLII 69 (SCC) at paras. 116-117 ["Emphasis added"].
[92] *Blencoe v. British Columbia, (Human Rights Commission*) [2000] 2 S.C.R. 307 ["*Blencoe*"]
[93] *R v. Heywood*, [1994] 3 SCR 761 at 789 (para 45) ["*Heywood*"].
[94] *Criminal Code,* R.S.C., 1985, c. C-46 ["*Code*"].

83. The Supreme Court found that the provision restricted liberty for the following reasons: (1) it prevented convicted sex offenders (like Heywood) from attending school grounds, playgrounds, public parks and bathing areas; (2) these were all places where the rest of the public was free to roam; and (3) breach of the prohibition was punishable by imprisonment.[95]

84. *Heywood* was recently cited favourably by the Supreme Court of Canada in *R. v. Ndhlovu* which had similar facts.[96] In that case, the accused was convicted of sexual assault and he was subjected to mandatory lifetime registration in the national sex offender registry pursuant to provisions of the *Code*.[97] He challenged the provisions as infringements of his section 7 liberty interest. The court found in his favour due to the scheme's requirement that he structure his travel and residency on an ongoing basis, which it found violated his right to liberty.[98]

85. In this case, the Travel Ban has restricted Nova Scotians' ability to move freely in public in Nova Scotia. They were unable to access 75% of the land in Nova Scotia, as 75% of Nova Scotia is forested land.[99] Mr. Evely himself has attested that forest hiking is a part of his daily life, and his freedom to attend at public parks and forests was completely restricted.[100] Any Nova Scotian who sought to hike, bike, fish or engage in any other activities in the forest was subject to a large fine, imprisonment, or both.[101] The Travel Ban therefore engaged the liberty interests of all Nova Scotians.

86. Mr. Evely received a fine of $28,872.50 for walking into a forested area restricted under the Travel Ban.[102]

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[95] *Heywood* at 789-790.
[96] *R. v. Ndhlovu*, 2022 SCC 38 at para 55.
[97] *Ibid*. at para 55.
[98] *Ibid*. at para 55.
[99] [redacted] Affidavit, Exhibit "A", at PDF 15.
[100] Evely Affidavit #1, *supra*, at paras 13-14, 18.
[101] Evely Affidavit #1, *supra*, at Exhibit "A", PDF 8.
[102] Evely Affidavit #1 at para 20, Exhibit "E", at PDF 17-21.

87. As is discussed below at paragraphs 137-138, the Travel Ban was issued with the express intention that people involved in forestry and other commercial activities would be permitted to use the "woods" while hikers and forest walkers (with or without medical conditions) like Mr. Evely were not. Mr. Evely submits that the *Heywood* criteria are met in this case and that his liberty interests are engaged.

b. Applicant's decision to immerse himself in the forest is a fundamental, personal life choice

88. The Supreme Court of Canada expanded the notion of liberty beyond the penal context and forms of physical detention of persons by the state. The liberty interest as defined in *Blencoe v. British Columbia (Human Rights Commission)* includes situations where state compulsions or prohibitions affect important and fundamental life choices.[103] That case, which was a civil one, describes a liberty interest as the right to an irreducible sphere or personal autonomy where individuals may make inherently private choices free from state interference. The right to liberty under section 7 is "rooted in fundamental notions of human dignity, personal autonomy, privacy and choice", and protects an individual's right to make "fundamental personal decisions."[104] The right to liberty includes the right to refuse medical treatment,[105] and the right to make "reasonable medical choices" without threat of criminal prosecution.[106]

89. In *Baril v. Obelnicki*, the Manitoba Court of Appeal held that a fundamental "basic life choice is the decision to move about freely in public."[107] In that case, a woman obtained a protection order against her neighbour, which was granted under domestic violence and stalking legislation. The respondent neighbour challenged the legislation's constitutionality under section

[103] *Blencoe, supra.*
[104] *Blencoe, supra*, at para 50.
[105] *AC v. Manitoba*, at para. 100-102, 136.
[106] *R. v. Smith*, 2015 SCC 34, at para. 18.
[107] *Baril v. Oleynik*, 2007 MBCA 40, at para. 69 ["Emphasis added"].

7 of the *Charter*. The court found that the legislation infringed the respondent's liberty interest.

Writing for the court, Madam Justice Steel wrote:

> **Restrictions on one's freedom of movement may engage the liberty interest even in civil cases.** *Godbout* involved important choices about where one may conduct one's personal affairs. That case addressed a resolution by city council requiring its permanent employees to live within the limits of the city. Although six of nine judges held that it was unnecessary to decide the s. 7 issue, La Forest J. decided (L'Heureux-Dubé J. and McLachlin J. (as she then was) concurring) that Ms Godbout's liberty rights under s. 7 were infringed.
>
> …
>
> Looking at s. 7(1) generally, one can envision many situations where the provisions in the protection order might be much more onerous. For example, a **respondent might be ordered to stay away from places where they normally** conduct business or **engage in social activities** because the applicant attends those same places…**In small communities especially, the potential for more serious infringements on liberty are greater**. It is easy to imagine situations in which a respondent's freedom of movement might be substantially limited.
>
> The protection orders granted under this *Act* engage the liberty interest in s. 7 because the nature of the freedom of movement that the orders restrain "encompasses only those matters that can properly be characterized as fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence." See *Godbout*, at para. 66, referred to with approval by Bastarache J. in *Blencoe*, at para. 51, and in *R. v. Malmo-Levine; R. v. Caine*, 2003 SCC 74, [2003] 3 S.C.R. 571 at para. 85.
>
> Therefore, I agree with the motions court judge that liberty interests are engaged by a protection order that restricts a respondent's freedom of movement in a serious manner. **By serious, I refer to a situation where the restraint prevents a person from having the same access to property enjoyed by other members of the public, where the restriction affects a person's autonomy with regard to important and fundamental life choices**, choices that are inherently personal going to the core of what it means to enjoy individual dignity and independence.[108]

90. Further, in *R. v. Budreo*, the Ontario Court of Appeal found that a section of the *Code* which allowed for a recognizance or peace bond on persons likely to commit a sexual offence against and child under 14 deprived the appellant of his section 7 liberty interest.[109] It held that

[108] *Ibid*. at paras. 70, 73-75.
[109] *R. v. Budreo*, 2000 CanLII 5628 (ON CA).

the conditions in the section prevented the appellant from going to many places that other Canadians could freely go to and thus stopped the appellant from participating fully in a community's activities.[110]

91. In *Carter v. Canada (Attorney General)*, the Supreme Court of Canada found that a law which prohibited aiding or abetting a person to commit suicide deprived the plaintiff of liberty in a manner not in accordance with the principles of fundamental justice.[111] It found that the law denied her the right to make a fundamental personal choice free from state interference:

> **An individual's response to a grievous and irremediable medical condition is a matter critical to their dignity and autonomy.** The law allows people in this situation to request palliative sedation, refuse artificial nutrition and hydration, or request the removal of life-sustaining medical equipment, but denies them the right to request a physician's assistance in dying. This interferes with their ability to make **decisions concerning their bodily integrity and medical care** and thus trenches on liberty.[112] [Emphasis added].

92. Further, in *R. v. Parker*, the Ontario Court of Appeal held that a *Code* provision that criminalized marijuana possession infringed the plaintiff's section 7 liberty and security of the person rights because he took the drug in order to reduce his epilepsy-associated seizures.[113] The court wrote:

> …the choice of medication to alleviate the effects of an illness with life-threatening consequences is a decision of fundamental personal importance. In my view, it ranks with the right to choose whether to take mind-altering psychotropic drugs for treatment of mental illness, a right that Robins J.A. ranked as "fundamental and deserving of the highest order of protection" in *Fleming v. Reid* (1991), 1991 CanLII 2728 (ON CA).[114]

93. The Applicant has been diagnosed with [redacted] by a [redacted] are

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[110] *Ibid*. at para. 23.
[111] *Carter v. Canada (Attorney General),* 2015 SCC 5, [2015] 1 SCR 331 ["*Carter*"].
[112] *Carter, supra*, at para 64.
[113] *R. v. Parker*, 2000 CanLII 5762 (ON CA) ["*Parker*"].
[114] *Parker* at para 102.
[115] Agreed Statement of Facts, February 20, 2026.
[116] Evely Affidavit #1 at para 9.

[redacted] His condition is grievous. He has chosen to try to manage his condition in a variety of ways, including eating and sleeping well, and meditating.[118] But he has found that the most effective way for him to reduce his debilitating symptoms is to spend hours every day hiking deep in the forest and "forest bathing".[119] The Applicant has even chosen to move to a house in Sydney, Nova Scotia that is a couple of blocks from a provincial park so that he could have easy access to the forest.[120]

94. The Applicant's choice to forest bathe on a daily basis [redacted] is a fundamental personal choice. That choice (how to manage his symptoms) concerns his bodily integrity [redacted] and medical care [redacted] The state interfered with that fundamental personal choice through its imposition of the Travel Ban. Such interference is a serious violation of his liberty.

ii. Travel Ban Limited Mr. Evely's Right to Security of the Person

95. Security of the person is generally given a broad interpretation and has both a physical and psychological aspect. The Supreme Court of Canada in *New Brunswick (Minister of Health and Community Services) v. G. (J.)* held that it encompasses "a notion of personal autonomy involving...control over one's bodily integrity free from state interference".[121] Lamer C.J.C., writing for all members of the court, held that, "the right to security of the person does not protect the individual from the ordinary stresses and anxieties that a person of reasonable

[117] *Ibid*. at paras 6-8.
[118] *Ibid*. at para 15.
[119] *Ibid*. at paras 14-17.
[120] *Ibid*. at para 12.
[121] *Rodriguez* at 587-88 (para 136) per Sopinka J.

sensibility would suffer as a result of government action."[122] The court further held that security of the person is engaged by state interference with an individual's physical or psychological integrity, including any state action that causes physical or serious psychological suffering.[123]

96. As noted above, Mr. Evely [redacted]

97. The Applicant has found that he is able to get relief from those debilitating symptoms through daily, multi-hour hikes in the woods.[126] The relief that he feels after a few hours in the woods persists for hours after he exits the woods.[127] He repeats this activity daily and/or a few times a week in order to maintain the positive effects that immersion in the forest provide him.[128] Immersion in the forest or "forest bathing" is Mr. Evely's best [redacted] treatment, as he has found it to be the most effective way to reduce [redacted]

98. The Travel Ban removed Mr. Evely's access to [redacted] The Applicant stated:

> Since the Travel Ban began on August 5, 2025, and until it was lifted, I was unable to engage in my daily, multi-hour walks in the woods. My symptoms worsened every day that passed. I am able to [redacted] through my long walks deep in the woods, where I cannot hear city noises and where I can completely immerse myself in nature. While the Travel Ban was in effect, I became [redacted]

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[122] *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46 ["*New Brunswick*"]
[123] *Ibid.* at para 58; *Blencoe*, *supra*, at paras 55-57; *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, at paras. 43, 191 and 200, ["*Chaoulli*"]; *Carter*, *supra*, at para 65.
[124] Evely Affidavit #1, *supra*, at paras. 6-10.
[125] *Ibid*. at para. 9.
[126] *Ibid*. at paras. 11-15.
[127] *Ibid*.
[128] *Ibid*.
[129] *Ibid*. at paras. 16-17.
[130] *Ibid*. at para. 21.

[redacted]. These symptoms became severe. During the Travel Ban, I was unable to sleep more than 2-4 hours a night, when I can usually sleep between 6-8 hours a night. [redacted]

99. As a steady line of Supreme Court of Canada cases have determined, where a law creates a risk to health by preventing access to health care, a deprivation of the right to security of the person is made out.[132]

100. The fact that Mr. Evely's [redacted] poses a risk in itself to his health does not negate the state's role in infringing his section 7 rights, as can be seen in *Chaoulli*. In that case, the applicants challenged a provision of Quebec's health care statute that barred Quebec residents from obtaining private health coverage for services that were publicly insured. The Supreme Court of Canada wrote:

> Studies confirm that patients with serious illnesses often experience significant anxiety and depression while on waiting lists…The majority suffered **worry, anxiety or stress** as a result. This adverse psychological impact can have a serious and profound effect on a person's psychological integrity, and is a **violation of security of the person**…
>
> The jurisprudence of this Court holds that **delays in obtaining medical treatment which affect patients physically and psychologically trigger the protection of s. 7 of the *Charter*.**
>
> The prohibition against private insurance in this case results in psychological and emotional stress and a loss of control by an individual over her own health.[133]

101. As the Ontario Court of Appeal held in *Parker*,

> The state has not violated Parker's rights simply because epilepsy in and of itself represents a danger to his life or health. However, to prevent his accessing a treatment by threat of criminal sanction constitutes a deprivation of his security of the person. Based on the evidence, the marijuana laws force

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[131] *Ibid*.
[132] *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 ["*PHS*"], at para. 93; *R. v. Morgentaler*, 1988 CanLII 90 (SCC), [1988] 1 SCR 30 ["*Morgentaler*"] at 59, *per* Dickson C.J., and at 105-6, *per* Beetz J.; *Rodriguez* at p. 589, *per* Sopinka J.; *Chaoulli* at para. 43 *per* Deschamps J., and, at paras. 118-19 *per* McLachlin C.J. and Major J.; *Parker, supra*.
[133] *Chaoulli* at paras 117, 118, 122.

> Parker to choose between commission of a crime to obtain effective medical treatment, and inadequate treatment.[134]

102. In *Reddock v Canada (Attorney General)*,[135] the Ontario Superior Court dealt with a case where an increase in inmates' suicidal ideation caused by the state was alleged to engage section 7 rights. In that case, a group of prison inmates challenged the prison's practice of "administrative segregation", more commonly known as solitary confinement, arguing, *inter alia*, that the practice violated their security of the person. The Ontario Superior Court agreed, finding that the evidence showed a demonstrable increase in suicidal ideation and behaviours when inmates were placed in solitary.[136] This increased risk of suicide and self-harm was a deprivation of the inmates' security of the person that was not fundamentally just.

103. The Applicant's security of the person rights are engaged because the Respondents' actions have prevented him from taking part in the best therapy he has found [redacted]

iii. Section 7 Infringements Not in Accordance with The Principles of Fundamental Justice

104. The principles of fundamental justice are about the basic values underpinning our constitutional order. The section 7 analysis is concerned with "capturing inherently bad laws: that is, laws that take away life, liberty, or security of the person in a way that runs afoul of our basic values. The principles of fundamental justice are an attempt to capture those values."[137] Limitations of the section 7 interests are only lawful so long as the infringements caused by government action or a law are in accordance with the principles of fundamental justice.[138] Arbitrariness, overbreadth, and gross disproportionality compare the rights infringement caused

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[134] *Parker* at para 107.
[135] *Reddock v. Canada (Attorney General)* 2019 ONSC 5053 ["*Reddock"*].
[136] *Ibid*., at para 260.
[137] *Canada (Attorney General) v. Bedford,* 2013 SCC 72 ["*Bedford"]* at para 96.
[138] *Ibid*. at paras 74-78.

by the law with the law's objective, not its effectiveness.[139] The principles do not measure the percentage of the population that is negatively impacted.[140]

105. The question under section 7 is whether anyone's life, liberty, or security of the person has been denied by a law; a grossly disproportionate, over-broad, or arbitrary effect on one person is sufficient to establish a section 7 breach.[141]

106. The Supreme Court of Canada wrote in *Bedford*,

> The case law on arbitrariness, overbreadth and gross disproportionality is directed against two different evils. The first evil is the absence of a connection between the infringement of rights and what the law seeks to achieve — the situation where the law's deprivation of an individual's life, liberty, or security of the person is not connected to the purpose of the law. The first evil is addressed by the norms against arbitrariness and overbreadth, which target the absence of connection between the law's purpose and the s. 7 deprivation.
>
> The second evil lies in depriving a person of life, liberty or security of the person in a manner that is grossly disproportionate to the law's objective. The law's impact on the s. 7 interest is connected to the purpose, but the impact is so severe that it violates our fundamental norms.[142]

107. The Travel Ban, carrying with it a risk of imprisonment, restricted the liberty interests of all Nova Scotians. Further, Mr. Evely submits that the Travel Ban infringes Nova Scotians' liberty and his security of the person rights in a manner that is not in accordance with the principles of fundamental justice. He presents his analysis of each principle below.

a. Arbitrariness

108. A law is arbitrary when there is no rational connection between the limit on the right and the object of the law. An arbitrary law is one that limits rights but is not capable of fulfilling or in any way furthering the objectives of that law.[143]

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[139] *Ibid.* at para 123.
[140] *Ibid.*
[141] *Ibid.*
[142] *Ibid*. at paras 108-109.
[143] *Ibid.; Carter* at para 85.

109. The Applicant submits that the objective of the Travel Ban is to protect the woods from the risk of human-caused fire.

110. The Requirement is arbitrary and cannot fulfill that objective for a few reasons:

People were still able to access the woods

111. The Respondents, while imposing the Travel Ban, simultaneously and expressly decided to exempt from the Travel Ban people whose livelihoods depended on forest access, and to industry which required workers to complete the work. Thus, thousands of Nova Scotians were permitted to access the woods, despite the Travel Ban.

112. As thousands of people (or more) were allowed to access the woods for work, but not for health and wellness, recreation, or medical and mental health reasons, the Travel Ban was arbitrary. It could not protect the forest from human caused fires as it purported to do by excluding one group of people, while allowing others to have travel work permits to access it.

Province created fire risk by giving travel permits to industry

113. The Respondents decided to exempt the forest and mining industries from the Travel Ban by issuing travel permits.[144]

114. As [redacted] - former fire investigator with DNR for 29 years - stated in his affidavit, "Permits issued to forestry companies during burn bans when fire risk was high during my tenure were issued with a multitude of conditions. Even with those risk mitigations, fires sometimes started as the risk could be reduced but not eliminated."[145] Banning people from walking in the woods who pose no threat to the forest from their shoes touching the ground,

[144] Record, Tab 9, at PDF 80; [redacted] Affidavit, *supra*, Exhibit "H", at PDF 264, lines 8-10, 12, 15-17; 30-32, and Exhibit "H", at PDF 265, lines 1-5.; Record, Tab 1, at PDF 6-7; Affidavit of [redacted] sworn February 20, 2026 ["*Tracy* Affidavit"] at para 7, Exhibit "B" and Exhibit "D"
[145] [redacted] Affidavit, *supra*, at para 16.

while permitting major industrial activities that carry known fire risks, utilizing hot and heavy machinery with combustible fuels in the forests, is arbitrary.

Province removed fire towers and hikers with cell phones

115. Nova Scotia removed fire towers in 2013 which were historically its first line of defence against forest fires.[146] Once the fire towers were removed, the new first line of defence against forest fires in Nova Scotia was people walking in the woods with cell phones.[147]

116. It is arbitrary to ban people from walking in the woods who report and help stop forest fires if the purpose of the Travel Ban is to protect the woods from fire risk. The Respondents essentially removed their warning system and banned their new line of defence (hikers with phones) from the woods which would render them unable to spot and report fires.

117. [redacted] confirmed that as a fire investigator with the DNR, "…we relied on information from people in the woods for information which could lead to the capture of arsonists."[148] Arson is by far the number one cause of fires in Nova Scotia.[149] The Travel Ban, by preventing law abiding people from being in the woods, removed a significant means of stopping arsonists in the forest, which is the opposite of its objective of reducing fire risk. It actually *increases* the risk of fire.[150] The vast majority of people who enter the woods are not arsonists, and removing hikers like Mr. Evely makes it easier for arsonists to set fires as no one is there to spot and report, or even stop them.

118. This arbitrariness analysis has similarities to *Morgentaler*, where the Supreme Court of Canada found that the requirement that all therapeutic abortions take place in accredited hospitals did not contribute to the objective of protecting women's health and, in fact, *caused*

[146] *Ibid*. at para 17.
[147] *Ibid*.
[148] *Ibid*. at paras 17, 18.
[149] *Ibid*., Exhibit "B" at PDF 102-103.
[150] See: *Bedford* at para 98.

delays that were detrimental to women's health.[151] Later cases interpreted this as an arbitrariness analysis.[152]

119. Similarly, in *PHS*, the Supreme Court of Canada held that the Minister's decision not to extend a safe injection site's exemption from drug possession laws was arbitrary.[153] The purpose of drug possession laws was the protection of health and public safety, and the services provided by the safe injection site actually contributed to these objectives. Therefore, the effect of not extending the exemption was contrary to the objectives of the drug possession laws.

b. Overbreadth

120. If an impugned law or government measure which limits section 7 rights "goes too far and interferes with some conduct that bears no connection to its objective," it will be overbroad.[154]

121. Such was the result in *Heywood*. In that case, the accused challenged a vagrancy law that prohibited offenders convicted of sexual offences against children from "loitering" in public parks. The majority of the court found that the law, which aimed to protect children from sexual predators, was overbroad; insofar as the law applied to offenders who did not constitute a danger to children, and insofar as it applied to parks where children were unlikely to be present, it was unrelated to its objective.[155]

122. *Heywood* was followed by the Supreme Court of Canada in *Ndhlovu*, discussed above at paragraph 84. The court found the mandatory lifetime registration in the sex offender registry to

[151] *Morgentaler* at 120.
[152] See: *Chaoulli* at para 133.
[153] *PHS* at para 127.
[154] *Bedford* at para 101.
[155] *Heywood* at 794, 795, 798.

be an overbroad infringement of the accused's liberty right, because it led to the continued registration of offenders who were not at a risk of reoffending.[156]

123. In *R. v. McCluskey*, the Nova Scotia Provincial Court found that a provision of the *Motor Vehicle Act* which prohibited pedestrians from walking on a highway infringed the section 7 liberty rights in a manner that was overbroad.[157] Judge Sherar wrote:

> If the purpose of s.127(2) of the Motor Vehicle Act is to help create a regime of safe traffic control on Nova Scotia's public highways, with respect, **the punitive reach of that section into the lives of the pedestrians of the province, as plainly read, may be too great. One can contemplate many fact situations wherein a pedestrian could and clearly does step off a sidewalk into a public highway without creating a safety hazard for either the pedestrian and any vehicular traffic in the vicinity.** In addition, there may be situations where pedestrians are impelled to step off a sidewalk. However, as presently contemplated under the legislature, each of those situations could subject the pedestrian to a fine or at worst, a period of imprisonment. The Crown replies that peace officers have a discretion as to when to charge a pedestrian in any situation. But as the ancient Romans opined: "Who guards the guardians?"[158]

124. The Travel Ban is overbroad as there is no evidence in the Record that people walking in the woods cause fires. [redacted] also attested that during his 29-year career as a DNR fire investigator, he had never come across information that people in the woods caused a forest fire.[159] The Travel Ban negatively affected people such as Mr. Evely who posed no risk of fire by simply going for a hike in the woods. It is unrelated to its objective.

c. <u>Gross Disproportionality</u>

125. For a law to reach the standard of gross disproportionality, the connection between the draconian impact of the law and its object must be entirely outside the norms accepted in our free and democratic society.[160] In this regard, the Supreme Court of Canada has stated, "if the

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[156] *Ndhlovu*, *supra.*
[157] *R. v. McCluskey*, 2005 NSPC 2
[158] *Ibid*. at para. 69.
[159] [redacted] Affidavit at para 14.
[160] *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2022 BCCA 245.

impact of the restriction on the individual's life, liberty or security of the person is grossly disproportionate to the object of the measure," the restriction will not be found to accord with the principles of fundamental justice.[161] The effects of the state action or law must be "so extreme as to be disproportionate to any legitimate government interest."[162]

126. In *Bedford*, the Supreme Court of Canada wrote:

> "Further, gross disproportionality does *not* consider the beneficial effects of the law for society. It balances the negative effect on the individual against the purpose of the law, *not* against societal benefit that might flow from the law…Gross disproportionality is not concerned with the number of people who experience grossly disproportionate effects; a grossly disproportionate effect on one person is sufficient to violate the norm."[163]

In that case, the court struck down criminal prohibitions related to sex work, finding the bawdy-house prohibition and living on the avails prohibition were grossly disproportionate to their objectives of deterring community disruption and preventing exploitation, as the laws put the sex workers' health, safety and lives at risk.[164]

127. The Travel Ban had a grossly disproportionate effect on Mr. Evely. For entering the forest near his house – an activity he does daily to reduce [redacted] – he was subjected to a law with a possible jail sentence and received an astounding $28,872.50 fine.[165] [redacted]

128. In balancing the negative effects of the Travel Ban with threat of imprisonment on Mr. Evely's mental health and his receipt of a $28,872,50 fine, against the purpose of protecting the forest from the risk of forest fires, it is apparent that the impacts on Mr. Evely are outside the

[161] *Carter* at para 89; See also: *Bedford* at paras 120-122.
[162] *PHS* at para 133.
[163] *Bedford* at paras 121-122.
[164] *Ibid*. at paras 134-136.
[165] Evely Affidavit #1, Exhibit "E".
[166] *Ibid*. at para 21.

norms accepted in our free and democratic society. In Canada, it is unacceptable to fine a person $28,872.50 for merely walking in a forest without creating any fire risk, especially when that person uses the forest to reduce [redacted]

iv. Travel Ban not in accordance with principles of fundamental justice despite Travel Permit

a. The Law on Curative Provisions

129. The Applicant anticipates that the Respondents will argue that the possibility of obtaining a "valid travel permit" as set out in the Travel Ban, will cure any deprivation of Mr. Evely's section 7 interests. The leading Supreme Court of Canada cases to consider this issue are *Canadian Council for Refugees v Canada*,[167] and *Canada (Attorney General) v. PHS Community Services Society*.[168]

130. *CCR* involved a section 7 *Charter* challenge to immigration and refugee legislation. In Canada refugee status claims are ineligible to be considered if the claimant came from a country designated by the regulations.[169] Countries may only be so designated if they complied with "non-refoulement" obligations under international law.[170] The appellants challenged the law arguing that it resulted in Canadian immigration officers returning claimants to the United States without considering whether the US would respect their rights under international law.[171]

131. The Supreme Court of Canada held in *CCR*, "When a *Charter* challenge targets a provision in an interrelated legislative scheme, the potential impact of related provisions, including those that may serve to "prevent or cure any possible defects," must be reviewed."[172]

[167] *Canadian Council for Refugees v Canada*, 2023 SCC 17 ["*CCR*"].
[168] *PHS*, *supra.*
[169] *CCR* at para 2.
[170] *Ibid*.
[171] *Ibid*. at para 3.
[172] *CCR* at para 63.

The court noted that evidence related to curative provisions should rarely prevent consideration of whether life, liberty or security of the person under section 7 are engaged.[173]

132. In *CCR*, the "curative provisions" were detailed and carefully considered. They included: "administrative deferrals of removal", "temporary resident permits", "humanitarian and compassionate exemptions", and "public policy exemptions".[174] As set out in the judgement, there was specific criteria in the statute for immigration officers and/or the Minister to follow and to assist them in deciding whether to grant exemptions.[175] The court ultimately found that "the legislation is tailored to prevent certain infringements of s. 7 interests and…survives constitutional scrutiny here because legislative safety valves provide curative relief.[176]

133. *CCR* also confirmed that exemptions can be "illusory" and incapable of curing constitutional defects if there is no possibility of accessing them in law. The court stated, "It is also insufficient for curative mechanisms to be available in law but unavailable in practice. Empty promises do not safeguard against breaches of constitutionally protected rights," and, "…challengers bear the evidentiary burden to establish that the legislation causes difficulties for individuals seeking access to curative mechanisms…They must therefore show that the legislation causes the exemption to be illusory in their individual circumstances."[177]

134. *PHS* concerned a general statutory prohibition on possession of controlled substances except as authorized under the regulations. The statute authorized the Minister "to issue exemptions for medical or scientific reasons, or for any purpose the Minister deems to be in the public interest" from the application of the statute.[178] The Supreme Court of Canada found that

[173] *Ibid*.
[174] *CCR* at para 148.
[175] *CCR* at paras 44-48.
[176] *Ibid*, at para 10.
[177] *CCR* at paras 158-159.
[178] *PHS* at para 39 [Emphasis added].

the exemptions acted “as a safety valve” that prevents the statute from applying where such application would violate the principles of fundamental justice under section 7 of the *Charter*. The court wrote, “…when the Minister’s discretion was exercised, these provisions cured the constitutional defects that would have arisen had the general prohibition been left to apply to those who ought not to have been caught by it: the staff and clients of a safe injection facility.”[179]

135. Conversely, in *Committee for the Commonwealth of Canada v. Canada*, the Supreme Court of Canada found that a violation of freedom of expression due to the prohibition of conducting business at and advertising at an airport, was not saved by section 1 of the *Charter* even though an applicant could apply to the Minister for authorization to conduct those activities.[180] Justice L’Heureux-Dube wrote:

> Rights and freedoms must be nurtured not inhibited. Vague laws intruding on fundamental freedoms create paths of uncertainty onto which citizens fear to tread, fearing legal sanction. Vagueness serves only to cause confusion and most people will shy from exercising their freedoms rather than facing potential punishment.
> In addition, the Regulations provides that "except as authorized in writing by the Minister, no person shall . . .". It is clear that the Minister is given a "plenary discretion to do whatever seems best". That in itself may create a standard which is so vague as to be incomprehensible. In any event, vagueness by virtue of the lack of a comprehensible standard does not accord with the requirement that a limit on a right or freedom be "prescribed by law".
> …
> This particular provision does not even come close to meeting that standard. As a result of its vagueness and overbreadth, there is no foreseeability as to what activity is in fact being proscribed. Furthermore, the unfettered discretion vested in the Minister itself undermines the reasonableness and predictability of the provision's application. **Those affected by the Regulation cannot be left to speculate or surmise how or in what circumstances it will be implemented. Such conjecture is incompatible with the spirit, purposes and goals of our *Charter*, and will not pass constitutional muster**: it has not been demonstrably justified in a free and democratic society.[181]

[179] *PHS* at paras 94 and 114.
[180] *Committee for the Commonwealth of Canada v. Canada* (1991), [1991] 1 S.C.R. 139, at para. 180 [“*Committee*”].
[181] *Committee* at paras. 181-182 [Emphasis added].

b. Travel Permit Exemption is Vague, Unavailable in Practice, and Confers Unfettered Discretion Upon the Minister

136. Unlike in *CCR* and *PHS*, where the curative exemptions to their respective legislation were detailed and carefully tailored to minimize *Charter* infringements, there is no criteria built into the text of the Travel Ban or elsewhere in the *Forests Act* that the Minister or other government officials should consider when deciding whether to grant a travel permit. In *CCR*, that criteria was detailed and built into the statute itself, and ensured that deprivations of refugee applicants' *Charter* rights would be avoided. In *PHS*, the Minister had discretion to grant exemptions for medical, scientific, and public interest reasons.

137. In this case, the Travel Ban itself does not provide any information as to who is eligible for a travel permit, or under what conditions. It also does not on its face attempt to guard against *Charter* infringements. The only information before this Court about who is eligible for a travel permit is found in the transcript of the Respondents' August 5, 2025 news conference,[182] the Respondents' news release,[183] the Decision Request in the Record,[184] and the Affidavit of Alison Tracy.[185] All of those documents confirm that the travel permit, in practice, is intended for industry, and to preserve individuals' livelihoods (people who rely on accessing the forest to make a living). They are discussed below:

- The Premier's Office/Natural Resources press release revealed that

  "Forestry, mining and any commercial activity on provincial Crown lands are also restricted. People who conduct this kind of activity can apply for a permit at their local Department of Natural Resources office."[186]

  The only permits mentioned were for commercial activity. The Premier was quoted as saying,

[182] [redacted] Affidavit, Exhibit "H", at PDF 261-270.
[183] Record, Tab 9, at PDF 79.
[184] Record, Tab 1, at PDF 6.
[185] [redacted] Affidavit.
[186] Record, Tab 9, at PDF 80.

"I'm asking everyone to do the right thing…stay out of the woods."[187]

No mention was made of a travel permit being available for non-commercial activity in the woods.

- Minister Rushton stated at a news conference on August 5, 2025:

  "Going for a hike is nice, going on an ATV trail is fun, but right now is not the time. So our message to the majority of Nova Scotians, please stay out of the woods…Don't look for loopholes."

  He continued,

  "we're not interfering with people's livelihoods. Lots of people make their living in the woods. It's necessary for them to go into the woods, but times can change when work takes place in the woods, so they can get a permit to carry out their operations on Crown lands."[188]

- In the Decision Request dated July 30, 2025, the Executive Director Regional Services of DNR identified that in 2016 and 2023, certain organizations and sectors were granted limited access by permit, provided that they met strict conditions designed to mitigate fire risk. The approach balanced wildfire prevention with continuity of essential services and economic activity. Permits were issued with strict mitigation conditions to:

  - Forest industry operators
  - Utilities and telecom companies – granted access for priority infrastructure work and maintenance
  - Other businesses considered on a case-by-case basis
  - Special event permit holders (community events, ceremonial fires)

  The first option for a travel ban presented to the Minister was called "Option 1". It stated,

  "…access to the woods would require a permit, where the department would use the same permitting and mitigation strategy used in 2016 and 2023, allowing limited access to Crown lands for essential industries and services under specific fire risk mitigation strategies."[189]

- The Director of Regional Coordination for the Nova Scotia Department of Natural Resources stated that the Q&A document provided at Exhibit "B" of her affidavit "was designed to help guide the local offices in responding to inquiries from the public and determining whether to issue travel permits."[190]

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[187] *Ibid*.
[188] [redacted] Affidavit at Exhibit "H", at PDF 264, lines 8-10, 12, 15-17, 30-32, and at PDF 265, lines 1-5. [Emphasis added].
[189] Record, Tab 1, at PDF 6-7.
[190] [redacted] Affidavit at para. 7, Exhibit "B".

Travel permits are mentioned in the Q&A document *only* in respect of "Harvesters operating on Crown land," and "Commercial operations like forestry, mining, utilities, and wind farm construction."[191]

The document reiterates that "You cannot use trails for recreation, like walking, hiking and biking" with no mention of a travel permit being an option for those activities.[192]

- Exhibit "D" of the [redacted] affidavit lists 300 permits that were granted during the Fire Ban. None were granted for medical reasons. None were granted for people who just wanted to go for a hike without a financial aspect tied to the activity, with the exception of someone who got a permit to find a lost dog.[193]

138. It is apparent from: (1) the repetitive messaging about travel permits for commercial activities, (2) the reiteration that hikers should stay out of the woods (without any suggestion that a travel permit might be available), (3) the Decision Request, and, (4) the travel permits actually granted, that the travel permit system was never intended to apply to people concerned about deprivations of their liberty or security of the person rights including those who have medical reasons to be in the forest. That was Mr. Evely's understanding after reading the August 5, 2026 news release; further, he was never offered a travel permit or told to apply for one by the Respondents or anyone at the DNR at any time after the Travel Ban went into effect, including after he met with DNR officials to get his ticket and after he filed his judicial review application.[194]

139. The travel permit process did not provide a safeguard for Nova Scotians'—including Mr. Evely's—section 7 *Charter* rights. It is illusory as it was available in law but not in practice.

140. Further, it suffers from the same pitfalls as the Minister's authorization in the *Committee* case. On its face, it is far too vague for Mr. Evely and other Nova Scotians to know what kind of activity would be eligible for a permit. As per *Committee*, such a vague exemption provision

[191] *Ibid*.
[192] *Ibid*.
[193] [redacted] Affidavit, *supra*, Exhibit "D".
[194] Evely Affidavit #2 at paras 5-12.

cannot pass constitutional muster where *Charter* deprivations are involved. The Minister's absolute unfettered discretion is incompatible with the *Charter*'s goals.

141. As a result, the Travel Ban's travel permit exemption does not function as a curative provision and does not prevent deprivations of Mr. Evely's section 7 *Charter* rights.

v. It is Unnecessary to Conduct a Section 1 Analysis

142. The Applicant submits that should this Honourable Court find that his section 7 rights were infringed in a manner not in accordance with the principles of fundamental justice, it is not necessary to engage in a justification analysis under section 1 of the *Charter* for two reasons: (1) section 7 violations are not easily saved by section 1, (2) the Minister failed entirely to acknowledge that the Travel Ban limited *Charter* protections resulting in a fatal error and no justification analysis for this Court to review without supplanting the Minister's decision with its own.

a. Section 7 violations are not easily saved by section 1

143. Life, liberty, and security of the person are "basic to our conception of a free and democratic society, and hence are not easily overridden by competing social interests.[195] As Justice Lamer stated in *Reference re s. 94(2) of the Motor Vehicle Act (British Columbia)*,

> Section 1 may, for reasons of administrative expediency, successfully come to the rescue of an otherwise violation of s. 7, but only in cases arising out of exceptional conditions, such as natural disasters, the outbreak of war, epidemics, and the like.[196]

144. The situation in Nova Scotia that brought about the Travel Ban does not constitute an "exceptional condition" as referenced in the *Motor Vehicle Act* decision above. A heightened fire risk from dry summer conditions which occurs all across Canada from time to time each

[195] *Charkaoui v. Canada (Citizenship and Immigration),* [2007] 1 S.C.R. 350 at paras 66-67; See also: *R. v. Malmo-Levine*, 2003 SCC 74, at paras 94-99.
[196] *Re. BC Motor Vehicle Act,* [1985] 2 S.C.R. 486 (S.C.C.) ["*Motor Vehicle Act*"].

summer does not fall into the category of a natural disaster. Further, Nova Scotia is not in the midst of a war or an epidemic. This is a case of government overreach in its response to fire season. A section 1 analysis of the justifiability of the section 7 breaches is not warranted.

b. Minister of Natural Resources Failed to Consider the Charter

145. The proper *Charter* section 1 framework in a judicial review of the decision of the Minister of Natural Resources to authorize the Travel Ban is the approach set out in *Doré v. Barreau du Québec*,[197] which was recently updated by the Supreme Court of Canada in *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*.[198] In reviewing decisions that limit *Charter* protections, courts are exercising their crucial role as "guardians of the Constitution."[199] Courts' approach "must reflect the particular importance of justification in decisions that engage *Charter* protections."[200] The court recently summarized the approach as follows:

> …a reviewing court must first determine whether the discretionary decision limits *Charter* protections. If this is the case, the reviewing court must then examine the decision maker's reasoning process to assess whether, given the relevant factual and legal constraints, the decision reflects a proportionate balancing of *Charter* rights or the values underlying them.[201]

146. The burden of proving that a decision reflects a proportionate balancing of the *Charter* rights it engages is on the decision maker.[202] Administrative decision makers must consider the *Charter* values relevant to their decisions, which constrain the exercise of their powers.[203]

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[197] *Doré v. Barreau du Québec*, 2012 SCC 12.
[198] *CSFTNO*, *supra.*
[199] See *CSFTNO* at para 70.
[200] *CSFTNO at* para 70.
[201] *CSFTNO at* para 73.
[202] *Loyola High School v. Quebec (Attorney General),* 2015 SCC 12 at para 38 ("The *Charter* enumerates a series of guarantees that can only be limited if the government can justify those limitations as proportionate."); *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 at paras 80, 162; *Lethbridge and District Pro-Life Association v. Lethbridge (City)*, 2020 ABQB 654 [*Lethbridge*] at para. 89; *Baars v. Children's Aid Society of Hamilton*, 2018 ONSC 1487 at para. 122; *Canadian Centre for Bio-Ethical Reform v. City of Peterborough*, 2016 ONSC 1972 at para. 15.
[203] *CSFTNO*, para 66.

147. It is not sufficient for a decision maker to claim that, in effect, its decision and reasons performed the necessary *Charter* analysis. When a *Charter* right applies, it is fatal to the decision if there is not "a clear acknowledgement and analysis of that right."[204] In the case of *McCarthy v Whitefish Lake First Nation*, Justice Favel applied this standard to an administrative decision of an election appeal committee on a First Nation, where a candidate was disqualified for being in a common law marriage:

> …if an individual's *Charter* rights are engaged, an administrative body must consider those rights and attempt to proportionately balance any limitations on those rights against the relevant statutory objective. The second step in the *Doré*/*Loyola* is not satisfied because the Committee failed to do so. This fatal error is another reason why this Court must quash and set aside the Common Law Marriage Prohibition Decision.[205]

148. Further, it is not sufficient for a decision maker to merely give lip service to the *Charter*; rather, the decision maker must be able to prove to a reviewing court that it actually engaged in the required *Charter* analysis and proportionately balanced and minimally impaired *Charter* protections.[206] The decision must show that the decision maker meaningfully addressed the *Charter* protections to reflect the impact the decision would have on the affected people.[207]

149. If a decision maker did engage in the required *Charter* analysis, courts are then required to review "the weight accorded by the decision maker to the relevant considerations in order to assess whether a proportionate balancing was conducted by the decision maker" and consider whether there were other reasonable possibilities that would give effect to *Charter* protections more fully in light of the objectives.[208]

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[204] *York*, para 94.
[205] *McCarthy v. Whitefish Lake First Nation #128,* 2023 FC 220.
[206] *Lethbridge* at paras. 108-109, 112; *Guelph and Area Right to Life v. City of Guelph*, 2022 ONSC 43 at paras. 61, 87.
[207] *CSFTNO* at para. 68.
[208] *CSFTNO* at para. 72.

150. A reviewing court must be satisfied that the decision gives effect, as fully as possible, to the *Charter* protections at stake in light of the decision maker's statutory objectives.[209] This properly involves an inquiry into the decision maker's statutory framework.[210]

151. Both a decision's outcome and its reasoning process must be justified and defensible in relation to the law and facts.[211] In *Vavilov*, the Court posits that "some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning[.]"[212] Also, some reasoning is so improper that an otherwise reasonable decision cannot stand.[213]

152. Decisions that fail to meet the above constitutional requirements will be struck down, as explained by Professor Paul Daly, University Research Chair in Administrative Law & Governance at the University of Ottawa, in an illuminating article on this subject.[214]

153. There is nothing in the Record to indicate that the Minister considered Nova Scotians' *Charter* rights or the *Charter* values underpinning those rights whatsoever in deciding to ban them from the forests for a period of 10 weeks. In the DNR's July 30, 2025 Decision Request, pros and cons, risks and mitigations, and Legal/Financial considerations are listed as follows:

> **Pros:**
>
> - Supports continuity of essential services and economic activities
> - Builds on an established and operationally proven approach
> - Strick [sic] controlled access to the woods corresponds to fire risk, where when conditions are extreme it takes very little to start a large fire
>
> **Cons:**
>
> - Put pressure on local offices to issue permits and respond to inquiries

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[209] *CSFTNO* at para. 92; *LSBC v TWU* at para. 80; *Loyola* at para. 39; *Doré, supra*, at paras. 55-56, 58.
[210] *See Lethbridge* at paras. 70, 111; *LSBC v. TWU* at paras. 29-47.
[211] *CSFTNO* at para 66.
[212] *Vavilov* at para 86.
[213] *Vavilov* at paras 86 and 105.
[214] Daly, Paul, *The Doré Duty: Fundamental Rights in Public Administration*, 2023 CanLIIDocs 1256 at 14.

- Some businesses that use the woods will be impacted

Risks & Mitigations

Risk: The public may perceive the proclamation and restrictions to travel in the woods to be too extreme.

Mitigation: Clear and transparent communication will be used to explain the rationale behind the approach and outline process to obtain a travel permit.

OTHER CONSIDERATIONS (LEGAL/FINANCIAL)

- Section 25 of the *Forests Act* allows the Minister to, at any time by proclamation, set aside for any period of time a restricted travel zone in any area of woods upon which no person shall enter for the purpose of travelling, camping, fishing or picnicking, or any other purpose, without a travel permit.

- Fire Weather Index conditions will be monitored daily by the Department to support permit decision-making.[215]

154. The complete absence of even a mention of *Charter* rights and values affected by the Travel Ban, illustrates that the Minister failed to consider the *Charter* in his decision-making process. As a result, the Travel Ban cannot be justified under section 1 of the *Charter*.

[215] Record, Tab 1, at PDF 7.

VI. **RELIEF SOUGHT**

155. Mr. Evely therefore seeks:

1. an order quashing the Travel Ban;
2. a declaration that the Travel Ban is ultra vires and unreasonable;
3. a declaration that the Travel Ban limits Nova Scotians' *Charter* section 7 rights in a manner not in accordance with the principles of fundamental justice, and that the limitations are not reasonable or justified under section 1;
4. an order that given the public interest nature of this matter, no costs will be assessed for or against Mr. Evely;
5. such further and other relief as counsel may advise and this Honourable Court may deem appropriate and just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of February 2026.

[redacted]
Marty Moore

[redacted]
Allison Pejovic

Counsel for Jeffrey Evely