SUPREME COURT OF NOVA SCOTIA
Citation: *Evely v. Nova Scotia (Minister)*, 2026 NSSC 118

Date: 20260417
Docket: Hfx 546181
Registry: Halifax

Between:

Jeffrey Evely

Applicant

and

Nova Scotia Minister of Natural Resources and
The Attorney General of Nova Scotia

Respondents

AND

Docket: Hfx 545976
Registry: Halifax

Between:

Canadian Constitution Foundation

Applicant

and

Minister of the Department of Natural Resources

Respondent

JUDICIAL REVIEW DECISION

Judge: The Honourable Justice Jamie S. Campbell

Heard: March 17, 18 and 19, 2026, in Halifax, Nova Scotia

Counsel: Marty Moore and Allison Pejovic, for the Applicant (Evely)
Sheree Conlon, KC, and Nasha Nijhawan, for the Applicant (CCF)
Harvey Morrison, KC, for the Respondents

By the Court:

[1] Last summer some Nova Scotians lost their homes and livelihoods to wildfires. Many were threatened with the real prospect of that. People were evacuated from their homes. Others were involved in the extraordinary efforts made to bring those fires under control. Resources were poured into fighting the fires. The weather was extremely dry and was forecast to remain that way. Travel in the woods was banned.

[2] Some people were perplexed by that. They could quite rightly claim that if they walked along a path in the woods they would almost certainly not, by doing only that activity, start a forest fire. Probably most people, perhaps thinking of those who had lost their homes, or those who were working long hours in dangerous and difficult conditions fighting the fires, thought the best thing was to just stay out of the woods. If they were uncertain about whether an area was part of the "woods" they followed the direction that it was best not to test the limits. The threat of a hefty fine may have played a part in that decision-making. But no doubt many just thought it was the right thing to do in the face of a crisis.

The Issues

[3] This case is about that travel ban. It isn't about whether there was a crisis. It isn't about whether the Nova Scotia Government had to act urgently to reduce the threat of further destructive fires. It is about whether the travel ban covering the woods in the entire province, issued by the Minister of the Department of Natural Resources, was within the legal authority of the Minister to issue and if so, whether the proper process was followed in issuing it. Jeffrey Evely and the Canadian Constitution Federation say that the proclamation of the travel ban was beyond the authority of the Minister under s. 25(1) of the *Forests Act*, R.S.N.S. 1989, c. 179. That is because it banned travel in all woods, not just designated areas within the woods. They say that the proclamation was so vague that a member of the public would not know what kinds of activity would put them at risk of a fine and potentially imprisonment. They also say that the travel ban prevented a wide range of activities that were not rationally connect to mitigating the risks posed to the woods. As such the ban was overbroad and therefore unconstitutional. Mr. Evely and the CCF argue that the Minister engaged in no consideration of the impact of the travel ban on the *Charter* rights of Nova Scotians and by failing to do so acted unreasonably so that the proclamation was invalid.

[4] The proclamation is no longer in effect. The travel ban no longer applies. The Minister agreed not to argue that the matter is moot. The case is of public interest and importance. The issue should be resolved. The role of the court is to resolve that dispute. If a finding on one issue resolves the dispute, any other comments are not binding on the parties.

Summary

[5] In this case, one issue does resolve the dispute.

[6] Individual rights insert themselves into the public debate in contexts that can be inconvenient. Sometimes they can be seen as compromising the safety and wellbeing of the majority for the benefit of a few. They may be seen as legal niceties that are out of touch with "common sense". To people who were facing the crisis in the forests of Nova Scotia in the summer of 2025 and needed people to act sensibly and just stay out of the woods, quotes from the Supreme Court of Canada about *Charter* rights will undoubtedly ring hollow. But if the rights of individuals are not safeguarded in those circumstances, they can be eroded in a way that eventually affects everyone. Experience now tells us that the erosion can happen in unexpected places at an unexpected pace.

[7] The issue here is not the balancing of community safety and individual rights. It is about the decision-making process.

[8] The Minister's decision to impose a travel ban is reviewed on a standard of reasonableness. The court is not permitted to second guess the Minister's decision. The Minister has a wide range of discretion. The decision must be reasonable, and the process used in reaching that decision is important. The Supreme Court of Canada has held that when a decision that limits *Charter* rights or engages *Charter* values does not consider those rights or values, the decision is unreasonable. The decision may have been justifiable had those rights and values been considered and balanced against government objectives at the time. But if they were not part of the decision-making process the decision is unreasonable.

[9] The travel ban, in preventing people from going into the woods, limited the mobility rights of Nova Scotians to move freely around the province. The Supreme Court of Canada has affirmed that, as a fundamental right protected by s. 6 of the *Charter*. There was no evidence in the record that when the Minister issued the proclamation there was any consideration given to mobility rights, how the ban could limit those rights and how the ban could be drafted in a way to minimize the

limitations on mobility rights. A travel ban in the woods may have been an entirely justifiable limitation on mobility rights given the extraordinary circumstances that presented themselves in the summer of 2025. Rights are not absolute. But the Minister had to have considered that before the proclamation was issued. As a matter of administrative law, the travel ban was unreasonable.

[10] Had those issues been considered the other issues raised by the CCF and Mr. Evely could potentially have been addressed. While no legal findings have been made with respect to those issues, they provide examples of why the consideration of the *Charter* implications of decisions is important.

Background

[11] In the summer of 2025 Nova Scotia was experiencing a prolonged drought. By August 5, 2025, all areas of the province were at high, very high or extreme fire risk. No significant rain that would disrupt the drought conditions was in the forecast for the next 10 days. The atmospheric conditions were very dry. The Fire Build Up index was high or very high. The Fire Build Up Index is a measure of how difficult a fire in a particular area would be to extinguish and is a forecast of the intensity of fires. Fires at that time would be very hard to extinguish because at the level of dryness in the province at the time, fires would tend to burn into the ground. From July 30 to August 5, 8 new wildfires were reported. The situation was dire. The province was tinderbox dry and new fires would be very hard to extinguish and likely to spread rapidly.

[12] It is easy to armchair quarterback the situation almost a year later. Those responsible for safeguarding the forests knew full well that waiting it out and doing nothing was not an option. They had to do something. They had to do it quickly and their options were limited.

[13] The Minister was being kept aware of the circumstances in the time leading up to August 5, 2025. The Minister had received various "Sunday Reports" which were summaries of the Initial Wildfire Notifications that were made with respect to each wildfire that occurred in the province. The Minister received the Initial Wildfire Notifications on which the Sunday Reports were based. The Minister was informed of what was being done to fight particular fires, the number of Department of Natural resources personnel on site, and the resources that were being deployed to fight the fire.

[14] On July 30, 2025, the Minister was provided with two Decision Requests. One was with respect to a "Proclamation Declaring an Open Fire Ban". It was prepared by the Manager of Risk Service with the Department of Natural Resources. The provincial wildfire hazard had been steadily rising through the spring and summer and had by then approached a state where extra mitigation efforts were required for public safety. The request notes that guidance documents from Fleet and Forest Protection outlined the conditions when a proclamation was recommended. Those were: (1) a prolonged period of no significant rain, (2) FWI (Fire Weather Index) high-extreme in 80% of the province, (3) BUI (Build Up Index) at least 30% of the province in high-extreme, and (4) no significant rain forecast for 30 days. The document notes that there had been a prolonged period of no significant rain. The Fire Weather Index was high in 90% of the province. The Build Up Index was high in 87% of the province. And NRCAN meteorologists saw no significant rain in the next two weeks.

[15] The first option presented was to just use daily burn restrictions and continue to monitor the situation. There would be no public inconvenience but there would be no reduction in human caused fires. The second option was to issue a proclamation banning all open fires. The Department would continue to monitor the state of the province and "if conditions worsen, follow up with additional mitigations: Woods Travel, Woods Closure." The benefits of the second option would be the reduction of risk of human caused fires, a simplified message that no open fires were permitted and an increase in public awareness. The downsides were identified as public inconvenience and the requirement for cancellation of industrial permits. The recommendation was for the immediate proclamation banning open fires across the province. The proclamation was made that day, July 30, 2025.

[16] A second Decision Request was also presented on July 30, 2025. That was for "Restricted travel in woods". It was prepared by the Regional Director, Department of Natural Resources. The request noted that due to limited rain there were extreme fire weather conditions across the province. A proclamation under the *Forests Act* had been issued that day to restrict open fires. In 2016 and 2023 the Province had used the provisions of the *Forests Act* to restrict all travel in the woods without a permit. Certain organizations had been granted limited access by permit, provided they met strict conditions designed to mitigate fire risk. That approach, the request said, "balanced wildfire prevention with continuity of essential services and economic activity, particularly for sectors whose operations are reliant on Crown land". The request said that permits were issued to forest

operators, utilities and telecom companies, and other businesses considered on a case by case basis. Permits were also issued with "tailored mitigation measures" to Special Event Permit Holders but were granted only with explicit Departmental approval and advanced fire suppression planning for activities involving open flame. The travel restriction would impact access to the woods such as wilderness areas, nature reserves, and forested provincial parks.

[17] The Decision Request noted, "The Department is aware of encampments on Crown lands that would be impacted by a travel restriction proclamation".

[18] Two options were presented. The first involved a proclamation to restrict travel in all woods in Nova Scotia unless with a permit. The Department would use the same permitting and mitigation strategy as in 2016 and 2023, allowing limited access to Crown lands for "essential industries and services under specific risk mitigation strategies". The "pros" were noted as being the support of essential services and economic activities, building on an established and operationally proven approach and strictly controlled access to the woods. The "cons" were pressure placed on local offices to issue permits and impacts on some businesses that used the woods. The risks were identified as being public perception of the ban as being "too extreme". That could be mitigated by clear and transparent communication to explain the rationale and the process to obtain a permit.

[19] The second option was a new proclamation restricting travel in the woods. No permits would be issued. That maximized fire risk reduction but would halt essential work and could impact critical services. The risk was that it may be challenged by "stakeholders relying on Crown lands access for livelihood, especially the forest sector". The legal and financial considerations were:

> 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.

[20] The recommendation was to proceed with the first option which included the travel permits.

[21] On August 5, 2025, the Minister issued a proclamation under s. 25(1) of the *Forests Act*. That section says:

Restricted travel zone

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 picknicking, 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.

[22] The proclamation implemented a travel ban. It prohibited "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".

[23] The idea was that keeping people out of the woods would reduce or eliminate the number of fires caused by people. The logic is unassailable. Keeping everyone out of the woods would reduce the risk of fires caused by humans being in the woods. Each person may not themselves be a risk. Those who like Mr. Evely were not carrying anything that could ignite a fire would present a negligible risk. Dropping a cell phone that hits a rock and sparks a fire appears at least to be a fanciful example of a fire risk. But there can be no doubt that keeping everyone out of the woods reduced the risk. Narrowing the scope of the travel ban to prevent only arsonists or careless people from entering the woods would have been unrealistic.

[24] Permits issued on a case by case basis meant that everyone was not kept out of the woods. But those who were by permit allowed to enter the woods could be required to have fire mitigation measures in place. It would be known to the Department who was in the woods, when and where.

Mobility Rights

[25] The Minister's decision to issue the proclamation implementing the travel ban is subject to judicial review. Reasonableness is the standard for review of such decisions. *Charter* rights or values were affected by that decision. The failure to consider the *Charter* implications of the decision makes the decision unreasonable.

[26] In *Taylor v. Newfoundland and Labrador*, 2026 SCC 5, the Supreme Court dealt with an interprovincial travel restriction adopted by the Province of Newfoundland and Labrador during the COVID-19 pandemic. The court ultimately found that while the travel restriction limited the constitutional right to free movement, Newfoundland and Labrador had shown that it was demonstrably justified. The court stressed the importance of mobility rights which "sit at the heart of what it means to be a free person" (para. 1). The case dealt specifically with the ability to travel across provincial borders and to travel throughout the country without government-imposed barriers. Kimberley Taylor tried to enter Newfoundland and Labrador, when her mother had died unexpectedly. That was during a ban on entry by non-residents. She argued that preventing her from entering the province to attend the burial and grieve with her family was a violation of s. 6 of the *Charter*. That section protects the mobility rights of Canadians.

[27] The Supreme Court found that s. 6 of the *Charter* guarantees Canadian citizens and permanent residents the right to travel freely throughout Canada, including across provincial borders. Laws that prevent free movement or that make movement contingent on government approval infringe on those mobility rights. The Supreme Court found that the travel restrictions were a reasonable component of the government response to the pandemic. Particularly in provinces in which there were a high proportion of the population at higher risk and that had a low capacity to provide medical treatment in the case of widespread illness, significant restrictions could be enacted to prevent the virus from spreading into their borders.

[28] Section 6(1) provides that every citizen of Canada has the right to enter, remain in and leave Canada. Section 6(2) provides that every citizen and every permanent resident has the right to move to and take up residence in any province, and to work in any province. There are limitations on those rights, such as reasonable residency requirements for social services. The travel ban was not about working in another province.

[29] The Supreme Court has interpreted s. 6 as having a meaning beyond protecting the right to travel to and work in other provinces. It is designed to "protect a broad interest in human mobility" (para. 148). The protections of s. 6 are not aimed at trivial or fleeting limits on movement but those that "strike at the purposes underlying s. 6, such as curfew laws, requirements to carry identity papers in public, or outright blockades on movement" (para. 150). The Supreme Court had been asked before to interpret aspects of the mobility rights section of the *Charter*, such as the right to earn a livelihood, but it had not until *Taylor*, been asked whether s. 6 included a right of movement *simpliciter*. That was described as a right to travel freely within Canada, for any purpose, "including within and across provincial borders" (para. 64). While the parties and interveners were divided on whether such a right existed, the Supreme Court held that "a broad right to mobility *simpliciter* is foundational to s. 6 as a whole" (para. 65).

[30] The Supreme Court's reference to curfew laws makes it clear that mobility involves the right to move about, generally. It is not only about the right to travel to or work in another province. And it is not about limits on mobility that are "trivial or fleeting". The travel ban prohibiting people from going into the woods, where they would otherwise have been free to go, impacts mobility rights as defined by the Supreme Court.

[31] *Taylor* was heard by the Supreme Court in April 2025. The decision was issued in 2026, after the imposition of the travel ban in Nova Scotia in the summer of 2025. But the Supreme Court made it clear that mobility rights under s. 6 were not new. The decision traces the history of mobility rights to Magna Carta.

[32] The issue at this stage is not whether the travel ban breaches mobility rights. It is whether the ban limits or engages those rights or the values that underlie those rights. The travel ban limited where people could travel or be present and prevented them from going to places where they would have been permitted but for the travel ban.

[33] The Minister's decision to issue a proclamation implementing a travel ban under the authority of s. 25(1) of the *Forests Act* affected mobility rights. People could no longer go where they had once gone. It was not a fleeting or insignificant restriction. It substantially affected peoples' lives. Mr. Evely is an example of that. In making a decision of that kind the Minister had to consider those rights.

[34] In *Doré v. Barreau du Quebec*, 2012 SCC 12, the Supreme Court set out the approach for reviewing administrative decisions that affect *Charter* protections.

The standard of review, as set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, is reasonableness. The reviewing court must first determine whether the decision engages *Charter* rights and values. The infringement does not have to be a direct infringement of a *Charter* right. It can involve a situation in which the decision "simply engages a value underlying one or more *Charter* rights, without limiting those rights". *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31, para. 64, *Doré* para. 35.

[35] Administrative decision makers, like the Minister in this case, are obliged to consider the values that are relevant to the exercise of their discretion in addition to respecting *Charter* rights. The Constitution dictates the limits of all state action and to be reasonable the decision must be made in accordance with the values reflected in the *Charter*.

[36] Under the *Doré* analysis the first issue is whether the decision engaged *Charter* rights or values regardless of whether it imposes limits. If the decision did engage *Charter* rights or values, the second issue is whether the decision maker considered those *Charter* rights and values. If the decision maker did not consider relevant *Charter* rights and values, the decision cannot have been reasonable.

> To be reasonable, a decision must reflect the fact that the decision maker considered the *Charter* values that were relevant to the exercise of its discretion (E. Fox-Decent and A. Pless, "The Charter and Administrative Law: Substantive Review", in C. M. Flood and P. Daly, eds., *Administrative Law in Context* (4th ed. 2022, 399, at p. 410). The decision must also show that the decision maker "meaningfully" (*Vavilov*, para. 128) addressed the *Charter* protections to "reflect" the impact that its decision may have on the concerned group or individual (para. 133)

[37] The court must consider 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. If not, the decision is unreasonable. (*Commission scolaire*, para. 73)

[38] That second stage is about the decision-making process and whether the decision maker even considered the *Charter* at all. If the decision maker does not acknowledge that *Charter* rights or values were even engaged by the decision, the

decision does not show that those rights or values were meaningfully addressed. The decision is unreasonable.

[39] It is only if the decision maker does consider the impact of the decision on *Charter* protections that the court goes on to the next step. If the decision maker gives precedence to other priorities over the *Charter* protections, it must do that in a way that is "proportionate to the resulting limitation on the *Charter* right". *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, para. 82. A decision that has a disproportionate impact on *Charter* protections is unreasonable because it cannot show that the decision maker "meaningfully considered these protections or that its reasoning reflects the significant impact that the decision may have". (*Commission scolaire*, para. 69)

[40] In this case the analysis ends at the second stage. *Charter* rights or values were engaged by the decision and there is no evidence that the Minister considered them. The decision maker's reasoning is not found in a written decision. It is found in the documents that were placed before the Minister before the decision was made. And those documents make no reference at all to *Charter* rights or values. In imposing a travel ban in the woods in Nova Scotia, the Minister was making a decision that at least engaged with and likely limited mobility rights. People could no longer go where they once could. Under *Doré*, the Minister was required to consider how the decision to impose the travel ban would impact mobility rights. The record shows no consideration having been given to that issue. The rights of commercial users of the woods were specifically addressed. Accommodations were made for permits that would allow for those whose livelihoods depended on them being in the woods to access the woods. There was a reference to encampments within the woods. But there was no reference to the effect that the travel ban would have on the mobility rights of those who, like Mr. Evely, used the woods for other purposes.

[41] Under *Doré* there is no opportunity to consider the weighing after the fact because the decision maker, the Minister, did not do it in the first place. The problem is with the process, not with the end result.

[42] The proclamation imposing the travel ban was unreasonable. It is no longer in force, so no further order is required.

Other Issues

[43] While the case has been decided on the ground that no consideration was given to *Charter* rights when the travel ban was imposed, the other issues that have been raised are still relevant. They point to the practical benefits of an approach that would require a careful consideration of the scope of the ban.

[44] The public servants involved in making the recommendation were not amateurs. They were basing their recommendations on hard scientific evidence regarding the extreme risk of fire in the midst of a crisis. They would be in the best position to consider how the scope of the travel ban might be defined in a way that would mitigate fire risk while minimally impairing mobility rights and providing clarity about what activities could result in a substantial fine or potentially imprisonment.

What are the Woods?

[45] Designating all woods in Nova Scotia as a restricted travel zone caused an interpretation problem. The term "woods" in the *Forests Act* is not defined with the kind of precision that would allow it to be a designated area. If specific areas had been designated Nova Scotians would know precisely where they were not allowed to go. When people in Halifax for example, were told to stay out of Point Pleasant Park, they knew what that meant. It is a reasonably precisely defined area.

[46] In other places that clarity was lacking. By designating the "woods" as the area to which the travel ban applied, the proclamation left people in some doubt, given the definition of "woods" in the *Forests Act*. It isn't what most people would think of when they are told to stay out of the woods. The *Forests Act* defines "woods" to mean "forest land and rock barren, brush land, dry marsh, bog or muskeg". There is no definition of "rock barren, brush land, dry marsh, bog or muskeg". "Forest land" is defined to include "land bearing forest growth or land from which the forest has been removed but which shows surface evidence of past forest occupancy and is not now in other use". So, woods can mean land from which the forest has been removed but which shows surface evidence of past forest occupancy and is not now in other use. A person would face a $25,000 fine for going into the woods, where there were no trees but surface evidence of past forest occupancy.

[47] "Forest" is defined by the *Forests Act* to mean "a plant association consisting predominantly of trees". The *Forest Act* does not say how many

associated trees are needed to make a "forest", or over what area. A plant association consisting predominantly of trees might include four trees forming the boundary between two urban properties. Or it might not.

[48] So, when Nova Scotians were told to stay out of the woods, they were left in a bit of an interpretative quandary. The woods are not the forest, but the forests are part of the woods. The woods do not mean that trees are present. The trees could have been removed. But if trees are present that could be the woods, though it was not clear how many trees were required. Woods is a broad term. Woods can be a rock barren with few or no trees usually along the coast. Woods can be brush land, with shrubs and low growing vegetation. Woods can be a dry marsh, which is a dried out wetland. Woods can be a bog, which is a wet area with acidic soil. Woods can be muskeg which is very much like a bog and might just be a bog. Someone who wanted to stay out of the woods had to put in some interpretive effort. And one might reasonably ask what staying out of a wet bog has to do with the mitigation of fire risk.

[49] Woods would not include a grassy meadow, despite how dry and dead the grass might be, adjacent to a forest. But it would include a bog, surrounded by a rock barren, along the coast, with no trees anywhere in sight. It was not clear whether a person driving through a wooded area in their car had entered the woods. What about walking along the road in a forested area? How wide would that road have to be?

[50] Being told to stay out of the "woods" made some sense to people who thought they knew what the woods are. It became confusing when the technical definition got involved.

[51] The *Forests Act* s. 25(3) says that a restricted travel zone does not apply to the owner or occupier of land, meaning that the activities undertaken by owners and occupiers on their own land would not be restricted by the ban. A person could walk into their own woods. They could not invite another person to join them, unless that person was also an owner or legal occupier of that land. Two owners could walk in the woods on their own land, but one owner could not invite a friend.

[52] The government just wanted people to use common sense. But the ban seemed to defy common sense definitions. Efforts were made to provide some kind of clarity. A Q&A document was provided to local offices of the Department of Natural Resources. They would be responsible for issuing permits and posting signs at public trails and other areas that were closed. The document says that the

overall message was to stay out of the woods. "Don't look for loopholes. If you're not sure, just don't do it - that is the safest approach." The document says that the restrictions applied to both provincial Crown lands and private lands although private landowners were free to use their own properties but could not host others to use the wooded areas of their properties. A person was permitted to go to a cottage or trailer in a wooded area though that was discouraged. They could cross Crown lands to access a cottage. People could still go to beaches.

> It's fine to use a relatively short trail to reach the beach - like from the parking area to the beach. Use your best judgement. You cannot go on a hike through a wooded area that eventually leads to a beach, unless you're on land that you own or occupy/rent - and we still discourage that.

[53] People could not use trails for recreation unless they were on land that the person owned or occupied. "If you need to use a relatively short trail through a wooded area to get from point A to point B, that is generally ok. Use your best judgement." Sport fishing was allowed "as long as you don't travel any great distance through the woods to do it." A person could go boating "as long as you're not going any great distance through the woods to reach the boat launch". People were again encouraged to use their "best judgement". People could not use off-highway vehicles in "wooded areas" though they could do so on their own land, as could employees and contractors, but not guests.

[54] The proclamation provided only that anyone who contravened it may be liable to prosecution under the *Forests Act*. Section 36(1)(b) of the *Forests Act* says that a violation by an individual is punishable on summary conviction by a fine of no more than $500,000 or a period of imprisonment of no more than six months. The *Summary Proceedings Act*, R.S.N.S., c. 450, applies to offences under the *Forests Act*. That Act provides that the summary conviction provisions of the *Criminal Code* apply. According to Schedule 12 to the *Summary Offence Tickets Regulations*, NS Reg 281/2011, the "Out of Court Settlement" amount for a ticket issued pursuant to s. 25(1) of the *Forests Act* for "entering woods without forest travel permit when a travel proclamation is in effect" is $28,872.50. What that all means is that an individual would be subject to a fine of $28,872.50 for entering the woods without a permit. There would also be the potential under s. 36(1) of the *Forests Act* that the person could be sentenced to jail for up to six months.

[55] Section 7 of the *Charter* provides that everyone has the right to life, liberty and security of the person and the right not to be deprived of those except in accordance with the principles of fundamental justice. Mr. Evely and the CCF

argued that the proclamation engages the s. 7 liberty rights of Nova Scotians. They cannot be deprived of their liberty accept in accordance with principles of fundamental justice which include the requirement that laws be neither vague nor overbroad.

[56] Section 7 rights are potentially engaged in this case. Those like Mr. Evely, who were found to have gone into the woods, in contravention of the travel ban, could be subject to a fine or imprisonment. Section 7 rights are engaged when a person faces the potential of imprisonment. *R. v. Moriarity*, 2015 SCC 55, paras. 17-19. Section 7 provides that a person's liberty may be deprived only when done in accordance with the principles of fundamental justice. One of those principles is that the law should not be vague. A vague law fails to provide fair notice to citizens of the conduct that is prohibited. It also does not control enforcement discretion.

[57] A vague provision does not provide "an adequate basis for legal debate". *R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606, p. 639. A vague provision does not even provide enough to reach a conclusion as to its meaning by any logical analysis. It does not "sufficiently delineate any area of risk", so it does not give fair notice to citizens nor limit enforcement discretion. It is not "intelligible". Another way to put it is that a provision is unconstitutionally vague "where it sets a standard that is not intelligible, that cannot provide the basis for coherent judicial interpretation, and that is not capable of guiding legal debate". *Trial Lawyers Assn. of British Columbia v. British Columbia (Attorney General)*, 2017 BCCA 324, para. 69.

[58] The issue is not whether the legislation is difficult to interpret but whether it does not provide an adequate basis for any interpretation at all. Legislation can be ambiguous, but it cannot be vague and they are different things. Ambiguity suggests that a text can mean two or perhaps more things. Vagueness means that the text cannot be reasonably interpreted as meaning anything at all.

[59] This case has been decided on other grounds. Had it not been, there is a compelling argument that the ban was so vague as to be incapable of being interpreted at all. People needed to know what activities would put them at risk of getting a substantial fine. Being told that they could go fishing by travelling through the woods provided they did not go any "great distance", or that they should use common-sense, puts people at risk of a penalty on the basis of at best unclear rules.

[60] Had *Charter* rights been considered when the decision was made the requirement for fair notice would have been addressed and the scope of the ban could have been refined.

[61] Similarly, the issue of overbreadth would have been considered. Mobility rights could be impaired only to the extent necessary to fulfill the purpose of the ban. Preventing people from entering wet bogs for example, may not have been necessary to mitigate the risk of fire. But it might have been. There may have been sound reasons for it. But those issues must have been considered.

Forests Act, Section 25(1)

[62] Section 25(1) permits the Minister to designate a "restricted travel zone in any area of the woods". Mr. Evely and the CCF argued that the Minister's power was never intended to permit the restriction of entry into any and all "woods" across the entire Province. The Minister may issue a proclamation where there is an area within the woods for which it is necessary to restrict travel, for the protection of those woods. For example, it may be necessary to limit access to portions of the woods to prevent the spread of insects or diseases or fires. That is different to restricting travel to any place that qualifies as woods. The proclamation does not designate a restricted travel zone but instead bans travel in all areas of the woods.

[63] The legislation must be interpreted having regard to its plain meaning and its purposes. One of the purposes of the legislation as set out in s. 2(i) "preventing and mitigating wildfires in a changing climate". A ban on travel in the woods can be part of mitigating the risk of fires. Going through the province and delineating areas of the woods that would when added together encompass all the woods would be wasteful, time consuming, confusing and divert resources from dealing with the real crisis.

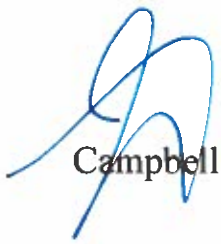
[64] Section 25(1) of the *Forests Act* gives the Minister the authority to issue a ban on travel in the woods. But the confusion about the definition of "woods" creates problems that should be addressed before such a ban is imposed. The section refers to restricting travel in designated areas within the woods. "Woods" as defined by the *Forests Act* does not appear to circumscribe a geographic area or location. Using the term "woods" to define the area to which the ban applied potentially creates problems with overbreadth by including areas like rock barrens and bogs. It creates problems with interpretation so that people do not know where

they are forbidden to travel. Section 25(1) provides the authority to impose the ban, but when such a ban is imposed, as part of compliance with *Doré*, consideration must be given to how that sweeping and imprecise ban can be more carefully defined.

Charter Analysis

[65] The Supreme Court of Canada in *Doré* provided a roadmap for decision makers. When *Charter* rights are involved, it is necessary to consider them in a meaningful way. That means thinking about whether there are ways to achieve government objectives that intrude less on the rights protected by the *Charter*. That may be difficult to do in the context of a quickly evolving emergency. But with the benefit of hindsight, it might be something that can be considered before the next one.

[66] If the parties are not able to agree on costs they should contact the court within thirty days of the date of this decision to make arrangements for submissions.



Campbell, J.