

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF NEWFOUNDLAND & LABRADOR)

BETWEEN:

CANADIAN CIVIL LIBERTIES ASSOCIATION AND KIMBERLY TAYLOR

APPELLANTS

- and -

**HIS MAJESTY THE KING IN RIGHT OF NEWFOUNDLAND AND LABRADOR AND
JANICE FITZGERALD, CHIEF MEDICAL OFFICER OF HEALTH**

RESPONDENTS

**ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF NOVA SCOTIA,
ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF PRINCE
EDWARD ISLAND, ATTORNEY GENERAL OF SASKATCHEWAN, ATTORNEY
GENERAL OF YUKON TERRITORY, ATTORNEY GENERAL OF NUNAVUT,
ATTORNEY GENERAL OF NUNAVUT, AND CANADIAN CONSTITUTION
FOUNDATION**

INTERVENERS

**FACTUM OF THE INTERVENER,
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

OSLER, HOSKIN & HARCOURT LLP
Suite 3000, Bentall 4
1055 Dunsmuir Street
Vancouver, BC V7X 1K8

**Emily MacKinnon
Emily Wang**

Tel: (604) 692-2705
Fax: (778) 785-2745
Email: emackinnon@osler.com
Email: ewang@osler.com

**Counsel for the Intervener,
British Columbia Civil Liberties Association**

OSLER, HOSKIN & HARCOURT LLP
320, World Exchange Plaza
100 Queen Street
Ottawa, ON K1P 1J9

Dan Hnatchuk

Tel: (613) 787-1102
Fax: (613) 235-2867
Email: dhnatchuk@osler.com

**Ottawa Agent for the Intervener,
British Columbia Civil Liberties Association**

ORIGINAL TO:

The Registrar
 Supreme Court of Canada
 301 Wellington Street
 Ottawa, ON K1A 0J1

COPIES TO:

Paul J. Pape
PAPE CHAUDHURY LLP
 150 York St, Suite 1701
 Toronto, Ontario
 M5H 3S5
 Telephone: (416) 364-8755
 Fax: (416) 364-8855
 Email: paul@papechaudhury.com

**Counsel for the Appellant,
 Canadian Civil Liberties Association**

John F.E. Drover
ROEBOTHAN, MCKAY & MARHALL
 P.O. Box 5236
 34 Harvey Road, 5th Floor, Paramount
 Building
 St. John's, Newfoundland & Labrador
 A1C 2G1
 Telephone: (709) 753-5805
 Fax: (709) 753-5221
 Email: jdrover@wrmmlaw.com
**Counsel for the Appellant,
 Kimberly Taylor**

Justin S.C. Mellor
Donald E. Anthony, K.C.
Mark P. Sheppard
N.L. DEPARTMENT OF JUSTICE
 Office of the Attorney General
 PO Box 8700, 100 Prince Phillip Drive, 4th
 Floor
 St. John's, Newfoundland & Labrador
 A1B 4J6
 Telephone: (709) 729-6564
 Fax: (709) 729-2129
 Email: jmellor@gov.nl.ca

Marie-France Major
SUPREME ADVOCACY LLP
 340 Gilmour Street
 Suite 100
 Ottawa, Ontario
 K2P 0R3
 Telephone: (613) 695-8855 Ext: 102
 Fax: (613) 695-8580
 Email: mfmajor@supremeadvocacy.ca

**Agent for the Appellant,
 Canadian Civil Liberties Association**

Marie-France Major
SUPREME ADVOCACY LLP
 340 Gilmour Street
 Suite 100
 Ottawa, Ontario
 K2P 0R3
 Telephone: (613) 695-8855 Ext: 102
 FAX: (613) 695-8580
 Email: mfmajor@supremeadvocacy.ca

**Agent for the Appellant,
 Kimberly Taylor**

D. Lynne Watt
GOWLING WLG (Canada) LLP
 160 Elgin Street
 Suite 2600
 Ottawa, Ontario
 K1P 1C3
 Telephone: (613) 786-8695
 Fax: (613) 788-3509
 Email: lynne.watt@gowlingwlg.com
**Agent for the Respondent,
 His Majesty the King in Right of
 Newfoundland and Labrador**

**Counsel for the Respondent,
His Majesty the King in Right of
Newfoundland and Labrador**

Justin S.C. Mellor
Donald E. Anthony, K.C.
Mark P. Sheppard
N.L. DEPARTMENT OF JUSTICE
Office of the Attorney General
PO Box 8700, 100 Prince Phillip Drive, 4th
Floor
St. John's, Newfoundland & Labrador
A1B 4J6
Telephone: (709) 729-6564
Fax: (709) 729-2129
Email: jmellor@gov.nl.ca

**Counsel for the Respondent,
Janice Fitzgerald, Chief Medical Officer**

Catherine Boies Parker, Q.C.
Caroline North
ARVAY FINLAY LLP
1512 – 808 Nelson Street
Box 12149, Nelson Square
Vancouver, British Columbia
V6Z 2H2
Telephone: (604) 696-9828
Fax: (888) 575-3281
Email: cboiesparker@arvayfinlay.ca
**Counsel for the Intervener,
Attorney General of the Yukon Territory**

Edward A. Gores, K.C.
DEPARTMENT OF JUSTICE (NS)
10 - 1690 Hollis Street
Halifax, Nova Scotia
B3J 2L6
Telephone: (902) 424-3297
Fax: (902) 424-1730
Email: edward.gores@novascotia.ca

**Counsel for the Intervener,
Attorney General of Nova Scotia**

Isabel Lavoie-Daigle
**ATTORNEY GENERAL OF NEW
BRUNSWICK**
Constitutional Unit, Legal Services Branch
P.O. Box 6000, Stn. A

D. Lynne Watt
GOWLING WLG (Canada) LLP
160 Elgin Street
Suite 2600
Ottawa, Ontario
K1P 1C3
Telephone: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

**Agent for the Respondent,
Janice Fitzgerald, Chief Medical Officer**

Graham Ragan
GOWLING WLG (Canada) LLP
2600-160 Elgin Street
Ottawa, Ontario
K1P 1C3
Telephone: (613) 786-8699
Fax: (613) 788-3624
Email: graham.ragan@gowlingwlg.com

**Agent for the Intervener,
Attorney General of the Yukon Territory**

D. Lynne Watt
GOWLING WLG (Canada) LLP
160 Elgin Street
Suite 2600
Ottawa, Ontario
K1P 1C3
Telephone: (613) 786-8695
FAX: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

**Agent for the Intervener,
Attorney General of Nova Scotia**

D. Lynne Watt
GOWLING WLG (Canada) LLP
160 Elgin Street
Suite 2600
Ottawa, Ontario

Fredericton, New Brunswick
 E3B 5H1
 Telephone: (506) 453-2222
 Fax: (506) 453-3275
 Email: isabel.lavoiedaigle@gnb.ca
**Counsel for the Intervener,
 Attorney General of New Brunswick**

**Theodore Litowski
 Noah Wernikowski
 MINISTRY OF JUSTICE
 SASKATCHEWAN**
 Constitutional Law Branch
 820-1874 Scarth St.
 Regina, Saskatchewan
 S4P 4B3
 Telephone: (306) 787-6642
 FAX: (306) 787-9111
 Email: theodore.litowski@gov.sk.ca
**Counsel for the Intervener,
 Attorney General of Saskatchewan**

**Caroline Davison
 DEPARTMENT OF JUSTICE AND
 PUBLIC SAFETY (P.E.I.)**
 95 Rochford Street
 4th Floor Shaw Building
 Charlottetown, Prince Edward Island
 C1A 7N8
 Telephone: (902) 368-6522
 Email: carolinedavison@gov.pe.ca
**Counsel for the Intervener,
 Attorney General of Prince Edward Island**

**Sharlene Telles-Langdon
 Joseph Cheng
 ATTORNEY GENERAL OF CANADA**
 Prairie Regional Office
 601-400 Broadway Avenue
 Winnipeg, Manitoba
 R3C 4K5
 Telephone: (431) 489-8696
 Fax: (204) 984-8495
 Email: Sharlene.Telles-Langdon@justice.gc.ca
**Counsel for the Intervener,
 Attorney General of Canada**

K1P 1C3
 Telephone: (613) 786-8695
 Fax: (613) 788-3509
 Email: lynne.watt@gowlingwlg.com

**Agent for the Intervener,
 Attorney General of New Brunswick**

**D. Lynne Watt
 GOWLING WLG (Canada) LLP**
 160 Elgin Street
 Suite 2600
 Ottawa, Ontario
 K1P 1C3
 Telephone: (613) 786-8695
 Fax: (613) 788-3509
 Email: lynne.watt@gowlingwlg.com

**Agent for the Intervener,
 Attorney General of Saskatchewan**

**D. Lynne Watt
 GOWLING WLG (Canada) LLP**
 160 Elgin Street
 Suite 2600
 Ottawa, Ontario
 K1P 1C3
 Telephone: (613) 786-8695
 Fax: (613) 788-3509
 Email: lynne.watt@gowlingwlg.com
**Agent for the Intervener,
 Attorney General of Prince Edward Island**

**Christopher Rupar
 ATTORNEY GENERAL OF CANADA**
 Department of Justice Canada
 50 O'Connor Street, Suite 500, room 556
 Ottawa, Ontario
 K2P 6L2
 Telephone: (613) 941-2351
 Fax: (613) 954-1920
 Email: christopher.rupar@justice.gc.ca

**Agent for the Intervener,
 Attorney General of Canada**

John L. MacLean
Adrienne Silk
ATTORNEY GENERAL OF THE
NUNAVUT TERRITORY
Legal & Constitutional Law Division
Sivummut Building - 1st Floor, PO Box 1000
Stn. 540
Iqaluit, Nunavut
X0A 0H0
Telephone: (867) 975-6323
Fax: (867) 975-6349
Email: jmaclean@gov.nu.ca

Counsel for the Intervener,
Attorney General of Nunavut

Jessica L. Kuredjian
Hardeep Dhaliwal
CANADIAN CONSTITUTION
FOUNDATION

Cassels Brock & Blackwell LLP
Bay Adelaide Centre - North Tower
40 Temperance St, Suite 3200
Toronto, Ontario
M5H 0B4
Telephone: (416) 815-4251
Fax: (416) 360-8877
Email: jkuredjian@cassels.com

Counsel for the Intervener,
Canadian Constitution Foundation

Graham Ragan
GOWLING WLG (Canada) LLP
2600-160 Elgin Street
Ottawa, Ontario
K1P 1C3
Telephone: (613) 786-8699
Fax: (613) 788-3624
Email: graham.ragan@gowlingwlg.com

Agent for the Intervener,
Attorney General of Nunavut

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PART I - OVERVIEW

1. The BCCLA intervenes to ask this Court to recognize that all individuals lawfully resident in Canada—including permanent residents—have the right to move freely throughout the country. This fundamental human right is enshrined in international instruments, and it is reflected in s. 6 of the *Canadian Charter of Rights and Freedoms*.

2. The respondent asks this Court to hold that such a right does not exist under the *Charter* and that free movement is only guaranteed if it is done for the purpose of moving residence or earning a livelihood. The application judge held that, although there is a right to interprovincial movement under the *Charter*, that right is only guaranteed to Canadian citizens.

3. This Court should reject both propositions. The right to freedom of movement should not be limited by a person's motive or purpose. The only interpretation of s. 6 that is consistent with the text and purpose of the section, Canada's international human rights obligations, and this Court's authority is that the right to free movement is guaranteed by s. 6(2)(a) and extends to both citizens and permanent residents.

4. The application judge's holding and the respondent's arguments are based on the erroneous view that s. 6(2) of the *Charter* only protects economic rights. On the contrary, while s. 6(2)(b) may be aimed at economic rights, s. 6(2)(a) is aimed at protecting human rights that are indispensable to a democratic, functioning society—including freedom of movement.

5. Finally, the right to freedom of movement is balanced by ss. 6(3) and (4). It is not limitless: rather, although it is broad, it recognizes the needs of communities to enact laws of general application that reflect their unique circumstances.

PART II - ISSUE IN APPEAL

6. The appellant raises a single constitutional question: Is *Special Measures Order (Amendment No. 11)* unconstitutional because it infringes s. 6 of the *Charter* and is not saved by s. 1 of the *Charter*?

7. The BCCLA takes no position on the merits of the appeal. The BCCLA intervenes to submit that the right to move freely across the country, for whatever purpose, is protected by s. 6(2)(a) of the *Charter*.

PART III - STATEMENT OF ARGUMENT

A. Section 6 must be interpreted consistently with the purpose of the *Charter* and Canada's international obligations

(a) The right to free movement, for any purpose, is protected by s. 6(2)(a)

8. The Respondent's submission that the *Charter* only protects free movement for economic purposes is inconsistent with the purpose of s. 6 and Canada's international rights obligations. It must be rejected.

9. It is not in dispute that the *Charter* must be interpreted consistently with its purpose, in light of its linguistic, philosophic, and historical contexts.¹

10. In *Canadian Egg Marketing*, this Court recognized that the "primary purpose of the *Charter* is to constrain government action in conformity with certain individual rights and freedoms, the preservation of which are essential to the continuation of a democratic, functioning society."²

11. The importance of the right to freedom of movement is confirmed in the *Charter*, as it is one of the rights not subject to the notwithstanding clause in s. 33. As this Court noted, the rights protected by s. 6 are part of those rights that are "essential to the continuation of a democratic, functioning society".³

¹ *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at 344.

² *Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157 at [para. 57](#).

³ *Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157 at [paras. 57-58](#).

12. In addition to the decisions of this Court providing guidance on the purpose of the protections in s. 6, which are included in the Appellant’s submissions, binding international instruments must be considered. Indeed, in *Canadian Egg Marketing*, the Court observed that the rights guaranteed under s. 6 “closely mirror[] the provisions of several human rights instruments to which Canada is a party”, including the *Universal Declaration of Human Rights (UDHR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.⁴

13. Furthermore, Article 12 of the *International Covenant on Civil and Political Rights (ICCPR)* provides for freedom of movement within a state, subject to certain restrictions.⁵ The *ICCPR* was ratified by Canada in 1976 and is binding.⁶

14. The intervener the Attorney General of Saskatchewan is incorrect to say that international law is “of little assistance” in interpreting s. 6 of the *Charter*.⁷ The protections afforded by all three instruments are relevant to determining the scope of s. 6, as they were the “best models of rights protection” at the time the *Charter* was enacted.⁸ Additionally, the protection guaranteed by the *Charter* is presumed to be “at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified”.⁹

15. In describing Article 12 of the *ICCPR*, which protects freedom of movement, the UN Human Rights Committee noted that “[l]iberty of movement is an indispensable condition for the free development of a person” and “interacts with several other rights enshrined in the Covenant”.¹⁰ And as explained by one commentator, the right to free movement was included in

⁴ *Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157 at [para. 58](#); [Universal Declaration of Human Rights](#), 10 December 1948, UN General Assembly resolution 217 A (III); [International Covenant on Economic, Social and Cultural Rights](#), 16 December 1966, 993 UNTS 3 art 6 (entered into force 3 January 1976, accession by Canada 19 May 1976).

⁵ [International Covenant on Civil and Political Rights](#), 16 December 1966, 999 UNTS 171 art. 12 (entered into force 23 March 1976, accession by Canada 19 May 1976).

⁶ See *Quebec (Attorney General) v. 9147-0732 Québec inc.*, [2020 SCC 32](#) at [para. 39](#).

⁷ Factum of the Intervener Saskatchewan Attorney General at para. 32.

⁸ *Quebec (Attorney General) v. 9147-0732 Québec inc.*, [2020 SCC 32](#) at [para. 41](#).

⁹ *Reference re Public Service Employee Regulations Act (Alta.)*, [\[1987\] 1 S.C.R. 313](#) at 349.

¹⁰ UNHCR, [General Comment No. 27: Article 12 \(Freedom of Movement\)](#), UN Doc CCPR/C/21/Rev.1/Add.9 at para. 1.

the *UDHR* because without it, individuals may not be able to exercise other protected rights (for example, freedom of association) or to improve their standard of living.¹¹

16. The relevant portions of Article 12 of the *ICCPR* read:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. [...]

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

17. Like s. 6(2)(a) of the *Charter*, Article 12(1) contains two statements: there is a right to “liberty of movement” (*i.e.*, “to move to” in s. 6(2)(a)) “and freedom to choose his residence” (*i.e.*, “and take up residence” in s. 6(2)(a)).

18. The right to liberty of movement enshrined in Article 12(1) is not limited to travel for particular purposes—in other words, the guarantee in Article 12(1) must be interpreted disjunctively rather than conjunctively. This is clear from the UNHRC’s commentary: “persons are entitled to move from one place to another and to establish themselves in a place of their choice. The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in place.”¹²

19. Section 6(2)(a) must be interpreted in the same way as Article 12(1), consistent with Canada’s international obligations, the presumption of conformity, and the purpose of s. 6. It follows, then, that the right protected in s. 6(2)(a) extends to both interprovincial and intra-provincial travel.

¹¹ See Jane McAdam, “An Intellectual History of Freedom of Movement in International Law” (2011) [12:1 *Mlb J. Int’l. L.* 27](#) at p. 47-48. Although the author was primarily discussing international mobility, the comments apply equally to free movement within a country.

¹² UNHCR, [General Comment No. 27: Article 12 \(Freedom of Movement\)](#) at para. 5 (emphasis added).

20. The application judge erred by finding that Article 12(1) is reflected in s. 6(1) of the *Charter* (para. 361). On the contrary: s. 6(1) reflects Articles 12(2) and (4) of the *ICCPR*.¹³ Article 12(1) does not speak to who may enter, remain in, or leave a state.

21. Additionally, contrary to the respondent's assertion,¹⁴ s. 6(2)(a) of the *Charter* does not have an economic rights purpose. The *ICCPR* protects civil and political rights. As a result (and as is clear from the text), Article 12 of the *ICCPR* is silent on economic rights (*i.e.* the right to make a living anywhere in the territory). The text in Article 12 mirrors ss. 6(1), 6(2)(a), and 6(3).

22. The economic right to pursue a livelihood is contained in Article 6 of the *ICESCR*, an instrument that is concerned with the protection of economic rights. As recognized by this Court in *Canadian Egg Marketing*, the same economic right to earn a livelihood is reflected in s. 6(2)(b) of the *Charter*.¹⁵

23. The incorporation of rights protected under both instruments into the text of s. 6(2), in distinct subparagraphs, shows that the provision is not simply targeted at protecting economic civil liberty. As such, the application judge erred by stating that the entirety of s. 6(2) was “concern[ed with] the economic integration of the country” (para. 374).

24. Interpreted in light of the purpose of s. 6(2)(a) and consistent with its context, the English and French versions of s. 6(2)(a) are “not only reconcilable, they are different ways of expressing the same idea”.¹⁶ Any other interpretation of the plain words of s. 6(2)(a) would unreasonably erode freedom of movement.

¹³ Article 12(2) concerns “freedom to leave any country”, and Article 12(4) concerns “the right to enter one’s own country”, which “implies the right to remain in one’s own country”: see UNHCR, [General Comment No. 27: Article 12 \(Freedom of Movement\)](#) at paras. 8 and 19. See also *Divito v. Canada*, [2013 SCC 47](#) at [paras. 25-26](#), interpreting s. 6(1) in light of Article 12(4).

¹⁴ Factum of the Respondents at paras. 80-82.

¹⁵ *Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157 at [para. 60](#).

¹⁶ *Quebec (Attorney General) v. 9147-0732 Québec inc.*, [2020 SCC 32](#) at [para. 65](#), per Abella J., quoted approvingly in *Dickson v. Vuntut Gwitchin First Nation*, [2024 SCC 10](#) at [para. 125](#).

(b) Mobility rights should be extended to permanent residents

25. Although the application judge recognized a right to freedom of movement within Canada for any purpose and relied on Article 12(1) of the *ICCPR*, he erred by locating the right in s. 6(1) rather than s. 6(2)(a). Doing so would exclude permanent residents from the guarantee—instead, permanent residents’ freedom of movement would be limited to the taking up of residence or the pursuit of a livelihood.

26. However, if the right is grounded in s. 6(2), it will protect the rights of citizens *and* of permanent residents to travel freely across the country. This Court has already recognized that s. 6(2) gives permanent residents a constitutionally-protected right to move about the country.¹⁷ Properly interpreted, that right must encompass travel for purposes other than taking up residence or earning a livelihood.

27. The express extension of the right to move (*i.e.* travel), take up residence, and earn a livelihood anywhere in Canada to permanent residents reflects the importance and the nature of permanent resident status. The intention of this express inclusion in s. 6(2)(a) is clear: permanent residents, once lawfully admitted into the country, must be afforded the same rights to exist and flourish in Canada as citizens.

28. Indeed, speaking of their inclusion in s. 6(2) of the *Charter*, then-Attorney General Jean Chrétien said: “[landed immigrants] are the people whom we wished to cover as there is a certain period during which a person may be permanent in Canada but not yet a Canadian citizen. We would not want this charter to exclude legitimate residents of Canada who have not yet obtained their status as citizens.”¹⁸

29. The objective of inviting non-residents to become permanent residents, and thereafter, Canadian citizens, is to allow them to “seek to contribute to their own well-being and that of Canada by living and remaining in the country.”¹⁹

¹⁷ *Black v. Law Society of Alberta*, [1989] 1 SCR 591 at 620-621.

¹⁸ Canada, Parliament, Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada, Minutes of Proceedings and Evidence, [32nd Parl., 1st Sess., No 3](#) (12 November 1980) at [49](#) (emphasis added).

¹⁹ *Younis v. Canada (Citizenship and Immigration)*, [2019 FC 291](#) at para. [37](#).

30. Upon becoming a permanent resident, a person is—like a citizen—no longer a “foreign national”:²⁰ they are no longer required to leave Canada after a certain date; they may apply for Canadian citizenship after a short number of years;²¹ and they may join the Canadian Armed Forces.²² To use the words of Article 12(1), permanent residents are “lawfully within” Canada.

31. The specific reference to permanent residents in s. 6(2) is an important measure to protect the interests of an overlooked and vulnerable group. As recognized by this Court, non-citizens “are a group lacking in political power and as such vulnerable to having their interests overlooked and their rights to equal concern and respect violated.”²³ Such non-citizens have interests that “are likely to be compromised by legislative decisions.”²⁴ For this reason, non-citizenship was recognized as a protected analogous ground under s. 15.

32. Extending the right to travel *within Canada* to permanent residents is also consistent with Canada’s international commitments. For instance, article 13 of the *Universal Declaration of Human Rights* states: “Everyone has the right to freedom of movement and residence within the borders of each state”; while the right to *enter* a country is limited to one’s “own” country.²⁵

33. Similarly, the *ICCPR* provides: “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”²⁶ While the rights set out in the *ICCPR*—including this one—should be granted to both citizens and non-citizens, the *ICCPR* also recognizes that non-citizens do not have the right to *enter* a state.²⁷

²⁰ *Immigration and Refugee Protection Act*, [S.C. 2001, c. 27, s. 2\(1\)](#) “foreign national”.

²¹ *Immigration and Refugee Protection Act*, [S.C. 2001, c. 27, s. 29\(2\)](#); *Citizenship Act*, [R.S.C. 1985, c. C-29, s. 5\(1\)\(c\)](#).

²² *Defence Administrative Orders and Directives 5002-1*, Enrolment, s. 3.3(b).

²³ *Andrews v. Law Society of British Columbia*, [\[1989\] 1 S.C.R. 143](#) at p. 152, per Wilson J.

The impugned legislation specifically placed restrictions on the ability of permanent residents to become lawyers.

²⁴ *Andrews v. Law Society of British Columbia*, [\[1989\] 1 S.C.R. 143](#) at 195, per LaForest J.

²⁵ [Universal Declaration of Human Rights](#), 10 December 1948, UN General Assembly resolution 217 A (III) (emphasis added).

²⁶ [International Covenant on Civil and Political Rights](#), 16 December 1966, 999 UNTS 171, (entered into force 23 March 1976), art. [12](#) (emphasis added).

²⁷ UNHRC, [CCPR General Comment No. 15: The Position of Aliens Under the Covenant](#), 11 April 1986, paras. 1-2 and 5.

34. As noted above, s. 6 has been recognized as closely mirroring the protections in international human rights instruments. Section 6 should not be interpreted as providing fewer protections than are present in those international instruments, including the *ICCPR*.

B. The scope of the right of interprovincial mobility is limited by s. 6(3)

35. Like s. 6(2)(b), the rights contained in s. 6(2)(a) are subject to the express limits in ss. 6(3) and 6(4). Those limits circumscribe the scope of the rights granted in s. 6(2) and “recognize the existence of regional characteristics that might require that specific conditions be imposed upon one province or another.”²⁸ This internal limit on the right to travel freely throughout the country reflects the balance struck—in both the *Charter* and international instruments—between legitimate regional concerns and the fundamental human right of freedom of movement.

36. Section 6(3) states:

(3) The rights specified in subsection (2) are subject to

- (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
- (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

37. The phrase “laws or practices of general application in force in a province” includes both federal and provincial laws, and is broad enough to include most provincial certification, licensing, and health-benefit laws, as well as federal regulatory schemes.²⁹ It also includes by-laws passed by band councils under the *Indian Act*.³⁰ And in British Columbia, it includes instruments passed by First Nation self-governing authorities.

38. Infectious disease crises, such as the COVID-19 pandemic, could pose unique challenges to First Nations. Situating the right to travel within s. 6(2) of the *Charter* thus provides for

²⁸ *Canadian Egg Marketing*, [1998] 3 SCR 157 at paras. 48-50.

²⁹ *Canadian Egg Marketing*, [1998] 3 SCR 157 at para. 130.

³⁰ *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10 at para. 57.

flexibility should the circumstances of a particular community necessitate limitations on inter- or intra-provincial mobility.

39. In the same vein, the ability to limit the freedom to settle in First Nations communities is recognized by the UNHCR as a possible acceptable basis to limit individuals' freedom of movement and settlement, stating: "the conditions [for restricting rights] could be met by...limitations on the freedom to settle in areas inhabited by indigenous or minorities communities."³¹

40. The permissible limitations on s. 6(1) of the *Charter* are materially different than the ones on s. 6(2). Only the latter recognizes that mobility rights may be limited by laws of general application enacted by communities to reflect their unique needs. Conversely, if the right to travel is grounded in s. 6(1) of the *Charter*, then an infringement of that right may only be justified by s. 1 (and the *Oakes* test) or s. 25. Neither s. 1 nor s. 25 involve the same considerations as s. 6(3)(a).

41. As noted in *Canadian Egg Marketing*, s. 6(3)(a) is not an "independent saving provision".³² Instead, s. 6(3)(a) defines the scope of the rights in s. 6(2). Whether or not the law is justified is not part of the analysis under ss. 6(2)(a) and 6(3)(a).

42. Section 1, on the other hand, considers "whether the negative impact of a law on the rights of individuals is proportionate to the pressing and substantial goal of the law in furthering the public interest".³³ The government bears the burden of showing that an infringement is justified.

43. While s. 25 guarantees that *Charter* rights "will not be construed so as to abrogate or derogate from any aboriginal, treaty, or other rights or freedoms that pertain to the aboriginal peoples of Canada", it gives primacy only to Indigenous rights that "protect Indigenous difference"³⁴—that is, interests connected to cultural difference, prior occupancy, prior

³¹ UNHCR, [General Comment No. 27: Article 12 \(Freedom of Movement\)](#) at para. 16.

³² *Canadian Egg Marketing*, [\[1998\] 3 SCR 157](#) at para. 54.

³³ *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#) at para. [125](#).

³⁴ *Dickson v. Vuntut Gwitchin First Nation*, [2024 SCC 10](#) at para. [5](#).

sovereignty, or participation in the treaty process.³⁵ Section 25 also requires there to be an “irreconcilable conflict” between the collective and individual rights concerned.³⁶

44. The internal balancing mechanism in ss. 6(2) and 6(3)(a) of the *Charter* thus permits communities with some scope to enact laws of general application—while nevertheless respecting the purpose of the guarantee.

PART IV - SUBMISSIONS ON COSTS

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

PART V - ORDER SOUGHT

46. The BCCLA takes no position with respect to the disposition of the appeal.

DATED at Vancouver this 25th day of October 2024.



Emily MacKinnon
Emily Wang

OSLER, HOSKIN & HARCOURT LLP
Counsel for the British Columbia Civil Liberties
Association

³⁵ *Dickson v. Vuntut Gwitchin First Nation*, [2024 SCC 10](#) at para. [150](#).

³⁶ *Dickson v. Vuntut Gwitchin First Nation*, [2024 SCC 10](#) at paras. [163-164](#).

PART VII - TABLE OF AUTHORITIES

<i>Case law</i>	Paragraph(s) Referenced
<i>Andrews v. Law Society of British Columbia</i> , [1989] 1 S.C.R. 143	31
<i>Black v. Law Society of Alberta</i> , [1989] 1 S.C.R. 591	26
<i>Canada (Attorney General) v. Bedford</i> , 2013 SCC 72	42
<i>Canadian Egg Marketing Agency v. Richardson</i> , [1998] 3 S.C.R. 157	10, 11, 12, 22, 35, 37, 41
<i>Dickson v. Vuntut Gwitchin First Nation</i> , 2024 SCC 10	24, 37, 43
<i>Divito v. Canada</i> , 2013 SCC 47	20
<i>Quebec (Attorney General) v. 9147-0732 Québec inc.</i> , 2020 SCC 32	13, 14, 24
<i>R. v. Big M Drug Mart Ltd.</i> , [1985] 1 S.C.R. 295	9
<i>Reference re Public Service Employee Regulations Act (Alta.)</i> , [1987] 1 S.C.R. 313	14
<i>Younis v. Canada (Citizenship and Immigration)</i> , 2019 FC 291	29
<i>Secondary Sources</i>	
Jane McAdam, “ An Intellectual History of Freedom of Movement in International Law: The Right to Leave as a Personal Liberty ” (2011) 12:1 <i>Mlb J. Int’l. L</i> 27	15
<i>Statutes and Regulations</i>	
<i>Citizenship Act</i> , R.S.C. 1985, c. C-29, s. 5(1)(c)	30
<i>Loi sur la citoyenneté</i> , LRC 1985, c C-29, art. 5(1)(c)	
<i>Defence Administrative Orders and Directives</i> 5002-1, Enrolment, s. 3.3(b)	30
<i>Directives et ordonnances administratives de la défense</i> , 5002-1, Enrôlement, art. 3.3(b)	
<i>Immigration and Refugee Protection Act</i> , S.C. 2001, c. 27, ss. 2(1) , 29(2)	30
<i>Loi sur l’immigration et la protection des réfugiés</i> , LC 2001, c 27, arts. 2(1) , 29(2)	

<i>International Covenant on Civil and Political Rights</i> , 16 December 1966, 999 UNTS 171 art. 12 (entered into force 23 March 1976, accession by Canada 19 May 1976)	13, 15, 16, 18, 19, 20, 21, 25, 33, 34
<i>Pacte international relatif aux droits civils et politiques</i> , 16 décembre 1966, 999 UNTS 171 art. 12 (entrée en vigueur: le 23 mars 1976, accession par Canada le 19 mai 1976)	
<i>International Covenant on Economic, Social and Cultural Rights</i> , 16 December 1966, 993 UNTS 3 art. 6 (entered into force 3 January 1976, accession by Canada 19 May 1976)	12, 22
<i>Pacte international relatif aux droits économiques, sociaux et culturels</i> , 16 décembre 1966, 993 UNTS 3 art. 6 (entrée en vigueur: le 3 janvier 1976, accession par Canada le 19 mai 1976)	
Canada, Parliament, Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada, Minutes of Proceedings and Evidence, 32nd Parl, 1st Sess, No 3 (12 November 1980)	28
Canada, Parlement, Comité mixte spécial sur la Constitution du Canada, Procès-verbaux et témoignages, 32e Législature, 1re Session, No 3 (12 novembre 1980)	
<i>The Constitution Act</i> , 1982, Schedule B to the <i>Canada Act 1982 (UK)</i> , 1982, c 11, ss. 1 , 6(1) , (2) , 6(3) , 6(4) , 25 , 33	1-12, 14, 17, 19-28, 31, 34-44
<i>Loi constitutionnelle de 1982</i> , Annexe B de la <i>Loi de 1982 sur le Canada (R-U)</i> , 1982, c 11, arts. 1 , 6(1) , 6(2) , 6(3) , 6(4) , 25 , 33	
<i>Universal Declaration of Human Rights</i> , 10 December 1948, UN General Assembly resolution 217 A (III), art 13	12, 15, 32
<i>Déclaration universelle des droits de l'homme</i> , Le 10 décembre 1948, L'Assemblée Générale (résolution 217 A (III), art 13	
<i>UN Human Rights Committee (HRC), CCPR General Comment No. 15: The Position of Aliens Under the Covenant</i> , 11 April 1986	33
<i>UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement)</i> , CCPR/C/21/Rev.1/Add.9, 2 November 1999	15, 18, 20, 39