Extreme circumstances call for extreme measures: NL's pandemic travel restrictions upheld by SCC

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In a decision released Feb. 13, 2026, the Supreme Court upheld a province's ability to impose inter-provincial travel restrictions in times of crisis (*Taylor v Newfoundland and Labrador*, 2026 SCC 5).

In May 2020, at the start of the COVID-19 pandemic, Nova Scotia resident Kimberley Taylor was denied entry to Newfoundland and Labrador (NL), where the rest of her family grieved the sudden death of her mother. Shortly before NL's Chief Medical Officer of Health had ordered that non-residents were prohibited from entering the province, with only limited exceptions. Although Ms. Taylor was granted an exemption authorizing her entry 10 days later, she along with the Canadian Civil Liberties Association (CCLA) sought a declaration that the travel restrictions unjustifiably infringed her rights under s. 6(1) and 6(2) of the *Charter of Rights and Freedoms*, which provide for mobility rights. It was the first time the courts were asked to consider whether s. 6 guarantees a right of movement *simpliciter*—the right to travel freely within Canada for any purpose.

Key takeaways

- Sections 6(1) and 6(2) guarantee Canadian citizens and permanent residents the right to travel freely throughout Canada, including across provincial borders. This means that restrictions that are more than trivial—laws that prevent free movement, or which make movement contingent on government approval (such as the exemptions at issue), will infringe s. 6.
- Travel bans and other significant restrictions on mobility will generally not be justifiable in a free and democratic society. However, where travel restrictions are part of a comprehensive government response to a crisis, including restrictions designed to save lives and protect the health of a vulnerable population, they may be able to pass scrutiny under the *Oakes* test.
- The purposive approach remains central to *Charter* interpretation, which is a unique exercise from ordinary statutory interpretation. The analysis starts with a consideration of the underlying interests the provision is designed to protect **before** considering the text of the provision and other context. Courts must

interpret a *Charter* provision in a manner that best protects those underlying interests. Where the provision is capable of more than one such interpretation, the Court should favour the broadest, most liberal interpretation.

- The well-established 3-step methodology applicable to bilingual interpretation of legislation—where the narrower shared meaning between the English and French versions is preferred—does not apply in the *Charter* context. Instead, the interpretive approach must follow the same purposive approach as all *Charter* interpretation. A purposive approach to bilingual *Charter* interpretation requires courts to select whichever reading better protects the right, which will generally be the broader of the two readings.
- The precautionary principle adopted in the environmental context—whereby the lack of full scientific certainty should not be used to justify inaction in the face of a threat of serious or irreversible harm—is not a freestanding principle of the s. 1 analysis. However, the concerns underlying the precautionary principle already underpin the s. 1 *Oakes* test. That test is flexible and considers the context of the state action, according the government significant deference on complex policy issues, including where the evidence is inconclusive.

The decisions below

The application judge at the Supreme Court of Newfoundland and Labrador canvassed the jurisprudence regarding s. 6 of the *Charter* and determined that the question before him—whether s. 6 guarantees a right to travel across provincial borders—was one of first instance. He concluded that s. 6(1) but not s. 6(2) guaranteed Canadian citizens a right to travel across provincial borders. He held that the travel restrictions infringed Ms. Taylor's right to mobility under s. 6(1), but that the infringement was justified under s. 1, concluding: "In the circumstances of this case Ms. Taylor's right to mobility must give way to the common good."

Ms. Taylor and the CCLA appealed. Before the appeal was heard, the travel restrictions were repealed. Although both the appellants and the province urged the Court of Appeal to proceed, the Court declined to decide the appeal on the basis that it was moot.

The Supreme Court interprets section 6 purposively and broadly

The majority confirms a purposive approach to bilingual *Charter* interpretation

Justices Karakatsanis and Martin, writing for the majority (with Côté, O'Bonsawin and Moreau JJ) set out the purposive approach to *Charter* interpretation—an approach that is distinct from ordinary statutory interpretation. This approach starts by examining the interests protected by the *Charter* provision at issue. The Court then must consider the broader context, including the character and objects of the *Charter* more broadly; the text of the *Charter* provision, including any headings; the history of the *Charter* right; analogous international and comparative law; interpretation of any related *Charter* rights and freedoms; the drafting history of the *Charter* provision; and any other relevant context. Then, taking all of these sources of information into account, the Court must interpret the provision to provide the most generous protection to the underlying

interests. This approach differs from the usual approach to statutory interpretation, where the analysis starts with the plain meaning of the text before considering context.

The majority also confirmed that this same purposive approach applies to bilingual interpretation of *Charter* rights. The Court rejects the well-established 3-step *Daoust* methodology for bilingual interpretation of legislation as inapplicable in the *Charter* context. Under the *Daoust* methodology, the Court gives priority to the narrowest area of overlap between the English and French versions of the statutory text on the basis that this will be best reflective of legislative intent. In contrast, *Charter* interpretation must start with a broad, liberal, and purposive reading of the text. Both the English and French versions are authoritative and must be read together to give colour and content to the interests protected and the purpose of the right. Where the two versions cannot be read harmoniously, the Court must select the reading that better protects the right, which will generally be the broader of the two.

The majority grounds a right of mobility *simpliciter* in both sections 6(1) and 6(2)

The majority applies this purposive approach to interpreting the scope of protection of mobility rights in s. 6 of the *Charter*. The majority identifies twin purposes of s. 6 working in harmony—section 6 "is designed to protect a broad interest in human mobility" both "to facilitate individual autonomy and dignity", and to "promote national unity and a common Canadian identity".

One of the key issues before the Court was whether a right to travel *simpliciter*, if it exists, is found in s. 6(1) or 6(2) or both. With respect to s. 6(1), the debate centered on whether the language guaranteeing the right "to enter, remain in and leave Canada" includes a right to travel across provincial borders or is limited to a right against exile and banishment. With respect to s. 6(2), the debate centered on whether the provision protects only a right to move and take up residence in another province, or includes a right to travel between provinces for other purposes. The plain reading of the French text appears to encompass both, whereas the English version is more ambiguous.

The majority adopts the broader interpretations of both provisions, concluding that both s. 6(1) and 6(2) guarantee the right to travel freely throughout Canada, including between provinces. This is important because each of s. 6(1) and 6(2) is limited in different ways. Section 6(2) is subject to certain economic limits set out in s. 6(3) and 6(4) that do not apply to s. 6(1). And s. 6(2) applies to both citizens and permanent residents, whereas s. 6(1)—the only section relied on by the application judge—only applies to citizens. By grounding the right of mobility *simpliciter* in both s. 6(1) and 6(2), the right applies to a broader subset of the Canadian population.

The majority therefore concludes that government actions that limit in a non-trivial way the ability of Canadian citizens and permanent residents to travel freely within Canada, or that require government approval for such travel, infringe s. 6(1) and 6(2) of the *Charter*.

The Court finds the travel restrictions to be reasonable and justified in the context of a crisis

The Supreme Court is unanimous in finding that the travel restrictions were justified under s. 1 of the *Charter*. They are found to be a "reasonable component of a comprehensive government response to the extraordinary crisis of the pandemic".

The respondents and numerous interveners made a novel argument that the "precautionary principle" should apply as part of the *Oakes* test under s. 1. The precautionary principle was developed in the context of international and domestic environmental law, and calls for governments to take a preventative mindset and not allow lack of scientific certainty to justify inaction in the face of a threat of serious or irreversible environmental damage. The argument was that the principle should be similarly applied in the constitutional context to support greater deference to legislative choices made in the face of threats of serious harm and scientific uncertainty.

The majority rejects this novel argument, holding that there is no need to formally recognize the precautionary principle as part of the s. 1 test. Instead, the majority holds that the *Oakes* test is sufficiently flexible and nuanced to allow consideration of the same factors that underly the precautionary principle, and notes that considerable deference is already accorded to governments under that test on issues of public policy, including where the scientific evidence is uncertain

Here, the majority concludes that the objective of preventing illness and death caused by travellers' importation and spread of the virus was rooted in public health, a goal of collective importance. The limit on Canadians' s. 6 rights is found to be "carefully tailored", particularly in light of the vulnerability of the province's population and healthcare system. Importantly, the Court repeats at several junctures that an analysis of lawmakers' responses in times of crisis cannot operate with the benefit of hindsight. In this case, the Court upholds the province's decision while acknowledging it was made without the benefit of concrete scientific or medical evidence, but rather the limited amount that was understood about COVID-19 at the early stages of the pandemic.

The Supreme Court splits on the proper interpretation of section 6

Justices Kasirer and Jamal JJ (Wagner CJ concurring) and Justice Rowe separately dissented in part. They all agree with the majority that a right to interprovincial travel is protected by s. 6 of the *Charter*; that Newfoundland and Labrador's travel restrictions violated that right; and that the violation was justified under s. 1. However, Justices Kasirer and Jamal are of the view that the scope of protection in s. 6(1) is limited to international mobility and only s. 6(2) protects interprovincial mobility. Justice Rowe takes the opposite view—he writes that interprovincial travel *simpliciter* is protected only by s. 6(1) (and is therefore guaranteed only to citizens), whereas s. 6(2) protects the right to move and take up residence in another province, not simply to travel.

An ongoing dialogue regarding restriction of rights in a crisis

In addition to the merits, the majority addresses its exercise of power under s. 40(1) of the *Supreme Court Act* to hear a moot appeal, finding that the Court of Appeal erred in the circumstances by refusing to exercise its discretion to do so. The majority describes how the issues at play are "of manifest public importance" and that there is a "clear social cost" in leaving the question of state limitations on mobility unconsidered.

Indeed, as the once widespread pandemic restrictions remain only in memory, Canadian courts are tasked with determining how far government restrictions can go in times of crisis without unreasonably impinging upon Canadians' rights. Principles of national unity and self-determination, which are top of mind for many Canadians, appear throughout the Court's analysis.

This case forms part of a broader legal dialogue involving the adoption of emergency measures that interfere with individual choice and freedom, including the Federal Court of Appeal's recent decision in *Canada (Attorney General) v. Canadian Civil Liberties Association*. For an analysis of the FCA's decision finding that Cabinet lacked reasonable grounds to believe a national emergency existed when it invoked the *Emergencies Act* to counter the "Freedom Convoy" demonstrations, see BLG's article. With this more recent decision, the Supreme Court sends a clear message that restrictions on fundamental *Charter* rights will be subject to intense scrutiny, but that extreme circumstances can justify equally (or proportionally) extreme measures.

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