

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR NEWFOUNDLAND
AND LABRADOR)**

B E T W E E N:

CANADIAN CIVIL LIBERTIES ASSOCIATION and KIMBERLEY TAYLOR

APPLICANTS
(Appellants/
Respondents by Cross-Appeal)

and

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

RESPONDENTS
(Respondents/
Appellants by Cross-Appeal)

FACTUM OF THE INTERVENER, CANADIAN CONSTITUTION FOUNDATION
(Rule 42 of the *Rules of Supreme Court of Canada*)

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PART I - CONCISE OVERVIEW OF POSITION AND CONCISE STATEMENT OF FACTS

PART II - OVERVIEW

1. This appeal asks this Court to determine, among other things, whether Canadian citizens have a constitutionally protected right to interprovincial travel simpliciter under section 6 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982 c 11 (the “*Charter*”).
2. The application judge found that only Canadian citizens hold this right under section 6(1). Both sides have appealed the decision, with the appellants arguing that the right is found under section 6(2)(a), or in the alternative section 6(1), while the respondents maintain that neither section provides such a right.
3. The Canadian Constitution Foundation (“*CCF*”) intervenes to argue that the *Charter* does indeed grant Canadians the right to interprovincial travel under section 6(2)(a) of the *Charter* or in the alternative section 6(1). In particular, the *CCF* will make two submissions.
4. ***First***, a right to interprovincial travel simpliciter is a fundamental assumption underlying the Constitution (which includes the *Charter* and the *Constitution Act, 1867* (UK), 30 & 31, c 3). Without a right to interprovincial travel, other constitutionally protected rights will be diminished, abrogated or violated, an outcome that this Court has previously held should be avoided.
5. ***Second***, the House of Commons Debates support that s. 6 of the *Charter* provides Canadian citizens with a right of interprovincial travel simpliciter.

PART III - QUESTION IN ISSUE

6. This factum will address a single issue raised in this appeal, namely: does section 6 of the *Charter* guarantee Canadians the right to interprovincial travel simpliciter – i.e., the right of Canadians to move freely within their country, across provincial borders?

PART IV - STATEMENT OF ARGUMENT

A. A RIGHT TO INTERPROVINCIAL TRAVEL SIMPLICITER IS A FUNDAMENTAL ASSUMPTION UNDERLYING THE CONSTITUTION AND WITHOUT IT OTHER CONSTITUTIONALLY PROTECTED RIGHTS WILL BE ABROGATED OR DIMINISHED

7. It is a “fundamental” and “bedrock” principle of the Constitution that “one part of the Constitution cannot displace or amend another part of the Constitution”¹ and that “one part of the Constitution cannot be abrogated or diminished by another part of the Constitution”². This maxim stems from a more basic canon of legal interpretation that statutes and provisions sitting at the same level of the “hierarchy of laws”³ are equal in status and therefore “presumed to be coherent and consistent.”⁴ Two constitutional statutes or provisions must be understood as being “linked” to one another as if they form one *corpus juris* (i.e., “body of law”).⁵ They should therefore be harmoniously interpreted to the greatest extent possible.⁶

8. These principles were affirmed by this Court in *Reference re Secession of Quebec* and *Dubois v. The Queen*, where it was held that individual elements of the Constitution are interconnected and that the interpretation of the Constitution must be informed by the intended interaction of its provisions and the assumptions underlying the text.⁷ In both cases, this Court also stated that the *Charter* should be understood as a cohesive system, where each part contributes to the overall meaning, and the entire system, in turn, informs the meaning of its individual

¹ *Canada (Attorney General) v Northern Inter-Tribal Health Authority Inc.*, [2020 FCA 63](#) at para. 31.

² *New Brunswick Broadcasting Co. v Nova Scotia (Speaker of the House of Assembly)*, [\[1993\] 1 S.C.R. 319](#) at 373.

³ See: *Canada (Attorney General) v Utah*, [2020 FCA 224](#) at para. 42.

⁴ *Canada (Citizenship and Immigration) v Nilam*, [2017 FCA 44](#) at para. 21.

⁵ Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (Eagan, Minnesota: Thomson/West, 2012) at 252 – 255.

⁶ See *Citizens' and The Queen Insurance Cos. v Parsons*, (1880) [4 S.C.R. 215](#) at 232; *Reference re Secession of Quebec*, [\[1998\] 2 S.C.R. 217](#) at para. 50; *Doucet-Boudreau v Nova Scotia (Minister of Education)*, [2003 SCC 62](#) at para. 50; *Reference Re Firearms Act*, [1998 ABCA 305](#) at para. 35. See also Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (Eagan, Minnesota: Thomson/West, 2012) at 180.

⁷ *Dubois v The Queen*, [\[1985\] 2 SCR 350](#), para. 43; *Reference re Secession of Quebec*, [\[1998\] 2 SCR 217](#), para. 50.

components.⁸ Therefore, an interpretation of a *Charter* right which would imply a violation of another *Charter* right should be avoided.⁹

9. The CCF submits that when section 6 is read in conjunction with other constitutional provisions, namely, sections 5 and 24 of the *Charter* and sections 38, 91(5), 91(7) and 91(13) of the *Constitution Act, 1867*, the context reveals that a right to interprovincial travel simpliciter is a fundamental assumption underlying the Constitution. If it is found that section 6 does not guarantee a right to interprovincial travel, such sections, as discussed below, will be abrogated, diminished or implicitly violated.

(i) Section 5 of the Charter and section 38 of the Constitution Act, 1867

10. Section 5 of the *Charter* necessitates an annual sitting of Parliament and of the legislatures.¹⁰ Section 38 of the *Constitution Act, 1867* provides that the Governor General shall, from time to time, summon and call together the House of Commons.¹¹

11. The requirement for regular legislative sittings is a fundamental aspect of democratic governance, ensuring that elected representatives can fulfill their duties. If there is no recognized right to interprovincial travel simpliciter under section 6, practical barriers would arise for Members of Parliament who need to travel across provincial borders to participate in legislative sessions. The requirement for an annual legislative sitting would become practically unenforceable if MPs faced barriers to travel across provincial borders, thus undermining the very purpose of section 5. Without a right to mobility simpliciter, citizens would not have a right to travel to the seat of government to observe the legislative process. While section 6(2)(b) of the *Charter* guarantees the right to pursue the gaining of a livelihood in any province, serving as an MP and travelling to Parliament in this capacity entails far more than the gaining of a livelihood. An MP's travel is dictated by a constitutional framework to attend federal legislative sessions.

⁸ *Ibid.*

⁹ *Dubois v The Queen*, [1985] 2 SCR 350, para. 43

¹⁰ *Canadian Charter of Rights and Freedoms*, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982 c 11, s. 5.

¹¹ *Constitution Act, 1867* (UK), 30 & 31, c 3, s. 38.

12. Similarly, by not recognizing a right to interprovincial travel simpliciter under section 6, barriers could arise for MPs attempting to attend a summoned session at the House of Commons. This would hinder the practical execution of the Governor General's constitutional duty to "call together" the House of Commons, as the summoning would be meaningless if elected representatives are unable to travel to respond to the summons. Further, the constitutional power of the Governor General to summon the House of Commons would be impliedly violated if MPs could not respond to the summons due to travel restrictions. As such, an interpretation of section 6 that provides Canadians do not have a right to interprovincial travel simpliciter must be avoided for sections 5 and 36 to not be diminished, abrogated or violated.

(ii) Section 24 of the Charter

13. Section 24 of the *Charter* states:

Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.¹²

14. Section 24 of the *Charter* grants the unequivocal power to anyone whose rights and freedoms have been infringed to seek a remedy through a court of competent jurisdiction. This Court often meets this criterion.¹³ In order for this right to have any meaning, claimants residing outside of Ontario must have a right to mobility simpliciter as they may need to travel interprovincially to Ottawa to have their cases heard at this Court. Without a right to interprovincial travel simpliciter, this right would be abrogated.

15. During the COVID-19 pandemic, this Court conducted virtual hearings.¹⁴ While this eliminated the need for travel to Ottawa, the virtual hearings were a temporary solution to travel complications caused by the pandemic. In 2021, this Court resumed in-person hearings, with the option for virtual hearings if requested by a party.¹⁵ Although the option to attend hearings

¹² *Charter*, *supra* note 10, s. 24.

¹³ *Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177, para. 78.

¹⁴ Supreme Court of Canada, "The Court's first hearing fully by video-conference: Remarks by the Right Honourable Richard Wagner, P.C. Chief Justice of Canada" ([online](#)).

¹⁵ Supreme Court of Canada, "Annual News Conference with the Parliamentary Press Gallery: Remarks by the Right Honourable Richard Wagner, P.C. Chief Justice of Canada" ([online](#)).

virtually remains, many cases are still heard in person, as in-person hearings can, in some cases, provide a more effective forum for oral argument, allowing for better engagement with and communication between counsel and judges. The option to have a virtual hearing does not abrogate the *Charter* right of those who wish to attend in person.

(iii) Section 91(5): Postal Service

16. An interpretation of section 6 that excludes the right to interprovincial travel could diminish the ability of the federal government to fulfill its responsibility for postal services under section 91(5) of the *Constitution Act, 1867*.¹⁶ Canada Post, the national postal service, delivers mail nationwide.¹⁷ The movement of postal workers between provinces is necessary for its efficient operation, ensuring that services are consistent across the nation. However, this movement is typically job-related and temporary. The workers are not establishing residences or seeking to gain livelihoods in a new province; they are fulfilling duties that require short-term mobility, implying that it is an assumption underlying the Constitution that Canadians have a right to interprovincial travel simpliciter. Without such a right, the federal government's ability to fulfill its obligations under section 96(5) will be diminished.

(iv) Section 91(7): Militia, Military and Naval Service, and Defence

17. Section 91(7) assigns "Militia, Military and Naval Service, and Defence" to the federal government.¹⁸ The Canadian Armed Forces ("CAF") require personnel to relocate for various assignments across the country.¹⁹ This mobility is vital for national defence, training, and operational readiness. However, this is about fulfilling a role within the military structure, often on a temporary or rotational basis, rather than permanently establishing a home or seeking to gain a livelihood in a new province. If members of CAF do not have a right to interprovincial travel simpliciter, the federal government's ability to relocate personnel across the country and fulfill its responsibility under section 91(7) would be diminished. Furthermore, if the federal government

¹⁶ *Constitution Act, 1867*, *supra* note 11. s. [91](#).

¹⁷ Canada Post, "Send within Canada" ([online](#)).

¹⁸ *Constitution Act, 1867*, *supra* note 11. s. [91](#).

¹⁹ Government of Canada, "Moving and relocation" ([online](#)).

opts to raise a militia, members may need to travel to other provinces on short notice. Militia members by definition are not moving to another province to seek a livelihood.

(v) **Section 91(13): Ferries Between Provinces**

18. Section 91(13) of the *Constitution Act, 1867* has underlying assumption that Canadians have a right to interprovincial travel. In particular, section 91(13) assigns the federal government authority over ferries operating between provinces, or between a province and any British or foreign country.²⁰ The Government of Canada has recognized that this section creates a constitutional obligation to support passenger ferry service between provinces.²¹ This obligation is closely tied to the mobility rights inherent in Canadian citizenship. This Court has held that mobility rights associated with Canadian citizenship ensure “the mobility of Canadians across provincial lines, a position reinforced today by s. 6 of the *Charter*.”²²

19. In this context, the federal government’s constitutional obligation to facilitate interprovincial transportation for individuals by ferry, such as those provided by Marine Atlantic Inc., between North Sydney, Nova Scotia, and Port aux Basques, Newfoundland and Labrador, highlights that it is an underlying assumption of section 91(13) that Canadians have a right to interprovincial travel.²³ This assumption is also supported by this Court’s decision in *Morguard Investments Ltd. v. De Savoye*, which stated that Canadian citizenship includes the right to move freely between provinces.²⁴

B. HOUSE OF COMMONS DEBATES SUPPORT THAT SECTION 6 PROVIDES A RIGHT TO INTERPROVINCIAL TRAVEL

20. This Court has considered extrinsic evidence, including legislative debates, when determining the scope of a right.²⁵ Though of limited weight, such evidence can assist in determining the background and purpose of legislation.²⁶ The House of Commons Debates

²⁰ *Constitution Act, 1867*, *supra* note 11. s. [91](#).

²¹ Government of Canada, Transport Canada, “Marine Atlantic Inc” ([online](#)).

²² *Morguard Investments Ltd. v De Savoye*, [\[1990\] 3 SCR 1077](#) at [1099](#).

²³ Government of Canada, Transport Canada, “Marine Atlantic Inc” ([online](#)).

²⁴ *Morguard Investments Ltd. v De Savoye* (S.C.C), *supra* note 22 at [1099](#).

²⁵ *Dickson v Vuntut Gwitchin First Nation*, [2024 SCC 10](#) at para. [118](#).

²⁶ *R v Morgentaler*, [\[1993\] 3 SCR 463](#), at p. 484.

regarding the *Charter* support the interpretation that section 6 of the *Charter* provides Canadian citizens with a right of interprovincial travel.

21. During a House of Commons Debate that took place on February 26, 1981 regarding the proposed *Charter*, Mr. Gilbert Parent (Member of Parliament for Welland) stated:

Physical obstacles to travel have virtually disappeared. We can go nearly everywhere in Canada in a single day, and in most cases, much more quickly. The only real obstacles are psychological and legal. The psychological obstacles reflect fear, apprehension and uncertainty, fuelled by perceived regional divisions. The Constitution we have been offered can only eliminate such perceptions by guaranteeing unequivocally the freedom of movement and communications. The legal obstacles are those which give special employment and ownership rights to local residents. These are certainly the most insidious obstacles, as they discriminate between citizens from one area and those from elsewhere. This can be the cause of serious divisions and great bitterness. Without mobility rights, there can be no question of the national commitment to which I referred earlier. For this principle to prevail, all Canadians must feel at home everywhere in Canada. This will promote an enlightened nationalism.²⁷

22. Mr. Parent's statement emphasizes that the main obstacles to interprovincial travel in Canada are not physical but psychological and legal. Mr. Parent's comments highlights that the purpose of section 6 of the *Charter* was to eliminate these barriers by guaranteeing the freedom of movement across Canada. The reference to "the freedom of movement and communications" and the importance of all Canadians feeling "at home everywhere in Canada" underscores that section 6 was designed to ensure Canadian have the travel freely across provinces without facing discrimination or other barriers.

23. During a House of Commons Debate that took place on October 15, 1980, the Hon. Yvon Pinard (then President of the Privy Council) stated:

It is quite essential that every Canadian, in whatever province, have the right and the freedom to enter and leave any province when he wishes and that every Canadian from whatever area and whatever province be entitled to earn his living in any province without being

²⁷ Canada, *House of Commons Debates*, 32nd Parl, 1st Sess, 1981 at 7735-7748 ([online](#)).

penalized and without being the victim of any discrimination. This is another category of rights which we want to see entrenched in the constitution and which protect Canadian citizens without penalizing the provincial governments.²⁸

24. The Hon. Yvon Pinard's statement provides that every Canadian should have the right and freedom to enter and leave any province at will, regardless of purpose. It also affirms the right of Canadians to earn a living in any province, which was ultimately codified in section 6(2)(b) of the *Charter*. Mr. Pinard's statement directly aligns with the notion that section 6 as a whole was intended to enshrine the right to interprovincial travel and economic participation, making it clear that the section's purpose is to allow Canadians to move freely between provinces.

25. During a House of Commons Debate that took place on October 10, 1980, Mr. Roy MacLaren (then Parliamentary Secretary to Minister of Energy, Mines and Resources) stated:

Mobility rights are important to every Canadian. Indeed, most Canadians would assume that they have the right to move about their country and to live and work where they will.²⁹

26. Mr. MacLaren's statement reinforces the idea that mobility rights, including the right to move about the country and to live and work where one chooses, are fundamental to Canadians. His reference to the assumption that Canadians already possess these rights highlights that section 6 was intended to formalize and protect the right to interprovincial travel and mobility, ensuring that all Canadians can exercise these freedoms without legal hindrances.

27. Overall, the CCF submits that the House of Commons Debates provide support to the interpretation that s. 6 of the *Charter* was meant to provide Canadians with a fundamental right to interprovincial travel simpliciter, ensuring that they can move freely across the country without legal, psychological or discriminatory barriers.

PART V - SUBMISSIONS CONCERNING COSTS

28. The CCF asks that no costs be awarded for or against it.


²⁸ Canada, *House of Commons Debates*, 32nd Parl, 1st Sess, 1980 at 3690-3712 ([online](#)).

²⁹ Canada, *House of Commons Debates*, 32nd Parl, 1st Sess, 1980 at 3596-3611 ([online](#)).

PART VI - ORDER SOUGHT

29. The CCF takes no position on the disposition of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 24TH DAY OF OCTOBER, 2024



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PART VII - TABLE OF AUTHORITIES

CASES	Cited in paras.
<i>Canada (Attorney General) v Northern Inter-Tribal Health Authority Inc.</i> , 2020 FCA 63	7
<i>Canada (Attorney General) v Utah</i> , 2020 FCA 224	7
<i>Canada (Citizenship and Immigration) v Nilam</i> , 2017 FCA 44	7
<i>Citizens' and The Queen Insurance Cos. v Parsons</i> , (1880) 4 S.C.R. 215	7
<i>Dickson v Vuntut Gwitchin First Nation</i> , 2024 SCC 10	20
<i>Doucet-Boudreau v Nova Scotia (Minister of Education)</i> , 2003 SCC 62	7
<i>Dubois v The Queen</i> , [1985] 2 SCR 350	8
<i>Morguard Investments Ltd. v De Savoye</i> , [1990] 3 SCR 1077	18
<i>New Brunswick Broadcasting Co. v Nova Scotia (Speaker of the House of Assembly)</i> , [1993] 1 S.C.R. 319	7
<i>R v Morgentaler</i> , [1993] 3 SCR 463	20
<i>Reference Re Firearms Act</i> , 1998 ABCA 305	7
<i>Reference re Secession of Quebec</i> , [1998] 2 S.C.R. 217	7
<i>Singh v Minister of Employment and Immigration</i> , [1985] 1 SCR 177	14

SECONDARY SOURCES	Cited in paras.
Antonin Scalia and Bryan A. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (Eagan, Minnesota: Thomson/West, 2012)	7

Canada, <i>House of Commons Debates</i> , 32nd Parl, 1st Sess, 1980 at 3596-3611 (available online).	25
Canada, <i>House of Commons Debates</i> , 32nd Parl, 1st Sess, 1980 at 3690-3712 (available online).	23
Canada, <i>House of Commons Debates</i> , 32nd Parl, 1st Sess, 1981 at 7735-7748 (available online).	21
Government of Canada, “Moving and relocation” (online)	17
Canada Post, “Send within Canada” (available online)	16
Government of Canada, Transport Canada, “Marine Atlantic Inc” (available online).	18
Supreme Court of Canada, “Annual News Conference with the Parliamentary Press Gallery: Remarks by the Right Honourable Richard Wagner, P.C. Chief Justice of Canada” (available online).	15
Supreme Court of Canada, “The Court’s first hearing fully by video-conference: Remarks by the Right Honourable Richard Wagner, P.C. Chief Justice of Canada” (available online).	15

STATUTES AND LEGISLATION	Cited in paras.
<i>Canadian Charter of Rights and Freedoms</i> , Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK) , 1982 c 11	10, 13
<i>Constitution Act, 1867</i> (UK), 30 & 31, c 3	10, 16, 17, 18