SUPREME COURT OF CANADA

CITATION: Taylor *v.* Newfoundland and Labrador, 2026 SCC 5

APPEAL HEARD: April 15 and 16, 2025
JUDGMENT RENDERED: February 13, 2026
DOCKET: 40952

BETWEEN:

Kimberley Taylor and
Canadian Civil Liberties Association
Appellants

and

His Majesty The King in Right of Newfoundland and Labrador and
Janice Fitzgerald, Chief Medical Officer of Health
Respondents

- and -

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 the Yukon Territory,
Attorney General of Nunavut,
British Columbia Civil Liberties Association and
Canadian Constitution Foundation
Interveners

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

JOINT REASONS FOR JUDGMENT: (paras. 1 to 257)	Karakatsanis and Martin JJ. (Côté, O'Bonsawin and Moreau JJ. concurring)
JOINT REASONS DISSENTING IN PART: (paras. 258 to 320)	Kasirer and Jamal JJ. (Wagner C.J. concurring)
REASONS DISSENTING IN PART: (paras. 321 to 400)	Rowe J.

Kimberley Taylor and
Canadian Civil Liberties Association *Appellants*

v.

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Janice Fitzgerald, Chief Medical Officer of Health *Respondents*

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2026 SCC 5

File No.: 40952.

2025: April 15, 16; 2026: February 13.

Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

ON APPEAL FROM THE COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR

Constitutional law — Charter of Rights — Mobility rights — Whether travel restrictions preventing non-residents from entering province during public health emergency violate mobility rights of non-resident denied entry into province — If so, whether infringement justified — Canadian Charter of Rights and Freedoms, ss. 1, 6.

During the early days of the COVID-19 pandemic, Newfoundland and Labrador declared a public health emergency. The province's Chief Medical Officer of Health ("CMOH") then made a series of general orders under a provincial statute that authorized the CMOH to take a wide variety of measures to protect the health of the population and prevent, remedy, or mitigate the effects of the public health emergency. One such order prohibited entry into Newfoundland and Labrador for everyone except residents of the province, asymptomatic essential workers, and persons in certain towns on the Labrador-Quebec border, and a subsequent order allowed exemptions for individuals in extenuating circumstances to enter the province if approved in advance by the CMOH (collectively, "travel restrictions").

In May 2020, T, a non-resident of the province, requested an exemption to enter Newfoundland and Labrador, where her mother had unexpectedly passed away, to be with her grieving family and to attend the burial. Her initial request was denied on May 8, but a reconsideration request was approved on May 16 and she was permitted to enter the province. Despite having been granted entry, T, joined by the CCLA,

sought a declaration that the travel restrictions infringed her mobility rights as guaranteed by s. 6 of the *Charter*.

The application judge concluded that s. 6(1) of the *Charter* guaranteed Canadian citizens a right to travel across provincial borders but that s. 6(2) did not. He therefore held that the travel restrictions infringed T's right to mobility as guaranteed by s. 6(1), but that the infringement was justified under s. 1 of the *Charter*. T and the CCLA appealed, arguing that the application judge correctly interpreted s. 6(1), but erred in interpreting s. 6(2). Before the appeal could be heard, the travel restrictions were repealed. The Court of Appeal dismissed the appeal as moot, without considering the merits of the claims under ss. 6 and 1 of the *Charter*.

Held (Wagner C.J. and Rowe, Kasirer and Jamal JJ. dissenting in part): The appeal should be allowed in part, the Court of Appeal's order dismissing the appeal as moot set aside, and the application judge's order modified to reflect that the travel restrictions limited mobility rights as guaranteed by s. 6(1) and (2) of the *Charter*.

Per **Karakatsanis**, Côté, **Martin**, O'Bonsawin and Moreau JJ.: Despite its mootness, this important appeal should be decided on its merits. Section 6 of the *Charter* guarantees a right to move freely within Canada, including across provincial borders, to both citizens and permanent residents, in s. 6(1) and (2). Generally, any law that limits, in a non-fleeting or non-trivial fashion, the ability of citizens or permanent residents to move within Canada, or which makes such movement contingent on state authorization, will infringe s. 6. Newfoundland and Labrador's travel restrictions did

just that. However, s. 6, like all *Charter* rights and freedoms, is subject to reasonable limits, including those necessary to protect public safety, health, or the rights of others. The travel restrictions pass scrutiny under the *Oakes* test and were justified under s. 1 of the *Charter*, because this was a grave emergency.

The methodology of *Charter* interpretation is crucially different from statutory interpretation. Unlike a statute that speaks to present rights and obligations, the *Charter* is drafted with an eye to the future. Its purpose is to provide a continuing framework for the legitimate exercise of governmental power and for the unremitting protection of individual rights and liberties. The *Charter* is a purposive document. A court can only interpret the meaning of a particular right or freedom by first delineating the nature of the interests it is meant to protect. Before a court can interpret how the *Charter* restrains state action, it must first determine what interests the provision in question protects, and why it protects them. The court must consider the character and larger objects of the *Charter*; the text of the particular *Charter* provision, including any headings; the history of the concept enshrined therein; analogous international and comparative law; the interpretation of related rights and freedoms in the *Charter*; the drafting history of the provision, and any other relevant source. Once the court has rigorously reviewed these sources, it must then interpret the text of the provision to provide the most generous protection it can support to safeguard its interests.

The well-established methodology applicable to the bilingual interpretation of legislation is unsuitable in the *Charter* context. Unlike statutory

interpretation, *Charter* interpretation is not an exercise in determining legislative intent. The bilingual interpretation of *Charter* rights is governed by the general methodology for *Charter* interpretation. This requires a purposive approach. *Charter* interpretation must begin with the broad, liberal, and purposive reading of the text, and each *Charter* right must be placed in its proper linguistic, philosophic, and historical contexts. The linguistic context includes that the French and English versions of *Charter* rights are equally authoritative. Reading both linguistic formulations together best protects the interests underlying the right. When there is an apparent difference between the equally authoritative versions of the *Charter*, both the English and the French texts, whether different, ambiguous, or of various breadths, inform purpose. When reasonably capable of more than one meaning, both authoritative versions of *Charter* rights are simply read together and each gives colour and content to the interests protected and the purpose of the right at issue. If linguistic divergence between French and English versions persists, despite all efforts to read them harmoniously, a purposive approach to bilingual *Charter* interpretation requires courts to select the reading that better protects the right — which will generally be the broader of the two. Parties asking a court to interpret a provision of the *Charter* ought, as a best practice, to draw that court's attention to both official language versions of that provision's text.

Applying this methodology, s. 6 of the *Charter* includes a broad right to free movement guaranteed by both s. 6(1) and (2). A broad right to mobility is ancient — much older than the *Charter* — and would have been presumed to be part of any specific mobility rights the *Charter* enshrined as supreme law. Section 6, like the

democratic rights in ss. 3 to 5 of the *Charter*, is not subject to legislative override under s. 33. The text of s. 6, which describes rights against exile and banishment, and rights to move for travel, residence, or work, indicates a broad underlying interest in free mobility and establishment across provincial and national borders.

Mobility rights have existed in the Anglo-Canadian legal tradition for centuries. Even in the 1200s, certain mobility rights were seen as ancient customs. Courts have historically regarded Canadians' interest in mobility across Canada as transcending provincial interests, with due sensitivity to the structure of federalism.

Mobility rights have strong protections under international human rights law and in the constitutional traditions of other democratic, common law countries. In rights-respecting democracies the world over, the fundamental human value of the freedom to choose where one wants to be — without state approval — is seen as essential and worthy of constitutional protection.

Other related *Charter* rights demonstrate the importance of freedom of movement to a free society more generally. Deprivations of freedom of movement can infringe the liberty interest under s. 7 of the *Charter*. More directly, arbitrary detention jurisprudence under s. 9 has described freedom of movement as one of the fundamental values of our democratic society. Freedom of movement is self-evidently an integral part of the freedom of peaceful assembly and association guaranteed in s. 2(c) and (d). The pervasiveness of freedom of movement elsewhere in the *Charter* echoes the common law's longstanding and zealous protection of mobility rights. Section 6 plays

a unique role in service of the *Charter*'s overall nation-building objective. The ability to move around within the country allows each Canadian to view themselves as members of a collective whole, and not merely as an individual within a local or regional community. One purpose of the mobility rights interest protected by s. 6 is thus to promote national unity and a sense of national identity among Canadians, sensitive to the federal nature of Canada. Legislative debates leading to the adoption of the *Charter* also show the perceived connection between individual mobility rights and Canadian nation-building.

Section 6 is designed to protect a broad interest in human mobility, to facilitate individual autonomy and dignity, and to promote national unity and a common Canadian identify. Freedom of movement, without constraint or coercion, is quintessential to the Canadian concept of a constitutional democracy. Free movement and establishment within Canada are essential to individual personal freedom and foundational to Canada's free and democratic federal structure. These twin purposes — one focused on the individual, the other on the nation — work in harmony, based on the view that mobility rights benefit both the individual and the community. The *Charter*'s protections are not aimed at trivial or fleeting limits on movement, but rather on 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.

The overlapping protection of free movement within both s. 6(1) and (2) recognizes the right's fundamental character. Each subsection addresses additional,

related entitlements that build on the central right of mobility. Section 6(1) also addresses the rights of citizens against exile and banishment, and s. 6(2) addresses the entitlement of citizens and permanent residents to establish residency and pursue a livelihood, and the provincial capacity to regulate these matters. Thus, s. 6's mobility protections can be read harmoniously, addressing different aspects of the broad right that is foundational to the entire section.

Section 6(1) guarantees citizens a right to move throughout Canada without restriction. The text of s. 6(1) guarantees all citizens of Canada the right "to enter, remain in and leave Canada". "Canada", as it appears in s. 6(1), has the features that Canadian legal tradition has always attributed to the land over which sovereignty extends. The interprovincial dimension of s. 6(1) is further grounded in the words "enter" and "leave", as in the right "to enter, remain in and leave Canada". These international elements of the right necessarily imply movement within Canada: one might need to cross provincial borders to leave the country or, after entering Canada, to return home. This shows that s. 6(1) provides more than a mere right to enter and exit. Rather, it clearly contemplates and requires an element of free travel within Canada, including across provincial borders.

This understanding of s. 6(1) also accords with the heading of the provision: "Mobility of citizens" in English or "*Liberté de circulation*" in French. Such broad headings, which refer to movement in general, do not imply that s. 6(1) is limited in scope to international travel and the prevention of exile. Rather, they denote wider

rights to move anywhere, inside or outside the country. Section 6(1) also mirrors the language of Article 12 of the *International Covenant on Civil and Political Rights* ("ICCPR"), a binding international human rights treaty which informed the drafting of the *Charter*. Article 12 protects, in different subsections, a citizen's right to enter their own country (art. 12(4)); to liberty of movement and to choose residence within any country in which they are lawfully present (art. 12(1)); and to leave any country (art. 12(2)). This mirrors a citizen's right under s. 6(1) to "enter, remain in and leave" Canada.

In light of these considerations, an interpretation of the right to remain in Canada that most effectively promotes the purposes of s. 6's mobility rights interest includes a right to move within Canada, including within and across provincial borders, without state restraint or a requirement for state authorization. Government actions that limit the ability of Canadians to move freely within Canada, except in a fleeting or trivial fashion, or make such movement contingent on state authorization infringe s. 6(1) of the *Charter*.

Further, s. 6(2) guarantees a right for citizens and permanent residents to move throughout Canada without restrictions. A bilingual interpretation of s. 6(2) shows it has a wide purpose and a broad scope, and guarantees the right to both move about the country and to establish a residence in any province. The French version of s. 6(2)(a) guarantees citizens and permanent residents a right "*de se déplacer dans tout le pays et d'établir leur résidence dans toute province*". The ordinary meaning of the

French "*de se déplacer dans tout le pays*" connotes a right to travel freely throughout Canada, and does not necessarily require any intent to settle in a location. The text of s. 6(2)(a) thus speaks to two distinct rights: (1) the right to travel throughout the country; and (2) the right to establish residence in any province. Nothing in the French text suggests that the second right qualifies or limits the first, and bilingual *Charter* interpretation does not look to the narrowest shared meaning. The English text of s. 6(2)(a) can support the dual rights approach that is clear in the French text.

Section 6(2)'s subheadings also diverge between the French — "*Liberté d'établissement*" — and English — "Rights to move and gain livelihood" — texts. The English subheading recognizes an unqualified right to move; the French subheading — which may suggest a focus on establishment rather than travel — cannot narrow the scope of the guarantee, given the clear breadth of the French text of s. 6(2). Collectively, when read together, they point towards rights to move, gain livelihood, and to establish oneself in a new province. The conclusion that s. 6(2)(a) protects a right to free movement throughout Canada is also consistent with Article 12 of the ICCPR, which guarantees a mobility right for everyone lawfully within the territory of a state. Section 6(2) guarantees rights for permanent residents, who alongside citizens form a broader subset of those lawfully within the territory of Canada.

Where a claimant establishes an infringement of a *Charter* right, the government may seek to justify the limit under s. 1. Section 1 both guarantees the rights and freedoms set out in the *Charter* and allows their reasonable limitation. The *Oakes*

test supplies the framework to determine when a limit on a *Charter* right can be justified under s. 1. The first stage assesses whether the legislative goal is pressing and substantial in a free and democratic society. If the court accepts that there is a pressing and substantial objective, it must determine whether the means the law employs to achieve the objective are reasonable. Whether a limit is reasonable is a question of proportionality which, under *Oakes*, has three components. First, the limit must be rationally connected to the objective. Second, the limit must minimally impair the right or freedom. Third, there must be proportionality between the salutary effects that result from the measure's implementation, and the deleterious effects that the measure has on rights and freedoms.

Although it is not an error of law to refer to the precautionary principle in a s. 1 analysis, there is no need to embed it into the analysis. The precautionary principle originated in the context of environmental policy. It calls for a preventive and anticipatory mindset to address the causes of environmental harms and states that the lack of full scientific certainty should not be used to justify inaction in the face of the threat of serious or irreversible environmental damage. The precautionary principle puts safety first and promotes life. It has similarities to, and may even intersect with, factors underpinning s. 1 and the *Oakes* test. However, transposing the precautionary principle onto the *Oakes* test would create problems of clarity and consistency. The principle originates in social science. It does not provide a clear legal framework and would import confusion into the s. 1 analysis. The concerns underlying the precautionary principle are already reflected under s. 1. The *Oakes* test is applied

flexibly and with a full understanding of the context of the state action in issue. The government is already accorded significant deference on complex policy issues, including where the evidence is inconclusive. Where there is a range of possible state responses to a serious policy issue, such as situations which involve emergent, novel, and urgent threats to human life, there may be room for debate about what will work and what will not, and the outcome may not be scientifically measurable. Courts recognize that governments enjoy a margin of appreciation, that a deferential approach can be applied to every stage of the *Oakes* test, and that each such stage contains a contextual standard. This recognition responds to the underlying concerns of the precautionary principle. The *Oakes* test remains the governing test and it is a responsive, flexible and nuanced standard for assessing whether a limit on a *Charter* right or freedom, even one enacted in an emergency, is justified in a free and democratic society.

In the instant case, the travel restrictions prevented T from entering the province for several days, until she finally received state authorization. These restrictions were not fleeting or trivial. They imposed a real limit on Canadians' freedom to move throughout Canada, and therefore infringed s. 6(1) and (2) of the *Charter*. However, the travel restrictions were demonstrably justified under s. 1. In the early days of the pandemic, growing numbers of cases and deaths paired with a lack of concrete medical and scientific evidence created an extraordinarily difficult situation where decisions had to be made swiftly to attempt to protect health and reduce further

loss of life. Newfoundland and Labrador's travel restrictions were a reasonable and justified measure in a free and democratic country in the COVID-19 pandemic.

Per Wagner C.J. and **Kasirer** and **Jamal** JJ. (dissenting in part): There is agreement with the majority that the appeal is moot but that the Court should exercise its discretion to hear the case. Moreover, there is agreement that T's right to interprovincial mobility was infringed and that the infringement was justified under s. 1 of the *Charter*. There is disagreement, however, that T's rights under s. 6(1) were infringed. Rather, it was T's right under s. 6(2)(a) of the *Charter* that was infringed. Section 6(1) only protects rights related to international mobility for Canadian citizens, while s. 6(2) protects interprovincial mobility within all of Canada for both citizens and permanent residents. More specifically, s. 6(2)(a) provides Canadian citizens and permanent residents, first, with the right to move temporarily from one province or territory to another and, second, with a separate right to take up residence on a lasting basis in any province or territory, while s. 6(2)(b) relates specifically to the interprovincial mobility rights of citizens and permanent residents to gain a livelihood in any part of the country.

A proper understanding of a *Charter* right requires that the two linguistic versions of the relevant provision be read together. Bilingual interpretation of *Charter* provisions proceeds in two stages. At the first stage, the two linguistic versions of the *Charter* provision are examined independently to determine, in each case, their ordinary and grammatical meaning. If a common meaning emerges, the analysis

proceeds to other indicia of meaning based on that shared text. If there is discordance in meaning between the two linguistic texts, the reader must attempt to reconcile the two versions, without relying on an absolute presumption favouring the narrower text or even the unambiguous text. If the two versions are irreconcilable, it is then necessary to rely on other principles and compare both possible meanings to the purpose and the context of the provision. Where the ordinary and grammatical meaning of one linguistic text is clear and the other ambiguous, the linguistic text that is plain reflects the two versions' reconciled, common meaning. At the second stage, the shared meaning must be assessed in light of the purpose of the *Charter* provision.

The French and English texts of s. 6(2)(a) express constitutional mobility rights differently. An ordinary and grammatical interpretation of the French text of s. 6(2)(a) ("*de se déplacer dans tout le pays et d'établir leur résidence dans toute province*") clearly directs that Canadian citizens and permanent residents hold two distinct interprovincial mobility rights: first, the right to move about in the whole of the country ("*de se déplacer dans tout le pays*"); and, second, the right to take up residence in any province ("*d'établir leur résidence dans toute province*"). It cannot be said, on an ordinary reading, that the words "*de se déplacer dans tout le pays*" are qualified by the words "*et d'établir leur résidence dans toute province*". The word "*et*" ("and") is a coordinating conjunction, not a term of qualification. Since s. 6(2)(a) was drafted with two verbs joined by a conjunction, this is a strong indication that this provision protects two distinct rights. Because of this two-part structure, the English version of s. 6(2)(a) ("to move to and take up residence in any province") could support a disjunctive

reading, in which physical movement and residential establishment are treated as distinct entitlements. However, it may also reasonably be read as setting out a unitary right to relocate to a province for the purpose of residence. At the first stage of bilingual interpretation, where one version is ambiguous and the other clear, the clear meaning is preferred. Here, the French text is clear and expansive, while the English text is reasonably capable of more than one meaning and is thus ambiguous. The French text, which conveys a dual guarantee, should therefore be preferred as a preliminary matter.

At the second stage, the purposes of s. 6(2) are better served by the dual-rights interpretation reflected in the unequivocal French text of s. 6(2)(a). Section 6(2) has a twofold purpose: first, fostering the individual autonomy and dignity of Canadian citizens and permanent residents by guaranteeing their ability to move freely across provincial boundaries in pursuit of personal or professional fulfillment; and, second, fostering Canada's unity within a federal system by facilitating mobility within the country, thereby contributing to social and economic cohesion. The purpose of preserving human dignity and autonomy is better served by interpreting s. 6(2) as protecting both a right to movement *simpliciter* and a right to take up residence. Preventing citizens and permanent residents from travelling temporarily to another province would undoubtedly infringe upon their dignity and autonomy. Moreover, the dual-rights interpretation holds true with respect to the purpose of maintaining a united federation. While the ability of citizens and permanent residents to settle permanently in another province certainly advances the objective of consolidating Canadian unity,

that objective is even more fully realized by guaranteeing fluid short-term mobility without undue legal barriers.

A purposive reading of s. 6(2)(a) must also account for international human rights instruments to which Canada is a party. For instance, like s. 6(2)(a), Article 12(1) of the ICCPR contains two aspects: a right to liberty of movement and a separate right to choose one's residence. This protection encompasses, like the French text of s. 6(2)(a) states unequivocally, movement *simpliciter*, distinct from relocation or economic migration.

The interpretation of s. 6(2)(a) as including interprovincial movement *simpliciter* is confirmed by considering s. 6 as a whole. A narrow single-right reading of s. 6(2)(a) would deprive it of meaningful force alongside s. 6(2)(b): if s. 6(2)(b) protects the right to work in another province without necessary relocation, as confirmed in *Law Society of Upper Canada v. Skapinker*, [1984] 1 S.C.R. 357, then s. 6(2)(a) can be understood to protect movement without work or residence. This internal coherence is reinforced by s. 6(3), which operates as a limit on the rights in s. 6(2) except where differential treatment is based primarily on province of residence. This supports the view that s. 6(2)(a) protects interprovincial mobility as a free-standing guarantee, distinct from the economic dimension protected by s. 6(2)(b).

Contrary to s. 6(2), s. 6(1) does not include a right to interprovincial movement *simpliciter*. First, s. 6(1)'s text does not support such a right. Read together, the words "remain", "enter" and "leave", and the shared word "Canada", protect the

rights of citizens to cross the country's international borders and to be free from state-imposed removal. The verb "to remain", read in its ordinary and grammatical sense, is the right to stay in Canada, to not be forced to leave Canada. To remain is not to move.

Second, s. 6(1)'s purpose does not support a right to interprovincial movement *simpliciter*. The interest protected by s. 6(1) is fundamentally concerned with banishment, expulsion, and the control of international borders. The fundamental purpose of s. 6(1) is to protect the "right to have rights": the rights to enter and remain in Canada under the protection of the *Charter* and to have access to the Canadian judicial system to enforce those rights. These concerns and interests are not engaged in the context of interprovincial mobility.

Third, s. 6(1)'s context does not support a right to interprovincial movement *simpliciter*. Recognizing under s. 6(1) the same right to interprovincial mobility as that recognized under s. 6(2) would imply that the *Charter* enshrines a second, ostensibly identical right to interprovincial movement *simpliciter* that is granted only to citizens, and not permanent residents, and that is not subject to the limitations in s. 6(3) and the special rule on affirmative action in s. 6(4). This would undermine the purpose of s. 6(2), which subjects interprovincial mobility, including that exercised by Canadian citizens, to ss. 6(3) and 6(4).

Per **Rowe** J. (dissenting in part): There is agreement with the majority that the Court of Appeal erred in refusing to exercise its discretion to hear the appeal, even

though the particular dispute is moot. Moreover, there is agreement that Newfoundland and Labrador's travel restrictions infringed s. 6 of the *Charter* and that this limitation was justified under s. 1. However, there is disagreement with respect to the analysis of s. 6 of the *Charter*: as held by the application judge, interprovincial travel *simpliciter* is protected by s. 6(1) but not by s. 6(2)(a).

The meaning of a right or freedom guaranteed by the *Charter* is ascertained through an analysis of the purpose of such a guarantee. The focus of the purposive approach must be on the interest the *Charter* provision protects.

Within the purposive approach, the analysis must begin by considering the text of the provision as the first indicator of purpose. The text of s. 6(1) captures a right of interprovincial travel *simpliciter*. Section 6(1) provides for the right to "remain in" Canada, which connotes a right to remain within the borders of Canada rather than a right only to stay in one's current location in Canada or a right only to stay in one's current province. The French text of s. 6(1) provides for the same interpretation. The right to remain in Canada must, of necessity, include the right to choose where in Canada one wishes to be from time to time, and the exercise of this right requires the ability to traverse provincial and territorial boundaries.

The subheading preceding s. 6(1) aids in interpreting the purpose of s. 6(1) and in identifying the interests falling within its scope. The *Charter*'s subheadings, like its headings, are the product of negotiation by the framers of the *Charter* and were deliberately included in the constitutional document. As components of the *Charter*,

they must bear on the interpretation of its provisions. In *Charter* interpretation, subheadings may provide similar assistance to that provided by headings. The subheading preceding s. 6(1) ("Mobility of citizens" in the English version and "*Liberté de circulation*" in the French version) assists in resolving the potential ambiguity of whether the right to remain in Canada provides only protection against exile, banishment, expulsion and, in some cases, extradition. The ordinary meaning of "mobility" and "*circulation*" supports the view that the totality of the three rights under s. 6(1) — the rights to enter, remain in, and leave Canada — reflects broader interests than a protection only against forced removal and a right to enter and exit the country: it suggests a right of citizens to move freely from place to place within Canada.

Contrarily, the text of s. 6(2)(a) does not capture a right of interprovincial travel *simpliciter*. Rather, it provides for a right of interprovincial mobility only for the purpose of changing one's residence. The French version of s. 6(2)(a) does not provide a compelling basis for concluding that s. 6(2)(a) provides for two rights, such that interprovincial travel *simpliciter* is a free-standing right, one that is separate from changing residence. The use of a coordinating conjunction — "and" in the English version of s. 6(2)(a) and "*et*" in the French version — indicates that the text of s. 6(2)(a) provides for a single, integrated right.

The subheading of s. 6(2) ("Rights to move and gain livelihood" in the English version and "*Liberté d'établissement*" in the French version) supports the interpretation that s. 6(2)(a) protects choice of residence, not a free-standing right to

interprovincial travel *simpliciter*. The contrast between the text of the subheadings of s. 6 provides additional textual direction as to the interests each subsection protects: s. 6(1) is aimed at the freedom to move about between one place and another (both inside Canada and between Canada and other countries), while s. 6(2)(a) is aimed at the freedom to establish one's residence in another province.

The internal context of s. 6 further supports the conclusion that the right to interprovincial travel *simpliciter* is protected by s. 6(1) but not by s. 6(2)(a). While s. 6(2) is subject to the express limitations set out in s. 6(3) and s. 6(4), s. 6(1) is free-standing. The purpose and meaning of s. 6(2)(a) must therefore be understood in the context of s. 6(3). The emphasis on one's place of residence in s. 6(3)(a) supports the conclusion that the mobility right in s. 6(2)(a) extends only to interprovincial travel in order to take up residence. Section 6(3)(b) similarly contains limiting language based on residency.

The history and jurisprudence demonstrate that s. 6 protects mobility rights as it relates to two purposes: upholding the rights of the citizen as a constituent of, and in furtherance of, Canadian nationhood, and protecting the dignity of the individual citizen. Underlying these purposes is a critical commonality: the ability of Canadians to move freely throughout their country. Section 6(2) furthers these dual purposes by protecting particular economic interests: s. 6(2)(b) protects the right to work in a province without having to become a resident there, and s. 6(2)(a) protects the right to take up residence in a province, which inherently encompasses a right to work in that

province. The right to remain in Canada under s. 6(1) serves the same dual purposes but addresses a different interest, one without the economic emphasis of s. 6(2). That interest is tied to the fact that a Canadian is a citizen of the whole country, not just a denizen of a province, and to the dignity that is inherent in an individual's autonomy, choice, and freedom from discrimination. The interest under s. 6(1) is therefore the protection of Canadians' ability to travel interprovincially, without regard to their purpose in travelling, and s. 6(1) provides for the right to interprovincial travel *simpliciter*.

Finally, the relevant international instruments — the ICCPR, the *European Convention on Human Rights* and the *Universal Declaration of Human Rights* — support and confirm a purposive interpretation of s. 6 as encompassing a right to interprovincial travel *simpliciter* within s. 6(1). Pre-*Charter* international instruments from which the drafters of the *Charter* drew inspiration can illuminate the historical origins of the concepts enshrined in a specific *Charter* right. Further, international instruments that have been ratified by Canada give rise to the rebuttable presumption of conformity, which provides that the *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in those international instruments. Instruments that postdate the *Charter* and which are not binding on Canada carry less interpretive weight than those that bind Canada (by virtue of ratification) and/or preceded the adoption of the *Charter*.

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By Karakatsanis and Martin JJ.

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Turpin, [1989] 1 S.C.R. 1296; *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862; *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559; *R. v. Collins*, [1987] 1 S.C.R. 265; *United States of America v. Cotroni*, [1989] 1 S.C.R. 1469; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Communauté urbaine de Montréal*, 2004 SCC 30, [2004] 1 S.C.R. 789; *R. v. Oakes*, [1986] 1 S.C.R. 103.

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APPEAL from a judgment of the Newfoundland and Labrador Court of Appeal (Fry C.J. and O'Brien and Boone JJ.A.), 2023 NLCA 22, [2023] N.J. No. 166 (Lexis), 2023 CarswellNfld 217 (WL), dismissing on ground of mootness an appeal from a decision of Burrage J., 2020 NLSC 125, [2020] N.J. No. 191 (Lexis), 2020 CarswellNfld 237 (WL). Appeal allowed in part, Wagner C.J. and Rowe, Kasirer and Jamal JJ. dissenting in part.

Shantona Chaudhury, *Paul J. Pape*, *John Drover* and *Mitchell McGowan*, for the appellants.

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Joseph Cheng and *Sharlene Telles-Langdon*, for the intervener Attorney General of Canada.

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Caroline Davison and *Mitchell O'Shea*, for the intervener Attorney General of Prince Edward Island.

Theodore J.C. Litowski and *Noah S. Wernikowski*, for the intervener Attorney General of Saskatchewan.

Catherine Boies Parker, K.C., and *Caroline North*, for the intervener Attorney General of the Yukon Territory.

John MacLean, for the intervener Attorney General of Nunavut.

Emily MacKinnon and *Emily Wang*, for the intervener British Columbia Civil Liberties Association.

Jessica Kuredjian and *Hardeep Dhaliwal*, for the intervener Canadian Constitution Foundation.

The judgment of Karakatsanis, Côté, Martin, O'Bonsawin and Moreau JJ. was delivered by

KARAKATSANIS AND MARTIN JJ. —

I. Overview

[1] Mobility rights sit at the heart of what it means to be a free person. The ability to move freely throughout one's country, without restriction or need for government authorization, often differentiates a liberal democracy from an authoritarian dictatorship. This appeal asks whether an interprovincial travel restriction, adopted during the early days of the COVID-19 pandemic, unjustifiably infringed Canadians' constitutionally protected freedom of movement. We answer that it did not. The travel restriction limited the constitutional right to free movement, but Newfoundland and Labrador has shown it was demonstrably justified.

[2] Broad mobility rights have existed at common law for almost a thousand years. At Confederation, these common law rights were embedded into Canada's legal and cultural framework. Since then, and with a few bleak exceptions, Canadians have enjoyed the freedom to move throughout this country for travel, work, or to take up residence. Similar mobility rights are protected under international law, and feature in the constitutional jurisprudence of other rights-respecting democracies. And in 1982, they were constitutionally entrenched in our own constitution, under s. 6 of the *Canadian Charter of Rights and Freedoms*.

[3] This Court's jurisprudence on s. 6 has emphasized the importance of free mobility to personal autonomy, identity, and dignity. We have also recognized that

protecting the right of all Canadians to move freely within this country promotes national unity and national identity.

[4] Before the pandemic, no Canadian court had been asked to recognize a *Charter* right to travel across provincial borders. The freedom to travel throughout the country as one desired, without government-imposed barriers, was seen as a given — an entitlement so central to our way of life that most Canadians likely assumed that it was already judicially recognized. Yet basic principles are often tested by exceptional circumstances, and that assumption came into sharp focus during the COVID-19 pandemic in Canada.

[5] The COVID-19 pandemic that hit the world in 2020 was an indisputable public health emergency. The virus was infectious and deadly. Canada confirmed its first case of the virus in January 2020. In the pandemic's early stages, governments grappled with the difficult yet urgent task of developing lifesaving measures in the face of limited and changing information. By September 2024, when Health Canada discontinued statistical reporting, millions of Canadians had been infected with the virus, and 60,871 Canadians had died of it.

[6] Canadians expected their governments to respect their rights and freedoms. Canadians also expected their governments to protect them from harm and save lives during an emergency. The pandemic placed those two imperatives in tension. Governments across Canada restricted personal rights and freedoms to limit person-to-person contact and combat the spread of the deadly virus.

[7] This appeal relates to one such restriction — a partial travel ban imposed in Newfoundland and Labrador.

[8] In May 2020, the Chief Medical Officer of Health (CMOH) of Newfoundland and Labrador ordered that non-residents of the province — including Canadians living in other provinces and territories — be prohibited from entering the province, subject to narrow exceptions. Only the CMOH retained the discretion to authorize non-residents to enter in extenuating circumstances. Thus, the freedom of Canadians to travel across provincial borders became subject to government authorization.

[9] In May 2020, the appellant, Kimberley Taylor, attempted to enter Newfoundland and Labrador, where her mother had died unexpectedly. She wanted to attend the burial, grieve with her family, and help her elderly father. But as a non-resident of the province, she was denied permission to enter. She requested an exemption from the relevant authorities, who took 10 days before authorizing her entry into the province. Ms. Taylor, joined by the Canadian Civil Liberties Association (CCLA), seeks a declaration that this travel restriction unjustifiably violated s. 6 of the *Charter*. The province resists. First, the province denies that s. 6 — the "Mobility Rights" or "*Liberté de circulation et d'établissement*" section of our *Charter* — guarantees a right to move across provincial borders for temporary travel. In the alternative, it submits that their travel restriction was a justified infringement under s. 1 of the *Charter*.

[10] We conclude that the s. 6 "mobility rights" of the *Charter* guarantee Canadian citizens and permanent residents the right to travel freely throughout Canada, including across provincial borders. Laws that prevent free movement, or which make movement contingent on government approval, infringe s. 6. Newfoundland and Labrador's travel restrictions did just that.

[11] As with all laws that limit rights, the government can seek to justify the limit under s. 1. While travel bans and other significant infringements on mobility will generally not be justifiable in a free and democratic society, this was a grave emergency. That said, a public health emergency does not give the government free rein to suspend fundamental rights and freedoms. Courts must still rigorously review emergency measures for *Charter* compliance under the proportionality analysis outlined in *R. v. Oakes*, [1986] 1 S.C.R. 103.

[12] We conclude that Newfoundland and Labrador's travel restrictions pass scrutiny under *Oakes*. Travel restrictions were a reasonable component of a comprehensive government response to the extraordinary crisis of the pandemic — especially its early stages. The record shows that Newfoundland and Labrador had a population that was uniquely vulnerable to COVID-19, and a low capacity to provide medical treatment in case of widespread illness. Other Attorneys General intervened to emphasize the limited options open to smaller, more isolated provinces and territories. In these circumstances, the province justifiably chose to enact significant restrictions on movement to minimize the spread of the virus into its borders in the first place. It

has demonstrated that no less-infringing alternative measure would have achieved its aim. In these circumstances, the benefits of saving lives and protecting health outweighed the temporary limits on free movement.

[13] The public health restrictions enacted during the COVID-19 pandemic exist now only in memory. This case is therefore moot. But unlike the Court of Appeal, we exercise our jurisdiction to hear this important case on its merits. We agree with the application judge's conclusion that the challenged travel restrictions were constitutional, although we would recognize that the laws in question limited s. 6(2), in addition to s. 6(1) of the *Charter*. Accordingly, we would allow the appeal in part.

II. Background

A. *The COVID-19 Pandemic in Newfoundland and Labrador*

[14] In December 2019, the World Health Organization (WHO) was alerted to the existence and spread of a pneumonia-like virus in China. In early January 2020, China confirmed that the cause was a novel coronavirus. The virus was eventually labelled SARS-CoV-2, and caused the disease that would come to be known as COVID-19.

[15] On January 15, 2020, the Public Health Agency of Canada activated its Emergency Operation Centre to support Canada's response to the virus. On January

25, Canada recorded its first case of COVID-19. And on March 9, Canada recorded its first death relating to the virus.

[16] On March 11, 2020, the WHO officially declared the global outbreak of COVID-19 as a pandemic. Three days later, Newfoundland and Labrador recorded its first case of COVID-19. On March 18, the province declared a public health emergency, under s. 27 of the *Public Health Protection and Promotion Act*, S.N.L. 2018, c. P-37.3 (*PHPPA*).

[17] At the time of the application in this case, 8,684 Canadians, and 528,204 people worldwide, had died due to COVID-19. No vaccine or therapy to treat or prevent the virus existed. Long-term outcomes for those who survived the virus were unknown. The WHO anticipated that no vaccine would be developed before 2021. Dr. Janice Fitzgerald, Newfoundland and Labrador's CMOH, swore to the following in July 2020, as part of these proceedings:

> In the absence of a vaccine or treatment, we must rely upon public health measures, both community and personal, rapid case identification and isolation, and rapid identification, quarantine, and testing of close contacts of cases. The goal is to identify and isolate all cases and contacts so that the virus is not spread further throughout the community. Public health measures are non-medical actions taken to reduce the spread of disease or illness.
>
> (A.R., vol. III, at p. 193)

[18] Dr. Patrick Parfrey gave undisputed evidence before the application judge that Newfoundland and Labrador "has the lowest life expectancy and health status in

Canada. When evaluated by risk factors for adverse outcomes for COVID-19, Newfoundland and Labrador has the highest rate in Canada for many of these risk factors" (A.R., vol. II, at p. 94).

[19] At the relevant time, there were 1,376 hospital beds and 92 intensive care unit (ICU) beds in Newfoundland and Labrador. The ICU occupancy rate consistently hovered at 50-60 percent. Modelling indicated that if the province experienced significant spread and infection of this new disease, the ICU capacity would quickly be overwhelmed.

[20] Nonetheless, Newfoundland and Labrador largely avoided significant outbreaks and spread of the virus during the first wave of COVID-19. A notable exception occurred at Caul's Funeral Home in St. John's. About 350 people visited the funeral home over March 15-17, 2020. Ninety-three of them developed COVID-19, and four generations of additional spread were traced back to this one event, including five ICU admissions and two deaths. Dr. Fitzgerald deposed that "[t]he Caul's outbreak was an example of the impact that infected travelers can have on rapid spread of the virus in settings such as close gathering events" (A.R., vol. III, at p. 197). She responded to this outbreak by ordering everyone who had attended the funeral home over the period of exposure to self-isolate.

[21] To further prevent the spread of the virus, Dr. Fitzgerald made a series of general orders for "Special measures" under s. 28 of the *PHPPA*. This section authorizes the CMOH to take a wide variety of measures "for the purpose of protecting

the health of the population and preventing, remedying or mitigating the effects of the public health emergency". For example, from March to July 2020, Dr. Fitzgerald ordered:

- a ban on funerals, visitations, and wakes;
- a ban on any public gathering larger than a certain size, varying from 5 to 50 people;
- a requirement that persons required to self-isolate remain on their own property;
- the closure of all campsites in municipal and privately-owned parks;
- the closure of non-urgent private health care clinics;
- the closure of gyms, cinemas, performance spaces, arenas, spas, hair salons, non-essential retail stores, bingo halls, restaurants, and other non-essential services;
- a ban on non-essential visits to personal care homes; and
- a requirement that all persons arriving in Newfoundland and Labrador self-isolate for 14 days.

[22] Under s. 28.1 of the *PHPPA*, the Minister of Justice and Public Safety had broad powers to enforce these orders, including to detain and convey persons

contravening an order to a specified location. Failure to comply could also lead to a sentence of a fine or imprisonment under s. 56.

[23] The spring and summer of 2020 was a time of great uncertainty. The virus spread quickly, killed many, and led governments to enact emergency restrictions. These restrictions were designed to slow the spread of COVID-19, and limited individual freedoms in ways that were previously unimaginable. It is no exaggeration to say that virtually every aspect of life changed during the extraordinary circumstances of the pandemic, as Canadians were urged and indeed mandated to stay home and prevent the spread of a virus whose full features were largely not understood.

B. *The Travel Restrictions*

[24] On April 29, 2020, Dr. Fitzgerald issued Special Measures Order (Amendment No. 11), to come into force on May 4. It prohibited entry into Newfoundland and Labrador for everyone except residents of the province, asymptomatic essential workers who needed to travel into the province for work, and persons in certain towns on the Labrador-Quebec border. The Order defined "residents" as persons lawfully entitled to be in Canada who made their home in the province and were "ordinarily present" there, excluding tourists, "transient[s]", or visitors. It also allowed individuals in extenuating circumstances, as approved in advance by the CMOH, to enter the province.

[25] On May 5, Dr. Fitzgerald issued another Special Measures Order. It clarified that certain categories of persons could request an exemption to enter the province, including persons with significant injuries requiring the support of family members residing in the province, persons returning from out-of-province schooling, and persons visiting family members who were "critically or terminally ill" (A.R., vol. IV, at pp. 89-91). As of June 23, the CMOH had received 8,606 exemption requests to enter Newfoundland and Labrador. Ms. Taylor was one such applicant.

[26] Together, these two Special Measures Orders are the subject of this appeal. We refer to them as the "Travel Restrictions". They prevented the vast majority of persons who did not ordinarily reside in Newfoundland and Labrador, including Canadians living in other parts of the country, from entering the province without permission from a government official.

C. *Ms. Taylor's Attempt to Enter Newfoundland*

[27] Ms. Taylor was born in Newfoundland. She moved to Nova Scotia in 1996, and lived there when the pandemic began. She made regular trips back to Newfoundland to visit her family, including her parents.

[28] On May 5, 2020, Ms. Taylor's mother unexpectedly passed away. Ms. Taylor immediately made plans to travel to Newfoundland to be with her grieving family, and to attend the burial.

[29] On the morning of May 6, Ms. Taylor emailed the CMOH and asked for an exemption to enter Newfoundland, so that she could "grieve with [her] family" (A.R., vol. II, at p. 76). She sent another email that afternoon, expressing distress that the process was taking so long. On May 8, the Office of the CMOH responded, expressing sympathy for her loss, but denying Ms. Taylor's request.

[30] On May 14, Ms. Taylor submitted a reconsideration request. She indicated that given the passage of time, her reason for wanting to enter Newfoundland had "shifted to the care of [her] elderly father" (A.R., vol. IV, at p. 378). She explained that she had a plan to self-isolate for 14 days upon entry to the province.

[31] Ms. Taylor and her family could not finalize funeral plans while her request to enter the province was pending. She deposed that: "My family and I had many emotional telephone and video calls as we waited for a response from the Government of Newfoundland and Labrador" (A.R., vol. II, at p. 74).

[32] On May 16, Ms. Taylor's reconsideration request was approved and she was permitted to enter Newfoundland and Labrador.

D. *Procedural History*

(1) Supreme Court of Newfoundland and Labrador, 2020 NLSC 125 (Burrage J.)

[33] Ms. Taylor and the Canadian Civil Liberties Association sought a declaration that the Travel Restrictions infringed the mobility rights in s. 6 of the *Charter*, could not be justified under s. 1, and were of no force and effect. Justice Burrage granted the CCLA public interest standing.

[34] The application judge canvassed the jurisprudence on s. 6 and concluded that no previous decision squarely addressed whether it guaranteed a right to travel across provincial borders. Interpreting s. 6 "generously in light of the interests the *Charter* was designed to protect" (para. 337), he concluded that s. 6(1) guaranteed to Canadian citizens a right to travel across provincial borders, but that s. 6(2) did not. He therefore held that the Travel Restrictions infringed Ms. Taylor's "right to mobility as guaranteed by s. 6(1)" (para. 366).

[35] Justice Burrage began his s. 1 analysis by discussing the legislative context. He referred to the nature of the harm of COVID-19, the particular vulnerability of Newfoundland and Labrador, the practical impact of the Travel Restrictions on Ms. Taylor's mobility, and the institutional capacity of the court. He had no difficulty finding that the objective of protecting those in the province "from illness and death arising from the importation and spread of COVID-19 by travelers" was pressing and substantial, and that the Travel Restrictions were rationally connected to this goal (para. 436).

[36] On minimal impairment, Burrage J. emphasized judicial deference to expert public health officials, especially given the level of scientific uncertainty and the

prospect of serious harms. He noted that the Travel Restrictions were merely one component of a "multipronged" approach to "wrestling this disease into submission" (paras. 471 and 486). Ultimately, he concluded that no less-infringing measure would be an effective substitute. While a requirement that travelers self-isolate could be effective, it would inevitably rely on voluntary compliance, which could not be counted upon during an emergency. Compulsory testing of travelers was also not an effective substitute, given the high rate of false negatives for COVID-19 tests. Because the Travel Restrictions were effective, and allowed for exemptions, they passed the minimal impairment test.

[37] Finally, Burrage J. addressed whether the salutary effects of the Travel Restrictions outweighed their deleterious effects. He held that it was obvious that they did, because the collective benefit to the population of the Travel Restrictions outweighed any impact on personal travel. He concluded: "In the circumstances of this case Ms. Taylor's *Charter* right to mobility must give way to the common good" (para. 492).

(2) Court of Appeal of Newfoundland and Labrador, 2023 NLCA 22 (Fry C.J. and O'Brien and Boone JJ.A.)

[38] Ms. Taylor and the CCLA appealed. Before the appeal could be heard, the Travel Restrictions were repealed. The appellants and the province agreed that the appeal was moot, but asked the Court of Appeal to exercise its discretion to decide the

case on the merits, given the significant nature of the legal issues and the need to provide legal guidance in case of a future pandemic.

[39] The Court of Appeal declined to adjudicate the moot appeal. Citing *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, it held that there was no adversarial context, that judicial economy militated against expending resources in this case, and that "[e]xercising discretion to hear a moot appeal when the legislation or government action giving rise to the litigation no longer exists would be outside the traditional role of the court" (para. 38).

[40] The Court of Appeal therefore dismissed the appeal as moot, without considering the merits of the claims under ss. 6 and 1 of the *Charter*.

III. Issues Before the Court

[41] Three issues arise in this appeal:

(1) Should this Court exercise its discretion to adjudicate this moot appeal?

(2) Did the Travel Restrictions infringe s. 6 of the *Charter*?

(3) If so, were the Travel Restrictions justified under s. 1 of the *Charter*?

A. *The Moot Appeal Should Be Decided*

(1) Discretion to Hear a Moot Appeal

[42] In *Borowski*, this Court explained that courts should generally decline to decide a case which raises a merely hypothetical or abstract question. Ordinarily, courts do not pronounce on the law when their decisions will have no practical effect on the rights of the parties. However, they will in exceptional circumstances.

[43] In deciding whether to hear a potentially moot appeal, courts must ask two questions (*Borowski*, at p. 353). First, is there a continuing live issue between the parties, or has the concrete dispute disappeared such that the issues have become academic? If there is no remaining live issue, the issue is moot. Second, despite the case's mootness, should the court exercise its residual discretion to hear the appeal?

[44] The "*Borowski* criteria" guide that discretion. An appellate court should consider: (1) the existence of an adversarial context; (2) judicial economy; and (3) the need to limit courts to their proper adjudicative role. Exercising discretion requires consideration of each rationale in a process that recognizes that they "may not all support the same conclusion. The presence of one or two of the factors may be overborne by the absence of the third, and vice versa" (*Borowski*, at p. 363; see also *R. v. Smith*, 2004 SCC 14, [2004] 1 S.C.R. 385, at para. 39).

[45] All parties recognize this appeal is moot: the authorities eventually permitted Ms. Taylor to enter the province, and by the time this matter came before the

Court of Appeal, the Travel Restrictions were no longer in effect. The Court of Appeal declined to exercise its discretion to hear the appeal.

[46] A discretionary judicial decision is owed deference on appeal (*Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, at pp. 76-77). An appellate court may interfere, however, when a lower court errs in principle, makes a palpable and overriding factual error, acts arbitrarily, or reaches a conclusion that is clearly wrong (*Saskatchewan (Environment) v. Métis Nation – Saskatchewan*, 2025 SCC 4, at para. 32). With respect, the Court of Appeal erred in assessing the relevant considerations.

[47] Even had we found no error in the Court of Appeal's exercise of discretion, this Court has a broad power under s. 40(1) of the *Supreme Court Act*, R.S.C. 1985, c. S-26, to hear a moot appeal and conduct its own analysis of the merits (see, by analogy, *MacDonald v. City of Montreal*, [1986] 1 S.C.R. 460, at p. 508; *Roberge v. Bolduc*, [1991] 1 S.C.R. 374, at pp. 392-93; see also *R. v. Comeau*, 2018 SCC 15, [2018] 1 S.C.R. 342, at para. 21).

[48] The following analysis shows how the Court of Appeal erred in its approach to this matter and explains why we conclude the appeal before this Court meets all three of the *Borowski* criteria.

(2) Criteria to Hear a Moot Appeal

(a) *The Existence of an Adversarial Context*

[49] A court's competence to resolve legal disputes is rooted in the adversarial system (*Borowski*, at p. 358). Our system of justice presumes that the best judicial outcomes emerge when courts hear contrasting points of view from parties who "present the evidence and relevant arguments fully and skillfully" (*Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 S.C.R. 524, at para. 29; see also L. M. Sossin and G. Kennedy, *Boundaries of Judicial Review: The Law of Justiciability in Canada* (3rd ed. 2024), at pp. 270-71). In the mootness context, this rationale is fulfilled if "despite the cessation of a live controversy, the necessary adversarial relationships will nevertheless prevail" (*Borowski*, at p. 359).

[50] In considering this factor, the Court of Appeal stated that the "adversarial context requires more than parties willing to present opposing positions" (para. 20). It was concerned that the parties disagreed on which questions they wanted decided and, "[m]ore importantly", that the parties did not raise all the possible sources for a right to interprovincial travel (para. 24). Thus, according to the Court of Appeal, answering the questions that the parties wished to argue would not necessarily resolve the "real world questions" as to whether such a right exists and where that right is found (para. 24; see also paras. 19-23 and 25).

[51] With respect, the Court of Appeal erred in concluding that it was not equipped with a sufficient adversarial context to resolve the appeal. A sufficient

adversarial context does not require complete overlap on the issues raised by the parties, nor does it demand that the parties provide all possible answers to a legal question. Rather, it will exist where the issues were "well and fully argued by parties who have a stake in the outcome" (*Borowski*, at pp. 358-59).

[52] The sophisticated parties to this appeal have vigorously presented considered and opposing arguments on the interpretation of s. 6 of the *Charter*. While the specific dispute between Ms. Taylor and the province may be moot, the legal question of whether the *Charter* protects a right to interprovincial travel is very much alive. The parties also differ in their proposed approach to s. 1 and the conclusion that should be reached.

[53] In any event, we are not persuaded that the parties "do not agree on the questions that they want this Court to decide" (C.A. reasons, at para. 23). With respect, there was unanimity over the questions asked of the court, and all parties want to have these questions answered. It follows that this criterion favours hearing the moot appeal.

(b) *Judicial Economy*

[54] *Borowski* noted the unfortunate reality that there is a need to ration scarce judicial resources among competing claims. Routinely adjudicating moot appeals could divert resources from proceedings that have an immediate, practical impact. Even so, there will be special circumstances where the nature of a moot case makes it worthwhile to apply the necessary resources to resolve it (p. 360).

[55] The concern for conserving judicial resources is partially answered if the court's decision will have some practical effect on the rights of the parties, even if the precise controversy which gave rise to the action no longer exists. Another instance is when the legal issue in dispute is recurring in nature, but of brief duration: "In order to ensure that an important question which might independently evade review be heard by the court, the mootness doctrine is not applied strictly" (*Borowski* at p. 360; see also *R. v. McNeil*, 2009 SCC 3, [2009] 1 S.C.R. 66, at para. 2; *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250, at para. 17; R. J. Sharpe and K. Roach, *The Charter of Rights and Freedoms* (7th ed. 2021), at p. 136).

[56] The significance of the legal issue at stake is also a consideration when assessing whether a court should hear a moot appeal (G. J. Kennedy and L. Sossin, "Justiciability, Access to Justice and the Development of Constitutional Law in Canada" (2017), 45 *Fed. L. Rev.* 707, at p. 717). In *Reference re Objection by Quebec to a Resolution to amend the Constitution*, [1982] 2 S.C.R. 793, the question of the constitutionality of the patriation of the Constitution was rendered moot by its occurrence. In exercising its discretion to hear the appeal, this Court considered the importance of the constitutional issue and whether "it appears desirable that the constitutional question be answered in order to dispel any doubt over it" (p. 806).

[57] However, the mere presence of an issue of national importance, or the fact alone that a case is raising a point likely to recur, is not a reason for hearing a moot

appeal — there must be "the additional ingredient of social cost in leaving the matter undecided" (*Borowski*, at p. 362).

[58] The Court of Appeal in this case was not convinced that it could provide helpful guidance on what travel restriction might be acceptable in a future public health emergency. Several other courts of appeal have considered challenges to emergency restrictions enacted to respond to COVID-19, many of which were moot by the time the appeal was heard. Courts have divided on whether to hear the moot appeals (see, e.g., *Beaudoin v. British Columbia (Attorney General)*, 2022 BCCA 427, 99 B.C.L.R. (6th) 89; *Gateway Bible Baptist Church et al v. Manitoba et al*, 2023 MBCA 56, 484 D.L.R. (4th) 591; *Harjee v. Ontario*, 2023 ONCA 716; and *Peckford v. Canada (Attorney General)*, 2023 FCA 219).

[59] In our view, judicial resources are well-spent in deciding this appeal. This is the first occasion where our Court has heard a constitutional challenge to an emergency measure adopted during COVID-19. It involves the application of a *Charter* right to an unprecedented provincial travel restriction. These are legal issues of manifest public importance. There is also a clear social cost in leaving the question of the constitutionality of state limitations on mobility unconsidered. As the Court of Appeal acknowledged, "the parties are perhaps correct in suggesting that the scientific evidence in the record suggests that another pandemic will happen in the future" (para. 30).

[60] Further, this appeal relates to an issue of a recurring but brief nature, that may otherwise evade review. Emergency public health measures are designed to be temporary. It is to be hoped that medical threats like a pandemic will be time limited. Questions around the legality of any resulting measures may become moot quickly, while a constitutional challenge can take years to reach appellate courts. We agree with the appellants that the transitory nature of these restrictions should not immunize them from judicial review.

(c) *The Need to Limit Courts to Their Proper Adjudicative Role*

[61] The last rationale from *Borowski* is grounded in Canada's separation of powers, underscoring how courts must be sensitive to their adjudicative role and avoid intruding into the role of the legislative branch (p. 362).

[62] The Court of Appeal found that exercising its discretion to hear a moot appeal when the law giving rise to the litigation no longer exists would be outside the traditional role of the court. On this point, we note that while the Travel Restrictions were repealed, the CMOH still holds power under s. 28(1)(h) of the *PHPPA* to restrict travel into the province. It is in the public interest to address the merits of this case to settle the state of the law. This is not a request for an advisory opinion in the abstract or a discussion of *Charter* rights at large. Instead, this Court's interpretation of s. 6 of the *Charter* and the rights it protects will have broader implications that immediately impact the parties and society. The courts have a duty to answer such questions (*R. v. Desautel*, 2021 SCC 17, [2021] 1 S.C.R. 533, at para. 84; L. Sossin, "The Unfinished

Project of *Roncarelli v. Duplessis*: Justiciability, Discretion and the Limits of the Rule of Law" (2010), 55 *McGill L.J.* 661). Determining whether the Travel Restrictions were constitutional is a judicial function that lies at the core of the Court's jurisdiction and does not inappropriately encroach on the role of the legislature.

[63] This appeal meets the *Borowski* criteria for hearing a moot appeal. We now turn to the merits of the appeal.

B. *The Travel Restrictions Infringed the Right of Mobility Under Section 6(1) and (2) of the Charter*

[64] This is a question of first instance for our Court. While we have interpreted other aspects of the mobility rights section of the *Charter*, such as the right to interprovincial mobility for the purpose of pursuing a livelihood, we have never been asked to interpret whether s. 6 includes a right of movement *simpliciter* — that is, a right to travel freely within Canada for any purpose, including within and across provincial borders. As the respondents conceded at oral argument, most Canadians would naturally assume that this right exists (transcript, at pp. 62-63).

[65] The parties and interveners divided on whether the right exists at all, and on its constitutional source if it does. Some suggested it is protected by s. 6(1), which applies only to citizens. Others invoked s. 6(2), which applies to citizens and permanent residents, but can be limited by provincial laws as described in s. 6(3). In our view, a broad right to mobility *simpliciter* is foundational to s. 6 as a whole. Subsections (1)

and (2) focus on different aspects of the right of free movement; s. 6 as a whole is most coherent if a broad right to move freely is understood as underlying the more specific rights in both subsections.

[66] As we explain, s. 6 guarantees broad rights of mobility and establishment. Like all *Charter* rights, we must interpret s. 6 in light of the interests it protects. Freedom of movement has always played a key role in the Canadian constitutional tradition. It also features prominently in international human rights and comparative constitutional law, the jurisprudence on related *Charter* rights, and in the clear text of s. 6.

[67] Section 6 protects the foundational interest of a person's freedom to choose where to be at any given time. Freedom of movement, without constraint or coercion, is essential to individual autonomy, dignity, and self-realization. It lies at the heart of the Canadian understanding of a free and democratic society — a political tradition that does not curtail movement, impose curfews, or require people to carry identity papers in public. Freedom of movement also supports national unity within the diverse Canadian federation. Section 6 recognizes that the freedom of Canadians to move freely within Canada, subject to the distinct laws of different provinces, promotes a sense of national unity and kinship, furthering the nation-building objective of the *Charter* itself. All of these interests unite s. 6's guarantees of rights to move, whether for travel, residence, or work.

[68] Applying a purposive methodology, we conclude that s. 6 guarantees a right to move freely within Canada, including across provincial borders, to both citizens and permanent residents. Generally, any law that limits, in a non-fleeting or non-trivial fashion, these persons' ability to move within Canada, or which makes such movement contingent on state authorization, will infringe s. 6.

[69] Recognizing this right does not mean recognizing an absolute or unlimited guarantee of free movement. Section 6 contains its own requirements and, like all *Charter* rights and freedoms, it is subject to reasonable limits, including those necessary to protect public safety, health, or the rights of others. But given the fundamental importance of free movement within Canada, the onus is firmly on the state under s. 1 of the *Charter* to justify them.

(1) The Methodology of *Charter* Interpretation

[70] *Charter* interpretation is crucially different from statutory interpretation (J. Weinrib, "What Is Purposive Interpretation?" (2024), 74 *U.T.L.J.* 74, at p. 83). The *Charter* entrenches protections for fundamental rights and freedoms in our Constitution. Unlike a statute that speaks to present rights and obligations — and that in comparison, can be easily enacted, amended, or repealed — the *Charter* "is drafted with an eye to the future", and its purpose is to provide a "continuing framework for the legitimate exercise of governmental power and . . . for the unremitting protection of individual rights and liberties" (*Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, at p. 155; see also L. E. Weinrib, "The Canadian Charter's Transformative Aspirations"

(2003), 19 *S.C.L.R.* (2d) 17). Like a "living tree", it must be "capable of growth and expansion within its natural limits" (*Hunter*, at pp. 155-56, quoting *Edwards v. Attorney-General for Canada*, [1930] A.C. 124 (P.C.), at p. 136).

[71] For more than 40 years, this Court has made these principles meaningful by interpreting the *Charter* purposively. In what follows, we review and reaffirm our longstanding purposive approach. We also discuss the sources on which courts rely to determine the purpose of a constitutional right.

[72] This Court first outlined a methodology for interpreting the *Charter* in *Hunter*. Speaking for a unanimous Court, Dickson J., as he then was, cautioned that courts cannot interpret the *Charter* "by recourse to a dictionary, nor for that matter, by reference to the rules of statutory construction" (p. 155). Instead, he explained that the *Charter* is a "purposive document" that requires a "broad, purposive analysis, which interprets specific provisions . . . in the light of its larger objects" (p. 156). A court can only interpret the meaning of a particular right or freedom by first delineating "the nature of the interests it is meant to protect" (p. 157).

[73] Justice Dickson expanded on this purposive approach in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, and later, as Chief Justice, in *Oakes*. He explained that the purpose of a right or freedom is found in both "the interests it was meant to protect" (*Big M*, at p. 344) and "the cardinal values it embodies" (*Oakes*, at p. 119). Put differently, the purpose of a right or freedom is to protect the interests and values embodied by the individual *Charter* provision. So, before a court can interpret *how* the

Charter restrains state action, it must first determine *what* interests the provision in question protects, and *why* it protects them. That requires a generous rather than legalistic approach, aimed at securing the full benefit of the *Charter*'s protection (*Big M*, at p. 344). Two examples illustrate this methodological approach.

[74] In *Hunter*, the Court did not define the guarantee in s. 8 as simply a right against unreasonable search and seizure. Instead, the Court construed the protections of s. 8 as relating at a minimum to the right of privacy, which in turn protects the "public's interest in being left alone by government" (pp. 159-60). Only after determining what interest s. 8 protects and why, did the Court determine how s. 8 restrained the state: namely, by preventing unreasonable state intrusions upon reasonable expectations of privacy.

[75] Similarly, in *Big M*, the Court did not decide which state actions are prohibited by s. 2(a)'s freedom of conscience and religion until after it rigorously determined the values underlying that freedom (pp. 346-47). The Court looked first to the underlying objectives of the *Charter* as a whole, including respect for freedom, equality, and human dignity (pp. 336-37). It then rejected the notion that freedom of religion is limited to an "anti-establishment" principle, or to the degree to which freedom of religion was enjoyed by Canadians before the proclamation of the *Charter* (pp. 339-44). Instead, the Court identified the essence of free conscience and religion as "[t]he ability of each citizen to make free and informed decisions" (p. 346). Section 2(a) preserves this interest to safeguard "basic beliefs about human worth and dignity"

and "a free and democratic political system" (p. 346). Only with these underlying interests in mind did the Court then interpret s. 2(a) as guaranteeing that the government could not "coerce individuals to affirm a specific religious belief or to manifest a specific religious practice for a sectarian purpose" (p. 347).

[76] In *Big M*, Dickson J. elaborated on the sources which courts must consult to determine the underlying interests and purposes of a *Charter* guarantee. He explained that a provision must be understood in light of (1) the character and the larger objects of the *Charter* itself; (2) the language chosen to articulate the specific right or freedom; (3) the historical origins of the concept enshrined; and (4) where applicable, the meaning and purpose of the other specific rights and freedoms with which it is associated (p. 344). We have since identified others, including international and comparative constitutional law, and — to a lesser extent — the drafting history of a provision.

[77] A purposive interpretation starts with the broad objective of the *Charter*: constitutionally enshrining fundamental rights and freedoms. The most essential purpose of the *Charter* "is to entrench certain basic rights and freedoms and immunize them from legislative encroachments" (*R. v. Whyte*, [1988] 2 S.C.R. 3, at p. 14, per Dickson C.J.). Section 52 of the *Constitution Act, 1982* provides that the *Charter*, as part of the Constitution, is the supreme law of Canada and any law that is inconsistent with it is to the extent of the inconsistency of no force and effect. As Wilson J. observed in *R. v. Morgentaler*, [1988] 1 S.C.R. 30, "the rights guaranteed in the *Charter* erect

around each individual, metaphorically speaking, an invisible fence over which the state will not be allowed to trespass" (p. 164).

[78] The *Charter* is structured as a broad guarantee of rights and freedoms, subject under s. 1 to such reasonable limitations prescribed by law that can be demonstrably justified by the government in a free and democratic society. Justice Dickson elaborated on this theme of the *Charter* as an instrument of reasonable freedom, discussing how a "truly free society" is one "which aims at equality with respect to the enjoyment of fundamental freedoms", and how "[f]reedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person" (*Big M*, at p. 336). The exact contours of a *Charter* provision's guarantee must be interpreted recognizing that "[o]ne of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint" (p. 336). Courts therefore interpret *Charter* guarantees broadly, recognizing that under s. 1 the state can justify reasonable limits on those broad rights to protect public safety, order, health, morals, or the fundamental rights and freedoms of others (pp. 336-37).

[79] The text of a constitutional right is embedded in the *Charter*, and so takes its context from the *Charter*'s overall purposes. A court begins the interpretive exercise by first reading the words of the provision (*Quebec* (*Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, [2020] 3 S.C.R. 426, at para. 8; *Desautel*, at para. 18). The text of a particular provision is a key indicator of the interests it protects and why it does so (*R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353, at para. 15; *R. v. Poulin*, 2019

SCC 47, [2019] 3 S.C.R. 566, at para. 64; see also *Caron v. Alberta*, 2015 SCC 56, [2015] 3 S.C.R. 511, at para. 36). It contributes to the scope of the provision's possible linguistic meaning, and also guides the court to relevant bodies of history, international law, and other indicators of the interests to be protected. Similarly, headings are probative of a right's purposes, and "the Court must take them into consideration" when interpreting a right or freedom (*Law Society of Upper Canada v. Skapinker*, [1984] 1 S.C.R. 357, at p. 376). But there is no place for rigid textualism (*9147-0732 Québec inc.*, at para. 12). Justice Dickson's admonition from *Hunter* not to read the *Charter* as if it were ordinary legislation remains true. *Charter* interpretation is a unique, purposive methodology.

[80] The historical origins of the right in question provide another interpretive source of purpose. The rights the *Charter* protects are "rooted in and hence to some extent defined by historical and existing practices" (*Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158, at p. 181; see also *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 49). Understanding those norms helps delineate the interests and values the rights and freedoms serve, and offers clues as to why they are constitutionally enshrined. Yet constitutional meaning is not frozen by the past. This part of the analysis does not look to the content of the right at the time of ratification or the scope that the framers would have afforded to the provision. It examines "historical and existing practices" to determine "the broader philosophy underlying the historical development of the right" (*Reference re Prov. Electoral Boundaries (Sask.)*, at p. 181). The living tree's roots offer guidance, but it "must be

capable of growth to meet the future" (p. 180). A right's historical origins may reveal something about the interests underlying it, or shed light on why those interests are important, but it does not restrict the form their protection may take.

[81] Other provisions of the *Charter* may also assist the search for purpose. The *Charter* is a system where "[e]very component contributes to the meaning as a whole, and the whole gives meaning to its parts" (*Dubois v. The Queen*, [1985] 2 S.C.R. 350, at p. 365, quoting P.-A. Côté, *The Interpretation of Legislation in Canada* (1984), at p. 236). As a starting point, that means there is no hierarchy of rights, and courts must avoid interpretations that privilege one right at the expense of another (*Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, at p. 877). But other provisions do more than preclude conflicting interpretations. They invite interpretations that draw inferences about one provision from the interests protected elsewhere in the *Charter*, thereby uniting its "underlying values" and maintaining its "internal coherence" (*Health Services and Support — Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, [2007] 2 S.C.R. 391, at para. 80).

[82] This Court has identified other indicators of the interests underlying *Charter* provisions. For instance, international law and comparative constitutional law can shed light on the purposes behind analogous *Charter* protections. Courts must presume that the *Charter* guarantees protections at least as broad as those afforded by similar international human rights documents that Canada has ratified (*9147-0732 Québec inc.*, at para. 31). And they may look to the comparative constitutional

landscape in other rights-respecting democracies as "relevant and persuasive" to domestic constitutional meaning (*United States v. Burns*, 2001 SCC 7, [2001] 1 S.C.R. 283, at para. 80; *9147-0732 Québec inc.*, at para. 35). Finally, the drafting history of a provision, while never determinative of meaning, can provide some indication of purpose (*Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486, at p. 508; *Poulin*, at paras. 78-79; *Desautel*, at para. 41). The drafting history, critically, is distinct from the historical origins of the right in question. The former relates to the actual process of drafting and ratifying the *Charter*, and the latter relates to the historical development of the values and interests enshrined in the Constitution.

[83] Courts must interpret a *Charter* provision in a fashion that best protects its underlying interests, consistent with their purposes. If more than one interpretation is similarly capable of doing so, then the Court should favour the most large, liberal, and generous option (*Hunter*, at pp. 155-56, citing *Edwards*, and *Minister of Home Affairs v. Fisher*, [1980] A.C. 319 (P.C.); see also *Big M*, at p. 344; *Grant*, at para. 16).

[84] To be clear, the principle of liberal interpretation of *Charter* provisions follows a rigorous determination of a provision's purposes (*Poulin*, at para. 53; *Grant*, at para. 17; *R. v. Blais*, 2003 SCC 44, [2003] 2 S.C.R. 236, at para. 40). As Dickson J. stated in *Big M*, at p. 344, "it is important not to overshoot the actual purpose of the right or freedom in question, but to recall that the *Charter* . . . must . . . be placed in its proper linguistic, philosophic and historical contexts."

[85] Thus, the interpretation of a *Charter* provision is first and foremost an exercise in ascertaining what interests that provision protects, and why it does so. The court must consider the character and larger objects of the *Charter*; the text of the particular *Charter* provision, including any headings; the history of the concept enshrined therein; analogous international and comparative law; the interpretation of related rights and freedoms in the *Charter*; the drafting history of the provision, and any other relevant source. Once the court has rigorously reviewed these sources, it must then interpret the text of the provision to provide the most generous protection it can support to safeguard its interests.

(2) The Bilingual Interpretation of *Charter* Rights

[86] The language used to define and describe the mobility rights enshrined in s. 6 of the *Charter* is markedly different as between its French and English versions (see, e.g., C.-E. Côté, "Circulation et établissement", in *JurisClasseur Québec — Collection Droit public — Droit constitutionnel* (loose-leaf), fasc. 11, at No. 4). Yet both versions are equally authoritative (*Constitution Act, 1982*, s. 57; M. Bastarache et al., *The Law of Bilingual Interpretation* (2008), at p. 96; and M. Beaupré, *Interpreting Bilingual Legislation* (2nd ed. 1986), at p. 199). The parties and interveners before this Court disagree about the nature and impact of these differences. Their arguments on how to read s. 6 draw heavily upon the principles this Court has developed for interpreting statutes where the two official language versions diverge. But as we explain, those principles should not be transposed directly to constitutional

interpretation. Instead, what is required is a clear and principled approach which builds upon, and is consistent with, how courts interpret the constitutionally entrenched rights and freedoms in the *Charter*.

[87] The methodology applicable to the bilingual interpretation of *legislation* is well-established and generally involves three steps (*R. v. Daoust*, 2004 SCC 6, [2004] 1 S.C.R. 217).[1]

[88] First, courts read the two versions of the legislative provision and compare them to assess whether any discordance exists between them (*Daoust*, at para. 27; *Montreal (City) v. Watt and Scott Ltd.*, [1922] 2 A.C. 555 (P.C.), at p. 562; Bastarache et al., at pp. 48-54). Common ways discordance may arise include: one language version may be ambiguous, while the other is clear; one language version may be broader than the other; or the versions may be irreconcilable (*Daoust*, at paras. 26-27; Bastarache et al., at p. 56; R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at p. 120).

[89] Second, if there is any discordance, courts must look for a meaning common to both versions (*Daoust*, at paras. 28-29; *Schreiber v. Canada (Attorney General)*, 2002 SCC 62, [2002] 3 S.C.R. 269, at para. 56; and *R. v. Mac*, 2002 SCC 24, [2002] 1 S.C.R. 856, at para. 5). The pathway to common meaning — if available —

[1] *Daoust* describes this procedure in two steps. In describing it as three, we mean only to make the steps in the framework conceptually clearer, not to change them (see Bastarache et al., at p. 47: "While the Court describes the procedure as having two steps, we think that it is more usefully described in three steps . . .").

differs based on the type of discordance at issue. If the discordance is formed on grounds of ambiguity in one version, the shared meaning is that of the clear version (*Daoust*, at para. 28; P.-A. Côté, in collaboration with S. Beaulac and M. Devinat, *The Interpretation of Legislation in Canada* (4th ed. 2011), at p. 347). Where the discordance arises from differences in breadth, the shared meaning is the narrower version (*Daoust*, at para. 29; Côté, Beaulac and Devinat, at p. 348; Bastarache et al., at p. 74). That said, where the two authoritative versions are irreconcilable, then there will be no shared meaning at this stage, and the court must rely on other principles of interpretation (*Daoust*, at para. 27; Côté, Beaulac and Devinat, at p. 349).

[90] Third, the court must determine whether the common or dominant meaning reflects Parliamentary intent, relying on the ordinary rules of statutory interpretation (*Daoust*, at para. 30; Bastarache et al., at p. 82; Côté, Beaulac and Devinat, at pp. 349-53). Thus, if the clear version (in the context of an ambiguity) or the narrow version (in the context of difference in breadth) does not accord with the intention of the legislature, the interpretation must be rejected (Côté, Beaulac and Devinat, at p. 349; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 39).

[91] Relying on this methodology, the appellants argued that the English text of s. 6 is ambiguous, while the respondents argued that — if at all — it is the French text which is ambiguous. On the other hand, the Attorney General of Nunavut characterized the variance as one of breadth, noting that the French text is broader than the English.

[92] The approach to statutory interpretation helps us understand how language conveys meaning, how different languages may convey different meanings, and that equally authoritative versions may vary based on their clarity, breadth, and consistency (R. Sullivan, "The Challenges of Interpreting Multilingual, Multijural Legislation" (2004), 29 *Brook. J. Int'l. L.* 985; J. P. Salembier, "Equal Authenticity and Rule of Law in the Adjudication of Bilingual Legislation" (2004), 26 *S.C.L.R.* (2d) 579). That said, its methodology arises from its own particular context, being the interpretation of *statutory* provisions. Statutory interpretation is the search for legislative intent at the time of the statute's enactment (*Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15, at para. 32). The priority given to the narrowest area of agreement between the French and English versions is tied to this search for legislative intent.

[93] This approach is unsuitable in the *Charter* context. *Charter* rights are entrenched normative constitutional statements, intended to protect broad personal interests against state intervention. So, unlike statutory interpretation, *Charter* interpretation is not an exercise in determining legislative intent (Bastarache et al., at p. 98). As a result, the narrower version of the shared meaning between English and French versions of the Constitution cannot be preferred. Presumptively preferring the narrower version would run contrary to this Court's consistent direction to interpret rights liberally and broadly.

[94] Put differently, the problem with the *Daoust* framework as applied to the *Charter* is that *Daoust* would direct courts to *begin* their interpretation with a search for the narrow common reading, and then to reject that narrow reading only if it is inconsistent with the purpose of the *Charter* provision in question. This approach turns *Charter* interpretation on its head. *Charter* interpretation must *begin* with the broad, liberal, and purposive reading of the text. Otherwise, we risk unduly limiting the scope of the *Charter*'s protections.

[95] The significant differences between the French and English versions of s. 6 means that this Court must now articulate a clear and principled approach applicable to bilingual *Charter* interpretation. The limited jurisprudence on this topic has yet to do so (Bastarache et al., at pp. 97-101). Sometimes the Court has simply adopted the methodology used for bilingual statutory interpretation (see, e.g., *R. v. Stillman*, 2019 SCC 40, [2019] 3 S.C.R. 144; *Poulin*). In others, the methodology is unclear or the discordance between the French and English versions is resolved without engaging in a purposive inquiry (see, e.g., *Mahe v. Alberta*, [1990] 1 S.C.R. 342, at p. 371; *R. v. Schmautz*, [1990] 1 S.C.R. 398, at pp. 415-16). Elsewhere, the Court has preferred the version that "would appear to reflect better the purpose underlying the right" (*R. v. Turpin*, [1989] 1 S.C.R. 1296, at p. 1314; see also *R. v. Collins*, [1987] 1 S.C.R. 265, at p. 287).

[96] In constitutional cases in which the mobility rights in s. 6 have been specifically considered, the differences between the French and English versions have

not figured prominently in the argument or analysis. While *Skapinker* acknowledged some differences, the Court resolved the discordance largely through reference to the wording of the headings, and did not undertake an overt bilingual interpretation. The remainder of this Court's s. 6 jurisprudence does not rely on bilingual interpretation or explicitly acknowledge both official language versions (*United States of America v. Cotroni*, [1989] 1 S.C.R. 1469; *Black v. Law Society of Alberta*, [1989] 1 S.C.R. 591; *Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157 (*Egg Marketing*); *Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47, [2013] 3 S.C.R. 157). However, the differences between the French and English versions of s. 6 have been the subject of academic commentary (see M.-R. N. Girard, "L'article 6 de la *Charte canadienne des droits et libertés*: la liberté de circulation et d'établissement — Un volcan dormant?", in G.-A. Beaudoin and E. Mendes, eds., *Canadian Charter of Rights and Freedoms* (4th ed. 2005), 415, at pp. 418-20; and I. Atak, "L'article 6 de la Charte canadienne des droits et libertés: La liberté de circulation et d'établissement", in E. Mendes and S. Beaulac, eds., *Canadian Charter of Rights and Freedoms* (6th ed. 2025), 619, at p. 623).

[97] Our starting point is that the bilingual interpretation of *Charter* rights is governed by the general methodology for *Charter* interpretation. To reiterate, s. 6 must not be read by reference to the rules developed to interpret statutory provisions. Its status as a constitutionally protected right means it must be read according to the unique interpretative approach developed to allow *Charter* rights to speak well into the future. This requires a purposive approach to bilingual *Charter* interpretation (see, e.g.,

Collins). To proceed otherwise would be to jeopardize the protection of the *Charter* provision's underlying interests.

[98] Recall that each *Charter* right must "be placed in its proper linguistic, philosophic and historical contexts" (*Big M*, at p. 344). The linguistic context includes that the French and English versions of *Charter* rights are equally authoritative (*Constitution Act, 1982*, s. 57; see also, generally, J. P. McEvoy, "The Charter as a Bilingual Instrument" (1986), 64 *Can. Bar Rev.* 155). In our officially bilingual country, reading both linguistic formulations together best protects the interests underlying that right.

[99] The text of the *Charter* is the first indicator of the scope of the right and guides the court towards other indicators of purpose. When there is an apparent difference between the equally authoritative versions of the *Charter*, both the English and the French texts, whether different, ambiguous, or of various breadths, inform purpose. When reasonably capable of more than one meaning, both authoritative versions of *Charter* rights are simply read together, and each gives colour and content to the interests protected and the purpose of the right at issue.

[100] Sometimes, linguistic divergence between French and English versions persists, despite all efforts to read them harmoniously. In those cases, a purposive approach makes it inappropriate to adopt a rule, taken from the statutory context, that the narrower shared wording is determinative. Instead, given the general interpretive aim of erring in favour of advancing protected interests through a large, liberal, and

generous interpretation, a purposive approach to bilingual *Charter* interpretation requires courts to select the reading that better protects the right — which will generally be the broader of the two. That accords with the purposive methodology more broadly, and with our limited precedents governing this domain (*Collins*, at pp. 287-88; *Martineau v. M.N.R.*, 2004 SCC 81, [2004] 3 S.C.R. 737, at paras. 81-83).

[101] Finally, we agree with our colleagues Kasirer and Jamal JJ. that parties asking a court to interpret a provision of the *Charter* ought, as a best practice, to draw that court's attention to both official language versions of that provision's text (para. 14).

[102] With this methodology in mind, we turn to the interpretation of s. 6 of the *Charter*, with an eye to the existence and scope of any right to move freely within Canada.

(3) Section 6 of the *Charter*

[103] The application judge concluded that s. 6(1) guarantees "the right of Canadian citizens to travel in Canada for lawful purposes across provincial and territorial boundaries", but that s. 6(2) provides no right to move across provincial borders (paras. 339 and 369). The appellants argue that he correctly interpreted s. 6(1), but erred in interpreting s. 6(2). They note that the application judge's conclusion means that unlike citizens, permanent residents have no right to travel within Canada. By contrast, Newfoundland and Labrador argues that s. 6 contains no right for citizens

or permanent residents to travel across provincial borders, except to work or take up residence. Several provincial and territorial Attorneys General intervened with their own positions on whether s. 6 contains a right to travel, and if so, whether this right is guaranteed by s. 6(1) or (2).

[104] To date, this Court has considered the purposes behind discrete aspects of s. 6(1) and (2). But we have never considered whether s. 6 includes a broad right to free movement. In this appeal, we are asked for the first time to consider the scope of s. 6(1) and (2) in the same case.

[105] We conclude the broad right of movement is guaranteed by both s. 6(1) and (2). A broad right to mobility is ancient — much older than the *Charter* — and would have been presumed to be part of any specific mobility rights the *Charter* enshrined as supreme law. The right is an underlying assumption that infuses both provisions. A right to free movement is a feature of s. 6(1) because history, international law, other related *Charter* provisions, and legislative debates all suggest that a right to "remain in" Canada includes a right to free movement within it. And it is a condition of s. 6(2) because an entitlement to go where you please to work or take up residence makes little sense unless you can, *in general*, go where you please. We shall explain.

[106] We begin by identifying the foundational interests underlying s. 6 as a whole, instead of considering each constituent part of s. 6 in isolation. The structure of s. 6 drives this interpretive approach (*Skapinker*, at pp. 379-80). Section 6 does not protect several independent rights, like (for example) s. 2. Rather, s. 6(1), s. 6(2),

s. 6(3), and s. 6(4) are specifications of, and limits on, a broad right to mobility. So, to properly interpret s. 6(1) and (2), it is important to first understand the interests that s. 6 as a whole is designed to protect, and why it protects them. After that initial step, we turn to interpreting the scope of the guarantees in the specific provisions of s. 6(1) and (2).

(a) *Text and Structure*

[107] As discussed, the broad objective of the *Charter* is to promote individual freedom from state restraint or coercion. Section 6, like the democratic rights in ss. 3 to 5 of the *Charter*, is not subject to legislative override under s. 33. Thus, s. 6's mobility rights are foundational to our society, and "[a] broad and purposive interpretation of the right is particularly critical" (*Sauvé v. Canada (Chief Electoral Officer)*, 2002 SCC 68, [2002] 3 S.C.R. 519, at para. 11; see also *Divito*, at para. 28). Against this backdrop, we turn to the scope of the guarantees in s. 6.

[108] Section 6 of the *Charter* provides:

Mobility Rights	Liberté de circulation et d'établissement
Mobility of citizens	**Liberté de circulation**
6 (1) Every citizen of Canada has the right to enter, remain in and leave Canada.	**6 (1)** Tout citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir.
Rights to move and gain livelihood	**Liberté d'établissement**

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(a) to move to and take up residence in any province; and

(b) to pursue the gaining of a livelihood in any province.

Limitation

(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.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

(2) Tout citoyen canadien et toute personne ayant le statut de résident permanent au Canada ont le droit :

a) de se déplacer dans tout le pays et d'établir leur résidence dans toute province;

b) de gagner leur vie dans toute province.

Restriction

(3) Les droits mentionnés au paragraphe (2) sont subordonnés :

a) aux lois et usages d'application générale en vigueur dans une province donnée, s'ils n'établissent entre les personnes aucune distinction fondée principalement sur la province de résidence antérieure ou actuelle;

b) aux lois prévoyant de justes conditions de résidence en vue de l'obtention des services sociaux publics.

Programmes de promotion sociale

(4) Les paragraphes (2) et (3) n'ont pas pour objet d'interdire les lois, programmes ou activités destinés à améliorer, dans une province, la situation d'individus défavorisés socialement ou économiquement, si le taux d'emploi dans la province est inférieur à la moyenne nationale.

[109] The basic structure and scope of s. 6 is clear from the text. Section 6(1) guarantees certain mobility rights to citizens. Section 6(2) guarantees certain mobility and establishment rights to citizens and permanent residents. And section 6(3) and s. 6(4) further define the rights guaranteed in s. 6(2) by stating that they are subject to specified forms of regulation (*Egg Marketing*, at paras. 50-54). The text of s. 6, which describes rights against exile and banishment, and rights to move for travel, residence, or work, indicates a broad underlying interest in free mobility.

[110] In *Skapinker*, this Court held that s. 6's heading — "Mobility Rights" or "*Liberté de circulation et d'établissement*" — denotes a right to "move about, within and outside the national boundaries" (pp. 377-78). This broad indication of purpose also informs the interpretation of the entirety of s. 6.

[111] Thus, the text and structure of s. 6 points to broad rights of mobility and establishment across provincial and national borders.

[112] We turn next to other indicators of purpose: the history of mobility rights in the Anglo-Canadian legal tradition, the status of mobility rights in international law and in other constitutional democracies, the connection between mobility rights and other *Charter* rights, the importance of mobility rights to the promotion and preservation of national unity, and legislative debate leading up to s. 6's enactment. We examine these indicators, recognizing as we do that s. 6's exemption from s. 33 of the *Charter* justifies a particularly broad interpretation (*Sauvé*, at para. 11; *Divito*, at para. 28).

(b) *Historical Foundations of Mobility Rights*

[113] Mobility rights have existed in the Anglo-Canadian legal tradition for at least eight centuries. In the Magna Carta of 1215, King John promised that "[i]n future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear", and that "[a]ll merchants may enter or leave England . . . and may stay or travel within it, by land or water . . . in accordance with ancient and lawful customs" (arts. 41-42). Thus even in the 1200s, certain mobility rights were seen as "ancient" customs.[2] Centuries later, in his *Commentaries on the Laws of England* (1768), Book I, William Blackstone regarded as "a right strictly natural" that "personal liberty consists in the power of loco-motion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct; without imprisonment or restraint, unless by due course of law" (p. 134).

[114] The *Constitution Act, 1867* contains no explicit mobility rights for persons, although its preamble expressed a desire for a "Constitution similar in Principle to that of the United Kingdom". Canadians thus inherited the common law tradition of presumptive freedom of movement — to be where one wanted to be.

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[2] Whether the Magna Carta accurately reflected medieval English law as regards free movement is a contestable historical question. But the specific rights and broad ideals reflected in the Magna Carta served as precedent for later key common law writers, including Blackstone and Sir Edward Coke (C. M. Whelan, "Passports and Freedom of Travel: The Conflict of a Right and a Privilege" (1952), 41 *Geo. L.J.* 63, at pp. 64-70; R. H. Helmholz, "The Myth of Magna Carta Revisited" (2016), 94 *N.C. L. Rev.* 1475).

[115] The Judicial Committee of the Privy Council's interpretation of the distribution of powers between Canada's federal and provincial governments recognized significant limits on the ability of provincial governments to restrict freedom of movement. Specifically, the Privy Council held that provinces lacked jurisdiction to enact laws whose pith and substance was to restrict the ability of "aliens or naturalized subjects" to enter, work, or reside within their borders (*Union Colliery Co. of British Columbia v. Bryden*, [1899] A.C. 580, at p. 587; see also *Cunningham v. Homma*, [1903] A.C. 151 (P.C.)). These laws fell within federal jurisdiction over "naturalization" (*Union Colliery*, at pp. 585-86; *Cunningham*, at pp. 155-56).

[116] In *Winner v. S.M.T. (Eastern) Ltd.*, [1951] S.C.R. 887, at pp. 919-20, rev'd in part [1954] A.C. 541 (P.C.), but not on this point, this Court considered whether one province could prevent a long-haul bus company from making stops within its borders on its way to another province. Rand J. reviewed the Privy Council jurisprudence and identified a "right" of mobility that provincial governments could not infringe without justification (at pp. 919-20):

> What [the Privy Council cases] impl[y] is that a province cannot, by depriving a Canadian of the means of working, force him to leave it: it cannot divest him of his right or capacity to remain and to engage in work there: that capacity inhering as a constituent element of his citizenship status is beyond nullification by provincial action. . . .
>
> It follows, *a fortiori*, that a province cannot prevent a Canadian from entering it except, conceivably, in temporary circumstances, for some local reason as, for example, health. With such a prohibitory power, the country could be converted into a number of enclaves and the "union" which the original provinces sought and obtained disrupted. . . .

> Such, then, is the national status embodying certain inherent or constitutive characteristics, of members of the Canadian public, and it can be modified, defeated or destroyed, as for instance by outlawry, only by Parliament.

[117] Rand J. wrote only for himself in *Winner*, but this Court has since adopted his statement of the law (*Morgan v. A.G. (P.E.I.)*, [1976] 2 S.C.R. 349, at p. 356; *Black*, at pp. 610-12; *Egg Marketing*, at para. 59).

[118] While courts must approach division of powers jurisprudence cautiously as an aid in *Charter* interpretation, this Court held in *Black* that *Winner* is a helpful source for identifying the historical tradition of mobility rights underlying s. 6 (p. 621).

[119] Thus, courts have historically regarded Canadians' interest in mobility across Canada as transcending provincial interests, with due sensitivity to the structure of federalism. Provinces could not limit mobility in a fashion that would create enclaves, but Rand J. was careful to qualify this guarantee with the possibility of temporary limits in situations of serious local concern, including threats to health.

[120] This historical background illuminates twin purposes of the fundamental right to be where one wants to be. First, the common law's zealous protection of individual liberty saw the right of "loco-motion" as an integral aspect of personal autonomy and self-fulfillment (Blackstone, at p. 134). Second, the Privy Council jurisprudence, as synthesized by Rand J. in *Winner*, points to a more communal purpose of knitting together one unified Canada, as opposed to "a number of enclaves", while

respecting the jurisdiction of the provinces in a federal state (see also T. Lee and M. J. Trebilcock, "Economic Mobility and Constitutional Reform" (1987), 37 *U.T.L.J.* 268, at pp. 281-83). As we explain below, these twin individual and communal purposes are also reflected in other indicators of the interests s. 6 protects, and why it protects them.

[121] The historical background of mobility rights in Canada is not unblemished. Before the *Charter*, the federal government had broad powers to restrict free movement. Canada adopted race-based internment policies during both world wars (P. E. Roy, *Internment in Canada*, last updated October 4, 2024 (online)). In *Reference to the Validity of Orders in Council in relation to Persons of Japanese Race*, [1946] S.C.R. 248, aff'd [1947] 1 D.L.R. 577 (P.C.), this Court upheld the federal government's internment and deportation of Japanese Canadians (see also E. M. Adams and J. Stanger-Ross, *Challenging Exile: Japanese Canadians and the Wartime Constitution* (2025)). Another tragic part of our history was the "pass system", in effect on the prairies in the late 19th and early 20th centuries, which prohibited Indigenous persons from leaving reserves without approval from an Indian Affairs agent (F. L. Barron, "The Indian Pass System in the Canadian West, 1882-1935" (1988), 13 *Prairie Forum* 25).

[122] While we must recognize unjust episodes in our history, they do not define the contents of the rights and freedoms protected by *Charter*. Quite the opposite: one reason to entrench constitutional rights is to prevent the abuse of human rights that history proves is possible. Historical episodes of rights abuses can inform the kind of

state activity that the *Charter* is designed to prevent, but they cannot be used to limit the scope of a right or freedom to cover only those abuses. The *Charter* is designed "with an eye to the future", and must be interpreted for the "unremitting protection of individual rights and liberties" (*Hunter*, at p. 155). Its protections are not frozen in response to the abuses of the past.

(c) *Mobility Rights in International and Comparative Law*

[123] Mobility rights have strong protections under international human rights law, reflecting an individual's broad right to choose to move freely.

[124] In the aftermath of the Second World War, the new United Nations General Assembly adopted the *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948). Article 13(1) of the *Universal Declaration of Human Rights* states that "[e]veryone has the right to freedom of movement and residence within the borders of each State." Article 13(2) states that "[e]veryone has the right to leave any country, including his own, and to return to his country." These sweeping statements are also reflected in the *International Covenant on Civil and Political Rights*, Can. T.S. 1976 No. 47 (ICCPR), a binding international human rights treaty Canada ratified in 1976 (see W. S. Tarnopolsky, "A Comparison Between the Canadian Charter of Rights and Freedoms and the International Covenant on Civil and Political Rights" (1982), 8 *Queen's L.J.* 211). As a pre-*Charter* instrument which informed the drafting of the *Charter*, the ICCPR is entitled to extra weight in the interpretive analysis (*9147-0732 Québec inc.*, at paras. 41-42).

[125] Article 12 of the ICCPR guarantees that

> 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.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 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.
>
> 4. No one shall be arbitrarily deprived of the right to enter his own country.

Because Canada ratified this binding instrument, the *Charter* is presumed to guarantee mobility rights at least as generous as these (*9147-0732 Québec inc.*, at paras. 31 and 41, citing *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, at p. 349).

[126] The United Nations Human Rights Committee has interpreted Article 12(1) of the ICCPR to guarantee a right to travel within one's country as one deems fit, including across subnational borders, and without making the right contingent on an intent to change residence (*Ackla v. Togo*, Communication No. 505/1992, U.N. Doc. CCPR/C/56/D/505/1992 (1996)). The Committee has also stated in its General Comment on Article 12 that "[l]iberty of movement is an indispensable condition for the free development of a person" and that "[t]he right to move freely relates to the whole territory of a State, including all parts of federal States" (*General Comment No.*

27: Freedom of movement (Art. 12), U.N. Doc. CCPR/C/21/Rev.1/Add.9, November 1, 1999, at paras. 1 and 5).

[127] The 1950 *European Convention on Human Rights*, 213 U.N.T.S. 221, is also a relevant source for *Charter* interpretation. As a significant rights-protecting instrument that predates the *Charter*, it assists in understanding what interests *Charter* rights are intended to protect, regardless of whether Canada has ratified it (*9147-0732 Québec inc.*, at para. 41; L. E. Weinrib, "A Primer on International Law and the Canadian Charter" (2006), 21 *N.J.C.L.* 313, at p. 324). The Convention itself does not refer to mobility rights. However, mobility rights are protected under the Convention's subsequently enacted *Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those included in the Convention and in the first Protocol thereto*, Europ. T.S. No. 46. Protocol No. 4 came into force in May 1968 and has been widely ratified across Europe (W. A. Schabas, *The European Convention on Human Rights: A Commentary* (2015), at pp. 1087-88).

[128] Article 2 of Protocol No. 4 guarantees mobility rights, including freedom of movement within a country, using essentially the same language as Article 12 of the ICCPR. This again demonstrates the high importance attached to mobility rights in international human rights law.

[129] Mobility rights also feature prominently in the constitutional traditions of other democratic, common law countries.

[130] In *Black*, this Court looked to the interpretation of mobility rights in the United States "to illuminate some of the points that arise under s. 6" (p. 613). Citing to the decision in *Toomer v. Witsell*, 334 U.S. 385 (1948), this Court noted that the Supreme Court of the United States has stated that the aim of mobility rights is to fuse the states into one federal whole, and that this national aim "was achieved by according rights to the citizen" (p. 613). More recently, in *Saenz v. Roe*, 526 U.S. 489 (1999), the Supreme Court of the United States held that the constitutional "right to travel" included at least three elements: (1) the right to travel from one state to another; (2) the right to be "treated as a welcome visitor rather than an unfriendly alien"; and (3) "for those travelers who elect to become permanent residents", the right to be treated equally as with other residents (p. 500).

[131] While the Australian Constitution guarantees few explicit human rights, the courts in that country have interpreted the constitutional guarantee of free trade among the states as also guaranteeing the free movement of people. In *Cole v. Whitfield* (1988), 165 C.L.R. 360, the High Court held that "personal movement across a [state] border cannot, generally speaking, be impeded" (p. 393).

[132] The *New Zealand Bill of Rights Act 1990* was inspired by our *Charter*, and the two instruments share many similarities (G. Huscroft, "Protecting Rights and Parliamentary Sovereignty: New Zealand's Experience with a *Charter*-Inspired, Statutory Bill of Rights" (2002), 21 *Windsor Y.B. Access Just.* 111). Section 18 of the *New Zealand Bill of Rights Act 1990* guarantees, for everyone lawfully within New

Zealand, "the right to freedom of movement and residence" within the country. The decision in *Kerr v. A.-G.*, [1996] D.C.R. 951, noted that the freedom to move and to take up residence where one wishes can "among other things be seen to be a bulwark against the creation of a ghetto" (p. 955).

[133] Similarly, the Irish courts have recognized an unenumerated right to free movement, arising in part from Ireland's democratic nature. This right has been described as "one of the hallmarks which is commonly accepted as dividing States which are categorised as authoritarian from those which are categorised as free and democratic" (*The State (M) v. The Attorney General*, [1978] I.R. 73 (H.C.), at p. 81).

[134] We do not suggest that these examples are an exhaustive review of mobility rights across the globe. But they represent a useful and consistent expression of international judicial wisdom. In rights-respecting democracies the world over, the fundamental human value of the freedom to choose where one wants to be — without state approval — is seen as essential and worthy of constitutional protection. The American and Australian examples also reinforce the interest in free movement and residence of people as an essential driver of national unity within a large, diverse and democratic federation.

(d) *The Connection to Other Related Charter Rights*

[135] In interpreting other *Charter* rights, this Court has discussed the importance of "freedom of movement" to a free society more generally.

[136] We have held that deprivations of freedom of movement can infringe the liberty interest under s. 7 of the *Charter* (*R. v. Ndhlovu*, 2022 SCC 38, [2022] 3 S.C.R. 52, at para. 7). More directly, this Court's arbitrary detention jurisprudence under s. 9 has described "freedom of movement" as "one of the fundamental values of our democratic society" (*R. v. Orbanski*, 2005 SCC 37, [2005] 2 S.C.R. 3, at para. 24). We have understood s. 9 as a bulwark against "the state's ability to interfere with personal autonomy" (*Grant*, at para. 21). This Court has therefore stated that "[i]nterference with freedom of movement, just like invasion of privacy, must not be trivialized" (*Kosoian v. Société de transport de Montréal*, 2019 SCC 59, [2019] 4 S.C.R. 335, at para. 139). And freedom of movement is self-evidently an integral part of the freedom of peaceful assembly and association guaranteed in s. 2(c) and (d) of the *Charter*.

[137] The pervasiveness of freedom of movement elsewhere in the *Charter* echoes the common law's longstanding and zealous protection of mobility rights. Our cases interpreting those provisions reveal a concern not only with physical restraint, but with the interference with personal autonomy inherent in any deprivation of a person's entitlement to decide where they want to be.

(e) *Mobility Rights and National Unity*

[138] The *Charter* was designed and intended to promote national unity in Canada. It is a distinctively "made in Canada" instrument (Prime Minister P. E. Trudeau, *Federal-Provincial Conference of First Ministers on the Constitution* (morning session of November 2, 1981), at p. 10; *Committee for the Commonwealth of*

Canada v. Canada, [1991] 1 S.C.R. 139, at pp. 178-79). The *Charter* was central to the project of patriation, by which Canada took full ownership of its Constitution and "reaffirmed the principles upon which the Confederation of 1867 had been based: democracy, federalism, respect for minorities and accommodation" (B. McLachlin, *Defining Moments: The Canadian Constitution*, February 13, 2014 (online)).

[139] The political scientist Peter H. Russell wrote in 1983 that the first "political purpose" of the *Charter* was to "offset, if not reverse, the centrifugal forces which some believe threaten the survival of Canada as a unified country" ("The Political Purposes of the Canadian Charter of Rights and Freedoms" (1983), 61 *Can. Bar Rev.* 30, at p. 31). While he expressed some skepticism that the *Charter* could succeed in this goal, he predicted that through uniform judicial protection of rights, "the Charter may well turn out to be a nation-building instrument" (p. 41). Peter W. Hogg and Wade K. Wright echo this conclusion, concluding that in setting a standard for rights across Canada, the *Charter* "adds a dimension of allegiance to Canada as a whole that did not exist before 1982. The Charter is to that extent a unifying instrument" (*Constitutional Law of Canada* (5th ed. Supp.), at § 36:3).

[140] By its very nature, the *Charter* is an instrument of national unity and identity. But the *Charter* does not expand the legislative powers of any level of government (s. 31). The purpose of the *Charter* is not to give the state new powers in pursuit of a nation-building objective (*Hunter*, at p. 156). Rather, the *Charter* is premised on the bold prediction that protecting individual rights and freedoms

promotes Canadian unity and sovereignty. The *Charter* pursues that national goal by protecting a common set of rights and freedoms for all Canadians.

[141] Set against that backdrop, the ability to move around within our vast country allows each Canadian to view themselves as members of a collective whole, and not merely as an individual within a local or regional community. We therefore agree with the growing academic consensus that s. 6 plays a unique role in service of the *Charter*'s overall nation-building objective (G. Régimbald and D. Newman, *The Law of the Canadian Constitution* (2nd ed. 2017), at §27.3; Hogg and Wright, at § 36:3; S. Choudhry and R. Stacey, "Independent or Dependent? Constitutional Courts in Divided Societies", in C. Harvey and A. Schwartz, eds., *Rights in Divided Societies* (2012), 87, at pp. 107-8; Russell, at p. 38).

[142] This said, s. 6 exists within a federalist constitutional framework. Section 6(3) ensures that provinces can continue to enact laws of general application that affect those within their borders, even if they incidentally affect mobility. This caveat recognizes that s. 6 is designed to promote national unity while embracing a diversity of approaches and respecting provincial difference within a federal union.

[143] One purpose of the mobility rights interest protected by s. 6 is thus to promote national unity and a sense of national identity among Canadians, sensitive to the federal nature of Canada.

(f) *The Legislative Debates Behind Section 6*

[144] As a final indicator of the purposes of s. 6's protection of Canadians' interests in free movement, we consider the legislative debates leading to the adoption of the *Charter*.

[145] When discussing the proposed draft of s. 6, Parliamentarians spoke to the benefit of mobility rights for individual freedom and national unity. Indeed, they often tied these two ideas together.

[146] For instance, Jean Chrétien, then the Minister of Justice, stated that his government's "conception of Canada is one where citizens as a matter of right should be free to take up residence and to pursue a livelihood anywhere in Canada without discrimination . . . . In other words, there will be one Canadian citizenship not ten provincial citizenships" (*House of Commons Debates*, vol. 3, 1st Sess., 32nd Parl., October 6, 1980, at p. 3286). In a similar vein, Gilbert Parent, Member of Parliament, gave a speech in the House of Commons in favour of the *Charter* as an instrument of Canadian nationalism. An excerpt shows the perceived connection between individual mobility rights and Canadian nation-building:

> To my mind, one of the most important aspects of this resolution is that it guarantees that all Canadians will be free to settle where they want in this country. How can we have a nation if its citizens are not free to move around as they wish? Only if we can look for work, put our children in schools where they will not feel out of place and become home owners and build in any area of the country will we consider ourselves citizens of a great nation. . . .
>
> . . . 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.
>
> (*House of Commons Debates*, vol. 7, 1st Sess., 32nd Parl., February 26, 1981, at p. 7746)

[147] These Hansard excerpts reinforce the purposes of s. 6 we have distilled from other sources.

(g) *Conclusions: The Purposes of Section 6's Mobility Interest*

[148] In our view, s. 6 is designed to protect a broad interest in human mobility. It does so to facilitate individual autonomy and dignity, including growth and fulfillment, and to promote national unity and a common Canadian identity. Freedom of movement, without constraint or coercion, is quintessential to our Canadian concept of a constitutional democracy. Free movement and establishment within Canada are interests that are both an essential aspect of an individual's personal freedom and foundational to the nature of our free and democratic federal structure. These twin purposes — one focused on the individual, the other on the nation — work in harmony, based on the view that mobility rights benefit both the individual and the community.

[149] Section 6's purposes are themselves large, liberal, and generous. They reflect the heading and text of s. 6, as well as its historical tradition, analogous international and comparative law, the broader nation-building purpose of the *Charter*, the recognized importance of "freedom of movement" in related rights, and the legislative history of the provision.

[150] Another clear theme from the history and international law of mobility rights, and from the broader objectives of the *Charter* as a whole, is that mobility rights are not absolute. On the contrary, *Winner* allowed for temporary limits on interprovincial travel for health reasons. Article 12(3) of the ICCPR similarly allows for limits on freedom of movement for health, national security, and other legitimate state objectives. Even the Magna Carta authorized limits on freedom of movement "in time of war, for some short period, for the common benefit of the realm", and exempted prisoners from the right entirely (art. 42). The *Charter*'s protections are similarly not aimed at any trivial or fleeting limit on movement, but rather 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.

[151] We turn now to interpret the scope of the specific guarantees in s. 6(1) and (2).

(4) Section 6(1) Guarantees Citizens a Right to Move Throughout Canada Without Restriction

[152] As a preliminary point, some submissions made to this Court seemed to presume that any right to move freely throughout Canada could only be contained in one of s. 6(1) or (2), but not both. We reject this suggestion. This Court has previously recognized overlapping protections of the same right in multiple sections of the *Charter* (see, e.g., *Re B.C. Motor Vehicle Act*, at pp. 502-3; *John Howard Society of Saskatchewan v. Saskatchewan (Attorney General)*, 2025 SCC 6, at paras. 78 and 80).

Indeed, there are other instances of overlapping protections within a single section of the *Charter*, such as the guarantees for freedom of religion and freedom of expression under s. 2(a) and (b) (see, e.g., *R. v. Khawaja*, 2012 SCC 69, [2012] 3 S.C.R. 555, at para. 66). The two subsections of s. 6 protect both overlapping and different classes of people, and there is no principled reason they cannot protect overlapping but also different aspects of mobility rights.

[153] As we explain, the overlapping protection of free movement within both subsections recognizes the right's fundamental character. Each subsection addresses additional, related entitlements that build on the central right of mobility. Section 6(1) also addresses the rights of citizens against exile and banishment, and s. 6(2) addresses the entitlement of citizens and permanent residents to establish residency and pursue a livelihood, and the provincial capacity to regulate these matters. Thus, s. 6's mobility protections can be read harmoniously, addressing different aspects of the broad right that is foundational to the entire section.

[154] Section 6(1) guarantees all citizens of Canada the right "to enter, remain in and leave Canada". The parties focus on whether the right to "remain in . . . Canada" guarantees a right to travel across provincial borders.

[155] The respondents say it does not. To support that conclusion, they invoke this Court's statements on the purpose of s. 6(1) in *Cotroni*. They argue that because *Cotroni* describes the "central thrust of s. 6(1)" as a right "against exile and banishment, the purpose of which is the exclusion of membership in the national community"

(pp. 1481-82), interprovincial travel is outside the scope of the right. *Cotroni* held that "the infringement to s. 6(1) that results from extradition lies at the outer edges of the core values sought to be protected by that provision" (p. 1481). So, the respondents argue, a right of interprovincial travel "falls off the edge" (R. F., at para. 49, quoting *Divito*, at para. 47).

[156] But *Cotroni* did not interpret s. 6(1) so narrowly. It did not purport to exhaustively determine s. 6's underlying interests and purposes. Still less did it purport to restrict them exclusively to protections against removal of some kind: La Forest J. was explicit that the right to "remain in . . . Canada" must mean something more than a simple right against exile (p. 1481). *Cotroni* involved a challenge to an extradition order, so the fact that the Court did not stray beyond that factual matrix to pronounce on other possible contexts in which s. 6(1) might apply does not mean there are no entitlements naturally associated with "remain[ing] in" Canada.

[157] Citing to a dictionary, the respondents argue that "[o]n a purely textual level" the right to "remain in . . . Canada" means only a right "to stay in the same place or condition" (R.F., at para. 46, citing the English definition of "remain" in the *Cambridge Dictionary* (online)). On this argument, Ms. Taylor had a right to remain within Nova Scotia, but not to travel to Newfoundland and Labrador.

[158] The respondents' rigidly textualist argument cannot succeed. First, it is an error to interpret the *Charter* by simply turning to a dictionary. It does not give due

effect to the broad human rights-oriented interest in respecting the freedom of persons to choose where they want to be.

[159] Even the neighbouring text of s. 6(1) does not support this narrow approach. The right "to remain" attaches to "Canada", not to one's province of residence. The right to remain within Canada naturally connotes a right to move freely within the country as a whole — not just within whatever province one happens to occupy. And sometimes, a right to *remain* somewhere also entails a right to freely move about that place. The application judge noted that in ordinary speech, a reasonable person would understand a right "to remain" in one's house to include a right "to wander freely from room to room" (para. 353). That analogy aptly applies to the meaning of a right to "remain in" Canada: like a right to remain in one's house, a right to remain in Canada comes with an entitlement to move freely around the country.

[160] Indeed, the language of s. 6(1) is broad: the right to enter, remain in, and leave *Canada*. "Canada", as it appears in s. 6(1), has the features that our legal tradition has always attributed to the land over which sovereignty extends. In Blackstonian terms, it is a place where the "personal liberty [which] consists in the power of loco-motion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct; without imprisonment, or restraint, unless by due course of law", is "a right strictly natural" (p. 134). Or, as Rand J. put it, it is a place where — at least as a general matter — "a province cannot prevent a Canadian from entering it"

(*Winner*, at p. 920). Because Canada is such a place, it follows that a right to "remain in" it includes a right to move freely around it.

[161] The interprovincial dimension of s. 6(1) is further grounded in the words "enter" and "leave", as in the right "to enter, remain in and leave Canada". These international elements of the right necessarily imply movement within Canada. For instance, one might need to cross provincial borders to leave the country or, after entering Canada, to return home. This shows that s. 6(1) provides more than a mere right to enter and exit. Rather, it clearly contemplates and requires an element of free travel within Canada, including across provincial borders.

[162] This understanding of s. 6(1) also accords with the heading of the provision. The heading is "Mobility of citizens" in English or "*Liberté de circulation*" in French. Such broad headings, which refer to movement in general, do not imply that s. 6(1) is limited in scope to international travel and the prevention of exile. Rather, they denote wider rights to move anywhere, inside or outside the country.

[163] Section 6(1) mirrors the language of Article 12 of the ICCPR, which this Court has called the "international law inspiration" for s. 6(1) (*Divito*, at paras. 24-27). Article 12 of the ICCPR protects, in different subsections, a citizen's right to enter their own country (art. 12(4)); to liberty of movement and to choose residence within any country in which they are lawfully present (art. 12(1)); and to leave any country (art. 12(2)). This mirrors a citizen's right under s. 6(1) to "enter, remain in and leave" Canada. The words "remain in" within s. 6(1) must be given separate meaning, as they

are in the ICCPR. Because Canada has ratified the ICCPR, the *Charter*'s mobility protections are presumed to conform with those in Article 12 (*9147-0732 Québec inc.*, at para. 31). It follows that the ICCPR's protection of free movement provides another reason to conclude that a right to "remain in" Canada includes a right to move freely within Canada, including across provincial borders.

[164] The Attorney General of Saskatchewan urges that if this Court finds that there is a right to interprovincial travel within s. 6 of the *Charter*, this right should be found in s. 6(2), but not in s. 6(1). Saskatchewan says this is important, since s. 6(3) does not apply to s. 6(1), and without the protection of s. 6(3)(b), provinces will have to provide social services to temporary travelers within their borders.

[165] This concern is unfounded. A right to travel is just that — a right to travel. In holding that governments cannot restrain citizens from travelling within the country, we do not hold that provinces are positively obligated to provide specific social services to travelers. As we will explain in our discussion of s. 6(2), there is good reason to doubt that s. 6(3) would permit a government to limit interprovincial travel that is unrelated to establishing residency or pursuing a livelihood. And even if s. 6(3) could operate in that manner, governments could potentially limit this right under s. 1, where justifiable in a free and democratic society.

[166] In light of these considerations, an interpretation of the right to "remain in . . . Canada" that most effectively promotes the purposes of s. 6's mobility rights interest includes a right to move within Canada, including within and across provincial

borders, without state restraint or a requirement for state authorization. The text of s. 6(1) naturally bears this broad, generous interpretation. So too do the history of the concept the provision enshrines, the emphasis the *Charter* otherwise places on free movement, and the presumption of conformity with international human rights instruments.

[167] A narrow interpretation of s. 6(1) is not available, even on textualist grounds. Applying the purposive methodology of *Charter* interpretation, we have no hesitation in concluding that s. 6(1) of the *Charter* guarantees Canadian citizens a right to move freely within Canada, including across provincial borders. Government actions that limit the ability of Canadians to move freely within Canada, except in a fleeting or trivial fashion, or make such movement contingent on state authorization infringe s. 6(1) of the *Charter*.

(5) Section 6(2) Guarantees a Right for Citizens and Permanent Residents to Move Throughout Canada Without Restrictions

[168] The appellants argue that s. 6(2)(a) also guarantees a right to travel across provincial borders. They focus on the French version of the clause "*de se déplacer dans tout le pays*", which corresponds in the English text "to move to . . . any province." The appellants say this provision guarantees a right to travel throughout Canada, while Newfoundland and Labrador argues that it only protects a right to move for purposes of taking up residence.

(a) *The Text of Section 6(2) Supports a Right to Move Throughout Canada*

[169] A bilingual interpretation of s. 6(2) shows it has a wide purpose and a broad scope, and guarantees the right to both move about the country and to establish a residence in any province. Recall that the French version of s. 6(2)(a) guarantees citizens and permanent residents a right "*de se déplacer dans tout le pays et d'établir leur résidence dans toute province*". The ordinary meaning of the French "*de se déplacer dans tout le pays*" connotes a right to travel freely throughout Canada, and does not necessarily require any intent to settle in a location (H. Brun, G. Tremblay and E. Brouillet, *Droit constitutionnel* (6th ed. 2014), at para. III.114). This language is broader than a term like "*déménager*", whose ordinary meaning *is* to move to a place for the purposes of establishing residence. The text of s. 6(2)(a) thus speaks to two distinct rights: (1) the right to travel throughout the country; and (2) the right to establish residence in any province.

[170] Nothing in the French text suggests that the second right qualifies or limits the first. The word "*et*" naturally functions as a coordinating conjunction that expands the list of rights protected. It does not limit the scope of the right that comes before it. Each right separated by "*et*" refers to a different place: the first gives a right "*de se déplacer dans tout le pays*" (to travel throughout *Canada*), whereas the second guarantees a right "*d'établir leur résidence dans toute province*" (to establish residence in any *province*). If section 6(2)(a) merely provided a right to establish residence in any

province, then it would be unnecessary, and indeed quite illogical, to simultaneously provide a right to travel throughout the whole *country*.

[171] The *Charter* is also replete with provisions that contain several distinct rights within a single sentence, which are separated only by the word "and" and "*et*". For example, s. 7 affords the right to "life, liberty *and* security of the person" ("*à la vie, à la liberté et à la sécurité de sa personne*"). Similarly, s. 3 guarantees the right to "vote in an election of members of the House of Commons or of a legislative assembly *and* to be qualified for membership therein" ("*de vote et [d'être] éligible aux élections législatives fédérales ou provinciales*"). This Court has never understood the mere use of the word "and" or "*et*" to internally qualify these rights in relation to one another (see, in the context of s. 7, *Re B.C. Motor Vehicle Act*, at p. 500; and, in the context of s. 3, *Harvey v. New Brunswick (Attorney General)*, [1996] 2 S.C.R. 876, at para. 23).

[172] Newfoundland and Labrador argues that the English text "to move to and take up residence in any province" is more ambiguous, and refers only to a right to move to a different province to take up residence. But the English text of s. 6(2)(a) can support the dual rights approach that is clear in the French text. And as we have explained, bilingual *Charter* interpretation does not look to the narrowest, shared meaning of the texts. Adopting a narrow interpretation would ignore the clear breadth of the French text, and render the English "to move to and take up residence in any province" repetitive and redundant, since the right "to move to" would add nothing to the right to "take up residence in". The text of s. 6(2)(a), in both authoritative language

versions, indicates that this clause protects distinct but related rights of travel and establishment.

[173] Section 6(2)'s subheadings also diverge between the French and English texts. In French s. 6(2) is found under the sub-heading "*Liberté d'établissement*", while in English it is described as "Rights to move and gain livelihood". Both the English and French subheadings of s. 6(2) are equally authoritative interpretive aids. They are both entitled to weight in interpreting s. 6(2), although this Court has held that subheadings are generally of less value than headings in *Charter* interpretation (*R. v. Wigglesworth*, [1987] 2 S.C.R. 541, at p. 558).

[174] While the French subheading may suggest a focus on establishment rather than travel, this subheading cannot narrow the scope of the guarantee, given the clear breadth of the French text. As well, the English subheading recognizes an unqualified "right to move". Collectively, when read together, they point towards rights to move, gain livelihood, and to establish oneself in a new province. This is consistent with our understanding of the bilingual text. An establishment-only interpretation would also not offer the most generous available protection of s. 6(2)'s purposes, as is required by the methodology for bilingual constitutional interpretation set out above.

(b) *The Jurisprudence on the Purpose of Section 6(2) Supports a Right to Move Throughout Canada*

[175] This Court's limited precedents on s. 6(2) relate to the employment context, and have discussed its purposes in terms of personal dignity and fulfillment. These precedents echo the twin purposes of the mobility interest underlying s. 6 as a whole that we have identified and articulated above.

[176] *Skapinker* was the first *Charter* case to be adjudicated by this Court. The applicant, a permanent resident, challenged a provision of the *Law Society Act*, R.S.O. 1980, c. 233, that limited membership to the bar to Canadian citizens. He argued that it violated permanent citizens' right "to pursue the gaining of a livelihood in any province" under s. 6(2)(b). The Court rejected this interpretation. It held that finding a freestanding "right to work" in s. 6(2)(b) would bear no relation to the "mobility rights" interest of s. 6.

[177] The fact that *Skapinker* does not refer to a right to travel does not mean that one does not exist. This Court was not asked to interpret s. 6(2)(a) and therefore did not comment on it. The Court in *Skapinker* adopted a cautious approach to interpreting the new *Charter*, and expressly stated that it did not intend to make any binding statements of law on issues that were not strictly necessary to decide the case before it (p. 383). Whether or not s. 6(2)(a) guaranteed a right to interprovincial travel had no bearing on the dispute before the Court in *Skapinker*. It follows that the Court's silence on the matter does not imply a rejection of the right.

[178] That said, *Skapinker* referred to the decision of the Quebec Superior Court in *Malartic Hygrade Gold Mines Ltd. v. The Queen in Right of Quebec* (1982), 142

D.L.R. (3d) 512, as "instructive" on s. 6(2) (p. 381). In *Malartic*, the court identified the purpose of s. 6(2) as being "undoubtedly to give Canadian citizenship its true meaning and to prevent artificial barriers from being erected between the provinces" while still allowing for regional diversity within the federation (p. 520). "In principle the Charter thus intends to ensure interprovincial mobility" (p. 521). These "instructive" statements are consistent with s. 6(2) guaranteeing more than the just the right to move residence and work across provincial borders.

[179] In *Black*, the Court did suggest that s. 6(2) included a right to travel. There, the applicants challenged certain rules of the Law Society of Alberta that prevented the establishment of interprovincial law firms in Alberta. Justice La Forest, at pp. 608-14, traced the history of s. 6(2) through *Winner* and *Union Colliery*. He concluded that a desire for economic unity in Canada "undoubtedly played a part" in entrenching mobility rights in the *Charter* (p. 612; see also J. B. Laskin, "Mobility Rights under the Charter" (1982), 4 *S.C.L.R.* 89, at pp. 93-94; P. Bernhardt, "Mobility Rights: Section 6 of the Charter and the Canadian Economic Union" (1987), 12 *Queen's L.J.* 199; and E. S. Binavince, "The Impact of the Mobility Rights: The Canadian Economic Union — A Boom or A Bust?" (1982), 14 *Ottawa L. Rev.* 340). However, he emphasized that s. 6(2) protects an individual human right, and also "defines the relationship of citizens to their country and the rights that accrue to the citizens in that regard" (*Black*, at p. 612). This right, according to La Forest J., included the right "to move about the country, to reside where he or she wishes and to pursue his or her livelihood without regard to provincial boundaries" (p. 620).

[180] Finally, in *Egg Marketing*, the applicants challenged laws impeding their ability to earn a livelihood by marketing eggs in other provinces and territories. Without rigorously reviewing the indicators of s. 6's purposes, the Court considered that s. 6 at least "embodies a concern for the dignity of the individual" (para. 60). Section 6(2) specifically promotes this interest "by guaranteeing a measure of autonomy in terms of personal mobility" (para. 60). The Court also held that s. 6(2) protects economic interests and should not be "restricted" to protecting physical movement (see para. 72). Thus, while *Egg Marketing* saw s. 6(2) as extending to protect a broader economic interest, it is also consistent with an understanding of s. 6(2) as protecting free movement as a means of personal autonomy, dignity, and self-fulfillment.

[181] These statements from *Skapinker*, *Malartic*, *Black*, and *Egg Marketing* are consistent with the twin purposes we have identified for s. 6's mobility interest. While those cases focused on the economic aspects of s. 6(2), that was a result of the specific factual disputes in those cases. The more general guarantee of s. 6(2)(a), interpreted consistently with its purposes and broad underlying mobility interest, clearly supports a right to move within Canada, like s. 6(1).

(c) *International Law Supports a Right to Move Throughout the Country*

[182] Concluding that s. 6(2)(a) protects a right to free movement throughout Canada is also consistent with the presumption of compliance with Article 12 of the ICCPR. Notably, Article 12(1) guarantees a mobility right for "[e]veryone lawfully within the territory of a State." It makes sense that this right would inform the content

of s. 6(2) in addition to s. 6(1), because s. 6(2) also guarantees rights for permanent residents, who alongside citizens form a broader subset of those "lawfully within the territory" of Canada.

(d) *The Context Surrounding Section 6(2) Does Not Derogate From its Protection of a Right to Move Throughout Canada*

[183] Section 6(3) and (4) function to define the scope of the right in s. 6(2), by permitting certain laws that would otherwise limit the rights in s. 6(2). Section 6(3) recognizes that the provinces retain jurisdiction to pass laws of general application, especially as they affect residence and working environments. Consistent with a broad mobility right, however, those laws cannot distinguish based on province of residence. Section 6(4) also allows for laws that would otherwise infringe s. 6(2) for provinces with an employment rate below the national average.

[184] Given the historical record of s. 6(3)[3] and the broader context of s. 6, we would be reluctant to accept that s. 6(3)(a) permits provinces to impose general limitations (such as curfews) on the broad right of free movement, unrelated to residency or employment. Section 6(3)(b) provides further support: laws which condition social services on reasonable residency requirements have nothing to do with

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[3] The history of the provision — while of course not determinative of its meaning — suggests it supports laws which restrict incidents of residence and occupation, so as to avoid creating a right to "mobility of capital" (*Federal-Provincial Conference of First Ministers on the Constitution*, at p. 73, per Alan Blakeney, Premier of Saskatchewan, morning session of September 8, 1980 (expressing concern that mobility rights entail mobility of capital), and at p. 596, per Prime Minister Pierre Elliot Trudeau, afternoon session of September 10, 1980 (explaining that the limitations in s. 6(3) address that issue); see also the examples cited in Laskin, at pp. 100-101).

free movement — but they are related to where one lives. We do not accept, as our colleagues suggest, that s. 6(3) is necessarily so wide that it creates an inconsistency with our interpretation of s. 6(1) (see para. 58). The respondents do not, however, rely on s. 6(3) or (4) in defending the constitutionality of the Travel Restrictions. We need not determine the full scope and applicability of s. 6(3) and (4) to the right to travel in this case.

(e) *Conclusion: Section 6(2) Protects a Right to Move Throughout Canada*

[185] Accordingly, we hold that s. 6(2)(a) guarantees Canadian citizens and permanent residents a right to travel within Canada as they choose, within and across provincial borders. Subject to s. 6(3) and (4), government actions that limit the ability of Canadians to move freely within Canada, except in a fleeting or trivial fashion, or make such movement contingent on state authorization infringe s. 6(2) of the *Charter*.

(6) The Travel Restrictions Infringed the Right of Movement in Section 6(1) and (2)

[186] The Travel Restrictions made entry into Newfoundland and Labrador by Canadian citizens and permanent residents contingent on prior authorization from the government. On their face, they banned the overwhelming majority of non-residents from entering that province. In practice, they prevented Ms. Taylor from entering the province to grieve her mother and be with her family for eleven days, until she received state authorization. These restrictions were not fleeting or trivial. They imposed a real

limit on Canadians' freedom to move throughout Canada, and therefore infringed s. 6(1) and (2) of the *Charter*.

C. *The Travel Restrictions Are Demonstrably Justified Under Section 1*

(1) The Law

[187] The rights and freedoms protected under the *Charter* are not absolute (*Oakes*, at p. 136). When the claimant has established an infringement of a *Charter* right, the government may seek to justify the limit under s. 1:

> **1** The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

[188] Section 1 performs two functions: (1) it constitutionally guarantees the rights and freedoms enumerated in the provisions that follow; and (2) it outlines the exclusive justificatory criteria against which limits on rights and freedoms must be measured (*Oakes*, at pp. 135-36). Section 1 therefore both guarantees the rights and freedoms set out in the *Charter* and allows their reasonable limitation.

[189] In the early years of the *Charter*, this Court sought to establish a framework to determine when a limit on a *Charter* right could be justified under s. 1. In *Big M*, Dickson J. laid out concepts central to what later became the *Oakes* test. The Court called for a two-stage analysis which first addressed the purpose of the infringing state

action, and then measured whether the means used to achieve that purpose were proportionate to the ends sought (p. 352). *Oakes* built on these concepts of purpose and proportionality and reframed the two stages into four questions which now supply the framework for a s. 1 justification analysis.

[190] The first stage under *Big M* requires an assessment of "which government objectives are of sufficient importance to warrant overriding a constitutionally protected right or freedom" (p. 352). *Oakes* restated the question as whether the legislative goal is "pressing and substantial in a free and democratic society" (pp. 138-39). To answer this question, courts make a normative assessment of the values and principles that lie at the heart of a free and democratic society (p. 136; see also *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, at para. 77). *Oakes* detailed a non-exhaustive list of such values and principles: ". . . respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society" (p. 136). These are principles and values from which the rights and freedoms protected in the *Charter* themselves were born (p. 136; see also *R. v. Keegstra*, [1990] 3 S.C.R. 697, at p. 736; *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, at pp. 1052 and 1056).

[191] For a law to pass this first stage of *Oakes*, its legislative objective must relate to values or principles that underlie a free and democratic society (pp. 138-39).

Thus, legislative objectives that are trivial or discordant with the principles of a free and democratic society cannot be justified under s. 1 (p. 138).

[192] If the court accepts that there is a pressing and substantial objective, it must go on to determine whether the means the law employs to achieve the objective are reasonable (*Big M*, at p. 352). The s. 1 reasonableness analysis requires courts to balance the interests of society against those of specific rights-bearing groups or individuals (*Oakes*, at p. 139). Some level of judicial deference is required, as s. 1 merely requires that the limits be "reasonable" (*Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331, at para. 97; *R. v. K.R.J.*, 2016 SCC 31, [2016] 1 S.C.R. 906, at para. 67). Courts acknowledge that there may be more than one solution to any particular social problem, and that legislatures are often better positioned than the judiciary to choose from that range of options when faced with complex social issues (*Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 S.C.R. 567, at para. 53).

[193] Whether a limit is reasonable is a question of proportionality. Under *Oakes*, the assessment of proportionality has three components. First, the limit must be rationally connected to the objective. This analysis inquires into whether the government has shown "that the restriction on rights serves the intended purpose" (*RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, at para. 153). The measure should not be arbitrary, unfair, or based on irrational considerations (*Oakes*, at p. 139). Second, the limit must minimally impair the right or freedom. The

court must inquire into whether the measure impairs the right no more than is necessary to advance the objective (p. 139). Third, there must be proportionality between the salutary effects that result from the measure's implementation on the one hand, and the deleterious effects that the measure has on rights and freedoms on the other (*Dagenais*, at p. 889). Unlike the other components of proportionality, this final component requires an assessment of the law's *effects*, rather than its selected *means*.

(a) *The Role of Context*

[194] The *Oakes* test is to be applied flexibly, having regard to the specific factual and social context of each case (*RJR-MacDonald*, at para. 63). In *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, the Court outlined contextual considerations that may be relevant in conducting a s. 1 analysis, including: (1) the nature of the harm targeted by the legislation and its resistance to precise measurement; (2) the vulnerability of the population at issue; (3) the presence of subjective fears or apprehension; and (4) the character of the activity alleged to be infringed. These contextual factors were later applied by this Court as part of a broader rationale for judicial deference to legislative choices in certain circumstances (see, e.g., *Harper v. Canada (Attorney General)*, 2004 SCC 33, [2004] 1 S.C.R. 827; *R. v. Bryan*, 2007 SCC 12, [2007] 1 S.C.R. 527).

[195] The role of these contextual considerations was clarified in *Health Services*. While they remain relevant, this Court confirmed that the justification analysis under s. 1 requires satisfying the *Oakes* test. Contextual factors such as those

discussed in *Thomson Newspapers* and other cases may inform how the *Oakes* test is applied, but they are not to be seen either as a separate test or a preliminary stage of the analysis.

(b) *The Role of the Precautionary Principle and a Flexible Approach*

[196] The respondents and numerous interveners, including the Attorney General of Canada, argued before this Court that the "precautionary principle" applies, or should apply, as a part of the *Oakes* test. In this novel argument, they seek to transpose a principle that this Court has applied in the environmental law context into the constitutional domain to support greater deference to legislative choices made in circumstances involving threats of serious harm in situations of scientific uncertainty. The application judge cited and relied on this principle when conducting the s. 1 analysis. The appellants argue that this was an error, and that the precautionary principle plays no role in the s. 1 analysis.

(i) <u>What Is the Precautionary Principle?</u>

[197] The precautionary principle originated in the context of environmental policy. At the 1990 United Nations Bergen Conference on Sustainable Development, the Environment Ministers of 34 countries, including Canada, laid out the following formulation of the principle in a Ministerial Declaration, the *Bergen Ministerial Declaration on Sustainable Development in the ECE Region*, U.N. Doc. A/CONF.151/PC/10, Ann. I, August 6, 1990 (*Bergen Declaration*):

> In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. [p. 19]

[198] According to this definition, the principle applies when governments set environmental policies. It calls for a preventive and anticipatory mindset to address the causes of environmental harms and states that the lack of full scientific certainty should not be used to justify inaction in the face of the threat of serious or irreversible environmental damage. This precautionary principle has become an important and oft-cited principle in the realm of international law and has been incorporated into numerous domestic environmental statutes.

(ii) Canadian Judicial Treatment of the Precautionary Principle

[199] This Court has considered the precautionary principle when interpreting provisions relating to environmental law in three cases. It was first considered in *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241, where this Court was asked to interpret a bylaw that restricted the use of pesticides (J. Abouchar, "The Precautionary Principle in Canada: The First Decade" (2002), 32 *E.L.R.* 11407). While the bylaw did not refer to the principle, the Court cited the statement from the *Bergen Declaration*. It noted that the bylaw "respects international law's 'precautionary principle'", and that there may be "currently sufficient state practice to allow a good argument that the precautionary

principle is a principle of customary international law" (*Spraytech*, at paras. 31-32, quoting *Bergen Declaration*, at para. 7, and J. Cameron and J. Abouchar, "The Status of the Precautionary Principle in International Law", in D. Freestone and E. Hey, eds., *The Precautionary Principle and International Law* (1996), 29, at p. 52).

[200] In *Castonguay Blasting Ltd. v. Ontario (Environment)*, 2013 SCC 52, [2013] 3 S.C.R. 323, this Court interpreted a provision of the *Environmental Protection Act*, R.S.O. 1990, c. E.19. Again, while the principle was not referenced explicitly in the statute, the Court considered that the provision in question "gives effect to" and is "consistent with" the precautionary principle, following *Spraytech* (para. 20).

[201] Finally, this Court affirmed the *Bergen Declaration* definition of the precautionary principle in *Reference re Impact Assessment Act*, 2023 SCC 23. Here, the statute expressly stated that the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1, itself must be administered in a manner that applies the precautionary principle (para. 145).

[202] Each of these cases involved interpreting a statute or bylaw on an environmental matter. This case raises new questions regarding the precautionary principle outside of the well-established spheres of international law and domestic environmental law.

[203] Some lower courts have relied on the precautionary principle beyond the environmental context (see, e.g., *R. v. Michaud*, 2015 ONCA 585, 127 O.R. (3d) 81, at para. 102; *Procureur général du Québec v. Gallant*, 2021 QCCA 1701). In addition,

certain courts have also cited the precautionary principle in cases involving the COVID-19 pandemic in recent years, including when conducting a s. 1 analysis (see *Ontario (Attorney General) v. Trinity Bible Chapel*, 2023 ONCA 134, 166 O.R. (3d) 81; *Grandel v. Saskatchewan*, 2022 SKKB 209; *Schuyler Farms Limited v. Dr. Nesathurai*, 2020 ONSC 4711; *Spencer v. Canada (Attorney General)*, 2021 FC 361, 490 C.R.R. (2d) 1).

(iii) Section 1 and the Precautionary Principle

[204] We are now asked to use the precautionary principle to assess whether *Charter*-infringing government action passes constitutional muster under s. 1. We accept that the precautionary principle has an important role to play in certain contexts. It draws attention to the link between the threat of serious harm and the level of scientific knowledge available at any given time. It puts safety first and promotes life, in various forms. It has similarities to, and may even intersect with, the inquiries into a law's objective and the means used to achieve that objective. These same factors underpin s. 1 and the *Oakes* test. For these reasons, it is not an error of law to refer to the precautionary principle in a s. 1 analysis.

[205] However, for the practical and conceptual reasons that follow, there is no need to embed the precautionary principle into the s. 1 analysis in the formal manner proposed in this case.

[206] Transposing the precautionary principle onto the *Oakes* test would create problems of clarity and consistency. The principle originates in social science. It does not provide a clear legal framework and would import confusion into the s. 1 analysis (see É. Labelle Eastaugh, "The Precautionary Principle as a Justification for Limiting Constitutional Rights" (2025), 62 *Alta. L. Rev.* 818). Fundamental methodological questions remain unanswered about how it operates, where in the s. 1 analysis it applies, and what preconditions a government must establish before it can invoke it to justify restrictions on *Charter* rights.

[207] This uncertainty is mirrored in the submissions of the parties and interveners. A number of them invited us to apply the precautionary principle in the s. 1 analysis, but there is little agreement on how to do so. While the Attorney General of Canada posits that the precautionary principle relates to all stages of the s. 1 analysis, the Attorneys General for Prince Edward Island and the Yukon situate it within the minimal impairment stage of the *Oakes* test. Others, such as the Attorneys General for Saskatchewan, Nunavut, and New Brunswick, identify the precautionary principle in broader terms, relating to the determination of what level of deference is to be owed. This uncertainty also affected the application judge's reasons in which the precautionary principle was cited as context, before applying *Oakes*, and also discussed briefly at the minimal impairment stage. This lack of clarity in how the precautionary principle would apply within a s. 1 analysis militates against adopting it as a freestanding principle alongside *Oakes*.

[208] This said, the concerns underlying the precautionary principle are already reflected under s. 1. The *Oakes* test is applied flexibly and with a full understanding of the context of the state action in issue. The government is already accorded significant deference on complex policy issues, including where the evidence is inconclusive (*Hutterian Brethren*, at para. 53; *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30, [2007] 2 S.C.R. 610, at para. 43). Such deference directly affects how courts assess the justifiability of an infringement, and establishes benchmarks for the nature and sufficiency of the evidence required (*Harper*, at para. 75; *Bryan*, at paras. 11 and 28). When there is a range of possible state responses to a serious policy issue, such as situations which involve emergent, novel, and urgent threats to human life, "[t]here may be room for debate about what will work and what will not, and the outcome may not be scientifically measurable. Parliament's decision as to what means to adopt should be accorded considerable deference in such cases" (*JTI-Macdonald Corp.*, at para. 41).

[209] Courts recognize that governments enjoy a margin of appreciation, that a deferential approach can be applied to every stage of the *Oakes* test, and that each such stage contains a contextual standard. This recognition responds to the underlying concerns of the precautionary principle.

[210] The first stage of the *Oakes* test focuses on purpose and requires that the infringing measure pursue a pressing and substantial objective of sufficient importance to warrant limiting a constitutionally protected right or freedom in a free and

democratic society (*Oakes*, at p. 138; see also *Big M*, at p. 352). As the state exists in part to protect society from harm, preventing a reasonably apprehended risk of "threats of serious or irreversible damage", will likely qualify as a pressing and substantial objective, consistent with the principles of the *Charter* and a free and democratic country. While rights-limiting laws enacted in compliance with the precautionary principle will therefore tend to pass the first stage of *Oakes*, it adds little or nothing to ask whether compliance with the precautionary principle is itself a pressing and substantial objective.

[211] The next step of *Oakes* asks whether this measure is rationally connected to the pressing and substantial objective. The language of the *Charter* requires that the measure be "*demonstrably* justified". This analysis cannot be one of intuition or pure deference to the choice of the legislature; the government must put forward a reasoned demonstration of the proportionality of the measure (*RJR-MacDonald*, at paras. 128-29). But this Court has never required scientific certainty and has made it clear that a rational connection to the objective can be established by reason, logic, or social science evidence (see, e.g., *JTI-Macdonald Corp.*, at para. 41; *Harper*, at para. 78; *R. v. Butler*, [1992] 1 S.C.R. 452, at p. 503; *Keegstra*, at pp. 768 and 776; *RJR-MacDonald*, at para. 137; *Thomson Newspapers*, at paras. 104-7; *R. v. Sharpe*, 2001 SCC 2, [2001] 1 S.C.R. 45). Government may rely upon a reasoned apprehension of harm and need only show "that it is reasonable to suppose that the limit may further the goal, not that it will do so" (*Hutterian Brethren*, at para. 48; see also *Harper*, at para.

77). There is no need to invoke the precautionary principle to justify government actions in the absence of full certainty.

[212] On the question of minimal impairment, the court must determine whether the challenged measure infringes the right in such a way that it is measured and carefully tailored to the pressing and substantial objective sought to be achieved (*RJR-MacDonald*, at para. 160). Again, governments have latitude to respond to complex policy issues, especially where the evidence is inconclusive (*Hutterian Brethren*, at para. 53; *JTI-Macdonald Corp.*, at para. 43; *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at p. 994). Laws do not fail this step simply because a litigant may, with the benefit of hindsight, point to a less infringing alternative. Indeed, "[s]ome deference to the legislator is warranted — if the law falls within a range of reasonable options, the court will not insist on the smallest infringement conceivable" (*Ontario (Attorney General) v. Working Families Coalition (Canada) Inc.*, 2025 SCC 5, at para. 63). In this sense, the precautionary principle's animating concern to encourage action during a crisis already finds home in this stage of *Oakes* without addition or amendment.

[213] At the final stage of *Oakes*, the court must weigh the proportionality of the effects of the measures which limit the *Charter* right or freedom against the objective of that measure (p. 139). The evidentiary burden at this stage also allows the salutary effects to be established by a reasoned apprehension (*Hutterian Brethren*, at para. 85; *Sharpe*, at para. 103) and does not require legislatures to show that the law will produce

the forecasted benefits. This is because "[i]f legislation designed to further the public good were required to await proof positive that the benefits would in fact be realized, few laws would be passed and the public interest would suffer" (*Hutterian Brethren*, at para. 85). In other words, this Court has already recognized at this stage, too, that a lack of scientific certainty is not a reason to postpone government action.

[214] As a whole, the *Oakes* test already captures any wisdom offered by the precautionary principle. We therefore conclude that the precautionary principle is not a part of the s. 1 analysis, nor should it be inserted or injected into the analysis in the formal manner proposed. The *Oakes* test remains the governing test and it is a responsive, flexible and nuanced standard for assessing whether a limit on a *Charter* right or freedom, even one enacted in an emergency, is justified in a free and democratic society.

(2) Application

(a) *The Application Judge's Treatment of the Thomson Newspapers Factors Is Inadvisable, but It Is Not an Error*

[215] The appellants argue that the application judge erred by engaging with each of the *Thomson Newspapers* contextual factors before proceeding to the *Oakes* framework.

[216] As described above, an assessment of contextual factors should not be seen as an initial stage of the analysis. That is because context is relevant to each step of the *Oakes* test. Thus, if context is only considered before proceeding through the *Oakes* analysis, then it risks becoming divorced and disconnected from each of the four steps.

[217] Nonetheless, the application judge's approach does not constitute a legal error in this case. This Court has repeatedly affirmed that the justification analysis under section 1 must be attentive to context (see, e.g., *RJR-MacDonald*, para. 138; *Frank v. Canada (Attorney General)*, 2019 SCC 1, [2019] 1 S.C.R. 3, para. 38; *Health Services*, at para. 139). Provided that the judge ultimately applies the *Oakes* test in a manner that is attentive to that context, it is not a legal error to first consider contextual factors. The application judge's assessment of contextual considerations at the outset of the analysis, rather than within the proportionality framework itself, is a difference in form rather than substance.

(b) *Application of the Oakes Test*

(i) Protecting Individuals From Illness and Death Is a Pressing and Substantial Objective

[218] Care is necessary when setting out the government's goal. What is at issue is the objective of the infringing measure, not the legislative scheme as a whole (*RJR-MacDonald*, at para. 144). The application judge employed the correct focus and found that the objective of the Travel Restrictions was "to protect those in Newfoundland and

Labrador from illness and death arising from the importation and spread of COVID-19 by travelers" (para. 436). The appellants disagree, arguing that the actual purpose was to prevent non-residents from entering the province, because the rate of transmission of COVID-19 was decreasing when the travel restriction was implemented.

[219] The application judge did not accept this argument, and neither do we. In the early days of the pandemic, provinces across Canada were facing extraordinary circumstances with little medical and scientific evidence to assist them. The situation was dire, with cases — and deaths — growing daily at frightening rates. There was much we still did not know about COVID-19, and governments were grappling with the urgent task of crafting measures that could help prevent further loss of life, using the rapidly changing information available. One of the only things that governments *did* know was that the spread of disease could be limited by limiting contact between one another. Even though transmission rates may have been declining, the government of Newfoundland and Labrador's Travel Restrictions represent an earnest attempt to protect the residents of its province during a confusing and challenging time.

[220] This governmental objective is clearly borne out by both the expert evidence and the interveners' submissions.

1. *The Expert Evidence Shows the Gravity of the Situation*

[221] We begin with the expert evidence. The affidavits of Drs. Rahman and Fitzgerald set out comprehensive evidence of the effects of travel restrictions on

limiting the spread of COVID-19. There is no dispute that COVID-19 was causing severe illness and death. By July 2020, 8.2 percent of COVID-19 cases in Canada resulted in death (A.R., vol. III, at pp. 194-95). This is a tragic figure. It must be remembered, too, that at the time there was no vaccine and no drug therapies for COVID-19 (p. 193). The 14-day self-isolation period was proving difficult to monitor, and there were concerns with poor adherence (p. 204; A.R., vol. VI, at pp. 167-98). The evidence was becoming clear that COVID-19 could spread exponentially, and that once community spread occurs, controlling the disease is difficult (A.R., vol. V, at pp. 45 and 54; A.R., vol. VIII, at p. 29).

[222] Dr. Brenda Wilson also explained that calculations made in the early days of the pandemic suggested that "a single day's delay in implementing effective control measures would lead to a 40% increase in total cases in a population" (A.R., vol. III, at p. 22). Dr. Wilson's report also set out that early estimates suggested that on average, during 30 days one infected person could infect over 400 others, and each of those individuals could infect another 400 others (p. 22). There was a real risk of exponential viral transmission.

[223] Dr. Proton Rahman provided modelling to show the simulated effects of the Travel Restrictions, demonstrating that the Travel Restrictions significantly reduced the spread of COVID-19. The studies attached to Dr. Rahman's affidavit also evidenced significant concerns regarding adherence to self-isolation measures (A.R., vol. VI, at p. 170).

[224] Dr. Fitzgerald further set out that disease rates were growing at a rapid rate in other provinces across Canada when the Travel Restrictions were implemented, and there were concerns that people in other provinces might attempt to come to Newfoundland and Labrador to avoid COVID-19 due to the then low prevalence rate in the province (A.R., vol. III, at p. 203).

[225] This was the situation facing Canadian governments. With limited information and a growing health crisis, those governments had to respond.

2. *The Intervener Submissions Show That the Situation Demanded a Response to Limit the Spread of the Virus*

[226] Our understanding of the choices before governments, particularly in smaller jurisdictions, has been augmented by the detailed submissions of various interveners who explained the nature of the COVID-19 pandemic at the operative time in their respective jurisdictions. The Attorney General of Prince Edward Island pointed out that, when the Travel Restrictions were implemented, there were a widespread number of deaths and cases of serious illness across Canada, and limited scientific evidence to explain what was happening (I.F., at para. 48). We did not yet know how COVID-19 spread from person to person (para. 50). Prince Edward Island further described how governments felt the urgency to protect vulnerable populations within their borders, and had to rely on reason and logic in the period before more scientific evidence became available (para. 50). There was no time for a "wait and see" approach given the growing concerns about the capacity of the healthcare systems of smaller

provinces like Prince Edward Island and Newfoundland and Labrador, and given the real threat of death as an outcome of this rapidly spreading illness (para. 57).

[227] The Attorney General of Saskatchewan, too, described how the extraordinarily high stakes and risk of harm required swift action in the face of the unprecedented and rapidly developing situation that was the early days of the COVID-19 pandemic (I.F., at para. 57). Saskatchewan also described how different provinces faced the task of choosing a measure tailored to local circumstances, values, and priorities in this time of crisis (para. 66).

[228] The Attorney General of the Yukon explained that in the early days of the pandemic, before we had drug therapies, vaccines, or any substantial information about COVID-19, governments implemented public health measures based on historical practices (I.F., at paras. 5-6). In the Yukon, decisions had to be made based on incomplete and evolving evidence, informed by the particularly far-reaching risks faced by the territory, including its geographic isolation, limited healthcare system capacity, and high volume of vulnerable populations (paras. 7-8).

3. *The Government's Objective Accords With the Principles of a Free and Democratic Society*

[229] The record and the surrounding context provided by the interveners demonstrate that the application judge correctly identified that the objective of the travel restriction was to protect those in Newfoundland and Labrador from illness and

death arising from the importation and spread of COVID-19 by travelers. This objective is rooted in the value of public health, which is a collective goal of importance (see *Oakes*, at p. 136) This value is rooted in the right to life, and the dignity and worth of a human person, which is an established value underlying a free and democratic society (see *Charter*, s. 7; *Re B.C. Motor Vehicle Act*, at p. 512). In *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, [2005] 1 S.C.R. 791, most of this Court held that "[w]here lack of timely health care can result in death, s. 7 protection of life itself is engaged" (para. 123, per McLachlin C.J. and Major J.). Here, had borders remained open during that stage of the COVID-19 pandemic, residents of Newfoundland and Labrador faced a reasoned apprehension of an increased risk of death and an overwhelmed healthcare system. Thus, the challenged legislation had an objective rooted in values and principles integral to a free and democratic society.

[230] Taking a broader lens, public heath, human dignity, and the preservation of life, especially in a medical crisis, are part of the rich tapestry of what it means to be Canadian. Interwoven in each of the values and principles that underlies a free and democratic society is the basic imperative that we must care for one another. Section 1 permits, and indeed demands, that regard for the well-being and lives of our fellow Canadians serves as a pressing and substantial objective.

[231] In sum, the application judge did not err in concluding that the government met its burden to establish that the Travel Restrictions pursued a pressing and substantial objective.

(ii) Proportionality

1. *The Travel Restrictions Were Rationally Connected to Their Objective*

[232] The appellants concede that the Travel Restrictions' means were rationally connected to their objective. The available expert evidence demonstrated that travel restrictions significantly reduced the COVID-19 spread in the population. No evidence was adduced to counter this.

[233] We see no cause to intervene in the conclusion that the Travel Restrictions were rationally connected to the goal of protecting the residents of Newfoundland and Labrador from exposure to COVID-19.

2. *The Travel Restrictions Minimally Impaired Section 6 Rights*

[234] In a great majority of cases, minimal impairment has been the linchpin of the s. 1 analysis (Hogg and Wright, at § 38:20). At this stage, the government must prove that there were no less harmful means to achieve the objective in a real and substantial manner. Some deference is owed to the government, especially when responding to complex social problems, but the right must be impaired as little as reasonably possible (*John Howard Society*, at para. 95; *R. v. Brown*, 2022 SCC 18, [2022] 1 S.C.R. 374, at para. 135). Judicial deference should not extend to accepting any law "simply on the basis that the problem is serious and the solution difficult" (*RJR-MacDonald*, at para. 136).

[235] Hindsight plays no role in this analysis (*Newfoundland (Treasury Board) v. N.A.P.E.*, 2004 SCC 66, [2004] 3 S.C.R. 381, at paras. 95-96). While we now know more about COVID-19, and the intensity of spring and summer 2020 may seem like a distant memory, the s. 1 analysis is conducted based on what was known when the decisions were made.

[236] The timeframe and context in which the Travel Restrictions were implemented leads to the conclusion that they minimally impaired the right to interprovincial travel at that early stage of the COVID-19 pandemic.

[237] The Travel Restrictions were a carefully tailored limit on Canadians' mobility rights. Importantly, the challenged measure was not a total travel ban. The CMOH carefully deliberated on the appropriate level of travel restrictions, mindful of the latest medical evidence and the experience in other jurisdictions. The product of this deliberation was a nuanced law that still allowed for residents and essential workers to enter the province. And anyone else who wanted to enter Newfoundland and Labrador could still apply and receive case-by-case consideration and a personal exemption. If they were refused entry, they could apply for reconsideration. Over 85 percent of requests to enter the province were granted (A.R., vol. III, at p. 204). In the extraordinary circumstances of the early stages of the pandemic, this was an evidence-based, expert-driven measure that was limited, tailored, and overall involved a minimal impairment on Canadians' mobility rights in these circumstances.

[238] The appellants argue that two available alternatives would have impaired mobility rights to a lesser extent: self-isolation, or a targeted prohibition only on travel for tourism, recreation, or entertainment purposes. With respect, we disagree.

[239] First, the appellants are incorrect in stating that no evidence before the application judge suggested that self-isolation was insufficient to achieve the desired objectives (A.F., at para. 130). Several relevant studies were attached to Dr. Rahman's report in the record, demonstrating the comparative drawbacks of self-isolation. In a study from the United Kingdom, it was found that 75.1 percent of those who either had COVID-19 symptoms or had a person in their household with COVID-19 symptoms failed to self-isolate (A.R., vol. VI, at p. 170). This study concluded that adherence to self-isolation measures was "poor" (p. 170). Dr. Fitzgerald's affidavit also sets out that discussions with the ferry operator Marine Atlantic confirmed that several travelers were entering the province with a reservation for a return sail for a date within the 14-day isolation period, which raised concerns about lack of adherence with the 14-day self-isolation period (A.R., vol. III, at p. 204; application judge's reasons, at para. 108). Dr. Fitzgerald also reported that the Provincial Government had received numerous complaints from individuals and businesses suggesting that the self-isolation requirement was not being followed (A.R., vol. III, at pp. 198 and 204; application judge's reasons, at para. 107).

[240] Self-isolation cannot be a satisfactory alternative alone when there were these many indicators of non-compliance. While the complaints of non-compliance

were far from conclusive, they demonstrate that the CMOH had good cause to consider reliance on a voluntary measure to be inadequate to address the degree of risk. And unlike enforcing self-isolation for all persons who entered the province, the province could effectively enforce the Travel Restrictions, given its geography.

[241] The appellants respond that when the Travel Restrictions were implemented, Newfoundland and Labrador's self-isolation requirements for travelers were working. They point out that COVID-19 case counts were stable and manageable. But this argument fails to appreciate that if even a single infected person did not comply with the self-isolation requirements, this could precipitate significant spread. It was appropriate for the province to take preventive action when it did, rather than waiting for the first instance of proven spread traceable to non-compliance with self-isolation.

[242] The appellants also point out that the government responded to the outbreak at Caul's Funeral Home with a self-isolation requirement. This argument fails to appreciate that even with self-isolation, the Caul's outbreak led to much illness and two deaths. The government cannot be faulted for taking additional measures to reduce the chances of more deaths.

[243] The evidence shows that self-isolation alone was not a sufficient alternative to meet the pressing and substantial objective of protecting those in Newfoundland and Labrador from illness and death. It was open to the government to conclude that other, more effective action had to be taken.

[244] The appellants also argue that to achieve minimal impairment, any travel restriction needed to be narrowly tailored to only limit travel for tourism, recreation, or entertainment, rather than prohibiting it for all purposes. They point to similar travel restrictions implemented by the federal government as an example of less intrusive means. We do not accept this argument. The expert evidence of Dr. Parfrey explained that Newfoundland and Labrador residents were particularly vulnerable to the pandemic because the population ranked as the highest — or near the highest — for risk factors associated with severe illness or death from the disease. Dr. Fitzgerald also noted concerns about the rural nature of the province, citing thinly stretched healthcare resources such as personal protective equipment and ICU beds only further strained by any unnecessary importation of the disease (A.R., vol. III, at p. 203). Given these distinctive features, it was reasonable to restrict all non-essential travel to meet the pressing and substantial objective.

[245] The test for minimal impairment is not a standard of perfection, nor — we reiterate — does it operate with the benefit of hindsight. The government is entitled to deference in achieving its pressing and substantial objective, particularly in a health emergency. We agree with the application judge that none of the alternatives constituted a similarly effective, less rights-impairing substitute for the travel restriction to meet the objective of protecting those in Newfoundland and Labrador from illness and death.

3. *The Travel Restrictions' Salutary Effects Are Proportionate to its Deleterious Effects*

[246] The final stage of the *Oakes* test requires proportionality between the harms of the measures responsible for limiting the *Charter* right or freedom, and the benefits of the pressing and substantial objective. The more severe or deleterious the harms of a measure, the more beneficial its salutary effects must be (*Oakes*, at pp. 139-40; *Dagenais*, at p. 889). This stage "allows courts to stand back to determine on a normative basis whether a rights infringement is justified in a free and democratic society" (*K.R.J.*, at para. 79). Here, courts must decide whether the *Charter* infringement "is too high a price to pay" for the resulting salutary effects (Hogg and Wright, at § 38:22).

[247] There were deleterious effects to the Travel Restrictions. As discussed above, s. 6 seeks to safeguard Canadians' mobility rights to promote personal autonomy and national unity. Both interests were harmed by the Travel Restrictions. There was the loss of the ability to travel to Newfoundland and Labrador. There was naturally inconvenience for those who had to make alternative arrangements, and potentially sorrow and emotional turmoil for those in situations similar to Ms. Taylor's. Further, there was harm to national unity in the removal of the ability to move freely across provincial borders — which is part of what it means to be Canadian.

[248] We recognize specifically that there was a significant personal impact on Ms. Taylor, who could not attend the burial of her mother and was prevented, for eleven days, from grieving with her family. We acknowledge the devastating impact such events can have on the individual and her family and community, and the distress that

can be caused by separation during the challenging and uncertain times of a global pandemic.

[249] But we must also consider the salutary effects of the limit on mobility rights.

[250] Newfoundland and Labrador was particularly vulnerable to the known risks of infection, illness and death, given the demographics of its population and the limited capacity of its healthcare system. When the measures were taken, there was certainty that COVID-19 caused severe illness and death. There were high rates of comorbidity and a population with an advanced age, paired with the limited capacity of the healthcare system (A.R., vol. V, at pp. 46-47; A.R., vol. III, at p. 204). In 2020, there were only 1,376 hospital beds in the province and 92 ICU beds (A.R., vol. III, at p. 194). At the same time, Newfoundland and Labrador was particularly well suited to preventing the spread of COVID-19 by means of travel restrictions. Expert evidence before the application judge indicated that island jurisdictions similar to Newfoundland and Labrador that adopted travel restrictions were successful in controlling COVID-19 infections (A.R., vol. V, at pp. 54 and 59-60; A.R., vol. VI, at p. 59).

[251] The Caul's Funeral Home spreading event demonstrated an example of the significantly harmful impact that infected travelers could have had in spreading the virus, adding to ill health and death, and straining the healthcare system in Newfoundland and Labrador: of the 350 people who attended, 93 of them developed

COVID-19. Four generations of transmission occurred, causing 12 hospitalizations, five ICU admissions, and two deaths (A.R., vol. III, at pp. 197-98).

[252] Government concerns appear to have later been confirmed. Modeling showed that over a nine-week period beginning May 4, 2020, failing to implement the travel restriction would result in 10 times more COVID-19 cases in residents of the province than what occurred (A.R., vol. V, at p. 50). Modeling also showed that ICU bed capacity would be quickly overwhelmed if the province experienced many infections (A.R., vol. III, at p. 194).

[253] Given this evidence, the assessment of the proportionality of effects at this stage is further buttressed because the measure responded to an emergent and novel crisis that posed a serious threat to human health and the basic functioning of a free and democratic society. In such a case, and even without relying on judicial deference, we would conclude that the salutary effects of the travel restriction clearly outweigh the deleterious ones.

[254] The evidence available at the time supported that the use of a travel restriction could prevent a significant volume of infections. An infection avoided was seen as a way to preserve health and save lives. We acknowledge the personal and painful losses of those impacted by these measures with solemnity and compassion. These were difficult times. Yet we must also give due weight to the lives that would have been lost if the measure had not been implemented. Here, losing a right to travel

and the inconveniences and personal losses that go with it, though important, must be outweighed by the decrease in serious health risks to the collective, and the lives spared.

(3) Conclusion on the *Oakes* Test

[255] In the early days of the pandemic, governments across Canada — including Newfoundland and Labrador — were confronted by a new and deadly disease. Growing numbers of cases and deaths paired with a lack of concrete medical and scientific evidence created an extraordinarily difficult situation where decisions had to be made swiftly to attempt to protect health and reduce further loss of life. These unprecedented circumstances, factoring in the capacity of their healthcare system and high volume of vulnerable populations, entitled Newfoundland and Labrador to act as it did. The Travel Restrictions amounted to a limitation of freedoms, and governments must exercise significant caution when engaging in such restrictions. However, Newfoundland and Labrador's Travel Restrictions were a reasonable and justified measure in a free and democratic country in the COVID-19 pandemic.

IV. Conclusion

[256] For these reasons, we would exercise our discretion to hear this moot appeal, and allow the appeal in part.

[257] The Court of Appeal's order dismissing the appeal as moot is set aside, and the application judge's order is modified to reflect that the Travel Restrictions limited

Ms. Taylor's mobility rights as guaranteed by s. 6(1) and (2). This limit was justified under s. 1 of the *Charter*. The parties do not seek costs and we agree this is not a case for costs.

The reasons of Wagner C.J. and Kasirer and Jamal JJ. were delivered by

KASIRER AND JAMAL JJ. —

I. Overview

[258] We have had the advantage of reading the reasons of Karakatsanis and Martin JJ., as well as those of Rowe J. We agree with our colleagues that the appeal brought by the Canadian Civil Liberties Association and Kimberley Taylor is moot but that we should exercise our discretion to hear the case. We also agree that the infringement of Ms. Taylor's constitutional right to interprovincial mobility was justified under s. 1 of the *Canadian Charter of Rights and Freedoms*.

[259] In our respectful view, however, Ms. Taylor's mobility right under s. 6(2)(a) of the *Charter* was infringed when she was prevented from attending her mother's burial in Newfoundland and Labrador, not her rights under s. 6(1). This reflects a settled understanding that s. 6(1) protects international mobility and that s. 6(2) protects interprovincial mobility. There is a broad scholarly consensus that s. 6(1) only protects rights related to international mobility for Canadian citizens, while s. 6(2) protects interprovincial mobility within all of Canada for both citizens and permanent

residents (H. Brun, G. Tremblay and E. Brouillet, *Droit constitutionnel* (6th ed. 2014), at paras. III.97-III.125; P. W. Hogg and W. K. Wright, *Constitutional Law of Canada* (5th ed. Supp.), at §§ 46:2-46:3). Author M.-R. Natalie Girard helpfully characterized s. 6 as having a [TRANSLATION] "dual personality": it enshrines two distinct sets of mobility rights, one international and the other interprovincial ("L'article 6 de la *Charte canadienne des droits et libertés*: la liberté de circulation et d'établissement — Un volcan dormant?", in G.-A. Beaudoin and E. Mendes, eds., *Canadian Charter of Rights and Freedoms* (4th ed. 2005), 413, at p. 434). The Hon. Robert J. Sharpe and Professor Kent Roach describe ss. 6(1) and 6(2) as "two kinds of mobility rights, one international and the other interprovincial" (*The Charter of Rights and Freedoms* (7th ed. 2021), at p. 249). Professor Charles-Emmanuel Côté explains as follows: [TRANSLATION] "Section 6 can be divided into two groups of rights that are practically independent of one another; subsection 6(1) guarantees rights relating to international mobility, while subsections 6(2), 6(3) and 6(4) guarantee rights relating to interprovincial mobility" ("Circulation et établissement", in *JurisClasseur Québec — Collection Droit public — Droit constitutionnel* (loose-leaf), fasc. 11, at No. 1).

[260] The structure of s. 6 indicates that the two kinds of mobility rights are treated differently. International mobility rights for Canadian citizens in s. 6(1) are only subject to a limit in s. 1 of the *Charter*. By contrast, interprovincial mobility rights for citizens and permanent residents in s. 6(2) can also be limited by certain laws of general application in force in a province and are subject to a special rule, not applicable to s. 6(1), on affirmative action programs (see ss. 6(3) and 6(4)). The purposes of ss. 6(1)

and 6(2) are also different: while both provisions respond to concerns relating to individual dignity and autonomy, s. 6(2) also serves to consolidate the federal union in Canada by curbing unnecessary barriers among the provinces and territories (*Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157, at paras. 59-60, per Iacobucci and Bastarache JJ., and at paras. 123-25, per McLachlin J., as she then was, dissenting; *Black v. Law Society of Alberta*, [1989] 1 S.C.R. 591, at pp. 608-14; see also I. Atak, "L'article 6 de la Charte canadienne des droits et libertés: la liberté de circulation et d'établissement", in E. Mendes and S. Beaulac, eds., *Canadian Charter of Rights and Freedoms* (6th ed. 2025), 619, at pp. 650-51; P. Bernhardt, "Mobility Rights: Section 6 of the Charter and the Canadian Economic Union" (1987), 12 *Queen's L.J.* 199, at p. 207). Cast in starkly different language, ss. 6(1) and 6(2) differ in scope, in structure, and in purpose; they each must be interpreted accordingly (see Hogg and Wright, at §§ 46:2-46:3; Sharpe and Roach, at pp. 250 and 253). We agree with the consensus view that Canadian citizens and permanent residents enjoy interprovincial mobility rights under s. 6(2), not s. 6(1). With great respect for other views, an interpretation of s. 6(1) that would recognize a general right to interprovincial movement *simpliciter* would depart from this approach without proper adherence to principle or settled law. It stands at odds with a purposive construction of s. 6 and fails to give due regard to the text and context of mobility rights under the *Charter*, which apply differently for different rights holders.

[261] Moreover, since the early days of the *Charter*, there has been a further consensus that, within the guarantee bearing on interprovincial mobility in s. 6(2),

ss. 6(2)(a) and 6(2)(b) should be distinguished, the latter relating specifically to the interprovincial mobility rights of citizens and permanent residents to gain a livelihood in any part of the country (*Law Society of Upper Canada v. Skapinker*, [1984] 1 S.C.R. 357, at p. 380). Relying on a bilingual interpretation of s. 6(2)(a), Ms. Taylor rightly urges the Court to clarify that s. 6(2)(a) protects two interprovincial mobility rights distinct from the right recognized in s. 6(2)(b). On this reading, also embraced in the scholarship, s. 6(2)(a) provides Canadian citizens and permanent residents, first, with the right to move temporarily from one province or territory to another and, second, with a separate right to take up residence on a lasting basis in any province or territory (see, e.g., H. Brun and C. Brunelle, "Les statuts respectifs de citoyen, résident et étranger, à la lumière des chartes des droits" (1988), 29 *C. de D.* 689, at pp. 703-4; Côté, at No. 14.2; Brun, Tremblay and Brouillet, at para. III.114; P. Blache, "Les libertés de circulation et d'établissement", in G.-A. Beaudoin and E. Mendes, eds., *The Canadian Charter of Rights and Freedoms* (3rd ed. 1996), 8-1, at p. 8-12).

[262] When Ms. Taylor was denied permission, pursuant to orders made under s. 28(1)(h) of the *Public Health Protection and Promotion Act*, S.N.L. 2018, c. P-37.3, to enter Newfoundland and Labrador from Nova Scotia temporarily to attend her mother's burial, her right to move freely from one province to another within Canada under s. 6(2)(a) was infringed, not her right to international travel guaranteed by s. 6(1) or her right to earn a living in another province guaranteed by s. 6(2)(b). Specifically, Ms. Taylor could properly claim a constitutional right to travel temporarily from Nova Scotia to Newfoundland and Labrador under s. 6(2)(a) of the *Charter* alone. In our

respectful view, the applications judge misinterpreted s. 6(1) as the basis for the *Charter* infringement and wrongly denied the existence of a constitutional right to interprovincial movement of the kind sought by Ms. Taylor under s. 6(2)(a).

[263] We therefore differ with our colleagues on the provision of the *Charter* that was infringed here but agree with their conclusion that the infringement by the provincial public health rules was justified pursuant to s. 1.

II. Background and Relevant Provisions of the *Charter*

[264] Our colleagues provide helpful reviews of the context of the appeal. It bears repeating that Ms. Taylor sought only to travel from one province to another temporarily to attend her mother's burial. She did not intend to leave Nova Scotia to earn a living or to establish a lasting residence in Newfoundland and Labrador. She did not plan to leave the country, but rather to return directly to her home province after the burial. As noted by our colleagues, she raises what for this Court is a novel question as to where interprovincial movement *simpliciter* finds constitutional protection under s. 6 of the *Charter*.

[265] According to its title, s. 6 of the *Charter* enshrines "Mobility Rights" (expressed differently in French as the "*Liberté de circulation et d'établissement*"). The provision as a whole protects two "sets" of mobility rights, in ss. 6(1) and 6(2) respectively, each of which incorporates a plurality of rights (*Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47, [2013] 3 S.C.R. 157, at

paras. 17-18). This Court explained in *Skapinker* that "the expression 'Mobility Rights' must mean rights of the person to move about, within and outside the national boundaries" (p. 377). The specific matter raised by the appellants concerns the proper parameters of the mobility rights protected under s. 6 of the *Charter* — namely, which of the rights set out in s. 6(1) and in ss. 6(2)(a) and 6(2)(b) respectively safeguard different aspects of international and interprovincial mobility for different classes of rights holders, having regard to the limitations in ss. 6(3) and 6(4).

[266] The solution is to be found in the proper interpretation of s. 6 of the *Charter*. The parties agree that in order to discern the meaning of s. 6 of the *Charter*, the provision must be given a purposive interpretation. This means, in the words of Dickson J. (as he then was), an interpretation that is undertaken "by reference to the character and the larger objects of the *Charter* itself, to the language chosen to articulate the specific right or freedom, to the historical origins of the concepts enshrined, and where applicable, to the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the *Charter*" (*R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at p. 344; see also *R. v. Poulin*, 2019 SCC 47, [2019] 3 S.C.R. 566, at para. 32).

[267] There is also no dispute here that a purposive interpretation of the *Charter* starts with a reading of the text of the relevant provision, just as it is true that a purposive interpretation does not end there (see *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, [2020] 3 S.C.R. 426, at para. 8, per Brown and Rowe

JJ., at para. 71, per Abella J., and at para. 139, per Kasirer J.). Importantly, the text that expresses the *Charter* right, according to *Big M*, informs a proper understanding of the purpose. Taking a purposive approach is wholly compatible, as Dickson J. observed, with an interpretation consonant with the "language chosen" to express the *Charter* right in question (p. 344, cited with approval in respect of the purposive interpretation of s. 6 in *Black*, at p. 613, per La Forest J.).

[268] Authors Guy Régimbald and Dwight Newman have helpfully observed that the text of s. 6 "is more detailed than the text of many Charter provisions", a matter that cannot be ignored in its interpretation (*The Law of the Canadian Constitution* (2nd ed. 2017), at §27.2). In that sense, s. 6 is less [TRADUCTION] "open-textured" than some *Charter* provisions that, by virtue of their more abstract language, can lend themselves to broader interpretive latitude (S. Beaulac, "'Texture ouverte', droit international et interprétation de la Charte canadienne" (2013), 61 *S.C.L.R.* (2d) 191, at p. 210). Some of the questions relating to the scope and application of s. 6 — such as, for example, who the rights holders are — find answers in a purposive interpretation involving careful attention to the detailed language chosen to give expression to constitutional mobility rights.

[269] The interpretation of s. 6 of the *Charter* has proved challenging because the French and English texts of s. 6 express constitutional mobility rights differently, as the Court recognized in its early exercise of reading s. 6 in *Skapinker* (p. 378). This dissonance has been highlighted by scholars since then (see, e.g., Côté, at No. 4; Girard,

at pp. 418-20; Atak, at p. 623). Both the appellants and the respondents acknowledge that the two linguistic texts of the *Charter* are equally relevant in interpretation as a consequence of s. 57 of the *Constitution Act, 1982*, which provides:

English and French versions of this Act	**Versions française et anglaise de la présente loi**
57 The English and French versions of this Act are equally authoritative.	**57** Les versions française et anglaise de la présente loi ont également force de loi.

[270] Commenting on the first generation of *Charter* jurisprudence, author J. P. McEvoy observed that "[t]o refer to only one language version may result in failure to properly ascertain the true meaning of the Constitution where possible discrepancies of language exist between the two versions" ("The Charter as a Bilingual Instrument" (1986), 64 *Can. Bar Rev.* 155, at p. 157; see also Hogg and Wright, at § 56:3; M. Bastarache et al., *The Law of Bilingual Interpretation* (2008), at pp. 97-101). Professor Roderick A. Macdonald wrote that legal bilingualism, rather than mere legal dualism, compels "engagement" of French and English legislative texts "with each other" ("Legal Bilingualism" (1997), 42 *McGill L.J.* 119, at p. 158). "[K]nowledge of one version alone", he wrote, "is an insufficient point of reference for understanding the juridical idea in question" (p. 161). In that spirit, this Court has decided that a proper understanding of a *Charter* right requires that the two linguistic versions of the relevant provision "be read together" (*Mahe v. Alberta*, [1990] 1 S.C.R. 342, at pp. 370-71, citing *Reference re Education Act of Ontario and Minority Language Education Rights* (1984), 10 D.L.R. (4th) 491 (Ont. C.A.), at p. 528; see also, more recently, *Dickson v.*

Vuntut Gwitchin First Nation, 2024 SCC 10, at para. 121). In this case, the intervener the Attorney General of Prince Edward Island urges that reading the two versions of s. 6(2)(a) together is essential to revealing the full meaning of the right (I.F., at para. 22).

[271] Because both the appellants and the respondents compare the relevant French and English texts of the *Charter*, it is useful to reproduce both linguistic texts for ease of reference. The rules of this Court require parties to cite both linguistic texts together in materials they submit before the Court (see, e.g., r. 25(1)(c)(vi) and (vii) and r. 44(1)(a) of the *Rules of the Supreme Court of Canada*, SOR/2002-156). This encourages the texts to be read and interpreted together; the applications judge did not have, it would seem, the advantage of seeing the two texts side by side (the bilingual interpretation argument was not raised before him). Because bilingual interpretation is an imperative wherever French and English enactments are equally authoritative, the practice of bringing both linguistic texts to the attention of a court charged with interpreting bilingual legislation could be encouraged by the adoption of rules of practice like r. 25(1)(c)(vi) and (vii) and r. 44(1)(a) elsewhere, in particular for the interpretation of bilingual constitutional texts, which is a national concern (see D. Mulaire, "Michel Bastarache, Naiomi Metallic, Regan Morris et Christopher Essert, *The Law of Bilingual Interpretation*" (2010), 41 *Ottawa L. Rev.* 397, at pp. 401-2).

[272] Sections 1 and 6 of the *Charter* provide:

Rights and freedoms in Canada **Droits et libertés au Canada**

1 The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Mobility Rights

Mobility of citizens

6 (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(a) to move to and take up residence in any province; and

(b) to pursue the gaining of a livelihood in any province.

Limitation

(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

1 La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

Liberté de circulation et d'établissement

Liberté de circulation

6 (1) Tout citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir.

Liberté d'établissement

(2) Tout citoyen canadien et toute personne ayant le statut de résident permanent au Canada ont le droit :

a) de se déplacer dans tout le pays et d'établir leur résidence dans toute province;

b) de gagner leur vie dans toute province.

Restriction

(3) Les droits mentionnés au paragraphe (2) sont subordonnés :

a) aux lois et usages d'application générale en vigueur dans une province donnée, s'ils n'établissent entre les personnes aucune distinction fondée principalement sur la province de résidence antérieure ou actuelle;

b) aux lois prévoyant de justes conditions de résidence en vue de

qualification for the receipt of publicly provided social services.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

l'obtention des services sociaux publics.

Programmes de promotion sociale

(4) Les paragraphes (2) et (3) n'ont pas pour objet d'interdire les lois, programmes ou activités destinés à améliorer, dans une province, la situation d'individus défavorisés socialement ou économiquement, si le taux d'emploi dans la province est inférieur à la moyenne nationale.

III. Analysis

[273] The appellants submit that the applications judge erred in deciding that Ms. Taylor's right of interprovincial movement *simpliciter* was not grounded in s. 6(2)(a). In their written materials, the appellants present no argument that a right to interprovincial movement could rest upon s. 6(1) beyond asserting that, should the Court decline to hold that Ms. Taylor's right is protected under s. 6(2)(a), the right could be protected under s. 6(1). Because the principal ground of appeal relates to infringement and the respondents oppose interprovincial movement *simpliciter* being protected under s. 6(2)(a), we begin our analysis with that provision.

A. *Section 6(2)(a) of the Charter*

(1) Positions of the Parties

[274] The appellants submit that Canadian citizens and permanent residents enjoy a *Charter* right to interprovincial movement *simpliciter* based on what they call a "disjunctive" reading of s. 6(2)(a). Drawing on what they say is a clear statement of the relevant mobility rights in the French text of s. 6(2)(a), they assert that this provision of the *Charter* provides Canadian citizens and permanent residents with two distinct mobility rights: first, "*le droit . . . de se déplacer dans tout le pays*", and, second, "*le droit . . . d'établir leur résidence dans toute province*". The first is the basis for Ms. Taylor's right to travel temporarily from her home province to Newfoundland and Labrador. The second is a separate right to take up residence in another province on a long-term basis, which was not relevant to her claim for the short visit for her mother's burial. The appellants submit that the dual-rights interpretation of s. 6(2)(a) rests on the ordinary and grammatical meaning of the French text, is supported by the structure of s. 6 as a whole, and aligns with the *Charter*'s purpose. They say that the English text of s. 6(2)(a) is ambiguous since it rests on a redundancy: in ordinary parlance, a person who "moves to" a province is necessarily going to "take up residence" there. The English text appears to speak, ambiguously, to the same mobility right twice and does not, on its face, speak to interprovincial movement *simpliciter*. Applying principles for the bilingual interpretation of the *Charter*, the appellants say that the plain French text of s. 6(2)(a) should be preferred over the ambiguous English text.

[275] The respondents disagree with the dual-rights interpretation of s. 6(2)(a). They share the view of the applications judge that the English text is clear and does not include interprovincial movement *simpliciter*. The respondents say that s. 6(2)(a)

should be read conjunctively, rather than disjunctively, to protect a single right to "move to" any province in Canada in order to "take up residence" there. The second part of the phrase, they say, qualifies the first: s. 6(2)(a) speaks to a right for Canadian citizens and permanent residents to move to one province from another in order to live there on a lasting basis. But s. 6(2)(a) does not protect interprovincial movement *simpliciter*, including Ms. Taylor's short-term plan to attend the burial in Newfoundland and Labrador. The respondents agree with the reading of s. 6(2)(a) accepted by the applications judge, who held that to ground a right of interprovincial movement *simpliciter* in s. 6(2)(a) would "strain its language beyond what even a generous and liberal interpretation of the *Charter* can bear" (R.F., at para. 62, citing 2020 NLSC 125, at para. 369). The French text, say the respondents, is itself unclear and, in any event, an interpretation that recognizes interprovincial movement *simpliciter* would fall outside of the purpose of s. 6(2). Since Ms. Taylor did not seek to travel to take up residence in another province, her *Charter* right was not infringed.

[276] What does s. 6(2)(a) of the *Charter* mean and does it provide Ms. Taylor with a constitutional right to travel temporarily from her home province to Newfoundland and Labrador?

[277] We start with a reading of the text as a first step in a purposive interpretation of the *Charter* right and, as part of that exercise, we read both linguistic versions of s. 6(2)(a) together. We agree with the appellants that the ordinary and grammatical meanings of the French and English texts are discordant. The French text

plainly refers to two interprovincial mobility rights that are guaranteed to Canadian citizens and permanent residents, whereas the meaning of the English text is ambiguous on its face, given the redundancy rightly pointed to by the appellants. The meaning of s. 6(2)(a) is unclear.

(2) The Method for Bilingual *Charter* Interpretation

[278] The traditional method of bilingual interpretation has been developed principally in respect of non-constitutional legislative instruments for which French and English texts have equal status (see, e.g., *R. v. Daoust*, 2004 SCC 6, [2004] 1 S.C.R. 217). Section 57 of the *Constitution Act, 1982*, which provides that the French and English versions of the *Charter* are equally authoritative, is said to point to the same general interpretive orientation (Hogg and Wright, at § 56:3; Bastarache et al., at pp. 97-98). Scholars have observed that the interpretive method applicable to the *Charter* must consider the distinctive nature and principles of *Charter* interpretation, including the purposive approach to interpreting *Charter* rights embraced in *Big M*, and that it must recognize that the notion of legislative intent, key to statutory interpretation, squares poorly with a constitutional document. Where the French and English texts of the *Charter* are discordant, this Court has not hesitated to choose one linguistic version over another, preferring the version "which would appear to reflect better the purpose underlying the right" (*R. v. Turpin*, [1989] 1 S.C.R. 1296, at p. 1314).

[279] A preliminary step in the interpretation of bilingual enactments, including the *Charter*, is undertaken as part of the usual exercise of identifying the ordinary and

grammatical meaning of the relevant text. Both texts must be read together at this step, given that both are equally authoritative. Where the ordinary and grammatical meaning is shared between the two texts — that is, they embody a single textual message — the person interpreting the *Charter* provision proceeds by the usual method to consider other indicia of meaning. If, on the contrary, both versions are clear but "irreconcilable" (*Daoust*, at para. 27) or in "absolute conflict" (Bastarache et al., at p. 47), other methods of interpretation to choose between them are required (p. 48; P.-A. Côté and M. Devinat, *Interprétation des lois* (5th ed. 2021), at para. 1129).

[280] In many cases of apparent conflict, however, the French and English texts will neither convey a single, clear meaning, nor be absolutely irreconcilable. At the first stage of the *Daoust* test, this discrepancy is resolved by discerning their "shared meaning" (*Daoust*, at paras. 28-29; see also Bastarache et al., at p. 47). When the texts are discordant in one way or another, the reader should be cautious before embracing one version over another before considering the context and the purpose of the provision. The general rules for the interpretation of bilingual statutes direct that the shared meaning between two clear but discordant texts should be identified with the narrower of the two, on the theory that the narrower meaning should be preferred as something akin to a lowest common denominator. But the jurisprudence is also clear that the narrower text need not be definitively preferred where other "principles of interpretation" point elsewhere, including to the broader of the two texts (see *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862, at para. 25). Indeed, some scholars have urged caution before even presumptively embracing the narrow text as indicative of meaning.

Professors Pierre-André Côté and Mathieu Devinat have described the presumption in favour of the narrow text as [TRANSLATION] "purely formal, as there is nothing to suggest that [the narrow meaning] better represents legislative intent than does the broad meaning" (para. 1132, fn. 123; see also R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at p. 129, fn. 70). As Professor Ruth Sullivan observed, "[i]n the case of legislation conferring benefits or rights, preference for the narrow version is inappropriate" ("Côté's Contribution to the Interpretation of Bilingual and Multilingual Legislation", in S. Beaulac and M. Devinat, eds., *Interpretatio non cessat: Mélanges en l'honneur de Pierre-André Côté / Essays in honour of Pierre-André Côté* (2011), 173, at p. 192). This caution is particularly apt for *Charter* provisions that enshrine fundamental rights and freedoms, which must be interpreted liberally (see *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, at p. 156).

[281] Sometimes, an ordinary and grammatical reading of the text reveals it to be ambiguous — that is, "reasonably capable of more than one meaning" (*Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 29). Where the ordinary and grammatical meaning of one linguistic text is clear and the other ambiguous, the jurisprudence directs that the linguistic text that is plain reflects the two versions' reconciled, common meaning (see *Daoust*, at para. 28; see also Bastarache et al., at pp. 63-73; Côté and Devinat, at para. 1130). The reader must still consider other signs of meaning, such as the purpose of the relevant *Charter* right. As we shall discuss, in this case the French text of s. 6(2)(a) is unequivocal and the English text is ambiguous, susceptible of two possible meanings. But even in this case, the

purposive interpretation of the provision requires the text to be measured against the purpose of the *Charter* right. Whatever favour might be extended to the unambiguous text, it is not absolute. Courts should also prefer the text that best accords with the purpose of the *Charter* right. The Court adopted this approach in an early exercise of bilingual interpretation of the *Charter* in *R. v. Collins*, [1987] 1 S.C.R. 265, where Lamer J. concluded: "As one of the purposes of s. 24(2) is to protect the right to a fair trial, I would favour the interpretation of s. 24(2) which better protects that right, the less onerous French text" (p. 287).

[282] In sum, when adapted to interpreting the *Charter*, the *Daoust* framework for bilingual interpretation proceeds in two stages. At the first stage, the two linguistic versions of the *Charter* provision are examined independently to determine, in each case, their ordinary and grammatical meaning. If a common meaning emerges, the analysis proceeds to other indicia of meaning based on that shared text. If at the first stage there is discordance in meaning between the two linguistic texts, the reader must attempt to reconcile the two versions, without relying on an absolute presumption favouring the narrower text or even the unambiguous text. If the two versions are irreconcilable, it is then necessary to rely on other principles and compare both possible meanings to the purpose and the context of the provision. At the second stage, the shared meaning must be assessed in light of the purpose of the *Charter* provision, rather than the legislative intent, consonant with the principles enunciated in *Big M* (Bastarache et al., at p. 98). With these interpretive principles in hand, we now turn to the provision at issue.

(3) Interpretation of Section 6(2)(a)

[283] We agree with the appellants that an ordinary and grammatical interpretation of the French text of s. 6(2)(a) of the *Charter* clearly directs that the persons entitled under the provision — Canadian citizens and permanent residents — hold two distinct interprovincial mobility rights: first, the right to move about in the whole of the country ("*de se déplacer dans tout le pays*"); and, second, the right to take up residence in any province ("*d'établir leur résidence dans toute province*"). Ms. Taylor invokes the first, which, on its ordinary meaning, would give her the right to visit Newfoundland and Labrador temporarily from her home province of Nova Scotia. This free-standing right does not require her to take up residence there or to seek to earn a living there.

[284] The French text of s. 6(2)(a) provides that "*[t]out citoyen canadien et toute personne ayant le statut de résident permanent au Canada ont le droit . . . de se déplacer dans tout le pays et d'établir leur résidence dans toute province*". The verbs "*se déplacer*" and "*établir*" are separated by the coordinating conjunction "*et*" and denote distinct circumstances. The first, "*se déplacer*", refers broadly to movement, regardless of whether it results in a change of residence. The choice of "*se déplacer*" rather than "*déménager*" suggests that the text contemplates movement *simpliciter* as a free-standing guarantee. Scholars have explained that the phrase "*se déplacer dans*" does not necessarily imply any intent to settle, and may instead encompass transient movement (Brun, Tremblay and Brouillet, at para. III.114). Indeed, "*se déplacer*" here

means “to move about”. When the Court was speaking to s. 6(2) as a whole in *Black*, it described that provision as protecting a right “to move about the country” (p. 620). Tellingly, the French version of the reasons for judgment rendered this phrase as the right “*de se déplacer à l’intérieur du pays*”. The Court referred to the right to take up residence in any province separately from the right to move about the country.

[285] The second verb, “*établir*”, introduces a separate idea: taking up residence in a particular province. We agree with the interveners the attorneys general of Prince Edward Island (I.F., at para. 22) and Nunavut (I.F., at para. 20) that the French text unequivocally sets out two distinct rights. For the Attorney General of Nunavut, the phrase “*se déplacer dans tout le pays*” means “to move about the entire country”, including “the right to temporarily leave and return” to one’s province of residence (I.F., at para. 20). The Attorney General of Prince Edward Island observes that it is instructive that “*de se déplacer*” is qualified by “*dans tout le pays*” and, in contrast, “*d’établir leur résidence*” is qualified by “*dans toute province*”: “One relates specifically to movement through the country and the other relates to any province. The fact that there are two separate qualifiers is indicative of two separate rights” (I.F., at para. 22 (emphasis in original)).

[286] Additionally, in our view it cannot be said, on an ordinary reading, that the words “*de se déplacer dans tout le pays*” are qualified by the words “*et d’établir leur résidence dans toute province*”. The word “*et*” (“and”) is a coordinating conjunction, not a term of qualification. It [TRANSLATION] “is used to link words, phrases, clauses

that have the same function or the same role and to express an addition, a connection" (*Le Robert* (online)). In ordinary parlance, it does not mean "*dans la mesure où*" ([TRANSLATION] "insofar as") or "only if".

[287] Moreover, judging by the drafting technique employed in the *Constitution Act, 1982*, a distinct right to move about the country need not have been situated in a separate paragraph of the *Charter*. Other sections of the *Charter* protect multiple distinct rights within the same sentence, simply separating them with the word "and". Section 3, for instance, protects both the right to vote *and* the right to be qualified for membership in the House of Commons or in a legislative assembly. Section 7 protects the separate rights to life, liberty, *and* security of the person. Even s. 6(1) includes three distinct rights in a single sentence: the rights to enter, to leave, *and* to remain in Canada (*Divito*, at para. 18).

[288] Since s. 6(2)(a) was drafted with two verbs joined by a conjunction, this is a strong indication that this provision protects two distinct rights.

[289] Because of this two-part structure, the English version of s. 6(2)(a) could support a disjunctive reading, in which physical movement and residential establishment are treated as distinct entitlements. However, we acknowledge that this phrase may also reasonably be read as setting out a unitary right to relocate to a province for the purpose of residence. On that view, the phrase "to move to and take up residence" would form a single conceptual link, suggesting that mobility is protected only insofar as it facilitates residential relocation. That is the reading adopted by the

applications judge (at para. 370) and advanced by the respondents (R.F., at para. 65). The intervener the Attorney General of Nunavut says that the French text, on an ordinary reading, is "broader" than the English text, in particular because the English text leaves out language equivalent to "*dans tout le pays*" (I.F., at paras. 19 and 22). Nevertheless, Nunavut acknowledges rightly that the English text could give rise to two competing reasonable interpretations and, as such, it is "ambiguous" (para. 21).

[290] The ordinary understanding of the English text indeed gives rise to interpretive difficulty. In ordinary usage, to "move to" a province implies establishing residence there, just as does the expression "to . . . take up residence". We agree that this can be seen as an apparent redundancy. A person who says that they are "moving to Newfoundland and Labrador" is understood to mean that they intend to live there, not merely to pass through. Understood accordingly, the addition of "take up residence" does not clarify the right being protected — it reiterates it. Therefore, on one view, those words simply reinforce a single concept. On another view, however, they signal that two distinct rights are being protected. Either way, the scope of the right as articulated in the English text is more difficult to discern and ambiguous.

[291] The parties' respective submissions reflect this uncertainty. The appellants argue that s. 6(2)(a) clearly protects two distinct rights, movement and residence, and that reading it otherwise would render the English text redundant. It would be illogical, they say, for the *Charter* to permit residence in a province while denying entry to it (A.F., at para. 64). The respondents, by contrast, maintain that the wording is clear in

the opposite direction: it protects only relocation, not transient movement, and does not encompass travel for purposes such as attending a funeral (R.F., at paras. 65-66). Each party thus asserts clarity, but on opposing grounds. That dissonance further underscores the problem. If the same phrase is said to be "clear" in support of two irreconcilable interpretations, it is difficult to conceive that its meaning is indeed self-evident.

[292] At the first stage of bilingual interpretation, where one version is ambiguous and the other clear, the clear meaning is preferred. Here, the French text is clear and expansive, while the English text is reasonably capable of more than one meaning and is thus ambiguous. Under the revised *Daoust* framework as applied to the interpretation of the *Charter*, the French text, which conveys a dual guarantee, should therefore be preferred as a preliminary matter at the first stage. This textual reading supports Ms. Taylor's argument that her right to interprovincial movement *simpliciter* has been infringed. But this meaning must be assessed against the purpose of s. 6(2).

[293] The jurisprudence on s. 6 of the *Charter* has not, for the moment, fixed on the particular purpose that underlies s. 6(2)(a), although some cases speak to the objects pursued in s. 6 and s. 6(2) more generally. Interprovincial mobility serves twin purposes designed to reinforce national unity and individual autonomy in extending to citizens and permanent residents the right to move about the country. In *Black*, for example, La Forest J. described the purpose of s. 6(2) of the *Charter* as consonant with the objectives of the *British North America Act, 1867*, i.e., the establishment of "a new political nationality" and the creation of a "national economy" (pp. 608-12; see also Côté, at No.

6; J. B. Laskin, "Mobility Rights under the Charter" (1982), 4 *S.C.L.R.* 89, at p. 93). La Forest J. wrote that "[t]hese economic concerns undoubtedly played a part in the constitutional entrenchment of interprovincial mobility rights, under s. 6(2) of the *Charter*", framed "in terms of the rights of the citizens and permanent residents of Canada" (*Black*, at p. 612). In this way, the "state economic concerns" for a united federation and the individual rights guaranteed by s. 6(2) are "intertwined" (p. 614). "What section 6(2) was intended to do", he added, "was to protect the right of a citizen (and by extension a permanent resident) to move about the country, to reside where he or she wishes and to pursue his or her livelihood without regard to provincial boundaries" (p. 620). Subsequently, in *Canadian Egg Marketing*, the majority of the Court wrote that the purpose of s. 6 is "rooted in a concern with human rights" (para. 59). Echoing international human rights conventions, s. 6 reflects the values of "autonomy", "equality" and "the preservation of the basic dignity of the person" (para. 60).

[294] It is therefore appropriate to speak of *purposes*, in the plural, when interpreting s. 6(2). As Professor Idil Atak has explained, [TRANSLATION] "[t]here is no doubt that the interprovincial mobility of persons promotes the consolidation of the Canadian union through economic integration and the development of a common market" (p. 650). However, such economic considerations [TRANSLATION] "are presently not at the forefront" of the interpretation of the *Charter* right: "Subsection 6(2) of the Charter . . . also entrenches a fundamental human right . . ." (pp. 651-52).

[295] These two dimensions — the protection of Canada's federal structure and the safeguarding of individual rights and freedoms — are not in tension; on the contrary, they reinforce one another. In her dissenting opinion in *Canadian Egg Marketing*, at para. 122, McLachlin J. stated that s. 6 has two purposes, one collective and one individual, whereby the individual right is the "private correlative of the collective interest in a unified economy". The two related purposes are:

> . . . (1) to promote economic union among the provinces; and (2) to ensure to all Canadians one of the fundamental incidents of citizenship: the right to travel throughout the country, to choose a place of residence anywhere within its borders, and to pursue a livelihood, all without regard to provincial boundaries. [para. 122]

[296] Thus, interprovincial mobility has its roots in concerns about federal cohesion, but it is enshrined in the *Charter* as a fundamental individual right, intimately connected to the values of autonomy and dignity. The proper interpretation of s. 6(2), including s. 6(2)(a), must reflect this dual character, with twin purposes that are "intertwined" (*Black*, at p. 614). Importantly, this is echoed in the dual character of the French text of s. 6(2)(a) which, as we noted, allows the rights holder to move about from province to province and to establish a residence in any province. This interpretation aligns with the twofold purpose of the provision: first, fostering the individual autonomy and dignity of Canadian citizens and permanent residents by guaranteeing their ability to move freely across provincial boundaries in pursuit of personal or professional fulfillment; and, second, fostering Canada's unity within a

federal system by facilitating mobility within the country, thereby contributing to social and economic cohesion.

[297] This dual-rights interpretation embodied in the French text more clearly aligns with the purposes of s. 6(2) than the single-right interpretation. First, the purpose of preserving human dignity and autonomy is better served by interpreting s. 6(2) as protecting both a right to movement *simpliciter* and a right to take up residence. Preventing citizens and permanent residents from travelling temporarily to another province — including for the personal and non-economic reason of attending a funeral — would undoubtedly infringe upon their dignity and autonomy. The dual-rights interpretation holds true with respect to the purpose of maintaining a united federation. While the ability of citizens and permanent residents to settle permanently in another province certainly advances the objective of consolidating Canadian unity, that objective is even more fully realized by guaranteeing fluid short-term mobility — the right to cross provincial borders, for example, for education, healthcare, or interpersonal relations — without undue legal barriers.

[298] Moreover, a purposive reading of s. 6(2)(a) must also account for international human rights instruments to which Canada is a party, which, as the Court observed in *Canadian Egg Marketing*, s. 6 "closely mirrors" (para. 58), citing notably the *International Covenant on Economic, Social and Cultural Rights*, Can. T.S. 1976 No. 46. Although these instruments are not binding on the Court in interpreting s. 6, we agree with the intervener the British Columbia Civil Liberties Association that, in

this case, they offer useful context (I.F., at paras. 12 et seq.) and, in the past, the Court has treated them as having persuasive authority (see *9147-0732 Québec inc.*, at para. 41, and, in respect of s. 6, *Divito*, at paras. 24 et seq.). We note in particular Article 12(1) of the *International Covenant on Civil and Political Rights*, Can. T.S. 1976 No. 47, which was ratified by Canada and which provides that "[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." As the British Columbia Civil Liberties Association submits, like s. 6(2)(a), Article 12(1) contains two aspects: a right to liberty of movement (echoing the right to move from province to province invoked by Ms. Taylor) and a separate right to choose one's residence (I.F., at para. 17). This protection encompasses, like the French text of s. 6(2)(a) states unequivocally, movement *simpliciter*, distinct from relocation or economic migration. Respectfully, we find unconvincing the applications judge's view that Article 12(1) is reflected in s. 6(1) of the *Charter* (paras. 360-62); instead s. 6(1) appears more in line with protection for international mobility in the *International Covenant on Civil and Political Rights*, in particular with the freedom to leave any country in Article 12(2) and with the right to enter one's own country in Article 12(4).

[299] Furthermore, the interpretation of s. 6(2)(a) as including interprovincial movement *simpliciter* is confirmed by considering s. 6 as a whole. A narrow single-right reading of s. 6(2)(a) would deprive it of meaningful force alongside s. 6(2)(b): if s. 6(2)(b) protects the right to work in another province without necessary relocation, as confirmed in *Skapinker*, then s. 6(2)(a) can be understood to protect

movement without work or residence (see T. Lee and M. J. Trebilcock, "Economic Mobility and Constitutional Reform" (1987), 37 *U.T.L.J.* 268, at p. 287; Laskin, at pp. 96-98; D. A. Schmeiser and K. J. Young, "Mobility Rights in Canada" (1983), 13 *Man. L.J.* 615, at p. 634). This internal coherence is reinforced by s. 6(3), which operates as a limit on the rights in s. 6(2) except where differential treatment is based primarily on province of residence (see *Canadian Egg Marketing*, at paras. 54 and 96-98). That understanding supports the view that s. 6(2)(a) protects interprovincial mobility as a free-standing guarantee, distinct from the economic dimension protected by s. 6(2)(b). The focus on residence in s. 6(3)(a) does not direct that s. 6(2)(a) protects only the right to take up residence. A law could discriminate on the basis of province of residence by restricting either a person's ability to relocate (for example, "no Quebec resident may establish residence in Prince Edward Island") or their ability to travel *simpliciter* (for example, "no Quebec resident may travel to Prince Edward Island"). The fact that s. 6(3)(a) refers to "residence" does not mean that s. 6(2)(a) contains no free-standing right of movement.

[300] For all these reasons, we conclude that the purposes of s. 6(2), shaped by its language, context, and historical and international origins, are better served by the dual-rights interpretation reflected in the unequivocal French text of s. 6(2)(a). This includes the right of interprovincial movement invoked by Ms. Taylor as the basis for the *Charter* infringement in this case.

B. *Section 6(1) Does Not Include a Right to Interprovincial Movement Simpliciter*

[301] As noted, we agree with the view that the rights to enter, remain in, and leave Canada guaranteed to every citizen of Canada protect "international" mobility rights (Régimbald and Newman, at §27.5; Hogg and Wright, at § 46:2; Côté, at No. 10; Atak, at pp. 621-22; Girard, at p. 415). Properly interpreted in light of its purpose, s. 6(1) does not grant Canadian citizens the right to interprovincial movement, except on an ancillary basis. We acknowledge that in some circumstances, a citizen will have to travel within Canada to exercise the right to international travel under s. 6(1). Where a citizen living in a remote part of Canada seeks to travel internationally, for example, they may have to transit by air through a major Canadian airport in another province to exercise their right to leave the country. That said, based on s. 6(1)'s text, context, and purpose, the provision must be interpreted to guarantee a right to international mobility, and not a right to interprovincial movement *simpliciter* such as is invoked by Ms. Taylor. In particular, we respectfully disagree with the applications judge that the "right to remain in Canada" in s. 6(1) includes "the right to choose where in Canada one wishes to be from time to time" (para. 348).

[302] The parties and interveners offer no substantive arguments in support of the judge's position. The appellants rely exclusively on s. 6(2) to ground Ms. Taylor's right to interprovincial movement (A.F., at paras. 54-95). They content themselves with a simple affirmation that "[a]lternatively, the right to interprovincial travel *simpliciter* is protected by s. 6(1) of the *Charter*, for the reasons of the Application Judge" (para. 2 (emphasis added)), a position that they did not take before the Court of Appeal, where they intended to argue that "the applications judge was wrong to find that section 6(1)

guaranteed Ms. Taylor's right to travel anywhere in Canada" (2023 NLCA 22, at para. 10). We also note that none of the parties or interveners, including the appellants, contend that both ss. 6(1) and 6(2) could simultaneously include a right to interprovincial movement *simpliciter*.

[303] The respondents argue that the applications judge was mistaken and that s. 6(1) cannot be interpreted to protect a right to interprovincial movement *simpliciter*. They say, in particular, that the applications judge "misconstrued the purpose of s. 6(1)", as this Court's jurisprudence makes clear that s. 6(1) is related to "international movement, specifically, exile, banishment, and extradition" (R.F., at para. 41, citing *United States of America v. Cotroni*, [1989] 1 S.C.R. 1469, and *Divito*; see also paras. 47-49).

[304] We agree with the respondents on this point. That s. 6(1) protects a free-standing right to interprovincial movement *simpliciter* is, in our respectful view, incompatible with a purposive interpretation of the *Charter*. Extending s. 6(1) to cover interprovincial mobility would stretch the language chosen in the *Charter* beyond its ordinary meaning and overshoot the purpose of s. 6(1). Such an interpretation is also inconsistent with the architecture of s. 6 as a whole.

(1) Section 6(1)'s Text Does Not Support a Right to Interprovincial Movement *Simpliciter*

[305] With respect, the applications judge did not start his analysis with any substantial textual examination of the word "remain" before undertaking his purposive

analysis of s. 6(1). More specifically, he did not interpret "remain" in light of its surrounding terms, "enter" and "leave", and the shared word "Canada". Read together, these words protect the rights of citizens to cross the country's international borders and to be free from state-imposed removal. As Brun, Tremblay and Brouillet explain, the right to "remain" in Canada is the [TRANSLATION] "right to not be forced to leave Canada, the negative aspect of the freedom to move between Canada and other countries" (para. III.103). Régimbald and Newman have written that the right to remain in Canada "provides protection, in the first instance, against a decision to exile, banish or expel a citizen from Canada, thereby protecting an individual's membership in the national community" (§27.7, citing *Cotroni* and noting that this right can also provide some protection against other forms of removal from the country).

[306] The applications judge relied on an analogy in interpreting s. 6(1): "In common parlance, we would regard the right to come and go from one's home, and to remain in it, as surely including the right to wander freely from room to room" (para. 353).

[307] With respect, this analogy rests on a fallacy by assuming the very point in dispute: that the right to "remain" somewhere would necessarily include the right to move within that place. If a person is forbidden to enter a particular room in a house, their right to remain in the house is not compromised if they are not compelled to leave it. What is in fact infringed is their right to move freely from room to room, a conceptually and linguistically distinct right from the right to "remain" in the house.

[308] Stated simply, to *remain* is not to *move*. As the respondents suggest, in ordinary parlance "remain" means to "stay in a place or position" or to "continue to be in a particular state or condition" (*Cambridge English-French Dictionary* (online)). Similarly, "*demeurer*" ("remain") does not mean to move; rather, it means [TRANSLATION] "[s]tay somewhere, be there for a long time" (*Dictionnaire Larousse* (online) (emphasis added)). Although constitutional interpretation cannot turn exclusively on dictionary definitions, interpretations that turn the meaning of a word on its head should be avoided.

[309] The verb "to remain", read in its ordinary and grammatical sense, is the right to *stay* in Canada, "to not be forced to leave Canada" (Brun, Tremblay and Brouillet, at para. III.103). It is a right *against* forced displacement. Concluding that Ms. Taylor's right to "remain in" Canada was infringed because she could not travel from Nova Scotia to Newfoundland and Labrador departs significantly from the primary sense of the text. At all times, Ms. Taylor "remained" in Canada.

(2) Section 6(1)'s Purpose Does Not Support a Right to Interprovincial Movement *Simpliciter*

[310] The scholarly consensus that s. 6(1) aims to protect *international* mobility, and thus does not pretend to cover *interprovincial* mobility, aligns with the jurisprudence of this Court, which has never suggested that s. 6(1) protects anything but international mobility rights. In *Cotroni*, this Court described the provision's "central thrust" as protecting "against exile and banishment" — that is, state action that

excludes citizens from "the national community" (p. 1482). In *Divito*, the Court applied this reasoning to conclude that a minister's refusal to allow a Canadian citizen to serve a foreign sentence in Canada did not infringe their right to enter Canada (para. 48). Both *Cotroni* and *Divito* identify the interest protected by s. 6(1) as being fundamentally concerned with banishment, expulsion, and the control of international borders — not with interprovincial mobility *simpliciter*.

[311] It is true that in *Cotroni*, the Court observed that s. 6(1) is phrased in "broad terms" and that the term "remain" does not signal intention to protect a person solely from being "arbitrarily expelled", "banished" or "exiled" from Canada (p. 1481). The Court explained that extradition is not itself a form of banishment or exile, as it does not seek to exclude someone from membership of their national community (p. 1482). However, the Court recognized that extradition also falls within the ambit of s. 6(1), albeit at the "outer edges of the core values sought to be protected by that provision" (p. 1481). The Court concluded in *Cotroni* that extradition is protected by s. 6(1) because it is a form of removal from the country. That is the extent of the "broad" interpretation privileged in *Cotroni* (see Régimbald and Newman, at §27.7). If the core of s. 6(1) is protection against exile and banishment, and if extradition lies at its "outer edges", then interprovincial movement "falls off the edge" of s. 6(1) protection, as Abella J. wrote in another context (*Divito*, at para. 47).

[312] As Régimbald and Newman wrote helpfully, the purpose of s. 6(1) is to permit "citizens to leave and re-enter the country in the course of pursuing their

endeavours and purposes and also provid[e] a guarantee to citizens that they may not be cut off from membership in the Canadian community" (§27.4). Abella J. observed in *Divito* that s. 6(1) has "its origins in the cataclysmic rights violations of WWII" (para. 21). The respondents rightly point out that this affirmation suggests that s. 6.(1) is aimed "at stopping international displacement and banishment of people, rather than protecting citizens from measures restricting internal domestic travel" (R.F., at para. 51). Its fundamental purpose is to protect the "right to have rights" (*Divito*, at para. 21): the rights to enter and remain in Canada under the protection of the *Charter* and to have access to the Canadian judicial system to enforce those rights. Without this fundamental guarantee, the state could simply exclude a citizen from the *Charter*'s protection. As such, it is shielded from the application of s. 33.

[313] These concerns and interests, however, are not engaged in the context of interprovincial mobility. Ms. Taylor's "right to have rights" is not at issue here, as she is as much protected by the *Charter* in Newfoundland and Labrador as she is in Nova Scotia. In both provinces, she is equally within Canada, equally under the protection of the *Charter*, and equally able to invoke the jurisdiction of Canadian courts for protection. Ms. Taylor was not cut off from the national community, nor was she in any way removed from the country. The interests at stake in this case are of a different nature — they are rooted, notably, in federalism and in the pursuit of personal and familial fulfillment, which, as we have seen, are the very concerns that s. 6(2) was designed to address.

[314] By interpreting s. 6(1) as encompassing a right to interprovincial movement *simpliciter*, the applications judge's reasons overlook the distinct purposes that have been assigned to ss. 6(1) and 6(2). Put simply, the right asserted in this case is not captured by the purpose that s. 6(1) was designed to serve nor the interests that s. 6(1) is meant to protect.

(3) Section 6(1)'s Context Does Not Support a Right to Interprovincial Movement *Simpliciter*

[315] Finally, recognizing interprovincial mobility rights to Canadian citizens under s. 6(1) raises concerns about the structural coherence of s. 6 as a whole. The right to interprovincial mobility that the applications judge recognized under s. 6(1) for Canadian citizens is not subject to the limitations in s. 6(3). Yet, where a Canadian citizen invokes their rights to "move to and take up residence in any province", under s. 6(2)(a), or their right to "pursue the gaining of a livelihood in any province", under s. 6(2)(b), the limitations in s. 6(3) do apply, as does the special rule on affirmative action in s. 6(4). It is of course settled law that "the Constitution of Canada forms a single entity and must be read as a whole" (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Communauté urbaine de Montréal*, 2004 SCC 30, [2004] 1 S.C.R. 789, at para. 16) and that [TRANSLATION] "the text of constitutional laws must be understood in light of their structure and the coherence of their parts" (J. Boulanger-Bonnelly, "Contributions civilistes à l'interprétation des lois constitutionnelles canadiennes" (2025), 70 *McGill L.J.* 203, at p. 225). Recognizing under s. 6(1) the same right to interprovincial mobility as that recognized under s. 6(2)

would imply that the *Charter* enshrines a second, ostensibly identical right to interprovincial movement *simpliciter* that is granted only to citizens, and not permanent residents, and that is not subject to the limitations in s. 6(3) and the special rule in s. 6(4). The notion that the right to "remain" in Canada in s. 6(1) includes the right to move freely within the country does more than consecrate a double protection of the same substantive right: it serves to undermine the purpose of s. 6(2), which subjects interprovincial mobility, including that exercised by Canadian citizens, to the limitations in s. 6(3) and the special rule on affirmative action in s. 6(4). Sections 6(3) and 6(4) are as much a part of the *Charter* as ss. 6(1) and 6(2). Most respectfully, it is erroneous to interpret s. 6(1) in a manner that undermines the application of s. 6(2). There is no hierarchy of rights in s. 6.

[316] In sum, a purposive interpretation of s. 6(1), informed by the text of the provision and the structure of s. 6 as a whole, provides no basis to recognize a right to interprovincial mobility for Canadian citizens under s. 6(1). We agree with Professor Charles-Emmanuel Côté, who wrote in respect of the scope of s. 6(1) that [TRANSLATION] "[t]he right to remain in Canada relates to the right to international mobility, and it is illogical to artificially graft onto it a right to interprovincial mobility" (No. 14.2).

C. *The Travel Restrictions Infringed the Right to Interprovincial Movement Simpliciter Under Section 6(2)(a)*

[317] Taken together, the Special Measures Order (Amendment No. 11) and the Special Measures Order (Travel Exemption Order) (see applications judge's reasons, at paras. 36-38) restricted the right to movement *simpliciter* of most Canadian citizens and permanent residents. On May 8, 2020, Ms. Taylor's *Charter* right to move freely between provinces was infringed when the Chief Medical Officer of Health of Newfoundland and Labrador denied her travel request to attend her mother's burial (para. 48).

[318] The respondents do not argue that the infringement of s. 6(2)(a) is in some way affected by ss. 6(3) or 6(4). Consequently, it is unnecessary to consider the application of these provisions in this case. We therefore proceed to consider s. 1 of the *Charter*.

D. *The Travel Restrictions Were a Reasonable and Justifiable Limit to Ms. Taylor's Section 6(2)(a) Mobility Right in a Free and Democratic Society*

[319] We agree with the applications judge and our colleagues that the respondents met their burden to show that the infringement of Ms. Taylor's right under s. 6 of the *Charter* was justified under s. 1 in accordance with the test in *R. v. Oakes*, [1986] 1 S.C.R. 103. Although we would conclude that only her right under s. 6(2)(a) was infringed, this has no bearing on the ultimate conclusion, which we share, that the infringement was justified under the *Oakes* test. We are of the opinion that it is not necessary to decide whether a precautionary principle is part of the s. 1 analysis.

IV. Conclusion

[320] For these reasons, we would allow the appeal in part, without costs.

The following are the reasons delivered by

ROWE J. —

[321] Like my colleagues, I find that the Court of Appeal erred in refusing to exercise its discretion to hear the appeal in this case, even though the particular dispute is moot. I also agree that Newfoundland and Labrador's travel restrictions infringed s. 6 of the *Canadian Charter of Rights and Freedoms* and that this limitation was justified under s. 1. As to the s. 1 analysis, I would add only that Newfoundland is an island and that access to Labrador, even though it forms part of the mainland of Canada, is largely by sea or air since overland access is limited. Thus, the Province's efforts to maintain a "*cordon sanitaire*" had a geographic basis that does not exist in most parts of the country.

[322] I depart from my colleagues in their analysis of s. 6 of the *Charter*. Applying the purposive approach as set out by Dickson J., as he then was, in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, I conclude that interprovincial travel *simpliciter* is protected by s. 6(1) but not by s. 6(2)(a).

I. Parties' Positions and Analytical Roadmap

[323] The application judge concluded that the right to "remain in" Canada, as provided for in s. 6(1), "includes the right of Canadian citizens to travel . . . across provincial and territorial boundaries" (2020 NLSC 125, at para. 301 (emphasis deleted)). He rejected the notion that a right of interprovincial travel *simpliciter* flowed from s. 6(2)(a), which provides that Canadian citizens and permanent residents have the right to "move to and take up residence in any province" (para. 374).

[324] Before this Court, the appellants argue that the application judge erred in his interpretation of s. 6(2)(a). They submit that s. 6(2)(a) not only protects the right to move to another province for the purpose of taking up residence, but also the right to move freely throughout the country (A.F., at para. 55).

[325] For the reasons that follow, I do not find this argument persuasive. In my view, a purposive interpretation of s. 6 of the *Charter* leads to the conclusion that interprovincial travel *simpliciter* comes within s. 6(1). I begin by discussing the text of s. 6(1). I then consider the internal context of s. 6, including the text of s. 6(2)(a) and the structure of the section. Next, I turn to the historical origins of mobility rights and of s. 6, including the right to interprovincial mobility prior to the adoption of the *Charter*, and address the interests protected by s. 6. Finally, I consider the relevant international instruments. In doing so, I recall this Court's discussion in *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, [2020] 3 S.C.R. 426, on the proper use of international and comparative law in *Charter* interpretation.

II. The Purposive Approach to Interpreting Section 6 of the *Charter*

[326] In order to engage a *Charter* right, a claimant must establish that they have "an interest falling within the scope of the guarantee, and one which accords with the purpose of that provision" (*9147-0732 Québec inc.*, at para. 7, citing *R. v. CIP Inc.*, [1992] 1 S.C.R. 843, at p. 852). Consequently, in order to conclude that the travel restrictions violate s. 6 of the *Charter*, it must first be demonstrated that interprovincial travel *simpliciter* is an interest that falls within the scope of a provision under s. 6 and accords with the purpose of that provision.

[327] Section 6 has four subsections, the English and French versions of which read:

Mobility Rights	Liberté de circulation et d'établissement
Mobility of citizens	**Liberté de circulation**
6 (1) Every citizen of Canada has the right to enter, remain in and leave Canada.	**6 (1)** Tout citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir.
Rights to move and gain livelihood	**Liberté d'établissement**
(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right	**(2)** Tout citoyen canadien et toute personne ayant le statut de résident permanent au Canada ont le droit :
(a) to move to and take up residence in any province; and	**a)** de se déplacer dans tout le pays et d'établir leur résidence dans toute province;
(b) to pursue the gaining of a livelihood in any province.	**b)** de gagner leur vie dans toute province.
Limitation	**Restriction**

(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.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

(3) Les droits mentionnés au paragraphe (2) sont subordonnés :

a) aux lois et usages d'application générale en vigueur dans une province donnée, s'ils n'établissent entre les personnes aucune distinction fondée principalement sur la province de résidence antérieure ou actuelle;

b) aux lois prévoyant de justes conditions de résidence en vue de l'obtention des services sociaux publics.

Programmes de promotion sociale

(4) Les paragraphes (2) et (3) n'ont pas pour objet d'interdire les lois, programmes ou activités destinés à améliorer, dans une province, la situation d'individus défavorisés socialement ou économiquement, si le taux d'emploi dans la province est inférieur à la moyenne nationale.

[328] Given the limited jurisprudence on interprovincial travel *simpliciter*, a return to first principles is called for. The meaning of a right or freedom guaranteed by the *Charter* is ascertained through "an analysis of the purpose of such a guarantee" (*Big M Drug Mart*, at p. 344 (emphasis in original)). The approach is a "generous, purposive and contextual" one, undertaken in a "large and liberal manner" (*9147-0732 Québec inc.*, at para. 7, citing *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353, at para. 15, and *Caron v. Alberta*, 2015 SCC 56, [2015] 3 S.C.R. 511, at para. 35).

[329] The focus of the purposive approach must be on the interest the *Charter* provision protects. It is methodologically unsound to begin by asking "What must a well-designed constitutional instrument protect?", and then proceed to read that protection into the *Charter*. Instead, pursuant to *Big M Drug Mart*, the Court must engage in a purposive interpretation of the *Charter* provision as written, by "reference to the character and the larger objects of the *Charter* itself, to the language chosen to articulate the specific right or freedom, to the historical origins of the concepts enshrined, and where applicable, to the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the *Charter*" (p. 344).

[330] Within the purposive approach, the analysis must begin by considering the text of the provision. As this Court explained in *9147-0732 Québec inc.*, the text is the "first indicator of purpose" (para. 11). Further, "while constitutional norms are deliberately expressed in general terms, the words used remain 'the most primal constraint on judicial review' and form 'the outer bounds of a purposive inquiry'" (para. 9, citing B. J. Oliphant, "Taking purposes seriously: The purposive scope and textual bounds of interpretation under the Canadian Charter of Rights and Freedoms" (2015), 65 *U.T.L.J.* 239, at p. 243). One must give "primacy to the text" to prevent overshooting the purpose of the right (*9147-0732 Québec inc.*, at para. 10). Accordingly, I begin by looking to the text of s. 6(1) and s. 6(2).

A. *The Text of Section 6(1)*

(1) The Text of Section 6(1) Captures a Right of Interprovincial Travel *Simpliciter*

[331] Section 6(1) provides that "[e]very citizen of Canada has the right to enter, remain in and leave Canada." A constituent element is the right to "remain in . . . Canada". This strongly connotes a right to remain *within the borders of Canada*, rather than a right only to stay in one's current location in Canada, or a right only to stay in one's current province. The ordinary meaning of "remain" is "to stay in the same place or in the same condition" (*Cambridge Dictionary* (online)). The text of s. 6(1) provides that the relevant "place" is the whole country.

[332] The French text of s. 6(1) — "*[t]out citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir*" — provides for the same interpretation. The ordinary meaning of "*demeurer*" ("remain") is "*[r]ester quelque part, y être pendant longtemps*" ([TRANSLATION] "[s]tay somewhere, be there for a long time") (*Dictionnaire Larousse* (online)). The ordinary meaning of "*rester*" ("stay") is "*[c]ontinuer à séjourner dans un lieu*" ([TRANSLATION] "[c]ontinue to remain in a place") (*Dictionnaire Larousse*). Section 6(1) provides that the relevant "*quelque part*" ("somewhere") (under the definition of "*demeurer*") and the relevant "*lieu*" ("place") (under the definition of "*rester*") is Canada. "*[L]e droit de demeurer au Canada*" is therefore the right to be within the boundaries of Canada.

[333] I agree with the application judge's observation that the "express language of s. 6" does not limit movement to a part of Canada or to the province of one's

immediate residence, but rather extends the right "to all of Canada" (para. 348 (emphasis in original)). This is true of both the English and French versions of s. 6.

[334] I further agree with the application judge that, since "s. 6(1) protects the citizen's choice to remain in Canada . . ., we must also recognize that such choices are not made in a factual vacuum. The right to remain in Canada must, of necessity, include the right to choose where in Canada one wishes to be from time to time" (para. 348). The exercise of this right requires "the ability to traverse provincial and territorial boundaries" (*ibid.*).

[335] This interpretation accords with the Court's recognition in *United States of America v. Cotroni*, [1989] 1 S.C.R. 1469, that "[s]ection 6(1) is phrased in broad terms" (p. 1481). In *Cotroni*, La Forest J. relied on the breadth of the text to reason that s. 6(1) protects against extradition because, "[h]ad the intention of the *Charter* been solely to protect a person from being expelled, banished or exiled, it could have been so framed" (*ibid.*). Similarly, it would give improper effect to the broad terms of s. 6(1) to interpret its text as protecting only the interests elaborated by La Forest J. in *Cotroni* (i.e., protection against expulsion, banishment, exile, and extradition).

[336] I acknowledge La Forest J.'s statement in *Cotroni* that "the central thrust of s. 6(1) is against exile and banishment" (p. 1482). However, the context of that statement is important. *Cotroni* addressed whether extradition infringed the right to remain in Canada; interprovincial travel *simpliciter* was not before the Court. *Cotroni* is not an exposition on the bounds of s. 6(1).

[337] I therefore agree with the application judge that the phrase "remain in" supports the view that the purpose of s. 6(1) includes the protection of Canadians' right to remain within the borders of Canada, and the right of interprovincial travel *simpliciter* is an interest falling within the scope of s. 6(1).

(2) The Role of Subheadings in *Charter* Interpretation

[338] This appeal provides an opportunity to clarify the role of subheadings in *Charter* interpretation. Headings and subheadings to *Charter* provisions form part of the constitutional document. As components of the *Charter*, they must bear on the interpretation of its provisions. As Estey J. explained in *Law Society of Upper Canada v. Skapinker*, [1984] 1 S.C.R. 357, at p. 376:

> It is clear that these headings were systematically and deliberately included as an integral part of the *Charter* for whatever purpose. At the very minimum, the Court must take them into consideration when engaged in the process of discerning the meaning and application of the provisions of the *Charter*.

[339] Shortly after *Skapinker*, Lamer J., as he then was, considered the role of subheadings in his dissenting reasons in *Mills v. The Queen*, [1986] 1 S.C.R. 863. Referring to the *Charter* subheading preceding s. 24(1) — "Enforcement of guaranteed rights and freedoms" — as a "marginal note", he explained that it "succinctly expressed" the purpose of the section, which in turn informed the interpretation of the term "court of competent jurisdiction" in s. 24(1) (p. 881).

[340] Then, in *R. v. Wigglesworth*, [1987] 2 S.C.R. 541, Wilson J., writing for the majority, adopted Lamer J.'s terminology and referred to *Charter* subheadings as "marginal notes". She quoted Estey J.'s statement in *Skapinker* that headings are relevant to *Charter* interpretation. However, citing to authorities on statutory interpretation, she explained that "the traditional view was that marginal notes could not be used as aids to interpretation as they formed no part of the Act which was passed by Parliament" (p. 556). She then cited to *Canadian Pacific Ltd. v. Attorney General of Canada*, [1986] 1 S.C.R. 678, at p. 682, a case dealing with statutory, not constitutional, interpretation, stating that "marginal notes, unlike statutory headings, are not an integral part of the *Charter*" (*Wigglesworth*, at p. 558). She explained that the case for their use as "aids to statutory interpretation is accordingly weaker" (*ibid.*). Still, Wilson J. acknowledged that the *Charter*'s "marginal notes" cannot be entirely irrelevant, holding that "the distinction [between 'marginal notes' and headings] can be adequately recognized by the degree of weight attached to them" (*ibid.*).

[341] As this proposition has since been treated as the guiding statement of law on the role of "marginal notes" (i.e., subheadings) in *Charter* interpretation, it is important to clarify its proper application. As I note above, the authorities relied on by Wilson J. in *Wigglesworth* dealt with statutory interpretation. In statutes, marginal notes — also sometimes referred to as "sidenotes" — are "short note[s] located beside a section that giv[e] an indication of the content of the section" (P. Salembier, *Legal and Legislative Drafting* (3rd ed. 2024), at p. 451). Section headings perform "a similar function" but are "located above the section, flush with the left margin" (*ibid.*).

Importantly, in statutory interpretation, marginal notes, unlike headings, "do not form part of the components of the Act, as stated in express terms in the federal *Interpretation Act*" (S. Beaulac, *Handbook on Statutory Interpretation: General Methodology, Canadian Charter and International Law* (2008), at p. 139; see also R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at §§ 14.05-14.06).

[342] Any application of a rule of statutory interpretation in the context of *Charter* interpretation must be considered in light of the direction of Dickson J., as he then was, in *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, that interpreting a constitution is fundamentally different from interpreting a statute (p. 155; see also *9147-0732 Québec inc.*, at para. 11). I note first that, to avoid improperly conflating a rule of statutory interpretation with one of constitutional interpretation, *Charter* subheadings should be referred to as "subheadings", not as "marginal notes". Second, because the *Charter*'s subheadings, like its headings, are the product of negotiation by the framers of the *Charter* and were deliberately included in the constitutional document, the rationale espoused by Estey J. in *Skapinker* for the significance of headings in *Charter* interpretation also bears on the significance of the *Charter*'s subheadings.

[343] As a result, in *Charter* interpretation, subheadings may provide similar assistance to that provided by headings. It may well be that, depending on the particular provision at issue, the assistance of a subheading as an aid to *Charter* interpretation is "weaker" than that of a heading (*Wigglesworth*, at p. 558). However, similar

considerations will apply to ascertaining the weight to afford to either a heading or subheading. As Estey J. set out in *Skapinker*:

> The extent of the influence of a heading in this process will depend upon many factors including (but the list is not intended to be all-embracing) the degree of difficulty by reason of ambiguity or obscurity in construing the section; the length and complexity of the provision; the apparent homogeneity of the provision appearing under the heading; the use of generic terminology in the heading; the presence or absence of a system of headings which appear to segregate the component elements of the *Charter*; and the relationship of the terminology employed in the heading to the substance of the headlined provision. [pp. 376-77]

[344] Therefore, while a heading or subheading "will not operate to change [a provision's] clear and unambiguous meaning", the Court should not "shut itself off from whatever small assistance might be gathered from an examination of the heading [or subheading] as part of the entire constitutional document" (*Skapinker*, at p. 377).

(3) The Subheading Preceding Section 6(1)

[345] I turn to the subheading preceding s. 6(1) ("Mobility of citizens" in the English version and "*Liberté de circulation*" in the French version). In my view, this subheading aids in interpreting the purpose of s. 6(1) and in identifying the interests falling within its scope.

[346] In particular, it assists in resolving the potential ambiguity of whether the "right to . . . remain in . . . Canada" provides only protection against exile, banishment, expulsion and, in some cases, extradition (*Cotroni*). The ordinary meaning of

"mobility", the word used in the English subheading, includes the "ability to move or walk around freely" (*Cambridge Dictionary*). Similarly, "*circulation*", the word used in the French subheading, means "*[a]ction d'aller d'un lieu à l'autre, d'aller et venir*" ([TRANSLATION] "[a]ction of going from place to place, of coming and going") (*Dictionnaire Larousse*). This supports the view that the totality of the three rights under s. 6(1) — the rights to enter, remain in, and leave Canada — reflects broader "mobility" interests than a protection only against forced removal and a right to enter and exit the country. It suggests a right of citizens to move freely from place to place within Canada (i.e., interprovincial travel *simpliciter*).

[347] In conclusion, the text — as the first factor to consider within the purposive approach — suggests s. 6(1) protects interprovincial travel *simpliciter*.

B. *The Internal Context and Structure of Section 6*

[348] The interpretive analysis does not end with the constitutional text of s. 6(1). Per *Big M Drug Mart*, in ascertaining the scope of a right, regard must be had, *inter alia*, to "other specific rights and freedoms with which it is associated within the text of the *Charter*" (p. 344). Further, the appellants submit s. 6(2)(a) contains a right to interprovincial travel *simpliciter*. I therefore turn to the broader context of s. 6, including s. 6(2)(a).

(1) <u>The Text of Section 6(2)(a) Does Not Capture a Right of Interprovincial Travel *Simpliciter*</u>

[349] The appellants submit that s. 6(2)(a) protects a right of interprovincial travel *simpliciter* on the basis that the French version of s. 6(2)(a) protects two rights rather than one, as it states that Canadian citizens and permanent residents have the right "*de se déplacer dans tout le pays et d'établir leur résidence dans toute province*". The appellants submit that the verb "*se déplacer*" means "to move", in the sense of "to get around" (A.F., at para. 62). Directly translated, this means that s. 6(2)(a) protects, first, a right to "get around/travel" throughout Canada and, second, a right to establish residence in any province (*ibid.*). The appellants further submit that if s. 6(2)(a) was meant to protect only moving for the purpose of taking up residence, one would expect the word "*déménager*" to be used in place of "*se déplacer*" (para. 63).

[350] I do not agree. Contrary to the appellants' submission, the French version of s. 6(2)(a) does not provide a compelling basis for concluding that s. 6(2)(a) provides for two rights, such that interprovincial travel *simpliciter* is a free-standing right, one that is separate from changing residence.

[351] The English text of s. 6(2)(a) reads:

> **Rights to move and gain livelihood**
>
> **(2)** Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
>
> **(a)** to move to and take up residence in any province;

[352] The French text of s. 6(2)(a) reads:

Liberté d'établissement

(2) Tout citoyen canadien et toute personne ayant le statut de résident permanent au Canada ont le droit:

a) de se déplacer dans tout le pays et d'établir leur résidence dans toute province;

[353] Notably, the words "*de se déplacer dans tout le pays*" are immediately qualified by the words "*et d'établir leur résidence dans toute province*". The words "*de se déplacer*" therefore apply only to situations where one travels with the goal of moving to a new province. If s. 6(2)(a) was intended to protect interprovincial travel *simpliciter* as a separate right, such a right would have been situated in a separate paragraph.

[354] The use of a coordinating conjunction — "and" in the English version of s. 6(2)(a) and "*et*" in the French version — indicates that the first phrase, "to move to" or "*de se déplacer dans tout le pays*", must be read together with the second phrase, "take up residence in any province" or "*d'établir leur résidence dans toute province*". The text of the paragraph provides for a single, integrated right. Thus, the text suggests that the ability to move as protected by s. 6(2)(a) is limited to doing so with the purpose of changing one's residence.

[355] This interpretation finds support in *Skapinker*, where the Court stated that "[t]he two rights" in s. 6(2)(a) and s. 6(2)(b) "both relate to movement into another province, either for the taking up of residence, or to work without establishing residence" (p. 382 (emphasis added); see also *Black v. Law Society of Alberta*, [1989]

1 S.C.R. 591, at p. 615). I agree with the intervener the Attorney General of Saskatchewan that, on its face, s. 6(2)(a) protects the choice of *residence*; it is not a free-standing right to travel between provinces (I.F., at para. 35).

(2) The Subheading Preceding Section 6(2)(a)

[356] The subheading of s. 6(2) supports the interpretation that s. 6(2)(a) protects choice of residence, not a free-standing right to interprovincial travel *simpliciter*.

[357] The French version of the subheading preceding s. 6(2) is "*Liberté d'établissement*". The word "*établissement*" translates directly to "settling". The English version of the subheading of s. 6(2) is "Rights to move and gain livelihood". In the French version, "*établissement*" is the parallel of "move and gain livelihood".

[358] The French version of the subheading therefore connotes a focus on the right of settling in another province rather than on the right to travel freely about the country. The subheading and the text, read together, give rise to the protection of only one right under s. 6(2)(a): the right to move to another province for the purpose of taking up residence.

[359] Even if I were to accept (which I do not) that any ambiguity exists as to whether the French and English versions of s. 6(2)(a), interpreted together, give rise to dual rights to travel *simpliciter* and to move to another province for the purpose of taking up residence, this ambiguity would be resolved by the subheading.

[360] Further, because s. 6 includes subsections, its subheadings carry weight in clarifying the interests protected by each subsection in comparison to one another. The French version of the subheading of s. 6(1) reads "*Liberté de circulation*" ("Mobility of citizens" in the English version), and the French version of the subheading of s. 6(2) reads "*Liberté d'établissement*" ("Rights to move and gain livelihood" in the English version). The contrast between the text of those subheadings provides additional textual direction as to the interests each subsection protects: s. 6(1) is aimed at the freedom to move about between one place and another (both inside Canada and between Canada and other countries), while s. 6(2)(a) is aimed at the freedom to establish one's residence in another province.

(3) The Structure of Section 6(2)(b) and Section 6(3)(a)

[361] As noted above, s. 6 has four subsections. Section 6(2) is subject to the express limitations set out in s. 6(3) and s. 6(4). However, s. 6(1) is a free-standing provision. As this Court has noted, "[t]he fact that s. 6(1) is not subject to such limitations . . . confirms its plenitude" (*Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47, [2013] 3 S.C.R. 157, at para. 28). This "plenitude" further supports the interpretation that the right to remain in Canada under s. 6(1) is not limited to a right against exile, banishment, expulsion or extradition, but rather includes a right to interprovincial travel *simpliciter*.

[362] In contrast, the purpose of s. 6(2)(a) cannot be ascertained in isolation. Rather, it must be ascertained in the context of s. 6 overall, including s. 6(3) (see *Skapinker*, at pp. 379-80).

[363] Section 6(3) provides:

> **Limitation**
>
> **(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.

[364] While this Court has not had occasion to consider the relationship between s. 6(2)(a) and s. 6(3), there is well-established jurisprudence on the relationship between s. 6(2)(b) and s. 6(3). In *Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157, the Court explained that s. 6(2)(b) and s. 6(3)(a) define a single right (para. 54). The Court endorsed, at para. 51, the following framing of the relationship between s. 6(2)(b) and s. 6(3)(a) from *Malartic Hygrade Gold Mines Ltd. v. The Queen in Right of Quebec* (1982), 142 D.L.R. (3d) 512 (Que. Sup. Ct.), at p. 521:

> [TRANSLATION]
>
> (a) The principle [(s. 6(2)(b))]: The right to pursue the gaining of a livelihood in any province;

> (b) The exception [(s. 6(3)(a) *in limine*)]: This right is subject to any laws or practices of a general application in force in that province;
>
> (c) The exception to the exception [(s. 6(3)(a) *in fine*)]: Except if these laws discriminate among persons primarily on the basis of the province of residence.

[365] Based on this framing, the Court observed that the guarantee in s. 6(2)(b) — the right to "pursue the gaining of a livelihood in any province" — could not be understood apart from s. 6(3)(a) (*Canadian Egg Marketing Agency*, at para. 51):

> On close examination, it will be observed that [the exception in s. 6(3)(a)] almost entirely undermines the guarantee set out in [s. 6(2)(b)]; meaning, scope and purpose can only be attributed to [s. 6(2)(b)] by reading it in conjunction with [the exception to the exception in s. 6(3)(a)]. The correctness of this general approach was recognized in both of the major Supreme Court decisions on s. 6, *Law Society of Upper Canada v. Skapinker*, [1984] 1 S.C.R. 357, and *Black v. Law Society of Alberta*, [1989] 1 S.C.R. 591.

Thus, the Court concluded that s. 6(2)(b) and s. 6(3)(a) "should be read together in order to establish one another's purpose" (para. 54). Both of the provisions define a "single right, rather than one right which is externally 'saved' by another" (*ibid.*).

[366] Similarly, in *Skapinker*, the Court established that s. 6(3) of the *Charter* "provides an exception to the paramountcy" of the rights conferred in s. 6(2) (p. 379). The issue in that appeal was whether s. 6(2)(b) protected a free-standing right to work; the Court concluded that it did not. Rather, s. 6(2)(b) protects the ability of a Canadian citizen or permanent resident to work *in any province*, despite not being a resident of

that province (pp. 369, 380 and 382-83). This conclusion was informed, in part, by the fact that the limitation imposed by s. 6(3)(a) is based on one's province of previous or present residence (pp. 379-80):

> In my opinion, s. 6(3)(*a*) further evinces the intention to guarantee the opportunity to move freely within Canada unimpeded by laws that "discriminate . . . primarily on the basis of province of present or previous residence". The concluding words of s. 6(3)(*a*), just cited, buttress the conclusion that s. 6(2)(*b*) is directed towards "mobility rights", and was not intended to establish a free standing right to work. Reading s. 6(2)(*b*) in light of the exceptions set out in s. 6(3)(*a*) also explains why the words "in any province" are used: citizens and permanent residents have the right, under s. 6(2)(*b*), to earn a living in any province subject to the laws and practices of "general application" in that province which do not discriminate primarily on the basis of provincial residency. [Emphasis added.]

[367] The intervener the Attorney General of Saskatchewan submits that the purpose and meaning of s. 6(2)(a) must similarly be understood in the context of s. 6(3) (I.F., at paras. 36-42). I agree. The framing endorsed in *Canadian Egg Marketing Agency* with respect to s. 6(2)(b) and s. 6(3)(a) is applicable, in a parallel way, to the relationship between s. 6(2)(a) and s. 6(3)(a). Reformulated, it would read:

> (a) The principle [(s. 6(2)(a))]: The right to move to and take up residence in any province;
>
> (b) The exception [(s. 6(3)(a) *in limine*)]: This right is subject to any laws or practices of a general application in force in that province;
>
> (c) The exception to the exception [(s. 6(3)(a) *in fine*)]: Except if these laws discriminate among persons primarily on the basis of the province of residence.

[368] This framing functions in the same way as that for s. 6(2)(b) and s. 6(3)(a), and so it is appropriate to borrow language from *Canadian Egg Marketing Agency* to explain it. The right to move to and take up residence, as guaranteed by s. 6(2)(a), is "almost entirely undermine[d]" by the exception set out in s. 6(3)(a), which provides that "any" law can impact such a right. However, the exception to the exception in s. 6(3)(a) establishes that laws which discriminate primarily on the basis of one's province of residence *cannot* encroach on the right set out in s. 6(2)(a). It is clear, then, that the "meaning, scope and purpose" of s. 6(2)(a) can only be ascertained if it is read in conjunction with s. 6(3)(a). As such, s. 6(2)(a) and s. 6(3)(a) define a single right.

[369] The limiting language of s. 6(3)(a) establishes that the right "to move" in s. 6(2)(a) is anchored in a specific purpose. In accordance with the concluding words of s. 6(3)(a), laws which discriminate "primarily on the basis of province of . . . residence" infringe the interests protected by s. 6(2). On the other hand, laws that do not discriminate on this basis do not infringe s. 6(2). The emphasis on one's place of residence in s. 6(3)(a) supports the conclusion that the mobility right in s. 6(2)(a) extends only to interprovincial travel in order to *take up residence*.

[370] Support for this interpretation can also be found in s. 6(3)(b), which similarly contains limiting language based on residency. Section 6(3)(b) states that the mobility guarantee in s. 6(2)(a) is subject to laws which provide for "reasonable residency requirements as a qualification for the receipt of publicly provided social services". It follows that laws that impose unreasonable residency requirements *will*

infringe the mobility guarantee in s. 6(2) (see, e.g., *Irshad (Litigation guardian of) v. Ontario (Ministry of Health)* (2001), 55 O.R. (3d) 43 (C.A.), at paras. 95-101). Section 6(3)(b)'s emphasis on the reasonableness of residency requirements reinforces the conclusion that s. 6(2)(a) protects the ability to choose where one wishes to *reside* in the country; it does not extend to a generalized right to move about the country.

[371] In sum, the internal context of s. 6 aligns with my textual analysis and supports the conclusion that the right to interprovincial travel *simpliciter* is protected by s. 6(1) but is not protected by s. 6(2)(a). I turn next to the historical origins of s. 6, the purpose of s. 6, and the relevant international instruments.

C. *The Historical Origins of Mobility Rights and the Purposes of Section 6*

(1) Pre-*Charter* Mobility Rights and the Purposes of Section 6

[372] Before the advent of the *Charter*, the courts relied on the federal-provincial division of powers as an indirect means of protecting mobility rights, as they did with other civil liberties (see *Winner v. S.M.T. (Eastern) Ltd.*, [1951] S.C.R. 887, at pp. 918-20, per Rand J.; see also *Switzman v. Elbling*, [1957] S.C.R. 285, at pp. 327-28, per Abbott J.). Canadians' right to move about the country was affirmed as a "consequence of the exclusive federal jurisdiction over citizenship conferred by s. 91 of the *Constitution Act, 1867*" (*Canadian Egg Marketing Agency*, at para. 59). In *Winner*, Rand J. explained that "[c]itizenship is membership in a state" and that it carries certain "essential attribute[s]", including the right to enter, reside in, and work in the province

of one's choice (pp. 918-20; see also *Canadian Egg Marketing Agency*, at para. 59; *Black*, at pp. 610-11). Accordingly, the courts protected Canadians' right to mobility by holding that only Parliament could modify, defeat, or destroy the right and that the regulation of interprovincial mobility was *ultra vires* the provinces. A province therefore could not "prevent a Canadian from entering it", lest "the country . . . be converted into a number of enclaves and the 'union' which the original provinces sought and obtained disrupted" (*Winner*, at p. 920). As La Forest J. explained in *Black*, personal mobility is "fundamental to nationhood" (p. 610).

[373] While s. 6 of the *Charter* recognizes a series of "mobility rights", their origins are "fundamentally different" from the right to mobility as it existed prior to the *Charter* (*Canadian Egg Marketing Agency*, at para. 59). As this Court recognized in *Black*, the language of s. 6 "is not expressed in terms of the structural elements of federalism, but in terms of the rights of the citizens and permanent residents of Canada" (p. 612). It follows that the *Charter* right "may demand a different scope in order to satisfy a different purpose" (*Canadian Egg Marketing Agency*, at para. 59).

[374] The mobility rights protected by s. 6 are "rooted in a concern with human rights"; "s. 6 responds to a concern to ensure one of the conditions for the preservation of the basic dignity of the person" (*Canadian Egg Marketing Agency*, at paras. 59-60). The guarantee of mobility engages notions of equality of treatment and the absence of discrimination, in the sense of a citizen's right to be "treated equally in his capacity as a citizen throughout Canada" (para. 60 (emphasis deleted), citing *Black*, at p. 621). A

citizen's ability to travel freely across provincial borders is fundamental to this basic dignity.

[375] It is hardly surprising that the doctrinal foundation of a right of mobility was expressed differently in a division of powers analysis before the advent of the *Charter* than in a rights analysis under the *Charter*. Nonetheless, as the Court recognized in *Black*, citizenship, the rights and duties that inhere in it, and the consequent relationship between the citizen and the state, are concerns reflected both in the pre-*Charter* jurisprudence on mobility rights and in the language of s. 6 (p. 612). As La Forest J. explained in *Cotroni*, s. 6 continues to engage citizens' "membership in the national community" (pp. 1481-82).

[376] The history, text, and jurisprudence therefore demonstrate that s. 6 protects mobility rights as it relates to two purposes: upholding the rights of the citizen as a constituent of, and in furtherance of, Canadian "nationhood" (*Black*, at p. 612); and protecting "the dignity of the individual" citizen (*Canadian Egg Marketing Agency*, at para. 60). Underlying these purposes is a critical commonality: the ability of Canadians to move freely throughout their country. That is an interest protected by indirect means before the *Charter* and now protected directly by the *Charter* under s. 6.

(2) The Interests Under Section 6(1) and Under Section 6(2)(a)

[377] As I have set out above, the text of s. 6 suggests that Canadians' right to move freely throughout their country is protected under s. 6(1), not s. 6(2)(a). This

interpretation is supported by this Court's jurisprudence, which indicates that s. 6(2) furthers the dual purposes outlined above by protecting particular *economic* interests.

[378] As La Forest J. observed in *Black*, the enactment of the *Charter* was concurrent with concerns regarding "barriers to interprovincial economic activity" and "the growing fragmentation of the Canadian economic union" (pp. 611-12). Given this context, "[t]hese economic concerns undoubtedly played a part in the constitutional entrenchment of interprovincial mobility rights, under s. 6(2) of the *Charter*" (p. 612 (emphasis added)). Sections 6(2), 6(3) and 6(4) were therefore at least partially aimed at combatting "the economic balkanization of Canada" (P. Bernhardt, "Mobility Rights: Section 6 of the Charter and the Canadian Economic Union" (1987), 12 *Queen's L.J.* 199, at p. 207). Section 6(2) guarantees a measure of autonomy and thereby "give[s] effect to the basic human right . . . that individuals should be able to participate in the economy" free from discrimination based on place of residence (*Canadian Egg Marketing Agency*, at para. 60). As Iacobucci and Bastarache JJ. explained in *Canadian Egg Marketing Agency*, when interpreting s. 6(2), "the hallmark of mobility required by s. 6 is not physical movement to another province, but rather any attempt to create wealth in another province" (para. 72).

[379] Thus, s. 6(2)(b) protects the right to work in a province without having to become a resident there, and s. 6(2)(a) protects the right to take up residence in a province, which inherently encompasses a right to work in that province. Both of course are subject to s. 6(3) and s. 6(4).

[380] The right to remain in Canada under s. 6(1) serves the same *purposes* — protecting the rights of citizens inherent to and in furtherance of their "membership in the national community", and protecting the dignity of individual citizens — but addresses a different *interest*, one without the economic emphasis of s. 6(2). This interest is instead tied to the fact that a Canadian is a citizen of the whole country, not just a denizen of a province, and to the dignity that is inherent in an individual's autonomy, choice, and freedom from discrimination. The interest under s. 6(1) is therefore the protection of Canadians' ability to travel interprovincially, without regard to their purpose in travelling. This is different from the interest under s. 6(2), which is the protection of Canadians' ability to work, establish a residence, or undertake commerce across the country. Section 6(1) thus provides for the right of interprovincial travel *simpliciter*.

[381] I also prefer this interpretation because it gives effect to the "living tree" doctrine. I would emphasize that this doctrine means that the interests that the *Charter* right seeks to protect can be actualized in different ways in response to changing social circumstances (see, e.g., *R. v. Bissonnette*, 2022 SCC 23, [2022] 1 S.C.R. 597, at para. 65; *Reference re Same-Sex Marriage*, 2004 SCC 79, [2004] 3 S.C.R. 698, at para. 22), not that the interests that the *Charter* protects will continue to multiply, year after year. This Court is not free to invent new obligations which extend beyond the original purpose of the constitutional provision (*R. v. Blais*, 2003 SCC 44, [2003] 2 S.C.R. 236, at para. 40). The analysis must always have regard, *inter alia*, to the historical context of the provision (*ibid.*; see also *R. v. N.S.*, 2012 SCC 72, [2012] 3 S.C.R. 726, at para.

72). The purposive approach and the "living tree" doctrine complement and give force and vigour to one another (see M. Rowe, "The Wisdom of Brian Dickson" (2025), 88 *Sask. L. Rev.* 49, at pp. 51-52).

[382] Understanding the purposes of s. 6, and how the interest at issue falls within the scope of that guarantee and accords with its purposes, is key to giving effect to the purposive approach.

D. *The Relevant International Instruments and the Role They May Play in Interpreting Section 6*

[383] A review of the international instruments that influenced the drafting of the *Charter* confirms the result I have reached by way of purposive interpretation: that the right of citizens to travel freely throughout Canada is protected under s. 6(1). I begin by reviewing this Court's guidance in *9147-0732 Québec inc.* as to which types of international instruments can be used in *Charter* interpretation and the use to which they may be put.

[384] International and comparative law can be used in interpreting *Charter* rights to "*support* or *confirm* an interpretation arrived at through the *Big M Drug Mart* approach" (*9147-0732 Québec inc.*, at para. 28 (emphasis in original)). Pre-*Charter* international instruments from which the drafters of the *Charter* drew inspiration can illuminate the "historical origins of the concepts enshrined" in a specific *Charter* right (para. 41, citing *Big M Drug Mart*, at p. 344). The Court in *9147-0732 Québec inc.*

explained that it is less important whether "Canada is or is not a party" to pre-*Charter* international instruments, as the "drafters of the *Charter* drew on international conventions because they were the best models of rights protection, not because Canada had ratified them" (para. 41, citing L. E. Weinrib, "A Primer on International Law and the *Canadian Charter*" (2006), 21 *N.J.C.L.* 313, at p. 324). For example, "it is entirely proper and relevant to consider the *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948) [("UDHR")], which Canada voted to adopt" and which inspired other protocols Canada has ratified, like the *International Covenant on Civil and Political Rights*, Can. T.S. 1976 No. 47 ("ICCPR"), of 1966 (*9147-0732 Québec inc.*, at para. 41).

[385] In addition to supplying historical context for the *Charter* right, binding international instruments (i.e., those that Canada has ratified) give rise to the rebuttable "presumption of conformity", a "firmly established interpretive principle in *Charter* interpretation" (*9147-0732 Québec inc.*, at para. 31). The presumption of conformity provides that "the *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified" (*Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, at p. 349; see also *9147-0732 Québec inc.*, at para. 31). The presumption "operates principally as an interpretive tool in assisting the courts in delineating the breadth and scope of *Charter* rights" (*9147-0732 Québec inc.*, at para. 34, citing *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, [2014] 3 S.C.R. 176, at para. 150). But, "being a presumption, it is also rebuttable and 'does not

overthrow clear legislative intent'" (*9147-0732 Québec inc.*, at para. 34, citing *Kazemi*, at para. 60).

[386] Multiple interveners referred this Court to interpretations given to international covenants by international bodies. For example, at paras. 15 and 18 of its factum, the British Columbia Civil Liberties Association cites to the United Nations Human Rights Committee's *General Comment No. 27: Freedom of movement (Art. 12)*, U.N. Doc. CCPR/C/21/Rev.1/Add.9, November 1, 1999, at paras. 1 and 5, which interprets Article 12 of the ICCPR as including a free-standing right to move freely within a country:

> Liberty of movement is an indispensable condition for the free development of a person. It interacts with several other rights enshrined in the Covenant . . . .
>
> . . .
>
> The right to move freely relates to the whole territory of a State, including all parts of federal States. According to article 12, paragraph 1, 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 a place. Any restrictions must be in conformity with paragraph 3. [Emphasis added.]
>
> (*General Comment No. 27*, at paras. 1 and 5)

[387] Instruments that postdate the *Charter* and which are not binding on Canada carry less interpretive weight than those that bind Canada (by virtue of ratification) and/or preceded the adoption of the *Charter* (*9147-0732 Québec inc.*, at para. 42). General Comments of UN treaty bodies, such as the Human Rights Committee, are not

legally binding on Canada (see H. Keller and L. Grover, "General Comments of the Human Rights Committee and their legitimacy", in H. Keller and G. Ulfstein, eds., *UN Human Rights Treaty Bodies: Law and Legitimacy* (2012), 116, at pp. 128-29). While it remains open for courts to consider non-binding post-*Charter* instruments such as the UN Human Rights Committee's *General Comment No. 27*, these instruments are "merely persuasive", and a "court relying upon them should explain *why* it is doing so, and *how* they are being used" (*9147-0732 Québec inc.*, at para. 40 (emphasis in original)).

[388] Having addressed these methodological issues, I now consider whether the interpretation of s. 6(1) and s. 6(2) that I have reached by means of purposive interpretation is supported by the relevant international instruments.

(1) The International Instruments Support a Right of Interprovincial Travel *Simpliciter* Under Section 6(1)

[389] The ICCPR is binding on Canada, thus triggering the presumption of conformity in interpreting s. 6 (see *9147-0732 Québec inc.*, at para. 39). The ICCPR contains a right to freedom of movement within a country under Article 12:

ARTICLE 12

> 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.
>
> 2. Everyone shall be free to leave any country, including his own.

> 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.
>
> 4. No one shall be arbitrarily deprived of the right to enter his own country.

[390] As the Court recognized in *Divito*, at para. 25, "the rights protected by the ICCPR provide a minimum level of protection in interpreting the mobility rights under the *Charter*". This "minimum level of protection" must also be borne by the text of the *Charter* right itself. This supports my interpretation that the "right to . . . remain" under s. 6(1) provides protection similar to that provided by Article 12(1).

[391] This Court has also referred to the ICCPR as a source of international legal inspiration for s. 6 (see *Divito*, at para. 24). This suggests that the drafters of the *Charter* had the right to liberty of movement within Canada in mind, understood its fundamental importance, and intended for its inclusion within the *Charter*.

[392] I would reject the argument that, because s. 6(1) does not replicate exactly the language of Article 12(1) of the ICCPR, it does not include this right. Such an argument fails to engage with the presumption of conformity. Further, this argument would not accord with the purpose for which the ICCPR can be used in *Charter* analysis, since international law may be used to "*support* or *confirm* an interpretation arrived at through the *Big M Drug Mart* approach" and not "to define the scope of *Charter* rights" (*9147-0732 Québec inc.*, at para. 28 (emphasis in original)).

[393] Two other international instruments also influenced the drafting of the *Charter* and are instructive as historical context: the UDHR and the *European Convention on Human Rights*, 213 U.N.T.S. 221 ("ECHR") (see B. L. Strayer, *Canada's Constitutional Revolution* (2013), at p. 262; M. Rowe and J. Mayrand-Thibert, "The *Charter* in the International Context" (*J.P.P.L.*, forthcoming)).

[394] While the ECHR lacked a provision corresponding to s. 6 when it entered into force in 1953, Protocol No. 4 to the Convention, which entered into force in 1968, includes a similar provision (*Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those included in the Convention and in the first Protocol thereto*, Europ. T.S. No. 46). It provides at Article 2(1) that "[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." The UDHR similarly contains the right to freedom of movement within a country. Article 13(1) of that instrument states that "[e]veryone has the right to freedom of movement and residence within the borders of each State."

[395] The inclusion, as distinct rights, of "the right to liberty of movement" within the territory of a member state in Protocol No. 4 to the ECHR and of "the right to freedom of movement . . . within the borders of each State" in the UDHR suggests that the drafters of the *Charter* understood the fundamental importance of this right and intended for its inclusion within the *Charter*. This favours the interpretation that s. 6 was intended to encompass the right for citizens to move freely throughout the country.

(2) The International Instruments Do Not Support a Right of Interprovincial Travel *Simpliciter* Under Section 6(2)(a)

[396] The UDHR and ICCPR also support my conclusion that this right is found within s. 6(1), not s. 6(2)(a). As discussed above, s. 6(2)(a) is subject to the limitations under s. 6(3)(a), such that it should be read as a "single right" (see *Canadian Egg Marketing Agency*, at para. 54). A right to interprovincial travel *simpliciter* under s. 6(2)(a) would be subject, under s. 6(3)(a), to "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". No such limits apply to s. 6(1), which is subject only to those limitations as may be justified under s. 1 of the *Charter*.

[397] The mobility right under Article 13 of the UDHR similarly has no internal limitations. It is subject only to Article 29 of the UDHR, which provides a narrower scope of limits in comparison to s. 6(3); under Article 29(2), rights can be limited by law only for the purpose of respecting others' rights and meeting the "just requirements of morality, public order and the general welfare in a democratic society".

[398] The mobility right in the ICCPR does contain internal limitations, under Article 12(3). Again, however, this limiting language provides a narrower scope of limits in comparison to s. 6(3); the right may only be subject to restrictions provided by law and which "are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others".

[399] In sum, the right to freedom of movement reflected in the UDHR and the ICCPR is subject to limitations that reflect those justifiable under s. 1 of the *Charter*. Because s. 6(2)(a) is subject to both s. 1 *and* to the internal limits set out in s. 6(3), whereas s. 6(1) is subject only to s. 1, these instruments support the interpretation that the right to interprovincial travel *simpliciter* is protected by s. 6(1). Accordingly, the relevant international instruments, applied in the manner required by this Court's jurisprudence, support and confirm a purposive interpretation of s. 6 as encompassing a right to interprovincial travel *simpliciter* within s. 6(1).

E. *Conclusion*

[400] Properly interpreted through the purposive approach to *Charter* interpretation, s. 6(1) protects the right to interprovincial travel *simpliciter*. Section 6(1) provides for the right to "remain in" Canada, which connotes a right to remain *within the borders of Canada*. Contrarily, the text of s. 6(2)(a) provides for a right of interprovincial mobility only for the purpose of establishing residence. This interpretation is supported by the subheadings in s. 6 and by the qualifying language of s. 6(3), which applies to s. 6(2)(a) but not to s. 6(1). The dual purposes of s. 6 — upholding the rights of the citizen as a constituent of, and in furtherance of, Canadian "nationhood", and protecting "the dignity of the individual" citizen — provide for a right to interprovincial travel *simpliciter* under s. 6(1). The relevant international instruments — the ICCPR, the ECHR and the UDHR — support this purposive interpretation. Canadians have the right to travel within Canada for such reasons as

they may choose, subject only to such limitations as can be justified under s. 1 of the *Charter*.

Appeal allowed in part, WAGNER C.J. *and* ROWE, KASIRER *and* JAMAL JJ. *dissenting in part.*

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