

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Canadian Constitution Foundation v. Minister of Natural Resources (Nova Scotia)*, 2025 NSSC 298

**Date:** 20250915

**Docket:** Hfx No. 545976

**Registry:** Halifax

**Between:**

Canadian Constitution Foundation

*Applicant*

v.

Minister of Natural Resources representing His Majesty the King in right of the  
Province of Nova Scotia

*Respondent*

<p><b>JUDICIAL REVIEW DECISION ON PUBLIC INTEREST STANDING</b></p>
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**Judge:** The Honourable Justice Scott C. Norton

**Heard:** August 26, 2025, in Halifax, Nova Scotia

**Written Decision:** September 15, 2025

**Counsel:** Sheree Conlon, KC and Nasha Nijhawan, for the Applicant  
Harvey Morrison, KC and Kevin A. Kindred, KC, for the Respondent  
Marty Moore, for Jeffrey Evely

**By the Court:****Introduction and Procedural History**

[1] The Province of Nova Scotia is in an unprecedented period of drought, which poses serious risk to our people, natural resources, and industries. The risk posed by potential (and actual) wildfires was met by urgent government action.

[2] On August 5, 2025, the Minister of Natural Resources issued a Proclamation pursuant to s. 25(1) of the *Forests Act*, RSNS 1989, c. 179 (the “*Act*”), prohibiting entry into the woods for the purposes of travelling, camping, fishing or picnicking, or any other purpose, without a valid travel permit in all counties in Nova Scotia.

[3] The Proclamation was effective as of 4:00 p.m. on August 5, 2025, and will end at 2:00 p.m. on October 15, 2025, unless the Proclamation is revoked or amended by further notice.

[4] Persons contravening the Proclamation may be liable to prosecution as established in the *Act*. A person contravening the Proclamation may be subject to a \$25,000 fine.

[5] On August 15, 2025, counsel for the Canadian Constitutional Foundation (“CCF”), a nationally registered charity, filed a Notice of Judicial Review seeking review of the Proclamation for allegedly exceeding the authority conferred by the *Act*, alleged failure of the decision maker to consider the proportional impact of *Charter* rights and values, and alleged vagueness and overbreadth. CCF also filed a Notice of Motion for Public Interest Standing. On August 18, 2025, as Chambers Judge, I granted a request from CCF to abridge the time periods set out in the *Civil Procedure Rules* and scheduled the Motion for Directions required by Rule 7 and the Motion for Public Interest Standing for August 26, 2025. Also on August 18, 2025, the respondent filed a Notice of Participation and an Undertaking to Seek Directions Regarding the Production of the Record (Rule 7.09(1)(c)) on August 18, 2025.

[6] CCF does not have private interest standing to pursue this judicial review. The issue for determination on this motion is whether the CCF should be granted leave to proceed with public interest standing. The respondent opposes the motion for leave.

[7] Also of note is that after the CCF filed its Notice of Judicial Review, a Notice of Judicial Review was filed on August 20, 2025 (Hfx No. 546181) by Jeffrey Evely, a resident of Nova Scotia who received a summary offence ticket for allegedly breaching the Proclamation, alleges that the Proclamation is unreasonable, ultra vires, and unreasonably limits his rights under s. 7 of the *Canadian Charter of Rights and Freedoms* (“*Charter*”). The court directed that the Motion for Directions would be heard at the same time as the CCF Motion for Directions. Mr. Evely did not participate in the motion for Public Interest Standing except to state that he did not oppose it.

[8] At the outset of the hearing, I granted the motion of the respondent to strike and/or disregard certain impugned portions of the applicant’s affidavit sworn by Christine Van Geyn as inadmissible opinion, hearsay and argument, and advised that no weight would be afforded to the impugned portions of the affidavit. At the conclusion of the hearing, I granted the motion for public interest standing with reasons to follow. These are my reasons.

### **The Legal Principles**

[9] The parties agree on the legal principles that apply to the motion for public interest standing. The leading case on public interest standing is *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, as affirmed in *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27. The Supreme Court comprehensively reviewed the relevant legal principles and criteria relating to public interest standing.

[10] The decision to grant or deny public interest standing is discretionary (*Downtown Eastside*, at para. 20). In exercising its discretion, a court must cumulatively assess and weigh three factors purposively and about the circumstances. These factors are (*Council of Canadians*, at para. 2):

1. whether the case raises a serious justiciable issue,
2. whether the party bringing the action has a genuine interest in the matter, and
3. whether the proposed suit is a reasonable and effective means of bringing the case to court

[11] In *Downtown Eastside*, the Supreme Court explained that each factor is to be “weighed ... in light of the underlying purposes of limiting standing and applied in

a flexible and generous manner that best serves those underlying purposes” (at para. 20). These purposes are threefold (per *Downtown Eastside*, at para. 1):

1. efficiently allocating scarce judicial resources and screening out “busybody” litigants;
2. ensuring that courts have the benefit of the contending points of view of those most directly affected by the issues; and
3. ensuring that courts play their proper role within our democratic system of government.

[12] Courts must also consider the purposes that justify granting standing in their analyses. These purposes are twofold (*Council of Canadians*, at para. 30):

1. giving effect to the principle of legality and
2. ensuring access to the courts, or more broadly, access to justice.

[13] The goal, in every case, is to strike a meaningful balance between the purposes that favour granting standing and those that favour limiting it (*Council of Canadians*, at para. 30).

[14] The legality principle encompasses two ideas: (i) state action must conform to the law, and (ii) there must be practical and effective ways to challenge the legality of state action (*Downtown Eastside*, at para. 31). Access to justice has several meanings, which includes being able to secure legal remedies through access to courts (*Council of Canadians*, at para. 35). In *Downtown Eastside*, the Court recognized that access to justice is symbiotically linked to public interest standing: the judicial discretion to grant or deny standing plays a gatekeeping role that has a direct impact on access (*Council of Canadians*, at para. 36).

[15] Courts should strive to balance all the purposes in light of the circumstances and in the “wise application of judicial discretion” (*Downtown Eastside*, at para. 21). It follows that they should not, as a rule, attach “particular weight” to any one purpose, including legality and access to justice (*Council of Canadians*, at paras. 31, 32, 56, and 58). Legality and access to justice are important — indeed, they played a pivotal role in the development of public interest standing — but they are two of multiple concerns that inform the *Downtown Eastside* analysis.

[16] As the Court explained in *Downtown Eastside*, none of the factors it identified are “hard and fast requirements” or “free-standing, independently operating tests” (at para. 20). Rather, they are to be assessed and weighed cumulatively, considering

all the circumstances. Under this framework, courts flexibly and purposively weigh the three factors considering the “particular circumstances” and in a “liberal and generous manner” (para. 2, citing *Canadian Council of Churches v. R.*, [1992] 1 SCR 236 (“*Canadian Council of Churches*”)).

[17] As noted, the *Downtown Eastside* framework addresses several concerns that underlie standing law, legality, and access to justice. But the framework also accommodates traditional concerns related to the expansion of public interest standing, including allocating scarce judicial resources, ensuring that courts have the benefit of contending points of view of those most directly affected by the issues, and ensuring that courts play their proper role in our constitutional democracy (*Council of Canadians*, para. 42).

[18] Limitations on standing are necessary to ensure that courts do not become overburdened with marginal or redundant cases.

[19] At the root of the law on standing is a need to strike a balance “between ensuring access to the courts and preserving judicial resources” (*Downtown Eastside*, at para. 23, quoting with approval from *Canadian Council of Churches*, at p. 252).

[20] These principles have repeatedly been accepted and applied in Nova Scotia courts, most recently in *Citizens Alliance of Nova Scotia v. Nova Scotia (Health and Wellness)*, 2024 NSSC 253, at paras. 22 to 34.

## **Analysis**

*Does the case raise a serious justiciable issue?*

[21] The respondent acknowledges that the issues framed by the Notice for Judicial Review meet the threshold for a serious justiciable issue.

*Does the Applicant have a genuine interest in the matter?*

[22] The respondent acknowledges that the applicant has a concern about the issues in this proceeding, because its broad and general mandate “to defend constitutionally protected rights and freedoms” encompasses the subject matter. However, the respondent asserted in its written brief that a broad mandate to defend constitutional rights is not sufficient to establish a genuine interest in every issue involving rights. The respondent says that although the CCF is a nationally registered charity, it has

no direct connection to Nova Scotia. Its offices are in Ontario. It has no office in Nova Scotia and has offered no evidence of staff or membership based in Nova Scotia, noting only that it receives some donations from Nova Scotians at para. 13 of the Affidavit of Christine Van Geyn. There is no evidence that the CCF has a “real stake” in the proceedings or can effectively speak for the Nova Scotians affected by the risk of wildfires and the government’s response.

[23] CCF says that this case is squarely about whether government is acting within its legal authority. CCF is a national organization with a 23 year record of advancing *Charter* arguments. There is no comparable organization in Nova Scotia. There is no case authority that geography should be a consideration.

[24] The fact that CCF is headquartered in Ontario is not in my view a disqualifying factor in this case. Had there been a competing claim for standing from a Nova Scotia organization with similar experience and stronger ties to the province, the respondent’s submissions may have bear more weight. In the circumstances of this case, I do not find that the CCF is a “busybody litigant” wasting scarce judicial resources.

*Whether the proposed suit is a reasonable and effective means of bringing the case to court?*

[25] This is the principle ground of objection by the respondent.

[26] As stated in *Council of Canadians*, at para. 60:

The third *Downtown Eastside* factor requires courts to consider whether, in all the circumstances, a proposed suit is a reasonable and effective means of bringing an issue before the courts. One of the many matters a court is to consider when assessing this factor is “the plaintiff’s capacity to bring forward [the] claim” (para. 51). To evaluate the plaintiff’s capacity to do so, the court “should examine, amongst other things, the plaintiff’s resources, expertise, and whether the issue will be presented in a sufficiently concrete and well-developed factual setting” (para. 51).

[27] At para. 55 of *Council of Canadians*, the Supreme Court of Canada set out a non-exhaustive list of four “interrelated matter” to consider with respect to the reasonable and effective means consideration:

1. *The plaintiff's capacity to bring the claim forward*: What resources and expertise can the plaintiff provide? Will the issue be presented in a sufficiently concrete and well-developed factual setting?
2. *Whether the case is of public interest*: Does the case transcend the interests of those most directly affected by the challenged law or action? Courts should take into account that one of the ideas animating public interest litigation is that it may provide access to justice for disadvantaged persons whose legal rights are affected.
3. *Whether there are alternative means*: Are there realistic alternative means which would favour a more efficient and effective use of judicial resources and would present a context more suitable for adversarial determination? If there are other proceedings relating to the matter, what will be gained in practice by having parallel proceedings? Will the other proceedings resolve the issues in an equally or more effective and reasonable manner? Will the plaintiff bring a particularly useful or distinctive perspective to the resolution of those issues?
4. *The potential impact of the proceedings on others*: What impact, if any, will the proceedings have on the rights of others who are equally or more directly affected? Could “the failure of a diffuse challenge” prejudice subsequent challenges by parties with specific and factually established complaints?

[28] With respect to the CCF’s capacity to bring the claim forward, the respondent acknowledges that CCF possesses resources and expertise with respect to the issues as framed in the Notice of Judicial Review.

[29] The respondent concedes that there is a public interest in the matter, though not one which the CCF is well-positioned to represent. The respondent argues that CCF’s useful perspective relates in a limited capacity to legal expertise on constitutional issues. The organization has no capacity to speak to the lived experiences of Nova Scotians affected by the Proclamation, nor any special expertise on fire risks, response, or mitigation.

[30] The position taken by CCF is that a determination of vires of the Proclamation and whether it breaches s. 7 of the *Charter* does not require a determination of the lived experiences of Nova Scotians. It can be litigated based largely on “legislative facts” and a record of the government’s own evidence, not requiring an individual with private interest standing. The proceeding will not prevent individuals who have evidence of impact on other individual rights from advancing those arguments on their own behalf.

[31] It is not necessary for the court to determine if the proceeding is the best or most preferable way to advance the argument. The court must only be satisfied that it is a reasonable and effective means of doing so, after considering the alternatives.

[32] In *UR Pride Centre for Sexuality and Gender Diversity v. Saskatchewan (Education)*, 2023 SKKB 204, the court granted the applicant public interest standing. At para. 18, Justice Megaw discussed the important role public interest litigants play when constitutional rights are affected by government policy:

[18] While it is necessary to place limitations on anyone and everyone being able to litigate any particular governmental action or issue, the court must recognize the important constitutional role it has in determining whether governmental action is legally based or legally carried out. That constitutional role compels the court to examine the governmental action and ensures that the rule of law is carried out by that action. It is the rule of law upon which democracy in Canada finds its foundation.

[33] With respect to whether there are alternative means, the respondent notes that a judicial review has been filed by Mr. Evely, who has been issued a summary offence ticket for acting contrary to the Proclamation. The circumstances of this directly affected individual will provide valuable factual context within which the Court can consider the issues that is absent in this proceeding. The involvement of an affected individual can reasonably be expected to present a more suitable alternative means of reviewing the Proclamation. The respondent argues this separate judicial review seeks review on the grounds identified in the Notice for Judicial Review in this proceeding, namely the *vires* of the Proclamation (ground 1), the reasonableness of the Proclamation (ground 2), and vagueness and overbreadth engaging s. 7 of the *Charter*. Accordingly, the very same issues are subject to review on a more concrete factual framework in the other proceeding, and permitting both reviews to proceed would constitute an unreasonable duplication of effort and expenditure of judicial resources.

[34] This issue was addressed in *Downtown Eastside* at paras. 69 and 70:

[69] Of course, an accused in a criminal case will always be able to raise a constitutional challenge to the provisions under which he or she is charged. But that does not mean that this will necessarily constitute a more reasonable and effective alternative way to bring the issue to court. The case of *Blais* illustrates this point. In that case, the accused, a client, raised a constitutional challenge to the communication provision without any evidentiary support. The result was that the Provincial Court of British Columbia dismissed the constitutional claim, without examining it in detail. Further, the inherent unpredictability of criminal trials makes it more difficult for a party raising the type of challenge raised in this instance. For instance, in *R. v. Hamilton* (Affidavit of Elizabeth Campbell, September 17, 2008, at para. 6 (A.R., vol. II, at pp. 34-35)), the Crown, for unrelated reasons, entered a stay of proceedings after the accused filed a

constitutional challenge to a bawdy house provision. Thus, the challenge could not proceed.

[70] Moreover, the fact that many challenges could be or have been brought in the context of criminal prosecutions may in fact support the view that a comprehensive declaratory action is a more reasonable and effective means of obtaining final resolution of the issues raised. There could be a multitude of similar challenges in the context of a host of criminal prosecutions. Encouraging that approach does not serve the goal of preserving scarce judicial resources. Moreover, a summary conviction proceeding may not necessarily be a more appropriate setting for a complex constitutional challenge.

[35] In *Frontline Nurses*, Justice Mosely found that the application by CCF was a reasonable and effective means to bring the issues before the court because they have the capacity to present evidence and argument required to *assist the court* in reaching a determination of the issues, which upholds the principle of legality (para. 187). He stated, at para. 188:

[188] The participation of individuals with direct standing, i.e., Cornell and Girceys, is not a bar to granting public interest standing. Nor would it serve, in my view, as a reasonable and effective means of bringing the issues before the Court to limit the proceedings to the two private litigants. While, as stated in *DESW* at para 37, a party with standing as of right is to be preferred all other relevant considerations being equal, that is not the case here. Neither the evidence submitted nor the arguments advanced by the private litigants would have been sufficient to deal with the issues in these proceedings. The CCLA and CCF brought organized and effective submissions to the issues before the Court. Moreover, this case transcends the interests of those most directly affected by the Proclamation and related measures: *DESW* at para 51.

[36] That same reasoning applies in this case.

[37] Finally, with respect to the potential impact of the proceedings on others, the respondent asserts that the approach taken by CCF in filing this application on an urgent basis and without verifiable communication with those directly affected is problematic. If public interest standing were to be granted, it could let an Ontario-based national charity take the lead in challenging a Proclamation that does not affect them. If CCF is granted public interest standing, it could prejudice subsequent proceedings which are filed in a timely manner but not as quickly as can be arranged by a national, litigation-focussed organization.

[38] I am not persuaded that the proceeding commenced by the applicant will prejudice subsequent proceedings. Mr. Moore on behalf of Mr. Evely welcomed the

prospect that this proceeding and Mr. Evely's could be advanced together. As noted by Justice Mosely in *Frontline Nurses*, at para. 189:

[189] Contrary to the Respondent's submissions, there has been a definite advantage in having counsel for the two public interest organizations working alongside, and to some extent guiding, the private litigants to move these proceedings to the point where the issues could be argued on their merits. And there is no suggestion that either Cornell or Gircys wish to exclude CCLA or CCF from the proceedings.

## **Conclusion**

[39] I concur with the following comment on public interest standing from *Frontline Nurses*, at para. 190:

[190] As stated in *Council of Canadians with Disabilities* at para 40, the whole purpose of public interest standing is "to prevent the immunization of legislation or public acts from any challenge". In the circumstances, I am satisfied that granting public interest standing to the CCLA and CCF will satisfy that purpose.

[40] The value of the involvement of a public interest litigant was noted at the conclusion of the *Frontline Nurses* decision, at para. 371:

[371] My preliminary view of the reasonableness of the decision may have prevailed following the hearing due to excellent advocacy on the part of counsel for the Attorney General of Canada had I not taken the time to carefully deliberate about the evidence and submissions, particularly those of the CCLA and CCF. Their participation in these proceedings has demonstrated again the value of public interest litigants. Especially in presenting informed legal argument. This case may not have turned out the way it has without their involvement, as the private interest litigants were not as capable of marshalling the evidence and argument in support of their applications.

[41] The motion for public interest standing is granted.

Norton, J.