

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Evely v. Nova Scotia (Department of Natural Resources)*, 2024 NSSC 16

**Date:** 20240124

**Docket:** SN 525431

**Registry:** Sydney

**Between:**

Jeffrey Lloyd Evely

Plaintiff

and

Department of Natural Resources,  
Attorney General of Nova Scotia

Defendants

**DECISION**

**Judge:** The Honourable Justice Jamie Campbell

**Heard:** January 22, 2023, in Sydney, Nova Scotia

**Counsel:** Jeffrey Lloyd Evely, self-represented Plaintiff  
Adam Norton, for the Defendants

**By the Court:**

[1] Nova Scotians do not want to relive the spring and summer of 2023. Many people lost their homes and everything they owned. We all recall the sad news reports of residents returning to the charred remnants of their properties. Forest fires had broken out in several areas in the province and remained out of control for a long time. Resources were stretched beyond their limits.

[2] This application for judicial review is about the fire proclamation issued by the Minister of Natural Resources and Renewables on May 30, 2023. That proclamation prevented people from entering the woods for any purpose without a travel permit. It has been referred to as a travel ban. The Minister's authority to do that is found in Section 25 of the *Forest Act*, RSNS 1989, c. 179. That allows the Minister to issue such a proclamation whenever "deemed necessary for the protection of the woods". The travel ban was lifted on June 13, 2023.

[3] Mr. Evely filed a Notice of Judicial Review on July 5, 2023, about two weeks after the ban was lifted. Mr. Evely says that the issuance of the proclamation was not reasonable. He says that nowhere in the record as filed, is the rationale for a province wide ban on entry into the woods discussed. He argues that there was no mention of the investigation of the RCMP in Pictou indicating that some of the fires there had been caused by arson. Mr. Evely notes the response in Alberta, where Premier Smith brought in additional arson investigators from outside that province. He says that with respect to Nova Scotia, "This strongly indicates a lack of professional standards in implementing the Ban, and a lack of interest in addressing the root causes of the fires. The level of apathy on the part of our public officials leaves Nova Scotians vulnerable to future disasters."

[4] Mr. Evely argued in his written materials that the grounds for his application are founded in the *Charter*, the *Canadian Bill of Rights*, and the *United Nations Universal Declaration of Human Rights*. He acknowledged in oral argument that the *Bill of Rights* and the *U.N. Declaration* would not apply to the Province of Nova Scotia. He says that his rights were infringed because no fires were burning in the area where he lives, and the ban was put in place arbitrarily. It was, he said, more about public perception than public safety. He pointed to what he believes to have been a pattern of heavy-handed government and bureaucratic behaviour over the last several years, including the response COVID-19 and the Portapique tragedy. That, he says, runs afoul of his rights which are subject only to such reasonable limits as can be demonstrably justified. He says that the Minister

refuses to recognize that he, Mr. Evely, was “born free and equal in rights and dignity to his ‘masters’ in government” and that he is “endowed with reason and conscience”. He argued that the Minister had disregarded his ability to manage his own life, by “treating him like livestock” and denying him his human rights.

[5] It is important not to be distracted by the florid rhetoric and identify the point that Mr. Evely is making. He believes that the proclamation of a travel ban was overbroad in that there was no justification for it to have been applied to places where there were no fires. He says that that it was not based on evidence showing that a ban would protect the woods. He believes that it was an arbitrary exercise of the Minister’s power under Section 25 of the *Forest Act* and even though the ban is no longer in effect there is an important point of principle that must be made. Proclamations of this kind are usually of short duration. A challenge to the exercise of that power practically could not be made while the proclamation is in effect. It may be moot in the sense that the ban is no longer in effect but courts have increasingly shown a willingness to weigh in on matters that while moot, are of significant and ongoing public interest.

[6] The Minister has brought two motions, which would put a stop to the matter. The first is a motion on standing, to decide whether Mr. Evely has standing to bring the Judicial Review Motion and second is a motion to dismiss the application for mootness. The mootness motion was scheduled to be heard the following week, but the parties agreed to have both motions heard on January 22. The issue of mootness is difficult to fully extract from the issue of standing.

### **Standing of Right**

[7] Standing is the ability of a person to bring a case to court. Anyone cannot just bring any issue to court because they are offended by something or find the issue to be interesting. That is particularly important when government is involved, and issues of public policy are debated. Courts decide cases between parties who have disputes. Their decisions are about resolving those disputes.

[8] There are two kinds of standing: private standing and public interest standing. Private standing is sometimes called standing as of right. To have private standing a person must have a special, personal, or private interest in the litigation. The person must have suffered some kind of wrong or damage over and above that suffered by the public. The person must be more than an interested observer or care particularly deeply about the dispute.

[9] Mr. Evely, like everyone else in Nova Scotia was prevented from going into the woods by the travel ban. He is a war veteran and suffers from PTSD. He was medically released from the Armed Forces in September 2021. He feels that he needs to access the woods as a way of dealing with stress and work toward recovery. The damage that he says he has suffered is not limited to the weeks that he had to stay out of the woods last summer. Everyone had to stay out of the woods. He argues that the special damage that he has suffered is the “profound betrayal represented by the trouncing of the rights and freedoms for which the Applicant personally witnessed more of his comrades than potentially any other living Canadian loaded onto the back of aircrafts in flag-draped coffins”. It is also the “sabotage” that the proclamation represents to his recovery plan by “forbidding the leisure he pursued” and the “undue stress of knowing that the heavy hand of weak leadership can at any moment arbitrarily crush his way of life and desecrate the legacy of his fallen comrades.” His says that the proclamation of the travel ban has inflicted disproportionate psychological trauma on him. It is a form of moral injury. Because of those things he says that he has suffered wrong or damage over and above that suffered by the general public.

[10] That wrong or damage however must arise from having an interest beyond that of the public. Interest can mean having an intellectual interest in or a passion for a subject matter. That is not what having an interest means in this context. If it were, it would open litigation up to cranks and busybodies who are “interested” in that sense. No one has suggested in any way that Mr. Evely is either of those things. Interest in this context means having a stake in something or being involved in something and because of that stake or involvement the person has suffered damages beyond those suffered by member of the public. That is what it means in the context of private standing.

[11] Mr. Evely has an interest in the subject matter of the dispute in the sense of being intellectually and emotionally engaged with it. Being more offended by government action because of the strength of one’s convictions or the nature of one’s principles does not mean that one has a special, personal, or private interest. His sense of grievance and what he perceives as an attack on his principles, means that he feels more strongly about these issues than many other members of the public. But the government action of which he complains was not directed at him or limit his activities more than it did the public in general so that he does not have an interest or a stake in the matter greater than that of others.

[12] Having served his country in war Mr. Evely suffers from PTSD. He feels the need for recreation more than most people and is seriously affected by what he sees as unfair government action. What the proclamation did, however, was to prevent every Nova Scotian from going into the woods without a travel permit. It did not single out Mr. Evely or veterans or any group of which Mr. Evely is a part. He was at no point ticketed for entering the woods and was not penalized in any way. He does not have a commercial interest or other specialized interest in going into the woods. His interest is recreational. The loss of that recreation was very keenly felt. That recreational use is the same as many other Nova Scotians who enjoy the woods and find comfort in being in that environment. Each person affected by the travel ban was affected in their own way. The fact that Mr. Evely experienced the loss of his recreational opportunity more profoundly than many others, does not make the issue specific, personal or special to him.

[13] Mr. Evely does not have standing of right in this matter. Some will have found it to have been an inconvenience. Some might have been deeply annoyed or aggrieved by it. Some, like Mr. Evely, may have found it profoundly distressing. But the extent to which one feels the impact subjectively of limitations that apply generally, is not a measure of interest upon which to ground a claim of standing.

### **Public Interest Standing**

[14] The issue then is whether Mr. Evely has public interest standing. The decision to grant public interest standing is discretionary. That discretion, of course, must be exercised judicially. It is not an arbitrary exercise of power. The exercise of that decision is guided by whether the case raises a serious justiciable issue, whether the party bringing the matter has a genuine interest and whether the proposed legal proceeding is a reasonable and effective means of bringing the matter to court. The onus is on the person seeking standing to establish that the court should exercise the discretion to grant it.

[15] Courts must impose some limits on who can bring cases before them. Access to justice is fundamentally important. Allowing anyone and everyone to raise matters of principle that they believe are in the public interest and to have courts deal with those issues is an impediment to access to justice. The problem of delay would become even greater if there were no limits on who could become involved in suing government over things they really don't like. Real issues should of course be brought, and public interest litigants can provide the voice of the "other side" that is often needed.

[16] The court must consider whether there is a justiciable issue before granting public interest standing. This is a judicial review. It is not an injunction application. It is not an appeal. It is not a constitutional challenge to the validity of Section 25 of the *Forest Act*. The remedy is to declare the proclamation of the travel ban invalid. Mr. Evely is seeking a declaration that the decision of the Minister was unreasonable and beyond the authority granted under the *Forest Act*. But the proclamation issued by the Minister has been revoked. The court cannot declare something invalid that is no longer in force. Courts are for resolving disputes or controversies. A justiciable issue is one that is capable of resolution by a court. Whether the proclamation is in force is not disputed. No one says it is.

[17] Mr. Evely would like a declaration. It could declare that the issuance of the no longer effective proclamation was unreasonable. Some courts have been prepared to enter into the issue of whether government proclamations that are no longer in force were reasonable. Those cases may raise issues of ongoing public importance and concern. Even though a case is moot a court may still decide to hear it. But on the issue of whether a person should be granted public interest standing, the fact that there is no longer a “live issue” is a factor to be considered.

[18] If this case were to proceed, it would have no effect on Mr. Evely’s interests. It would not result in charges against him being withdrawn because there are none. It would not result in fines being discharged because there are none. It would not clarify the process for the issuance of future proclamations. Section 25 is used when it is necessary to issue a travel ban to protect the woods. Each time a travel ban is contemplated the circumstances will be different. The format of a judicial review is unsuited to studying the technical issues around the kinds of information that should be assessed, the factors to be considered and the weight that should be given to those factors before a proclamation is to be issued. The decision on a judicial review application is not an opportunity for a judge to set policy. It is about the proclamation issued in May 2023 that is not longer in effect.

[19] There is no justiciable issue.

[20] The court has to consider whether the person or group seeking public interest standing has a “genuine interest” in the matter. No one questions the genuineness of Mr. Evely’s concern or the genuineness of his adherence to principle. He has a genuine interest in having these issues addressed. Practically, he is no longer prevented from going into the woods. But it is an issue of principle. People can debate the issue of whether the travel ban was overbroad or was

required at all. And that might be an important public and political debate where those principles can be tested or applied.

[21] Mr. Evely's interest is genuine in the sense that he cares a great deal about it. But that is not what a genuine issue means here. A public interest advocacy group for example, may not as an entity, have a direct interest in an issue, in that it does not affect the group itself. But the people in whose interest it advocates may be directly affected. The group then has genuine interest. That is not Mr. Evely's situation. He has a personal interest in that he cares. But he does not act on behalf of any group of people whose interests are now affected by the no longer effective travel ban.

[22] That is related to the issue of whether the proposed judicial review is a reasonable and effective means to bring the matter to court. The dispute about the 2023 ban is over. There is no ban to dispute. It has become a dispute about what should be done in the future before a ban is implemented. A judicial review application is not a reasonable or effective means to do that. It is based on information contained in the record. There is no expert evidence about the kinds of things that the Minister should consider before implementing a ban. A judicial review is designed to be retrospective in nature and the real issue for Mr. Evely is prospective. A judicial review application is not the appropriate process to debate and set public policy. A judicial review is not a public inquiry.

[23] Mr. Evely does not have standing as of right and I am not prepared to exercise my discretion to grant him standing as a public interest litigant. Because he has no standing it is not necessary to address the legal issue of whether the application is moot now that the proclamation has been revoked. The application for judicial review brought by Mr. Evely cannot proceed.

[24] The Minister has not sought costs on the motion or the application. No costs are awarded.

Campbell, J.