SCC No. 42005

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

ATTORNEY GENERAL OF CANADA

APPELLANT
(Respondent)

and

PAUL DROVER

RESPONDENT
(Appellant)

RECORD FOR THE MOTION FOR LEAVE TO INTERVENE OF PUBLIC INTEREST LITIGATION INSTITUTE

(Rules 47, 55 and 56 of the *Rules of the Supreme Court of Canada*)

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NOTICE OF MOTION FOR LEAVE TO INTERVENE OF PUBLIC INTEREST LITIGATION INSTITUTE
(Rules 47, 55 and 56 of the *Rules of the Supreme Court of Canada*)

TAKE NOTICE that Public Interest Litigation Institute presents the following motion for leave to intervene pursuant to Rules 47, 55 and 56 of the *Rules of the Supreme Court of Canada*

THE MOTION IS FOR AN ORDER:

(i) Granting Public Interest Litigation Institute ("PILI") leave to intervene in the present appeal;

(ii) Allowing PILI to file a memorandum of argument not exceeding 10 pages in length, or any other number of pages determined by the Court;

(iii) Authorizing PILI to present oral submissions at the hearing for a duration specified by the Court;

(iv) Any other order or other measure deemed appropriate by the Court.

THE MOTION IS BASED ON THE FOLLOWING GROUNDS:

1. Article 55 of the *Rules of the Supreme Court of Canada* authorizes any person interested in the present appeal to file a motion for intervention;

2. A motion for leave to intervene will normally be granted if the proposed intervener's submissions will be relevant and useful to this Honourable Court and different from the other parties and interested parties;

3. This appeal raises at least two critical issues concerning the interpretation and application of the right to liberty guaranteed under s. 7 of the *Charter*. First, does the right to liberty protect an individual's ability to choose their place of residence without state interference? Second, does the right to liberty only apply in the context of – or can it otherwise only be infringed by – state action involving the administration of justice?

4. The first question has never conclusively been answered by this Honourable Court, including *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844. As for the second, jurisprudential debates have persisted – including in this Honourable Court – notwithstanding that Justice Lamer's majority reasons in *Re BC Motor Vehicle Act*, [1985] 2 S.C.R. 486 indicated that the answer is negative. The heart of the debate is whether the protection of section 7 is limited to procedural due process, or whether it also encompasses *substantive* due process. PILI advances the latter view of section 7.

5. Owing to the paramount interest of clarity in constitutional interpretation, and to imperative of ensuring the rigorous protection of the cardinal interests protected under section 7, PILI submits that this Honourable Court's guidance is urgently required.

6. The present appeal – and the questions in respect of which PILI proposes to intervene – transcend the immediate parties and will impact the breadth and scope of the protection conferred by section 7 to some of the some essential rights guaranteed under the *Charter*. This Court's determination of the issues will extend beyond the constitutionality of subsection 22(4) of the *Canada Elections Act*, and will instead clarify the relationship between state action and section 7, including the nature, type, and circumstances under which state action can be held to violate the critical interests it protects. It will also clarify whether constitutional protection extends under s. 7 to an interest that most – if not all – Canadians would understand to be fundamental to their lives.

7. PILI has a real and substantial interest in the issues on which it proposes to intervene in this appeal. As per its Mission Statement, PILI is dedicated to using strategic litigation and advocacy as vehicles for access to justice in order to advance the rights, interests, and values at the heart of Canada's liberal democracy. This includes launching and intervening in constitutional litigation bearing upon the interpretation and application of the *Canadian Charter of Rights and Freedoms*, including in four appeals decided by this Honourable Court. Confirming the interpretation and application of section 7 as extending to both procedural and substantive due process is manifestly a question of public interest as it impacts the rights and freedoms of every person in Canada and their relationship with state action at all levels of government. Confirming that section 7 protects individuals' ability to choose their place of residence free from state interference also manifestly bears on the public interest, including based on its ubiquity and application to all persons in Canada.

8. As an incident of its mandate to advance access to justice and perspectives not otherwise represented in critical legal debates, PILI also places significant importance on highlighting the links between the right to choose one's place of residence free from state interference and considerations related to physical safety and the security of individuals seeking to flee from harmful environments, harassment, stalking, crime, and intimate partner violence.

9. Nourished by the experience and expertise of its counsel – and fueled by its record of interventions in nine (9) appeals heard by this Honourable Court – PILI will provide submissions that are useful and different from those provided by the parties and other potential interveners. PILI's submissions will indeed be unique, impartial and independent, providing critical insight beyond the parties' own interests and perspectives.

10. If granted leave to intervene, PILI will, in developing its submissions, consult with the parties and any other interveners to avoid duplication.

11. If PILI's motion is granted, it will not raise new issues, adduce new evidence, supplement the record of the parties, or take a position on the disposition of the present appeal. The issue on which PILI wishes to intervene – namely, the interpretation and application of section 7 of the *Charter* – is specifically addressed in the judgment on appeal and in the parties' respective submissions and is a pure question of law.

12. If granted leave to intervene, PILI undertakes to abide by the schedule set by the Registrar for the filing of materials.

13. PILI will not seek costs in the intervention and respectfully requests that none be awarded against it.

THE FOLLOWING DOCUMENTS ARE REFERRED TO IN SUPPORT OF THE MOTION:

1. The Affidavit sworn on September 25, 2026 by Ms. Julie Ritchie, co-President of the Public Interest Litigation Institute;
2. Such further or other material as counsel may advise and this Honourable Court may permit.

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**AFFIDAVIT OF MS. JULIE RITCHIE,
CO-PRESIDENT OF PUBLIC INTEREST
LITIGATION INSTITUTE**

I, Julie Ritchie, Vice-President of Public Interest Litigation Institute, practising my profession at 150 Elgin Street, 10th Floor, Ottawa, Ontario K2P 1L4, solemnly affirm as follows:

1. Since December 2024, I am the Vice-President of Public Interest Litigation Institute ("PILI"). It is in this capacity that I am signing the present affidavit in support of the motion for intervention filed in this Honourable Court in the present appeal. I furthermore attest to having familiarized myself with the legal and factual questions at issue.

2. I hereby affirm that PILI is authorized to file the present motion for intervene in order to participate in the discussion of the significant and determinative questions of law to be addressed.

3. If leave to intervene is granted, PILI will provide unique, relevant, and educated assistance to this Honourable Court in the present appeal. PILI will not raise new legal issues, supplement the parties' evidentiary record, or take position on the disposition of the appeal.

SUMMARY OF PILI'S PROPOSED LEGAL POSITION IN THE PRESENT APPEAL

5. PILI proposes to intervene on two narrow, yet fundamental question directly addressed in the judgment on appeal and raised by the parties in the present appeal.

    - Does the right to liberty guaranteed by s. 7 protect the right of individuals to choose their place of residence without state interference?
    - Can s. 7 of the *Charter* only be invoked in respect of – and is it only possible for it to be infringed by – state action that involves the administration of justice?

6. The first question has never conclusively been answered by this Honourable Court, including *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844. As for the second, jurisprudential debates have persisted – including in this Honourable Court – notwithstanding that Justice Lamer's majority reasons in *Re BC Motor Vehicle Act*, [1985] 2 S.C.R. 486 indicated that the answer is negative. The heart of the debate is whether the protection of section 7 is limited to procedural due process, or whether it also encompasses *substantive* due process. PILI advances the latter view of section 7.

7. Owing to the paramount interest of clarity in constitutional interpretation, and to imperative of ensuring the rigorous protection of the cardinal interests protected under section 7, PILI submits that this Honourable Court's guidance is urgently required.

8. The present appeal – and the questions in respect of which PILI proposes to intervene – transcend the immediate parties and will impact the breadth and scope of the protection conferred by section 7 to some of the some essential rights guaranteed under the *Charter*.

9. This Court's determination of the issues will extend beyond the constitutionality of subsection 22(4) of the *Canada Elections Act*, and will instead clarify the relationship between state action and section 7, including the nature, type, and circumstances under which state action can be held to violate the critical interests it protects. It will also clarify whether constitutional protection extends under s. 7 to an interest that most – if not all – Canadians would understand to be fundamental to their lives, that is, the ability to choose their place of residence.

10. Relying on Canadian constitutional jurisprudence and international and comparative constitutional law sources, PILI will respectfully submit as follows:

- The fundamental personal choices protected under the right to liberty guaranteed by section 7 include the ability of individuals to choose their place of residence without state interference;

- This Court should unequivocally affirm that the protection of section 7 extends to procedural and substantive due process and is not only engaged or potentially infringed by state action that involves the administration of justice;

11. If adopted, PILI's proposed submissions will greatly enhance the public interest in clarifying the scope and extent of the protection conferred by section 7; will affirm the constitutional protection attaching to a personal choice that most – if not all – Canadians regard as fundamental; and will identify the nature of state action in respect of which section 7 interests may be invoked. This will, in turn, strengthen the rule of law and the Charter as and advance the public interest – which lies at the heart of PILI's mission and mandate

ABOUT PUBLIC INTEREST LITIGATION INSTITUTE

12. PILI is an independent, non-partisan, and apolitical non-profit legal association founded in December 2024. As per its Mission Statement, PILI is dedicated to using strategic litigation and advocacy as vehicles for access to justice in order to advance the rights, interests, and values at the heart of Canada's pluralistic democracy. This includes intervening in public and private law litigation bearing upon the public interest, and providing strategic counsel and advocacy to third parties.

13. PILI's Statement of Principles specifically provides, *inter alia*:

> **Strategic Advocacy:** PILI is committed to using strategic advocacy as a powerful tool for advancing the public interest, the rule of law, the vitality of Canadian democracy, and the integrity and accountability of public and private sector actors. PILI's commitment to strategic advocacy extends to intervening before all Canadian courts in public and private law matters connected to the public interest, consistent with the values enshrined in the *Canadian Charter of Rights and Freedoms* and the international human rights and other relevant instruments to which Canada is signatory.
>
> **Accountability:** PILI strongly believes that the public interest demands and requires that governmental, parapublic and private sector actors adhere to legal and ethical rules and standards, respect human rights and public welfare, and that said actors must be held accountable when they transgress or fail to abide by these rules and standards. PILI is committed to marhshalling its deep experience and expertise in litigating against powerful entities to ensure accountability and further advance the public interest.

> **Education:** PILI is committed to serving as a vehicle for legal education. In particular, PILI strives to contribute to cultivating the next generation of public interest lawyers by providing opportunities for law students to contribute research assistance and knowledge in ongoing or anticipated litigation, including interventions in appeals, as a way to initiate them to the practical mechanics of public interest litigation and its potential for powerful impacts.

14. In advancing these principles, PILI's mission is also partly educational, as it increasingly involves law students at the University of Ottawa's Faculty of Law to provide research assistance as a means of introducing them to public interest litigation, appeals, interventions, and litigation heard by the Supreme Court of Canada. This, in turn, contributes to cultivating the next generations of public interest lawyers and advocates. A brilliant student, Ms. Miriam Abdallah, has contributed brilliant research assistance in the preparation of the present application for leave to intervene.

15. PILI also collaborates with lawyers interested in advancing the public interest by intervening litigation at different levels of court, and intends to expand PILI's standing as a vehicle for advancing access to justice. PILI also provides lawyers with free strategic advice, litigation insights, assistance, and support.

16. The breadth and depth of PILI's founders' cross-cutting expertise and experience in public and private law, in both civil and common law – and in advancing the public interest and the rule of law in both government and the private sector – uniquely position PILI to offer invaluable insights and contributions to this Honourable Court's consideration of the critical issues raised in the present appeal.

17. PILI's founders have or will have acted as Counsel in litigation before this Honourable Court,[1] the Quebec Court of Appeal, the Quebec Superior Court, the Federal Court, the Supreme Court of British Columbia, the Court of King's Bench for Saskatchewan, and the Ontario Superior Court of Justice, in matters including constitutional litigation, class actions, judicial review applications, general civil litigation, and criminal proceedings.

18. PILI is also an active intervener in several appeals before this Honourable Court, including several involving the interpretation and application of the *Charter*, namely:

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[1] *Quebec Maritimes Junior Hockey League Inc., et al. v. Lukas Walter, et al.* (SCC No. 41532), under reserve, hearing held on February 16, 2026.

- *English Montreal School Board v. Attorney General of Quebec* (SCC No. 41231)
- *Government of Saskatchewan as represented by the Minister of Education v. UR Pride Centre for Sexuality and Gender Diversity* (SCC No. 41979)
- *Attorney General of Quebec v. Joseph-Christopher Luamba* (SCC No. 41605)
- *His Majesty The King v. Abdel Karim Chemlal* (SCC No. 41766)

19. PILI has also intervened in the following appeals:

- *Ontario Place Protectors v. His Majesty The King in Right of Ontario* (SCC NO. 41805)
- *NHK Spring Co. Ltd. v. Tony Cheung et al.* (SCC No. 41451)
- *GCT Canada Limited Partnership v. International Longshore and Warehouse Union Ship and Dock Foremen, Local 514* (SCC No. 41951)
- *H.N. v. Board of Education of School District No. 61 (Greater Victoria), et al.* (SCC No. 41910)
- *Aphria Inc. v. Canada Life Assurance Company, et al.* (SCC No. 41665)

20. In addition to interventions, PILI also launches its own constitutional challenges to legislation and other state action. In August 2026, PILI filed an application for declaratory relief under s. 52(1) of the *Constitution Act, 1982* in Quebec Superior Court that involves the interpretation and application of s. 128 of the *Constitution Act, 1867* and the constitutional oath of allegiance it requires be taken by persons elected to Parliament or to a provincial legislature (see *Public Interest Litigation Institute v. Attorney General of Quebec, et al.*, No. 500-17-139512-266, Superior Court of Quebec).

21. In September 2026, PILI filed an Originating Application in the Court of King's Bench for Saskatchewan challenging the constitutional validity of sections 4 and 5 of *The Saskatchewan First Act*, S.S. 2023, c. 9, contending that these provisions are *ultra vires* the provincial power of unilateral constitutional amendment entrenched in s. 45 of the *Constitution Act, 1982* (see *Public Interest Litigation Institute v. Attorney General of Saskatchewan, et al*.,)

22. PILI counsel have also represented other interveners in the following appeals:

- *Canadian National Railway Company v. Alberta Pacific Forest Industries Inc.* (SCC No. 42092)
- *Ville de Québec v. Jardins de Vérone S.E.C.* (SCC No. 41748)

- *Democracy Watch v. Attorney General of Canada*, 2026 SCC 28
- *Quebec (Attorney General) v. Bijou Cibuabua Kanyinda, et al.*, 2026 SCC 7
- *TransAlta Generation Partnership v. Alberta*, 2024 SCC 37
- *Auer v. Auer*, 2024 SCC 36

23. The breadth and depth of PILI's founders' expertise and experience in the practice, publication and teaching of constitutional law – and in advancing the public interest and the rule of law in the private and public sectors – uniquely positions PILI to offer invaluable insights to this Court's consideration of the critical issues raised in the present appeal.

PILI'S INTEREST AND EXPERTISE IN THE PRESENT APPEAL

24. PILI has a direct interest and expertise in the constitutional issues raised in the present appeal. This includes advancing the public interest in affirming that s. 7 protection extends to substantive and procedural due process, and that the fundamental personal choices protected under the right to liberty include the ability to choose one's place of residence free from state interference. These are matters of fundamental importance to Canadians from coast-to-coast, and whose voices PILI intends to amplify in its submissions.

25. As evidenced by, *inter alia*, its track record of interventions in significant constitutional appeals heard by this Honourable Court – and its own constitutional challenges filed in Canadian courts – PILI's mission includes launching and intervening in public law litigation as vehicles for access to justice in order to advance the rule of law and the public interest consistent with Canada's liberal democratic values. This includes the promotion of constitutional supremacy and encouraging the interpretation and application of the *Charter* in a manner that reconciles the primacy of the purposive approach with the nature and structure of government established by the Canadian Constitution.

26. PILI has a real and substantial interest in the issues on which it proposes to intervene in this appeal. The judgment rendered in this appeal will inevitably impact its litigation, intervention, and advocacy efforts in advancing the public interest – both generally, as concerns *Charter* rights and freedoms, and as specifically concerns the critical interests protected under s. 7. One of the pillars of PILI's Mission and Principles is to advance constitutional supremacy and interpretations of the *Charter* that reconcile legal rigour, the

separation of powers, and the broader public interest of Canadians that the law must ultimately uphold, protect, and advance.

27. As an incident of its mandate to advance access to justice and perspectives not otherwise represented in critical legal debates, PILI also places significant importance on highlighting the links between the right to choose one's place of residence free from state interference and considerations related to physical safety and the security of individuals seeking to flee from harmful environments, harassment, stalking, crime, and intimate partner violence.

28. PILI's interest is further reflected in respectfully offering to provide this Honourable Court with public interest perspectives that exceed interest groups focused on singular constituencies, or the conceptions of the public interest to be advanced by the six (6) Attorneys General having filed a Notice of Intervention.

29. Significantly, by the time this appeal is heard, PILI will have intervened in four (4) appeals heard by this Honourable Court that involving critical questions of *Charter* interpretation (*English Montreal School Board v. Attorney General of Quebec* (SCC No. 41231); *Attorney General of Quebec v. Joseph-Christopher Luamba* (SCC No. 41605); *Government of Saskatchewan as represented by the Minister of Education v. UR Pride Centre for Sexuality and Gender Diversity* (SCC No. 41979); and *His Majesty The King v. Abdel Karim Chemlal* (SCC No. 41766)).

30. Overall, PILI has significant interest and expertise in the central questions of constitutional law raised in the present appeal. PILI will be honoured to intervene in this appeal.

31. As noted, if granted leave to intervene, PILI will not adduce new evidence, raise new issues, or take any position as to the disposition of the present appeal.

32. To the best of my knowledge, I affirm that all facts discussed in this affidavit are true.

As duly sworn and signed in Montreal this 25th day of September 2026

Julie Ritchie

Sworn before me in Montreal this 25th day of September 2026





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WRITTEN SUBMISSIONS

PART I – OVERVIEW

1. The Public Interest Litigation Institute ("PILI") files the present motion to intervene in the appeal of the Court of Appeal for Ontario's judgment in *Drover v. Canada (Attorney General)*, 2025 ONCA 468. PILI would be honored to contribute to this important appeal.

2. In *Godbout v. City of Longueuil*, [1997] 3 S.C.R. 844, Justice LaForest's brilliant concurring reasons concluded that the right to liberty protected under s. 7 of the *Charter* guarantees to individuals the ability to choose their place of residence without state interference. This appeal provides this Honourable Court with the opportunity to revisit this conclusion in light of 30 years of subsequent jurisprudential developments. In light of the divergent conceptions of s. 7 articulated in the judgment on appeal, this appeal also provides this Court with the opportunity to clarify – once and for all – whether s. 7 is only engaged or can otherwise only be infringed by state action involving the administration of justice. If allowed to intervene, PILI will submit that:

- The ability of individuals to choose their place of residence without state interference is a fundamental personal choice protected by the right to liberty guaranteed by s. 7;
    - This Court has previously held that s. 7 protects individuals' freedom of movement;
    - This Court's interpretation of ss. 6(1) and (2) of the *Charter* support interpreting s. 7 as protecting the ability to choose own's residence free from state intervention;
    - Relevant international and comparative constitutional law sources recognize the right to select one's residence free from state intervention;
- This Court should unequivocally affirm that the protection of s. 7 extends to procedural and substantive due process and is not only engaged or potentially infringed by state action that involves the administration of justice. Among other reasons:
    - Nothing in the text of s. 7 indicates otherwise;
    - This interpretation best fulfills the purposes of s. 7 and of the Canadian *Charter of Rights and Freedoms* as an instrument of human dignity;
    - This Court's jurisprudence under s. 7 contains several examples of cases involving substantive due process;
    - Confining s. 7's application to state action involving the administration of justice can only result from a judicially-imposed internal limit to s. 7.

3. If adopted, PILI's submissions will strengthen the protection guaranteed to Canadians under s. 7, thereby advancing the public interest and the rule of law at the heart of PILI's mission.

PART II – FACTS

A. Outline of PILI's Submissions

I – The Right to Liberty Protects the Ability to Choose One's Place of Residence Without State Interference

4. The right to liberty guarantees the ability "to make fundamental personal choices free from state interference,"[2] covering matters that can properly be characterized as fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence."[3] Liberty is engaged by state action that limits or otherwise impacts this ability.[4] Lifestyle choices, such as the recreational consumption of cannabis, "a taste for fatty foods, an obsessive interest in golf" and "attend[ing] operas or piano lessons" are not covered by the right to liberty.[5]

5. The ability of individuals to choose their place of residence without state interference is one of the fundamental personal choices protected under the right to liberty guaranteed by s. 7. This Court should adopt Justice LaForest's analysis and conclusion to this effect in his concurring reasons in *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, at paras. 58-73. Since *Godbout*, this Court has held that "deprivations of freedom of movement can infringe the liberty interest under s. 7."[6] Restricting an individual's ability to choose their place of residence impacts on that freedom.

(a) Physical Safety and The Individual Choice to Live in a Given Location

6. Additional considerations support Justice LaForest's conclusion in *Godbout*.

7. Indeed, an individual's choice of living in a particular location may be impacted by factors relating to personal safety. While Justice LaForest correctly emphasized that some people "may want to ensure that they are physically proximate to family or to close friends… [or] to maintain a personal relationship,"[7] the choice to live in a given location may be motivated by escaping stalking or harassment, abusive familial or social relationships, or intimate partner violence as described in *Ahluwalia v. Ahluwalia*, 2026 SCC 16. Justice LaForest also highlighted that "the type of neighbourhood" and "the living environment" affects individuals' choices in selecting their

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[2] *Carter v. Canada (Attorney General)*, 2015 SCC 15, at paras. 64, 68.
[3] *R. v. Malmo-Levine; R. v. Caine*, 2003 SCC 74, at para. 75.
[4] *Carter*, at para. 68.
[5] *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55, at para. 50.
[6] *Taylor v. Newfoundland and Labrador*, 2026 SCC 5, at para. 136, citing *R. v. Ndhlovu*, 2022 SCC 38, at para. 7.
[7] *Godbout*, at para. 67.

place of residence. Individuals may, for example, seek to move from a crime-infested neighbourhood occasioning pervasive threats to their safety – and/or to that of their family members – to a more peaceful and stable environment. In this sense, and reflecting the interlinked and overlapping nature of the interests protected under s. 7 – the right to choose one's place of residence free from state interference as an incident of the right to liberty can overlap with the s. 7 right to security of the person.[8] This is true even if external factors other than state action that are present in a place of residence result in it being unsafe or unsuitable, as there could still be a "sufficient causal connection" between the state's prohibition on changing one's place of residence and the impact on the individual of being forced to remain in that unsafe or unsuitable place.[9]

8. Overall, while Justice LaForest correctly emphasized the "particular social and economic circumstances" that influence an individual's choice of place of residence as a matter of personal autonomy,[10] these additional non-exhaustive considerations discussed herein further highlight how this choice is fundamentally personal and deserving of constitutional protection under s. 7.

(b) Other Charter Provisions Support Justice LaForest's Conclusion

9. *Taylor v. Newfoundland and Labrador*, 2026 SCC 5 highlights the relevance of interpreting *Charter* rights in light of other related *Charter* provisions.[11] The freedom to choose own's place of residence free from state interference protected by s. 7 fits within this Court's jurisprudence that "discusse[s] the importance of 'freedom of movement' to a free society more generally."[12] Indeed, the freedom to choose one's place of residence is a dimension of freedom of movement protected under several *Charter* provisions. Freedom of movement includes the right to remain in one current's chosen place of residence and the right to physically permanently or temporarily move to another chosen place of residence free from state interference. It would be an error to conceive of freedom of movement as being limited to transitory movements between destinations or as ignoring that it also protects the freedom *not* to move, but to stand still. As held by this Court: "Interference with freedom of movement, just like invasion of privacy, must not be trivialized."[13]

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[8] *Carter v. Canada (Attorney General)*, 2015 SCC 15, at para. 64.
[9] *Canada (Attorney General) v. Bedford*, 2013 SCC 72, at paras. 73-92.
[10] *Godbout*, at para. 68.
[11] *Taylor*, at paras. 135-137.
[12] *Taylor*, at para. 135.
[13] *Kosoian v. Société de transport de Montréal*, 2019 SCC 59, at para. 139; *Taylor*, at para. 136.

10. This Court has also held that the right to be free from arbitrary detention protected under s. 9 is a component of freedom of movement and that "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*."[14] As well, in *Taylor*, this Court held that s. 6 of the *Charter* protects a right of movement *simpliciter* – that is, a right to travel freely within Canada for any purpose, including within and across provincial borders." (see para. 64) (emphasis added).

11. As an undeniably fundamental personal choice deeply linked to individual autonomy, privacy, safety, and self-determination, the ability to choose one's place of residence embodies the protection of freedom of movement afforded under s. 7 of the *Charter*. While s. 6 protects "a right to travel freely within Canada", the protection conferred under s. 7 is its necessary extension, protecting individuals' ability to *establish* themselves and live in any particular location of their choice. This does not simply duplicate the protections in s. 6. Section 6 rights are concerned with the right of "loco-motion" – to literally physically move one's body without state interference.[15]

12. Section 6(1) is limited to Canadian citizens, is concerned with interprovincial mobility,[16] and protects aspects of the freedom of movement extending beyond the ability to choose one's place of residence (such as the right to "leave Canada"). Section 6(2)(a) is limited to Canadian citizens and permanent residents and also concerns interprovincial mobility. Section 6(2)(a) protects "two distinct rights"; the first is "the right to travel throughout the country" – which "does not necessarily require any intent to settle in a location." The second right protected under s. 6(2)(a) is "the right to establish residence in any province."[17] Section 6(2) does not, therefore, include the right to move and take up residence within the same province, including for citizens and permanent residents. That ability is protected under s. 7 as an incident of the freedom to choose one's place of residence without state interference. Alternatively, that ability is protected under ss. 6(2)(b) and s. 7 as an example of an interest that enjoys protection under s. 7 and at least one other *Charter* provision. Other examples include the legal rights listed in ss. 8 to 14. Even where s. 7 overlaps with another *Charter* provision, s. 7 may still "provid[e] a more compendious protection" than its counterpart.[18] Section 7 can therefore protect freedom of movement even if s. 6(1) and (2) also do.

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[14] *Taylor v. Newfoundland and Labrador*, 2026 SCC 5, at para. 136.
[15] *Taylor*, at paras. 113, 160.
[16] *Taylor*, at paras. 154, 161, 337.
[17] *Taylor*, at para. 169.
[18] *R. v. Généreux*, [1992] 1 S.C.R. 259, at 310; *R. v. Stillman*, 2019 SCC 40, paras. 97, 130-133.

13. Critically for the purposes of this appeal, this Court has stated that "[t]he pervasiveness of freedom of movement… in the *Charter* echoes the common law's longstanding and zealous protection of mobility rights" and that its "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."[19] Necessarily, then, the ability to choose one's place of residence without state interference as an incident of – or otherwise related to –freedom of movement is not only engaged by state action involving "physical restraint" but by any state action that interferes with the entitlement to exercise that freedom. The *Charter*'s internal logic and the fulsome protection to be afforded by s. 7 require nothing less.

(c) Relevant International and Comparative Constitutional Law Sources

14. International and comparative law can be used in interpreting *Charter* provisions to "support or confirm an interpretation arrived at through the *Big M Drug Mart* approach."[20] PILI's factum will discuss these sources if its application for leave to intervene is granted.

(d) Impact of Adopting LaForest J.'s Conclusion in Godbout

15. Affirming that the right to liberty protects individuals' ability to choose their place of residence without state interference leads to the following results. **First**, the state is prohibited from dictating that individuals should *remain* in their current place of residence – or, in other words, from prohibiting individuals from moving to another residence. This is, of course, unless the state action that directly or indirectly has a sufficient causal connection to a limit on the person's ability to move to another place of residence is in accordance with the principles of fundamental justice.

16. **Second**, the state is also prohibited from *preventing* individuals from remaining in their current chosen place of residence – or, in other words, from forcing individuals to move to another place of residence not of their choosing. As a matter of public record, Canadian history features devastating examples of individuals and communities being forced to move to state-imposed places of residence, such as residential schools, and the Japanese and Italian internment camps during World War II. All of these examples would have been illegal had the *Charter* been in force at the relevant times and the s. 7 right to liberty recognized as encompassing individuals' ability to choose their own places of residence without state interference. It goes without saying that these

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[19] *Taylor*, at para. 137.
[20] *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, at para. 28.

examples would not have been in accordance with the principles of fundamental justice; however, examples may indeed be identified that would respect these principles. To name only one, the right of a person convicted of a criminal offence to live in their chosen place of residence without state interference is limited by sentencing measures mandating a term of imprisonment, but this will not be contrary to the principles of fundamental justice unless the sentencing measure is, for example, vague, overbroad, arbitrary, or grossly disproportionate.

17. **Third**, affirming that s. 7 protects individuals' ability to choose their place of residence without state interference would also constrain the state's authority to impose conditions on staying in one's chosen place of residence or moving to another location of one's choosing. Limits and restrictions could indeed be imposed, but would have to accord with the principles of fundamental justice and with all other applicable *Charter* rights and freedoms.

18. Overall, LaForest J.'s concurring reasons in *Godbout* should be affirmed. The s. 7 right to liberty protects individuals' ability to choose their place of residence free from state interference.

II – Section 7 Extends to Procedural and Substantive Due Process

19. This Court should unequivocally affirm that the protection of s. 7 extends to procedural *and* substantive due process and is not only engaged or potentially infringed by state action that involves the administration of justice. This question has hitherto yet to be settled by this Court.[21]

20. Procedural due process conceives of constitutional guarantees of life, liberty, and security of the person as being limited to deprivations arising from state-caused physical restraint, coercion, unfair procedures, and other "state action which engages the justice system and its administration."[22] By contrast, substantive due process conceives of life, liberty, and security of the person as protecting a range of dignity-related interests and focuses on whether state action actually impacts these interests regardless of the fairness of the procedure used or the mechanics by which state action is enforced or implemented.[23] In PILI's view, interpreting s. 7 as extending to substantive due process is supported by the jurisprudence and best accords with the section's text, purpose, historical origins, and with the *Charter*'s purpose as an instrument of human dignity. It is also confirmed by relevant international and comparative constitutional law sources.

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[21] *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55, at para. 49.
[22] *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, at para. 46.
[23] e.g., Erwin Chemerinsky, "Substantive Due Process" (1999) 15 Touro L Rev 1501.

21. **First**, the text of s. 7 does not confine its application to state action involving the administration of justice. In the *BC Motor Vehicle Act Reference*, Justice Lamer rejected the view s. 7's placement under "Legal Rights" calls for the opposite conclusion.[24] In the absence of a textual anchor, restricting s. 7's application to state action involving the administration of justice can only result from an unwarranted, judicially-imposed internal limit to s. 7.[25] **Second**, and relatedly, an internal limit of this nature is inconsistent with the purpose of s. 7 and the *Charter* as instruments of human dignity,[26] and with the large, liberal, and purposive interpretation of s. 7 that this Court has repeatedly championed. The impact of state action on human dignity does not depend on its nature and state action that does involve the administration of justice can inevitably impact human dignity. **Third**, restricting s. 7 to state action of this nature is incompatible with s. 32 of the *Charter*, which provides that the *Charter* applies to "all matters within the authority of Parliament" and the provincial legislatures. Section 32 does not exempt certain types of state action from s. 7's ambit, which can only be achieved temporarily by invoking the notwithstanding clause in s. 33. **Fourth**, whether or not state action is "coercive" is the wrong metric for determining whether s. 7 is engaged with respect to the interests it protects.[27] The key question is whether state action – of any kind – has a sufficient causal connection with a deprivation of one or more of these interests. It may be proposed that any kind of state action producing such an effect is *ipso facto* coercive even if it does not involve the administration of justice. Relatedly, the line between what counts as coercive or non-coercive state action is unclear, and insisting on its identification as a condition to s. 7's application represents a rewriting of the constitutional text. However: "It is not for the Court to do by 'interpretation' what the framers of our Constitution chose not to do by enshrinement, or their successors by amendment."[28] Neither the framers nor their successors provided that s. 7 is only engaged by state action involving the administration of justice.

22. Fifth, this Court's most recent statement on substantive due process was not that s. 7 is only engaged by state action of this nature, but that "[t]he extent to which s. 7 of the Charter applies outside the context of the administration of justice has yet to be settled by this Court."[29] (emphasis

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[24] *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486, at paras. 11-34.
[25] See contra Judgment on Appeal, at paras. 18-56 (Miller JA, dissenting).
[26] *R. v. Morgentaler*, [1988] 1 S.C.R. 30, at 164-165, per Wilson J.
[27] See *contra Cycle Toronto v. Ontario (Attorney General)*, 2026 ONCA 582, at para. 18.
[28] *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34, at para. 82.
[29] *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55, at para. 49.

added). In other words, s. 7 *does* apply outside that context; only the *extent* of its application has yet to be determined. The answer lies in the living tree doctrine and the pragmatic judicial incrementalism that this Court deploys to breathe life into the *Charter*'s guarantees in each case.

23. These arguments will be more fulsomely developed in PILI's factum if its application for leave to intervene is granted.

PART III: ISSUE

24. The sole issue is whether PILI satisfies the criteria for intervention state in Rule 57(2) of the *Rules of the Supreme Court of Canada*. It is humbly submitted that the answer is affirmative.

PART IV: ARGUMENTS

A. PILI's Direct Interest and Expertise in the Present Appeal

24. PILI has a real and substantial interest in the issues on which it seeks to intervene in this appeal. As per its Mission Statement, PILI is dedicated to using strategic litigation and advocacy as vehicles for access to justice in order to advance the rights, interests, and values at the heart of Canada's liberal democracy. As an incident of its mandate to advance access to justice and perspectives not otherwise represented in critical legal debates, PILI places significant importance on highlighting the links between the right to choose one's place of residence free from state interference and considerations related to physical safety and the security of persons fleeing from harmful environments, harassment, stalking, crime, and intimate partner violence.

25. Further, confirming the interpretation and application of s. 7 as extending to both procedural and substantive due process is manifestly a question of public interest as it impacts the rights and freedoms of every person in Canada and their relationship with state action at all levels of government. Confirming that s. 7 protects individuals' ability to choose their place of residence free from state interference also manifestly bears on the public interest, including based on its ubiquity and application to all persons in Canada.

26. This Court's conclusion on this issues will also directly impact PILI's litigation and advocacy efforts in courts across Canada, as PILI launches and intervenes in constitutional litigation bearing upon the interpretation and application of the *Charter*. PILI's interest is further reflected in respectfully offering to provide this Court with insights into the broader dimensions of the seemingly narrow questions raised in this appeal, and the extent to which definitive answers advance and are justified by the rule of law and broader public interest considerations.

It is precisely because PILI has a direct interest in this appeal that it wishes to intervene in the present appeal and contribute to this Honourable Court's deliberations.

27. Further, by the time this appeal is heard, PILI will have intervened in four appeals before this Court involving the interpretation and application of various *Charter* provisions (see *English Montreal School Board v. Attorney General of Quebec* (SCC No. 41231); *Attorney General of Quebec v. Joseph-Christopher Luamba* (SCC No. 41605); *Government of Saskatchewan as represented by the Minister of Education v. UR Pride Centre for Sexuality and Gender Diversity* (SCC No. 41979); and *His Majesty The King v. Abdel Karim Chemlal* (SCC No. 41766)). Overall, PILI has significant interest and expertise in the central questions of law raised in this appeal.

C. AND D. PILI's Submissions Will Be Relevant and Useful to This Honourable Court

28. Owing to PILI's significant interest and expertise in constitutional law, and its independent, non-partisan and apolitical character, PILI's submissions will be highly relevant and useful to this Court's consideration of whether the s. 7 right to liberty protects individuals' ability to choose their place of residence free from state interference and whether protection conferred by s. 7 extends to both procedural *and* substantive due process. PILI's perspectives will be relevant and useful in situating the choice of personal residence within a multifactorial matrix of considerations that often include factors relating to personal safety and the security of one's person and/or family. PILI's submissions concerning the liberty to choose's once residence will deploy the purposive approach of *Charter* interpretation refined in *Taylor v. Newfoundland and Labrador*, 2026 SCC 5, and highlight its interaction with the mobility rights entrenched in s. 6(1) and (2) of the *Charter* PILI will also complement the international law sources highlighted in LaForest J.'s concurrence in *Godbout* and by propose relevant sources of comparative constitutional law.

29. PILI's capacity to provide unique and relevant submissions of potential usefulness to this Honourable Court is furthermore attested to by PILI having been granted leave to intervene in nine (9) appeals heard or to be heard by this Honourable Court, in addition to PILI counsel's other interventions on behalf of other interveners, in 6 other appeals, including *Democracy Watch v. Canada (Attorney General)*, 2026 SCC 28 and *Auer v. Auer*, 2024 SCC 36. PILI's experience will further ensure that its submissions are useful and relevant to this appeal.

E. PILI's Submissions Will Be Different From Other Parties To The Present Appeal

31. PILI's legal positions and perspectives will be different from those advanced by the parties and interveners. First, PILI has engaged with the parties' materials and has crafted its submissions with the specific intent of avoiding repetition. Second, PILI is one of the first proposed interveners to file their materials, and did so long before the filing deadline, thereby enabling other proposed interveners to consult them and avoid duplication. PILI will diligently tailor its submissions to minimize or avoid any overlap with submissions of other parties and interveners.

F. PILI Will Not Raise New Legal Issues or Supplement the Evidentiary Record

32. If PILI's motion is granted, it will not raise new issues, "adduce further evidence or otherwise to supplement the record of the parties."[30] The sole issue on which PILI wishes to intervene – the interpretation of s. 7 of the *Charter* – is expressly raised in the judgment on appeal, in the Appellant's and Respondents' respective submissions[31] and is a pure question of law.[32]

PART V: ORDERS SOUGHT

PUBLIC INTEREST LITIGATION INSTITUTE RESPECTFULLY REQUESTS THIS HONOURABLE TO ISSUE AN ORDER IT AUTHORIZING TO

a) **INTERVENE** in the present appeal;

b) **FILE** a factum in the present appeal not exceeding ten (10) pages in length, or any other length specified by this Honourable Court;

c) **MAKE** oral submissions during the hearing of the present appeal for a duration not exceeding ten (10) minutes, or any other duration specified by this Honourable Court;

d) **AND ANY OTHER** order that this Honourable Court deems appropriate;

e) **THE WHOLE** without costs in favour of, or against, Public Interest Litigation Institute.

THE WHOLE RESPECTFULLY SUBMITTED THIS 25th DAY OF OCTOBER 2026



Lawrence David, LL.M

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[30] e.g., Supreme Court of Canada, Bulletin of May 15, 2026.
[31] Appellant's Factum, at paras. 21 et seq; Respondents' Memorandum on Application for Leave to Appeal, at paras. 35-78.
[32] *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17, para 85