No. S-258866
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

In the matter of the Judicial Review Procedure Act, RSBC 1996 ch. 241

BETWEEN:

ETHAN WILDING

PETITIONER

AND:

NORTH SALT SPRING WATERWORKS DISTRICT

RESPONDENT

PETITION TO THE COURT

ON NOTICE TO:
North Salt Spring Waterworks District
761 Upper Ganges Road
Salt Spring Island, British Columbia V8K 1S1

AND TO:
Ministry of Attorney General
Legal Services Branch
PO Box 9280 STN PROV GOVT
1001 Douglas Street
Victoria, British Columbia V8W 9J7

AND TO:
The Attorney General of Canada
Suite 900 – 840 Howe Street
Vancouver, British Columbia V6Z 2S9

The address of the registry is: Vancouver Law Courts
800 Smithe Street
Vancouver, British Columbia V6Z 2E1

[ ] This matter is within the jurisdiction of an associate judge.

[X] This matter is not within the jurisdiction of an associate judge.

The petitioner estimates that the application will take 2 days.

[X] This matter is an application for judicial review.

[ ] This matter is not an application for judicial review.

This proceeding has been started by the petitioner for the relief set out in Part 1 below by the persons named as petitioners in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) Serve on the petitioner(s)

i. 2 copies of the filed response to petition; and

ii. 2 copies of each filed affidavit on which you intent to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s)

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the petitioner(s) is: c/o Coal Harbour Law 1208 West Pender Street, 3rd Floor Vancouver, British Columbia V6E 2S8 Fax number address for service (if any) of the petitioner(s): N/A E-mail address for service (if any) of the petitioner(s): tfalcone@coalharbourlaw.ca
(2)	The name and office address of the petitioner's(s') lawyer is: Thomas Falcone Coal Harbour Law 1208 West Pender Street, 3rd Floor Vancouver, British Columbia V6E 2S8

CLAIM OF THE PETITIONERS

Part 1: ORDERS SOUGHT

1. A declaration that the decision made by the North Salt Spring Waterworks District on August 5th, 2025 denying the Petitioner's application for a water service connection was unreasonable;

2. An order quashing the decision made by the North Salt Spring Waterworks District on August 5th, 2025 denying the Petitioner's application for a water service connection;

3. An order that the North Salt Spring Waterworks District approve the Petitioner's application for a water service connection;

4. In the alternative, an order remitting the Petitioner's application for a water service connection to the North Salt Spring Waterworks District for reconsideration;

5. A declaration that the decision made by the North Salt Spring Waterworks District on August 5th, 2025 denying the Petitioner's application for a water service connection was a breach of the Petitioner's rights under section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c. 11 (the "***Charter***").

6. A declaration that the North Salt Spring Waterworks District Operations Policy #9, adopted January 30th, 2025, is in violation of section 7 of the *Charter*, and is of no force and effect.

7. A declaration that the decision made by the North Salt Spring Waterworks District on August 5th, 2025 denying the Petitioner's application for a water service connection was a breach of the Petitioner's rights under section 36(1) of the *Constitution Act*, 1982, Schedule B to the *Canada Act* 1982 (UK), 1982, c. 11.

8. A declaration that the North Salt Spring Waterworks District Operations Policy #9, adopted January 30th, 2025, is in violation of section 36(1) of the *Constitution Act*, 1982, Schedule B to the *Canada Act* 1982 (UK), 1982, c. 11.

9. Costs as against any party that opposes this petition;

10. Such other relief as this Honourable Court may deem just and necessary.

Part 2: FACTUAL BASIS

THE PARTIES

1. The petitioner, Ethan Wilding ("**Ethan**"), is a businessman and social entrepreneur, with an address for service in this proceeding of c/o 1208 West Pender Street, 3rd Floor, Vancouver, British Columbia V6E 2S8.

2. The respondent, the North Salt Spring Waterworks District (the "**NSSWD**"), is an improvement district incorporated pursuant to the *Local Government Act* [RSBC 201] ch. 1, having a business office at 761 Upper Ganges Road, Salt Spring Island, British Columbia, V8K 1S1.

3. As of date of filing of this petition, His Majesty the King in the right of the Province of British Columbia is not a party to this proceeding but is given notice pursuant to section 16 of the *Judicial Review Procedure Act,* RSBC 1996 ch. 241 (the "***JRPA***") and section 8 of the *Constitutional Question Act*, RSBC 1996 ch. 68 (the "***Constitutional Question Act***").

4. As of date of filing of this petition, His Majesty the King in the right of Canada is not a party to this proceeding but is given notice pursuant to section 8 of the *Constitutional Question Act.*

THE PROPERTY AND THE FABLAB PROGRAM

5. On July 10, 2023, Ethan acquired a piece of property on Salt Spring Island with a civil address of 215 Baker Road, Salt Spring Island, British Columbia, V8K 2N6, legally described as:

   PID: 012-918-342

   LOT B SECTION 22 RANGE 1 EAST NORTH SALT SPRING ISLAND COWICHAN DISTRICT PLAN 47928

(the "**Property**").

Affidavit #1 of Ethan Wilding ("**Wilding**"), ¶ 3

6. Ethan facilitates and funds philanthropic efforts on Salt Spring Island to encourage education and hands-on experience with advanced robotics, 3D printing, and other technologies. These efforts centre around a program delivered in conjunction with the Salt Spring Island Public Library (the "**Library**") called **FabLab**.

Wilding, ¶ 7 – 10

7. FabLab was initially delivered in the Library's Ganges branch, but due to great popularity soon exceeded the capacity of this location. Ethan decided that the Property could be re-developed to facilitate FabLab. To that end, Ethan at great personal expense, directed the construction of a loft-style building on the Property to host FabLab (the "**Maker Space**") as well as the renovation of a church on the Property into a hall that could be utilized by community groups for non-profit pursuits (the "**Community Hall**").

Wilding, ¶ 13 – 14

THE NSSWD'S MORATORIUM

8. In or around October 2024, the NSSWD implemented a moratorium on new or upsized water service connections. The policy was updated in 2018 and again in 2025. In January 2025, the NSSWD approved a partial lift of the moratorium on the Maxwell Lake system but kept the moratorium in place for the St. Mary Lake system (the "**Moratorium Policy**").

9. The Property sits on the St Mary Lake system grid.

10. The Moratorium Policy specifies that:

i. **Each property on the NSSWD St. Mary Lake parcel tax roll, regardless of zoning, will be entitled to only one ¾" (19mm) residential water service connection to either a single-detached dwelling or a single unit business; and**

ii. **Where the application for service is for the subdivision of a property on the NSSWD parcel tax roll, only one lot will be served with a ¾ "(19mm) connection and all other lots created must provide potable water by other means; and**

iii. **Where the Building Inspector requires an increase in the size of an existing service connection in order to issue a building permit for a renovation to an existing structure, the application will be denied; and**

iv. **Where the application is for new cottages, secondary suites, or a second structure located on a property that is already served, the application will be denied; and**

v. **Where the application is for the legalization of an existing secondary suite or seasonal cottage, approval will only be given if proof is provided of the existence of the suite or cottage prior to implementation of the moratorium on October 1st, 2014.**

11. The practical effect of the Moratorium Policy is that no new water service connections will be provided to any properties within the St. Mary Lake system boundaries of the NSSWD, unless one of the narrow above exception applies or the NSSWD otherwise decided to exercise residual discretion to grant an exemption.

THE REQUEST FOR A WATER CONNECTION

12. After development and renovation work for the Maker Space and the Community Hall commenced on the Property, Ethan realized the Property did not have a freshwater connection. It soon became apparent that the groundwater well source was insufficient for the community-oriented purposes of the Maker Space and the Community Hall.

Wilding, ¶ 18 – 20

13. After a series of conflicting verbal conversations with NSSWD staff about the possibility of connecting the Property to the St. Mary Lake system, in April 2025 Ethan eventually submitted an application for a new water connection (the "**Water Service Connection Application**").

Wilding, ¶ 22

THE REJECTIONS OF THE REQUEST FOR A WATER CONNECTION

14. On May 2nd, 2025, NSSWD staff informed Ethan that the Water Service Connection Application was rejected, due to the Moratorium Policy.

Wilding, ¶ 24

15. After receiving confirmation that the appeal to the NSSWD Board of Trustees (the "**Board**") was possible by attending and making submissions at an in-person Board meeting, Ethan prepared for and eventually attended a Board meeting on July 31st, 2025. At this Board meeting, Ethan requested a reconsideration of the rejection of the Water Service Connection Application and requested an exemption from the Moratorium Policy for the Property, due to the community benefits that would spring from allowing the Property an adequate supply of drinking water. Ethan also represented to the Board the extensive water conversation measures he had implemented on the Property.

Wilding, ¶ 29

16. Ethan also presented a support letter from the Library, which implored the Board to allow the Property an exemption from the Moratorium Policy so that the Library's FabLab program could meet community needs.

Wilding, Ex. "E"

17. On August 5th, 2025, the NSSWD wrote to Ethan and informed him that the Board had decided to reject his request for reconsideration and his request for an exemption from the Moratorium Policy.

Wilding, ¶ 30

THE CURRENT SITUATION

18. As of the filing of this Petition, the Property continues to lack access to the St. Mary Lake system public drinking water supply, or any other public water supply under the administration of the NSSWD.

Wilding, ¶ 31

19. While the Property continues to have a limited water supply from its groundwater well, this supply is inadequate for the needs of the community and is limiting the capacity of the Maker Space and the Community Hall to deliver educational and community service programs to Salt Spring Island.

Wilding, ¶ 32 – 34

Part 3: LEGAL BASIS

SECTION 1 – JUDICIAL REVIEW

STANDING TO ON JUDICIAL REVIEW

20. This proceeding is governed in part by the *JRPA*.

21. Section 2 of the *JRPA* provides as follows:

> **Application for judicial review**
>
> 2 (1) An application for judicial review must be brought by way of a petition proceeding.
>
> (2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:
>
> (a) relief in the nature of mandamus, prohibition or certiorari;

> (b)a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

22. The Petitioner brings this application for judicial review pursuant to section 2 of the *JRPA*. The statute, however, is silent as to who has standing to commence an application such as this for judicial review. The common law of this province has commented extensively on the issue of standing.

23. The general rule on standing developed by the common law is that persons who were before the tribunal or "who are directly affected by the tribunal's decision" or a person who is an "'aggrieved person,' an 'affected person', or someone who is 'exceptionally prejudiced' by the impugned administrative action" may bring an application for judicial review.

Kitimat (District) v Alcan Inc., 2006 BCCA 562, at para 47

Bradshaw v Workers' Compensation Board, 2017 BCSC 1092, at para 8

24. The Petitioner is the owner of the Property. The Petitioner is, in conjunction with the Library, the primary proprietor of the Maker Space and the Community Hall. It is the Petitioner who submitted the Water Service Connection Application, and the Petitioner who was rejected by the Board. The Petitioner is the person directly affected by the NSSWD's refusal to allow the Property access to water.

STANDARD OF REVIEW

25. The standard of review applicable to the NSSWD's reject the Water Service Connection Application is reasonableness.

Brinkworthy Properties Ltd. v North Salt Spring Waterworks District 2017 BCSC 951 ("***Brinkworthy***"), paras 51 – 57

Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 ("***Vavilov***")

26. With regards to the constitutional issues raised in this proceeding, *Vavilov* instructs that:

> it is important to draw a distinction between cases in which it is alleged that the effect of the administrative decision being reviewed is to unjustifiably limit rights under the *Canadian Charter of Rights and Freedoms* (as was the case in *Doré*) and those in which the issue on review is whether a provision of the decision maker's enabling statute violates the Charter (see, e.g., *Martin v. Nova Scotia (Workers' Compensation Board)*, 2003 SCC 54, [2003] 2 S.C.R. 504 (S.C.C.) , at para. 65). Our jurisprudence holds that an administrative decision maker's interpretation of the latter issue should be reviewed for correctness, and that jurisprudence is not displaced by these reasons.

Vavilov, para 57

THE REJECTION WAS UNREASONABLE

27. Improvement districts are incorporated under Part 17 of the *Local Government Act* RSBC 205 c. 1 (the "*Local Government* Act") and are the simplest form of local government in British Columbia. They are incorporated by the issuance of letters patent setting out, in addition to a description of the area being incorporated, the particular objects and powers of the improvement district.

28. The NSSWD was granted letters patent in 1948 (the "**Letters Patent**"). Pursuant to the Letters Patent, the objective of the NSSWD is the provision of a water-supply and the acquisition, maintenance, and operation of works for the said purposes and all matters incidental thereto.

29. Pursuant to its power under section 697 of the *LGA*, the NSSWD in 2021 adopted **Bylaw 322** which governs the applications for water service connections in the geographic area over which the NSSWD has jurisdiction to maintain a water supply.

30. Bylaw 322 stipulates that:

Service Connections.

2. Applications for connections to the District Works shall be made to the District by the owner of the premises, the owner's agent or an Occupier, on the form attached as Schedule "A" to this Bylaw (the "Application"). Each Application shall be accompanied by the fee described in

the District's current Miscellaneous Service Charge Bylaw, with the fee dependent upon the type of meter required for the proposed connection.

6. The Trustees may approve or disapprove any application. Reasons for a connection refusal are:

a) the proposed connection does not comply with the provisions of this and other applicable bylaws of the District;

b) the Trustees determine that the District has an insufficient Water supply to provide the parcel with an adequate supply of Water; or

c) the Trustees determine that if the application were approved, the District would not have a sufficient Water supply to provide any other parcel or parcels with an adequate supply of Water; or

d) the Trustees are not satisfied that the use specified on the Application is a permitted use of the premises pursuant to the Salt Spring Island Local Trust Committee's Salt Spring Island Land Use Bylaw, 1999, as amended or replaced from time to time.

7. In order to determine whether to approve or disapprove an application, the District may require additional information regarding the proposed connection. If and when the District requires information relative to the premises or the works proposed to be connected to the District's Works additional to that indicated on the standard form, such information shall be supplied before the application for connection is considered by the Trustees.

31. The Moratorium Policy further provides a policy framework, noted Part 1 of this Petition, that new water service connections will be subject to certain the evaluative considerations.

32. The NSSWD has granted itself broad discretion with Bylaw 322. It can approve or disprove "any application" for water service connections. It is Bylaw 322 that ultimately governs what the NSSWD must do when presented with a new water service application. The Moratorium Policy is a policy framework that merely provides for additional evaluative criteria.

33. This Court, when reviewing the NSSWD's decision to rejection of the Water Service Application, is faced with "the question raised on this ground of the application for judicial review is whether [the rejection] [fits] comfortably with the principles of justification, transparency and intelligibility'."

Brinkworthy, para 57

34. The NSSWD's decision to reject the Water Service Connection Application can be characterized as a policy-informed decision. The Board is empowered by the Letters Patent and the requisite sections of the *Local Government Act* – and, indeed, expected – to make certain decisions in light of policy concerns. The Federal Court of Appeal has recently commented on how the *Vavilov*ian reasonableness review ought to be conducted in the context of policy-informed decision-making:

> 49 We agree with the parties and the Federal Court in the instant case that *Vavilov* requires reformulation of how reasonableness review applies to discretionary policy decisions and that the approach in *Maple Lodge* has been overtaken.
>
> 50 In this regard, we see no principled reason why the reasonableness review of a discretionary policy decision should not be framed in the manner set out in *Vavilov* , which asks whether a decision "**bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision**": *Vavilov* at para. 99.

51 *Vavilov* is the starting point for undertaking a judicial review and sets out a holistic approach. Earlier case law on conducting reasonableness review can provide insight but must be aligned with the *Vavilovian* approach: *Vavilov* at para. 143. **Discretionary policy decisions should not be an exception.** The Supreme Court in *Vavilov* noted the existence of decisions by "ministers" and matters of "high policy" (at para. 88). Yet, it held that "reasonableness remains a single standard, and elements of a decision's context do not modulate the standard or the degree of scrutiny by the reviewing court" but instead act as constraints (at para. 89).

52 This Court in *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada* 2020 FCA 100, [2021] 1 F.C.R. 374 [*Entertainment Software*] at paragraphs 25-30, aff'd 2022 SCC 30, [2022] 2 S.C.R. 303 outlined a variety of policy-laden decisions, subject to review for reasonableness that are unconstrained in nature and are thus very hard to set aside, and noted that, unless an exception applies, **reasonableness as mandated by *Vavilov* is the correct approach to reviewing policy-laden decisions.** Thus, the categories listed in *Maple Lodge* now serve as examples of when a discretionary policy decision would be unreasonable but do not fully categorize unreasonable policy decisions. Rather, the requisite analysis is that mandated by *Vavilov* .

53 Pursuant to *Vavilov* , reasonableness review is deferential, and the reviewing court does not ask itself what decision it would have made or whether the decision under review is correct (at para. 83). Rather, the reviewing court is limited to considering whether the outcome of an administrative decision is transparent, intelligible, and justified in light of the reasons, if any, that may have been given by the administrative decision-maker and in light of the legal and factual constraints that bear on the decision: *Vavilov* at paras. 85, 99. Where no reasons are given for a decision, as is often the case when a policy is adopted, reasonableness review requires a reviewing court to consider the reasonableness of the policy in light of the record before the administrative decision-maker and the relevant constraints,

> including the applicable statutory provisions: *Vavilov* at paras. 137-138.
>
> [...]
>
> 56 Discretionary policy decisions are also reviewable for reasonableness, but, once again, the bar for establishing unreasonableness is high, often requiring an applicant to establish that the decision fails to respect the provisions in the statute pursuant to which the discretionary decision was made, which may provide constraints on the way in which discretion was exercised: *Entertainment Software* at paras. 31-33. See also Donald J.M. Brown et al., *Judicial Review of Administrative Action in Canada* (Toronto: Thomson Reuters Canada, 2009) (looseleaf release 2025-02) (WL) at § 15:63. XX

Universal Ostrich Farms Inc. v Canada (Food Inspection Agency) 2025 FCA 147, paras 49 – 56 **[Emphasis added]**

35. The NSSWD's rejection of the Water Service Application was unintelligible and unjustifiable because:

    a. The rejection failed to comply with any of the enumerated "reasons for a connection refusal" under section 6 of Bylaw 322 – the NSSWD's letter rejecting the Water Service Application did not expressly or implicitly refer to any of the sole grounds for rejection that are enumerated under section 6 (a) – (d);

    b. The rejection failed to comply with the over-arching objective of the NSSWD in its Letters Patent;

    c. The rejection was framed purely in terms of the Moratorium Policy, which itself is incongruent with Bylaw 322 and the Letters Patent.

36. The NSSWD's decision to reject the Petitioner's Water Service Application was unreasonable because, when set against the backdrop of the Letters Patent,

Bylaw 322, and the Moratorium Policy, the internal rationale of the decision is unintelligible and incongruent with the overarching objective of the NSSWD as set out in the Letters Patent.

SECTION 2 – CONSTITUTIONAL ISSUES

THE REJECTION, AND/OR THE MORATORIUM POLICY AS A WHOLE, BREACHES THE PETITIONER'S SECTION 7 *CHARTER* RIGHTS

37. Section 7 of the *Charter* provides that:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

38. Section 7 of the *Charter* is concerned with whether a limit is imposed in a way that respects the principles of fundamental justice.

Charkaoui v Canada (Citizenship and Immigration) 2007 SCC 9 at para 21

39. The Superior Court of Ontario has canvassed the issue of whether the *Charter* may protect so-called 'positive rights' – in other words, whether section 7 might require the state to do something, as opposed to refraining from engaging in conduct that deprives an individual of something protected by section 7:

> [138] In this case the Applicants have invoked s. 7 of the *Charter* which provides a broad right to "life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." As was recently confirmed by a majority decision of the Ontario Court of Appeal, s. 7 is not limited to an individual's interactions with the administration of justice: *Drover v. Canada* at paras. 143 – 185. As Gomery J.A. explained, at para. 178: Laws that restrict the life, liberty and security interests protected by the *Charter* must be substantively consistent with the principles of fundamental justice. This includes requirements that a law that

restricts an individual's *Charter* rights must not be substantively overbroad, arbitrary, grossly disproportionate, or vague: see *Bedford*, at paras. 110-123.

[139] What is less clear is whether and how the *Charter* may apply to government inaction or, put another, way, whether the *Charter* can require governments to act to vindicate *Charter* rights. Further, where governments have taken steps to enhance safety, can they reverse those steps without engaging the *Charter*?

[140] The Supreme Court has directed courts to apply the *Charter* broadly, to give it a large and liberal interpretation. In *Hunter v. Southam Inc.*, 1984 CanLII 33 (SCC), [1984] 2 SCR 145 at 156, as the Court of Appeal recently reminded us in *Drover v. Canada (Attorney General)*, 2025 ONCA 468 at para. 146, Dickson J. expressly adopted the approach taken in *Minister of Home Affairs v. Fisher*, [1980] A.C. 319 (P.C., Bermuda), at p. 328, that called for "a generous interpretation avoiding what has been called 'the austerity of tabulated legalism,' suitable to give individuals the full measure of the fundamental rights and freedoms referred to."

[141] When laws or policies developed by governments infringe rights protected by the *Charter*, "the courts cannot shy away from considering them": *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35 at para. 89, a case dealing with access to health care. Similarly, in *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 at para. 105, involving the issue of illegal drug use and addiction and the provision of regulated injection sites, the Court reiterated that, while it is for governments to make laws and policy, "those actions are subject to *Charter* scrutiny."

[142] In *Gosselin v. Quebec (Attorney General)*, 2002 SCC 84 at paras. 81-83, the Supreme Court of Canada discussed whether s. 7 could apply to impose positive obligations on the government. The Court noted that s. 7 of the *Charter* "speaks to the right *not to be deprived* of life, liberty and security of the person." The majority was unwilling to recognize or apply a positive rights approach, in that case to impose a positive state obligation to guarantee adequate living standards.

> However, the Court left open the possibility that there may be "special circumstances" in which a positive obligation to sustain s. 7 rights could arise.

Cycle Toronto et al v Attorney General of Ontario et al 2025 ONSC 4397, paras 138 – 142

40. The Petitioner in this proceeding says that access to drinking water is a right under section 7 of the *Charter*, and that the NSSWD's rejection of the Water Service Connection Application and/or the Moratorium Policy as a whole deprives him of the life, liberty or security of the person protections enunciated by section 7.

41. The Petitioner submits that either:

    a. The provision of drinking water is a "special circumstance" in which the state has a positive obligation to sustain section 7 rights, and the NSSWD's rejection of the Water Service Connection Application is a violation of this positive obligation; and/or,

    b. While there may or may not be a positive obligation stemming from section 7 of the *Charter* to provide drinking water, the Moratorium Policy has an "an arbitrary, overbroad, or grossly disproportionate impact" on the Petitioner by denying him access to a scheme that the NSSWD has already established.

Bedford v Canada (Attorney General) 2013 SCC 72

42. The Supreme Court of Canada has said that,

> In order to establish a s. 7 breach, the claimant must first show that she was deprived of her right to life, liberty or security of the person, and then must establish that the

> state caused such deprivation in a manner that was not in accordance with the principles of fundamental justice.

Gosselin v Québec (Procureur général) 2002 SCC 84, para 205

43. The denial of access to freshwater is a deprivation of the right to life, liberty, or security of the person, and the arbitrary nature of the NSSWD's denial and/or the Moratorium Policy was a violation of principles of fundamental justice.

Chaoulli v Québec (Procureur général) 2005 SCC 35, paras 129 – 133

THE REJECTION IS A BREACH OF SECTION 36 OF THE CONSTITUTION

44. Section 36(1) of the *Constitution Act*, 1982, Schedule B to the *Canada Act* 1982 (UK), 1982, c. 11 (the "*Constitution Act*"), provides that:

> 36(1) Commitment to promote equal opportunities
>
> Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to
>
> (a) promoting equal opportunities for the well-being of Canadians;
>
> (b) furthering economic development to reduce disparity in opportunities; and
>
> (c) providing essential public services of reasonable quality to all Canadians.

45. The Manitoba Court of Appeal has found that "a reasonable argument might be advanced that the section could possibly have been intended to create enforceable rights."

Manitoba Keewatinowi Okimakanak Inc. v Manitoba Hydro-Electric Board 1992 CarswellMan 373 (MBCA), para 10

46. Our Court of Appeal, commenting on the justiciability of section 36(1), has noted that,

> I accept that "a reasonable argument might be advanced that the section could possibly have been intended to create enforceable rights" [...] but more than that is required of a statement of claim. Material facts must be pleaded to create an informed environment for consideration of that question.

Canadian Bar Assn. v British Columbia 2008 BCCA 92, para 52

47. The Petitioner submits that section 36(1) is justiciability and was intended to create enforceable rights: namely, that Canadians have access to "essential public services of reasonable quality." The material facts plead here are straightforward: the Petitioner is being denied access to the essential public service of fresh drinking water.

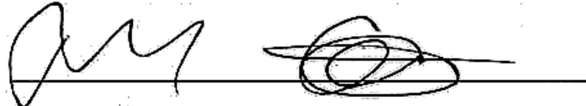
48. Moreover, this is not a case wherein the Petitioner is pleading that a government authority has an obligation pursuant to section 36(1) of the *Constitution Act* to establish or create a service, system or scheme in order to fulfill its obligations under that constitutional provision. Rather, the facts underlying this proceeding is that the NSSWD exists (pursuant to the Letters Patent) and has already created such a system for the delivery of an essential public service, but is denying the Petitioner access to that system. This is a breach of the state's obligations under section 36(1) of the *Constitution Act.*

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Ethan Wilding sworn on November 18th, 2025;

2. such further material as counsel may provide with leave of this Honorable Court.

Date: November 25th, 2025



Signature of counsel for Petitioner
Thomas Falcone

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs *[number]* of Part 1 of this notice of application

[ ] with the following variations and additional terms:

____

____

____

Date: *[month, day, year].* __________________________

Signature of

[ ] Judge [ ] Associate Judge