



**IN THE COURT OF APPEAL  
OF NEWFOUNDLAND AND LABRADOR**

**Citation:** *Citizens Against Clearcutting v. Newfoundland and  
Labrador*, 2026 NLCA 8

**Date:** March 26, 2026

**Docket Number:** 202501H0012

**BETWEEN:**

CITIZENS AGAINST CLEARCUTTING

APPELLANT

**AND:**

HIS MAJESTY THE KING IN RIGHT OF  
NEWFOUNDLAND AND LABRADOR

RESPONDENT

**Coram:** W.H. Goodridge, K.J. O'Brien and G.L.C. Noel JJ.A.

**Court Appealed From:** Supreme Court of Newfoundland and Labrador,  
General Division 202201G3418  
(2025 NLSC 2)

**Appeal Heard:** January 22, 2026

**Judgment Rendered:** March 26, 2026

**Reasons for Judgment by:** G.L.C. Noel J.A.

**Concurred in by:** W.H. Goodridge and K.J. O'Brien JJ.A.

**Counsel for the Appellant:** James Gunvaldsen Klaassen and Reid Gomme

**Counsel for the Respondent:** Ian Hennessey

**Authorities Cited:**

**CASES CITED:** *Citizens Against ClearCutting v. Newfoundland and Labrador (Environment and Climate Change)*, 2025 NLSC 2; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, [2021] 3 S.C.R. 107; *Association of Allied Health Professionals v. Eastern Regional Integrated Health Authority*, 2025 NLCA 1; *Newfoundland and Labrador (Environment and Climate Change) v. Atlantic Salmon Federation (Canada)*, 2018 NLCA 53; *Rosianu v. Western Logistics Inc.*, 2021 FCA 241; *Ayangma v. Université de Moncton, Moncton Campus*, 2019 NBCA 14; *Paladin Security Group Ltd. v. Construction General Labourers, Rock & Tunnel Workers, Local 1208*, 2023 NLSC 105; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21; *Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 21; *Archean Resources Ltd. v. Newfoundland*, 2002 NFCA 43, leave to appeal to SCC refused, 29390 (20 March 2003); *Labrador Inuit Association v. Newfoundland (Minister of Environment and Labour)*, 1997 CanLII 14612 (NLCA); *Northern Harvest Smolt Ltd. v. Salmonid Association of Eastern Newfoundland*, 2021 NLCA 26; *Salmonid Association of Eastern Newfoundland v. Her Majesty the Queen in Right of Newfoundland and Labrador*, 2020 NLSC 34; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *David Suzuki Foundation v. Canada-Newfoundland and Labrador Offshore Petroleum Board*, 2020 NLSC 94; *Jackman v. Newfoundland and Labrador*, 2019 NLSC 55; *Law Society of Newfoundland and Labrador v. Buckingham*, 2023 NLCA 17, leave to appeal to SCC refused, 40884 (4 April 2024); *Safe Food Matters Inc. v. Canada (Attorney General)*, 2022 FCA 19; *Alexion Pharmaceuticals Inc. v. Canada (Attorney General)*, 2021 FCA 157, leave to appeal to SCC refused, 39858 (24 March 2022).

**REGULATIONS CONSIDERED:** *Environmental Assessment Regulations, 2003*, NLR 54/03, sections 3(3), 25.

**STATUTES CONSIDERED:** *Environmental Protection Act*, SNL 2002, c. E-14.2, sections 107, 48, 2(mm), 49(1), 62, 51(1), 46; *Interpretation Act*, RSNL 1990, c. I-19, section 16.

**G.L.C. Noel J.A.:**

## **OVERVIEW**

[1] A judge of the Supreme Court of Newfoundland and Labrador dismissed the application of Citizens Against Clearcutting (“CAC”) for judicial review of two decisions of the Minister of Environment and Climate Change (the “Minister”). CAC is appealing the decision of the Judge (*Citizens Against ClearCutting v. Newfoundland and Labrador (Environment and Climate Change)*, 2025 NLSC 2 (the “Judge’s Decision”)).

[2] The Minister decided:

- (i) to release a Crown Zone 2 Five-Year Forestry Operating Plan (2022-2026) (the “2022 Forestry Plan”) from further environmental assessment under the *Environmental Protection Act*, SNL 2002, c. E-14.2 (the “EPA”) (Appeal Book, Vol 1, Tab 5 (the “Release Decision”)); and
- (ii) to dismiss an appeal from CAC and the Town of Port Blandford (the “Town”) of the Release Decision filed under section 107 of the *EPA* (Appeal Book, Vol 1, Tab 6 (the “Appeal Decision”)).

(collectively, the “Minister’s Decisions”)

[3] CAC, a local environmental group, objects to clearcutting covered by the 2022 Forestry Plan. CAC argued before the Judge that the Minister’s Decisions were unreasonable because he failed to consider evidence of “significant public concern” that would have required an environmental assessment before release of the Plan. CAC argued the Minister too narrowly interpreted the governing statute and failed to justify that interpretation.

[4] In dismissing the application, the Judge concluded that the Minister’s Decisions were reasonable. CAC agrees that reasonableness was the appropriate standard of review but argues that the Judge erred in his application of that standard. CAC submits that the Minister’s Decisions were unreasonable, and that a review by this Court should result in an order to quash the Minister’s Decisions and remit the matter to the Minister for reconsideration.

[5] For the reasons below, and upon review, I would conclude that the Minister's Decisions were reasonable. I would dismiss the appeal and make no order as to costs.

## **STANDARD OF REVIEW**

[6] As noted, there is no dispute that the Judge chose the correct standard of review; the only question on this appeal is whether the standard was applied correctly. In answering that question this Court reviews anew the Minister's Decisions (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 16; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, [2021] 3 S.C.R. 107, at para. 10; and *Association of Allied Health Professionals v. Eastern Regional Integrated Health Authority*, 2025 NLCA 1, at para. 7).

## **BACKGROUND**

[7] To provide context for the appeal issues and CAC's arguments, an outline of the following is necessary: a) the parties b) the 2022 Forestry Plan c) CAC's submissions on community opposition to clearcutting d) the statutory process leading to the Minister's Decisions and e) a synopsis of the Minister's Reasons.

### **a) The Parties**

[8] CAC is a non-profit entity incorporated under the laws of Newfoundland and Labrador. CAC is the incorporated successor of the Port Blandford Citizens Against Clearcutting Committee and represents a group of community members and supporters who have for many years raised concerns about the impacts of clearcutting in the Town and the nearby Southwest River Valley.

[9] The Minister is responsible for discharging the powers, functions, and duties relating to the administration of the *EPA*.

### **b) The 2022 Forestry Plan**

[10] The 2022 Forestry Plan details proposed clearcutting for the period between January 1, 2022, and December 31, 2026, on Crown lands in a large area of eastern Newfoundland. Planning Zone 2, which is the geographic area covered by the 2022 Forestry Plan, extends from Long Harbour River, Northwest River, and Terra Nova National Park in the west to Come By Chance in the east and includes all the

Bonavista Peninsula, Burin Peninsula, and the islands in Placentia Bay. The proponent of the 2022 Forestry Plan is the Department of Fisheries, Forestry and Agriculture (the “FFA”).

[11] Forestry plans in Newfoundland and Labrador run on five-year cycles. CAC maintains that the 2017-2021 Five Year Operating Plan (the “2017 Forestry Plan”), which directly preceded the 2022 Forestry Plan, was the first time that significant clearcutting and forestry access road building were proposed for areas within the Town’s municipal boundaries and in the nearby Southwest River Valley.

**c) CAC’s Submissions on Community Opposition to Clearcutting**

[12] CAC submits that its members and supporters have consistently and vocally expressed their concerns about the potential impacts on the local economy and environment. These expressions of public concern have continued in relation to the 2022 Forestry Plan, which increases the amount of clearcutting permitted in the areas most important to CAC.

[13] CAC points to the evidentiary record before the Court that shows community opposition to the clearcutting, authorized by the 2017 Forestry Plan and the 2022 Forestry Plan, has been expressed in many different forms.

**d) The Statutory Process Leading to the Minister’s Decisions**

[14] The relevant legislative and regulatory provisions are found in Part X of the *EPA* and the *Environmental Assessment Regulations, 2003*, NLR 54/03 (the “*Regulations*”). Section 48 of the *EPA* provides that “[a] person shall not proceed with an undertaking unless that undertaking has been exempted or released under [the *EPA*].” The term “undertaking” is defined in section 2(mm).

[15] The 2022 Forestry Plan met the definition of “undertaking”. FFA, as the proponent, registered the undertaking under section 49(1) of the *EPA* and notified the Minister on August 12, 2021.

[16] In *Newfoundland and Labrador (Environment and Climate Change) v. Atlantic Salmon Federation (Canada)*, 2018 NLCA 53, this Court identified the statutory criteria that the Minister must follow when determining whether to release an undertaking or to require further environmental assessment (*Atlantic Salmon Federation*, at paras. 7-14; and Judge’s Decision, at para. 16).

[17] Following registration, the Minister is required to take certain steps, including consulting with and obtaining “the opinions of all other ministers of the Crown whose departments may have an interest in an undertaking that may be subject to an environmental assessment” (*EPA*, at s. 62) and making the undertaking and any related registered documents available for a 35-day public consultation period (*Regulations*, at s. 3(3)).

[18] In this case, the Minister set the 35-day public consultation period from August 12, 2021, to September 16, 2021. The Minister publicized the registration of the undertaking and invited comments from the public and other agencies. The Minister notified subscribers to the Environmental Assessment News Bulletin, which included environmental groups, media, government agencies, municipal organizations and other members of the public, and he gave general notice to the public through the social media platform formerly known as Twitter (now “X”).

[19] The Minister received five comments from members of the public. One came from the NL Forest Industry Association (the “NLFIA”) in support of the 2022 Forestry Plan. The other four comments voiced concerns about the plan. Three of these came from individuals, and one from the Town.

[20] Of the 23 provincial and federal government departments and agencies consulted by the Minister, 18 recommended that the 2022 Forestry Plan be released, and five provided comments without any recommendation (Judge’s Decision, at para. 25; and Appeal Book, Vol II, Tab 9, at p. 695).

[21] Section 51(1) of the *EPA* requires the Minister to determine whether (a) an environmental preview report is required; (b) an environmental impact statement is required; or (c) the undertaking may be released from any further environmental assessment.

[22] An environmental impact statement, pursuant to section 25(1) of the *Regulations*, is required if the Minister determines an undertaking will have significant negative environmental effects or if the Minister determines that there is “significant public concern”. The term “significant public concern” is not defined by the *EPA* or the *Regulations*. In assessing whether there is significant public concern about a project, section 25(3) of the *Regulations* provides that the Minister may consider whether “public acceptability of the undertaking is seriously questioned” and whether “government policy has been established to address public concerns”.

[23] The Minister's Release Decision took the form of a letter to the FFA on December 22, 2021. It released the 2022 Forestry Plan from further environmental assessment. In releasing the 2022 Forestry Plan, the Minister required that several conditions be met, some of which will be discussed further below.

[24] The Release Decision was based on a recommendation by Brenda Rowe, an Environmental Scientist with the Department of Environment and Climate Change, to the Minister in December 2021 (Appeal Book, Vol 2, Tab 9 (the "Rowe Memorandum")). The Rowe Memorandum is a briefing report which sheds light on the rationale underlying the Release Decision (*Vavilov*, at para. 137). CAC acknowledges that the Rowe Memorandum forms the basis of the Minister's reasons for the Release Decision, citing how Canadian appellate courts have treated briefing reports as reasons for decision in the context of judicial review (CAC Factum, at para. 22; *Rosianu v. Western Logistics Inc.*, 2021 FCA 241, at paras. 67-74; and *Ayangma v. Université de Moncton, Moncton Campus*, 2019 NBCA 14, at paras 14, 17).

[25] The Release Decision was publicly announced on January 5, 2022.

[26] On March 7, 2022, counsel for CAC and the Town appealed the Release Decision under section 107 of the *EPA*. Section 107 allows a person "who is aggrieved by a decision" made under the *EPA* to appeal that decision to the Minister, within 60 days of receipt of that decision, stating the reasons for the appeal. The Minister is to notify the appellant, in writing, of his decision within 30 days. The Minister may dismiss the appeal, allow the appeal or make another decision or order that may be made under the *EPA*.

[27] On this section 107 appeal, CAC and the Town submitted that the Release Decision was unlawful because the concerns expressed by CAC, the Town, and community supporters rose to the level of significant public concern. As a result, they submitted that the Minister was required to order an environmental impact statement for the 2022 Forestry Plan pursuant to section 25(1)(b) of the *Regulations*. As discussed below, the Minister rejected this section 107 appeal from CAC and the Town and provided detailed reasons in his Appeal Decision.

#### **e) A Synopsis of the Minister's Reasons**

[28] The Minister rejected the section 107 appeal with reasons. These detailed reasons for the Appeal Decision were set out in a 20-page letter from the Minister

dated March 31, 2022. The Minister's Decisions were informed by the substantive review of public concerns expressed and advice received from federal and provincial departments and agencies that the Rowe Memorandum provided to the Minister.

[29] The Minister's reasons indicate that the Minister found no significant public concern after considering "all written government and public comments submitted during the 35-day public consultation period" for the 2022 Forestry Plan. (Appeal Decision, at p. 63). The Minister stated he did not receive evidence of such public concern as CAC and the Town claimed (at p. 65). The Minister indicated that the public voices and the concerns raised during the operation of the 2017 Forestry Plan were heard, and FFA presented the 2022 Forestry Plan to address and mitigate most of the previous concerns (at p. 67).

[30] The Minister provided detailed responses to the concerns that the appeal raised. The Minister explained how he had addressed, through the conditions of release, concerns that the Town and others raised about viewsapes along the Trans-Canada Highway (the "TCH"), the impact on fish and wildlife habitats, water bodies and wetlands, the use of pesticides, harvesting within the Town's boundaries, and the impact on tourism.

[31] The Minister outlined the conditions of release which directed FFA to comply with several conditions. The conditions can be summarized as follows:

- Implement measures to preserve viewsapes along the TCH and lower the visibility of forestry activities to the motoring public;
- Comply with the regulatory oversight of the Department of Fisheries and Oceans on the potential effects on fish and fish habitat;
- Consult with Environment and Climate Change Canada about establishing plans to manage wildlife, revegetation, noise, and invasive species;
- Require permits from the Water Resources Management Division when working in or near water bodies or wetlands;
- Comply with pesticide control regulations; and

- Require permits from municipal authorities when harvesting within their boundaries.

The Minister also required FFA to develop and implement a Tourism Stakeholders Consultation Plan to report on consultations with tourism stakeholders. (Release Decision, at pp. 55-61; and Appeal Decision, at p. 81).

[32] The Minister noted that the concerns raised by the Town were repeated in submissions received from two individuals (Appeal Decision, at pp. 78-79).

[33] Finally, the Minister addressed the specific concerns raised by the third individual's submission (Appeal Decision, at pp. 79-80).

## ISSUE

[34] The central issue on this appeal is whether the Minister's Decisions were unreasonable.

## ANALYSIS

[35] The burden is on CAC, as the challenging party, to show that the Minister's Decisions are unreasonable (*Vavilov*, at para. 100).

[36] CAC submits that the Minister's Decisions were contrary to a proper interpretation of the *EPA* and premised on an unduly narrow interpretation of section 25(1)(b) of the *Regulations*, excluding evidence of public concern outside the section 3(3) 35-day public consultation period, and his failure to justify that interpretation.

[37] CAC raises the following arguments:

- (1) the Minister failed to reasonably account for public concern as a central focus of the environmental assessment process;
- (2) the Minister's Decisions are contrary to the plain language and scheme of the *EPA* and the *Regulations*;
- (3) the Minister's Decisions undermine the purpose of Part X of the *EPA*;

- (4) the Minister's Decisions have absurd consequences; and
- (5) the Minister's Decisions do not allow the Court to understand his reasoning on key points.

[38] If the Minister's Decisions meet the requirements of reasonableness, the reviewing court cannot substitute its own view of the result (*Vavilov*, at paras. 83, 85; and *Association of Allied Health Professionals*, at para. 13).

[39] Decision-makers like the Minister receive their powers by statute and must always comply with their governing legislation, including regulations. To assess the Minister's compliance with the *EPA* and the *Regulations*, the Court must ensure that the Minister's Decisions are justified based on a reasonable interpretation of the governing statutory scheme consistent with the text, context, and purpose (*Vavilov*, at paras. 108, 117-118, 120; *Paladin Security Group Ltd. v. Construction General Labourers, Rock & Tunnel Workers, Local 1208*, 2023 NLSC 105, at para. 54; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at para. 67; and *Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 21, at paras. 41, 63, 87-88).

[40] I now turn to each of CAC's arguments.

**(1) The Minister failed to reasonably account for public concern as a central focus of the environmental assessment process**

[41] CAC submits the Appeal Decision revealed the Minister's conclusion that he was not required to consider public concerns about the 2022 Forestry Plan expressed outside the 35-day public consultation period mandated by section 3(3) of the *Regulations*. In particular, the Minister wrote as follows:

I carefully considered all comments brought forward in the government and public correspondence that were submitted during the consultation period for the environmental assessment of the [2022 Forestry Plan], prior to making my decision to release the [2022 Forestry Plan] from further environmental assessment, subject to conditions.

I emphasize that in Newfoundland and Labrador, environmental assessment is a legislated process under the [EPA] and the *Regulations*. In accordance with the [EPA] and the *Regulations*, a person who wishes to submit comments on a registration document that is the subject of an environmental assessment, shall submit those

responses or comments to the minister, in writing, not more than 35 days after the announcement is made under subsection 3(2) of the *Regulations*.

[42] CAC submits that section 25(1)(b) does not refer to the consultation process established by section 3(3). It states:

25. (1) Where, the minister determines with respect to an undertaking that there

...

(b) is significant public concern,

the minister shall require an environmental impact statement.

[43] Section 3(3) states:

3.(3) A person who wishes to make responses to or comments on registration documentation made available under subsection (2) shall submit those responses or comments to the minister, in writing, not more than 35 days after the announcement is made under that subsection

[44] In *Atlantic Salmon Federation*, this Court held that the Minister in question had “actually determined that there was significant public concern” (underlining in original, at para. 358); and was thus obligated by section 25(1)(b) to order further environmental assessment. The present case is distinguishable because the Minister determined that there was no “significant public concern”. That determination was for the Minister to make.

[45] In my view, the Minister was justified in determining that there was no “significant public concern”, as per section 25(1)(b), because of the limited public concern expressed during the 35-day public consultation period. It was incumbent on members of the public to come forward during the stipulated consultation period to identify and express their concerns about the 2022 Forestry Plan.

[46] CAC has failed to demonstrate that the Minister ignored expressions of public concern. CAC points to expressions of public concern that pre-date registration of the 2022 Forestry Plan and are not directly relevant to the 2022 Forestry Plan. The Minister, however, did address this pre-registration commentary in the Appeal Decision. The Minister concluded that the public voices and concerns with the 2017

Forestry Plan were considered by FFA in the drafting of the 2022 Forestry Plan. The Minister stated:

In reviewing the five public submissions I received during the environmental assessment of the [2022 Forestry Plan], I reasonably concluded that the public voices and the concerns raised during the operation of the previous Crown 5-Year Operating Plan for Zone 2 (2017-2021) were heard and the proponent, FFA, presented a registration document for the [2022 Forestry Plan] that addressed and mitigated most of the previous concerns.

(Appeal Decision, at p. 67)

[47] The “significant public concern” must be with respect to the “undertaking” – not another undertaking, or general environmental impact concern. Otherwise, the *EPA* would not be workable. The interpretation that CAC is urging is not reasonable given the scheme of the *EPA*. When looking at the other information that CAC submits was ignored, none of it was in relation to the 2022 Forestry Plan but was asking for better consultation for the 2022 Forestry Plan – that is not a concern with the plan itself.

[48] CAC also points to an email in the record dated November 30, 2021, that Linda Davis sent to Premier Furey and several Ministers of Cabinet: (Appeal Book, Vol 1, Tab 8(b), at pp. 206-207). This email was after the close of the 35-day public consultation period but before the date of the Release Decision. Ms. Davis also submitted one of the section 3(3) *Regulations* public comments through Engage NL during the 35-day public consultation period (Appeal Book, Vol 3, Tab 16). Ms. Davis’s email and section 3(3) submissions are, however, substantially similar in content regarding opposition to the proposed clearcutting in the Southwest River Valley and Town area. The Minister was aware of the concerns expressed by Ms. Davis. The Minister replied to Ms. Davis, as he did for the other four submissions received, and set out the measures FFA and other ministerial departments of the province and Canada were taking to mitigate expressed public concerns (Appeal Book, Vol 3, Tabs 13, 15, 17, 19, 22).

[49] I would find that the Minister responded in a reasonable manner to the public concerns.

**(2) The Minister's Decisions are contrary to the plain language and scheme of the *EPA* and the *Regulations***

[50] CAC submits the Minister's Decisions are contrary to the plain language and scheme of the *EPA* and the *Regulations*, because the language suggests the Minister has the discretion to consider a wide range of information.

[51] CAC submits the Minister's Decisions restrict the information used to assess the level of public concern under section 25(1)(b) of the *Regulations* to written comments submitted during the 35-day public consultation period mandated by section 3(3). As a result, all other relevant information is excluded from the Minister's analysis by default. This interpretation they argue is contrary to the plain language of the *Regulations*.

[52] I would agree that neither the *EPA* nor the *Regulations* impose any restrictions on the scope of information the Minister may consider when assessing the level of public concern about the registered undertaking, in this case, the 2022 Forestry Plan. The broad language used in sections 25(1)(b) and 25(3)(a) – terms like “significant public concern” and “public acceptability” – provide discretion to the Minister to consider a wide range of information.

[53] There is nothing in the text of the *EPA* or the *Regulations* that indicates the section 3(3) public consultation period is the only way for the public to have their concerns considered in the environmental assessment process. As the Supreme Court of Canada wrote in *Vavilov*, “where a decision maker is given wide discretion, it would be unreasonable for it to fetter that discretion” (at para. 108). Arbitrarily restricting the Minister's significant public concern analysis to comments submitted in writing under section 3(3) unreasonably fetters the Minister's discretion to look beyond those comments.

[54] While it may not be reasonable for the Minister to only take submitted comments into consideration, here the record fails to demonstrate that there was anything else. For instance, it may be different if during the consultation period there was evidence of public demonstrations or other displays of public concern that the Minister ignored, but this is not the case here.

[55] CAC, in my view, overstates its position, at paragraph 57 of their Factum, when they say that “the Minister's interpretation of s 25(1)(b) effectively strips him of the authority to request information about public concerns that may have been

communicated to the proponent or other ministers, contrary to the broad discretion granted by the [*EPA*] and the *Regulations*". The Minister is not constrained to exclude all other evidence of public concern. In this case, the record establishes the Minister considered all that there was to consider, including a public comment from Peter Armitage that was received after the 35-day public consultation period (Appeal Book, Vol 3, Tabs 14-15).

[56] As CAC correctly submits, the record indicates that when the Minister requested comments from other departments and agencies regarding the 2022 Forestry Plan, he confined his request to "regulatory, scientific and technical advice within each of their mandates" (Appeal Decision, at p. 67). Notwithstanding the Minister's narrow casting of his request to the other ministries and agencies for feedback on the 2022 Forestry Plan, what they provided was quite broad, as evidenced by the Rowe Memorandum (at pp. 695-708) and the compendium of all feedback received from other government agencies and departments (see the "Government Agency/Department comments regarding Environmental Assessment Submission", Appeal Book, Vol 3, Tab 11, at pp. 0877-0984).

[57] Although I agree with CAC that the Minister has discretion to consider evidence of public concern other than the responses received during the 35-day public consultation period, there was no other evidence of public concern about the 2022 Forestry Plan for the Minister to consider.

[58] I reject the CAC's argument that the Minister's Decisions are contrary to the plain language and scheme of the *EPA* and the *Regulations*.

**(3) The Minister's Decisions undermine the purpose of Part X of the *EPA***

[59] There is no question that the Minister's interpretation of section 25(1)(b) must accord with the purpose of the governing statute.

[60] Provincial legislation and common law both emphasize the importance of interpreting provisions broadly to best accomplish the legislative objectives. Despite this, CAC submits the Minister's narrow interpretation undermines the purpose of Part X of the *EPA*, which governs environmental assessment (*Vavilov*, at para. 120; *Mason*, at para. 67; *Interpretation Act*, RSNL 1990, c. I-19, section 16; and *Archean Resources Ltd. v. Newfoundland*, 2002 NFCA 43, at para. 23, leave to appeal to SCC refused, 29390 (20 March 2003)).

[61] CAC observes this Court has also long and consistently endorsed a broad approach to interpreting environmental legislation and regulations, citing *Labrador Inuit Association v. Newfoundland (Minister of Environment and Labour)*, 1997 CanLII 14612 (NLCA), at para. 11; *Atlantic Salmon Federation*, at paras. 301-310; *Northern Harvest Smolt Ltd. v. Salmonid Association of Eastern Newfoundland*, 2021 NLCA 26, at para. 25; and *Salmonid Association of Eastern Newfoundland v. Her Majesty the Queen in Right of Newfoundland and Labrador*, 2020 NLSC 34, at para. 73.

[62] Part X of the *EPA* sets out the framework for environmental assessment. The purpose of Part X as set out in section 46 is to:

- (a) protect the environment and quality of life of the people of the province; and
- (b) facilitate the wise management of the resources of the province,

through the institution of environmental assessment procedures before and after the commencement of an undertaking that may be potentially damaging to the environment.

[63] CAC submits that attaining these objectives require meaningful consideration of a wide range of viewpoints to inform the Minister’s decision on any given project.

[64] As I have explained, the Minister did not exclude concerns, as CAC contends, simply because they were not submitted in writing during the 35-day public consultation period. Neither did the Minister’s interpretation of section 25(1)(b) of the *Regulations* undermine the objects of Part X of the *EPA* “by stifling the voices of affected communities”, as CAC alleges in paragraph 72 of their Factum.

[65] Interpreting the *EPA* in a broad and liberal manner, to give effect to the purpose of the legislation, the Minister was justified in considering the consultation scheme that the *EPA* mandates through both section 62 of the *EPA* and section 3(3) of the *Regulations*. The responses under section 3(3) of the *Regulations* and the ministerial and agency responses under section 62 were canvassed extensively in the Rowe Memorandum.

[66] Other information and concerns received outside the formal consultation process were referenced in the Rowe Memorandum. The Memorandum did not drill into all the details of the pre-registration concerns, but it still referenced concerns raised by the Town and other members of the public. While there is no barrier for

the Minister to consider other information outside the formal consultation process contemplated in the *EPA* and *Regulations*, the Minister “reasonably concluded” that the proponent of the 2022 Forestry Plan had fairly taken pre-registration public concerns into consideration in proposing the Plan. The Minister further concluded that the conditions of release would properly mitigate the expressions of public concern.

[67] The Minister was aware of concerns raised by the CAC predecessor group, and made the determination, based on the record, that the issues did not reach a level of “significant public concern”.

[68] The Minister’s Decisions did not undermine the purpose of Part X of the *EPA*.

#### **(4) The Minister’s Decisions have absurd consequences**

[69] I agree with CAC that there is a well-established presumption against interpreting statutory and regulatory provisions in a way that produces absurd results (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 27; *David Suzuki Foundation v. Canada-Newfoundland and Labrador Offshore Petroleum Board*, 2020 NLSC 94, at para. 100; and *Jackman v. Newfoundland and Labrador*, 2019 NLSC 55, at para. 22). However, I disagree with CAC’s argument that the Minister’s Decisions have absurd consequences.

[70] The Minister’s interpretation of section 25(1)(b) did not, as CAC claims, devalue democratic or public engagement for the purpose of environmental assessment. There is no evidentiary basis to conclude that the Minister excluded public concerns that he was aware of regarding the 2022 Forestry Plan, or concerns expressed to the FFA or provincial Ministers with whom the Minister is required to consult about the 2022 Forestry Plan. On the contrary, the record establishes robust consultation and consideration of public concerns.

#### **(5) The Minister’s Decisions do not allow the Court to understand his reasoning on key points**

[71] CAC argues the Minister’s Decisions do not allow the Court to understand the Minister’s reasoning on key points.

[72] CAC submits the Minister’s Decisions failed to consider the proper legal and factual context using rational and intelligible reasoning. CAC argues the Minister

has failed to meet the requisite standard of justification, and the Minister's Decisions must be quashed (*Vavilov*, at paras. 2, 86, 103, 120, 194-195; *Mason*, at paras. 8, 59-60, 65, 69; *Law Society of Newfoundland and Labrador v. Buckingham*, 2023 NLCA 17, at paras. 44, 46-47, leave to appeal to SCC refused, 40884 (4 April 2024); *Safe Food Matters Inc. v. Canada (Attorney General)*, 2022 FCA 19, at paras. 51-57; and *Alexion Pharmaceuticals Inc. v. Canada (Attorney General)*, 2021 FCA 157, at para. 20, leave to appeal to SCC refused, 39858 (24 March 2022)).

[73] The Rowe Memorandum, CAC submits, briefly mentions public concern, but only describes comments received under section 3(3) of the *Regulations* and provides no explanation as to why other information may have been excluded. The Rowe Memorandum describes a stakeholder consultation process conducted by FFA, but CAC submits it contains no information about the substance of any concerns communicated to FFA through that process and does not explain why the Minister failed to request that information despite his statutory authority to do so. Similarly, CAC notes the Rowe Memorandum contains comments from several provincial ministries but no information about any public concerns that may have been communicated to those ministries and no explanation as to why the Minister did not request that information.

[74] Despite the comprehensive submissions articulated by CAC's counsel, I cannot agree. The Minister's conclusion on the absence of "significant public concern" to the 2022 Forestry Plan rationally follows from the Minister's analysis.

[75] On reviewing anew the Minister's Decisions, I would find they bear the necessary hallmarks of reasonableness, as per the factors set out in *Vavilov* (at paras. 99-100, 102-103). That is, and as discussed below, i) they reveal a rational chain of analysis; ii) they demonstrate sound reasoning when read in conjunction with the record; iii) they do not exhibit any logical fallacies that would bring the Minister's Decisions into question; and iv) the conclusion rationally follows from the analysis.

(i) *The Minister's Decisions reveal a rational chain of analysis*

[76] As set out in section 25(1)(b) of the *Regulations*, prior to releasing an undertaking from environmental assessment, the Minister must first determine whether "significant public concern" exists. In making this determination, section 25(3) permits the Minister to consider whether (a) public acceptability of the undertaking is seriously questioned; and (b) government policy has been established to address public concerns.

[77] The Minister’s analysis followed a proper interpretation and application of the enabling statutory scheme and the criteria that this Court identified in *Atlantic Salmon Federation*.

[78] The Minister released the 2022 Forestry Plan because he determined that it would neither have significant negative environmental effects nor cause significant public concern. In releasing the 2022 Forestry Plan, the Minister screened the undertaking for further environmental assessment by releasing the 2022 Forestry Plan, subject to the conditions summarized at paragraph 31 of these reasons.

[79] The Minister determined that significant public concern about the 2022 Forestry Plan did not exist. The Minister’s determination was also informed by the fact that government policies were in place to address certain of the public concerns that were expressed.

[80] The Minister’s Decisions therefore reflect a rational chain of analysis, as does the Minister’s explanation of the process as reflected in the Appeal Decision reasons.

*(ii) The Minister’s Decisions demonstrate sound reasoning when read in conjunction with the record*

[81] The Release Decision was largely informed by the Rowe Memorandum. That memorandum noted the continuation of certain concerns that had been identified regarding the 2017 Forestry Plan (at p. 713).

[82] The record demonstrates that the Minister was alive to the concerns raised by the Town, that he did not determine the concerns to be significant, and that he was satisfied that these concerns would be addressed based on the conditions of release. In addition to the release conditions, the Rowe Memorandum referenced staff of the FFA meeting with the Town “to discuss land development and commercial and domestic cutting” leading to “an enhanced understanding of the forest management planning process and the plan”. It cited that the Tourism and Culture Branch of government recommended landscape design techniques to “minimize the negative effects of clear cuts on touring corridors, trails and outfitters” (at p. 713).

[83] The Rowe Memorandum also stated FFA’s intention to follow “mitigative measures” and extensively detailed “the best management practices” that FFA would adopt from “previous planning processes” and incorporate them into the 2022 Forestry Plan (at p. 716).

[84] Under section 25(3)(b) of the *Regulations*, in assessing the level of public concern about an undertaking, the Minister may consider whether government policy has been established to address public concerns.

[85] CAC's position is that the Minister did not account for the full range of public concerns that were reasonably available to him. This argument relies on an interpretation of the *Regulations* that would require the Minister to consider previous iterations of the 2022 Forestry Plan, and comments made in response to other forestry plans in deciding to release the 2022 Forestry Plan. This is not, in my view, an interpretation of the *Regulations* that is reasonably supported within the statutory framework.

[86] The public comments received from the Town and three individuals during the 35-day public consultation period, which the Minister addressed in detail in the Appeal Decision, captured the overall substance and extent of the public concerns that were expressed about the 2022 Forestry Plan.

[87] The record indicates that the Minister was aware of the broader factual context. The Minister knew that the 2022 Forestry Plan affected an area that spanned from the Bonavista Peninsula to the Burin Peninsula and included all the islands in Placentia Bay. The concern about the 2022 Forestry Plan came from a single community within this region and three individuals who either lived in the community (Ms. Davis and Jennifer Kaye) or a nearby community in Bonavista Bay (Mr. Armitage).

[88] The Minister knew of the expressions of concern about the previous plan(s) and required several conditions be met prior to release of the 2022 Forestry Plan. The Release Decision was informed by the fact that several government departments and agencies provided advice and recommendations to the Minister and others raised no issues with the 2022 Forestry Plan. The 2022 Forestry Plan's release was also supported by the NLFIA, representing 96 percent of the province's commercial forest resource industry (Appeal Book, Vol 3, Tab 20).

[89] Read in conjunction with the entire record, the Minister's Decisions were based on a fully informed view of both the specific issues raised by the public and the level of concern expressed. The Minister reasonably concluded that government policies had been established to address the public concerns raised about the 2022 Forestry Plan. The Minister was not required to review each individual instance of public expression that occurred; instead, he thoroughly and holistically outlined the

concerns raised through the public comment process and explained why he felt these concerns were sufficiently mitigated and addressed.

*(iii) The Minister's Decisions do not exhibit any logical fallacies that would bring them into question*

[90] While section 25 of the *Regulations* makes no specific reference to comments submitted pursuant to section 3(3), that is the only provision in the *Regulations* that contemplates a form or forum in which public comments would be made in response to a registered undertaking. As previously noted, it is open to the Minister to consider alternative forms of expressions of public concern outside the written comments submitted during the 35-day public consultation period. The Minister, however, cannot fairly be expected to consider all evidence of public concern expressed before the 2022 Forestry Plan was registered, as expressions of public concern about the 2022 Forestry Plan.

[91] Guided by the well-established modern approach to statutory interpretation, it was reasonable for the Minister in this case to rely on the written comments received during the 35-day public consultation period in making his determination under section 25(1)(b), since there was no other evidence of public concern expressed about the 2022 Forestry Plan.

[92] The record reveals that concerns expressed prior to the 2022 Forestry Plan were reviewed as part of the government policy engagement mechanism that was thoroughly canvassed in the Rowe Memorandum.

[93] The Minister acted within the framework of the enabling statutory scheme, and the Minister's Decisions do not exhibit any logical fallacies to bring them into question.

*(iv) The conclusion rationally follows from the analysis*

[94] Based on the foregoing, including the relatively limited information of public concern, which was thoroughly considered and addressed, it is evident that the Minister's Decisions were the result of a rational conclusion and a sound analysis, and met the reasonableness standard.

## **COSTS**

[95] In the event that the appeal was dismissed, CAC asked this Court to exercise its discretion to make no order as to costs given CAC raised issues of public interest. The Judge made no order as to costs in the court below, and the Respondent takes no position on costs.

[96] In these circumstances, I would exercise this Court's discretion to make no award of costs.

## **CONCLUSION**

[97] Having reviewed anew the Minister's Decisions, I would find that CAC has failed to show that the Minister's Decisions were unreasonable. The Minister interpreted section 25(1)(b) of the *Regulations* and considered all the information that was before him concerning the 2022 Forestry Plan, including the five comments received in response to the section 3(3) public consultation period and the advice and recommendations of government departments and agencies. The Minister's Decisions were based on a rational chain of analysis and justified in relation to the facts and law that constrain the Minister and met the test of reasonableness.

[98] I would therefore dismiss the appeal.

## **DISPOSITION**

[99] CAC's appeal is dismissed with no award of costs.

---

G.L.C. Noel J.A.

I concur: \_\_\_\_\_  
W.H. Goodridge J.A.

I concur: \_\_\_\_\_  
K.J. O'Brien J.A.