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The Notwithstanding Clause x 4 in Alberta: Now What?

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Legislation Commented On: *Back to School Act*, SA 2025, c B-0.5; *Protecting Alberta's Children Statutes Amendment Act, 2025,* SA 2025, c 24

As discussed previously on ABlawg, in the space of one month in late 2025 the Alberta government invoked the notwithstanding clause in section 33 of the *Charter* four times through two different statutes: the *Back to School Act*, SA 2025, c B-0.5 (*BTSA*) and the *Protecting Alberta's Children Statutes Amendment Act, 2025,* SA 2025, c 24 (*PACSAA*). The *BTSA* ended the Alberta teachers' strike and lockout, ordered the teachers back to work, imposed "collective agreements", and prohibited further strikes and lockouts with hefty penalties attached (see this post by Shaun Fluker et al). The government used section 33 to declare that the *BTSA* shall operate notwithstanding sections 2 and 7 to 15 of the *Charter* (section 3) and purported to oust the jurisdiction of courts to hear constitutional challenges related to the legislation (section 14). The *PACSAA* amended three Alberta statutes that target the rights of trans and gender diverse youth by restricting access to gender-affirming health care (*Health Professions Act*, RSA 2000, c H-7, ss 1.91 and 1.92), prohibiting use of gender-affirming names and pronouns at school without parental consent / notification (*Education Act*, SA 2012, c E-0.3, s 33.2; see also amendments that limit access to education on sex, sexuality and gender identity), and limiting participation in "women-only" sports (*Fairness and Safety in Sport Act*, SA 2024, c F-2.5) (see this previous post). The amendments in the *PACSAA* again declare that these three statutes shall operate notwithstanding sections 2 and 7 to 15 of the *Charter*. Pursuant to section 33(3) of the *Charter*, declarations such as those in the *BTSA* and *PACSSA* cease to have effect five years after they come into force. The *BTSA* and the *PACSAA* also declare that they apply notwithstanding the *Alberta Bill of Rights,* SA 2000, c A-14 and *Alberta Human Rights Act*, RSA 2000, c A-25.5, but the issues arising from those declarations will not be explored here.

I recently spoke to the Alberta Branch of the Canadian Bar Association, Labour and Employment Law section about these laws. My focus was on how the groups whose rights and freedoms are impacted by this legislation, and similar legislation in other provinces, have pushed back on these attempts by governments to pre-emptively use the notwithstanding clause to block *Charter* remedies. This post will discuss the constitutional challenges to the *BTSA* and *PACSAA* that are

underway, placing these legal strategies in the context of other litigation in Canada that seeks to limit the scope of section 33 of the *Charter* and to advocate for ongoing powers of judicial review. Some of these arguments can be seen as jurisdictional – for example, affirming the ability of courts to grant declarations that the laws in question violate particular rights and freedoms even if they cannot strike down those laws. Other arguments propose more substantive limits, calling on courts to recognize that section 33 does not apply in specific circumstances.

These arguments raise new issues that go beyond the formal requirements for the invocation of section 33 detailed in *Ford v Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 SCR 712 (*Ford*). In *Ford*, the Supreme Court held that "the essential requirement of form laid down by s. 33 is that there must be an express declaration that an Act or a provision of an Act shall operate notwithstanding a provision included in s. 2 or ss. 7 to 15 of the Canadian *Charter"* (at 741). In addition, section 33 can only be used prospectively and not retrospectively (at 744-5).

Ford did not address all the types of limits to section 33 canvassed in this post. As the Saskatchewan Court of Appeal recently held, *Ford* dealt with the requirements to invoke section 33 and did not rule on courts' ongoing jurisdiction to review legislation once section 33 has taken effect (see *Saskatchewan (Minister of Education) v UR Pride Centre for Sexuality and Gender Diversity*, 2025 SKCA 74 (CanLII) at paras 46-48 (*UR Pride* SKCA)). While one view is thus that *Ford* leaves open arguments as to jurisdiction and substantive limits on section 33, the Quebec Court of Appeal interpreted *Ford* as more constraining, as discussed below (see *Organisation mondiale sikhe du Canada c. Procureur général du Québec*, 2024 QCCA 254 (CanLII)).

The Alberta Teachers Association Challenge to the *BTSA*

The Alberta Teachers Association (ATA) filed its challenge to the *BTSA* on November 6, 2025, seeking amongst other relief an order for an interim and interlocutory injunction. The ATA argues that the privative clause in section 14 of the *BTSA* is of no force or effect due to its inconsistency with section 96 of the *Constitution Act, 1867*, which protects the inherent jurisdiction of superior courts. Assuming this argument is successful and the Alberta Court of King's Bench accepts that it can hear the challenge, the ATA seeks a declaration that the notwithstanding clause was not properly invoked as required by *Ford.* It argues that the *BTSA* effectively applies retrospectively by imposing an "agreement" on the teachers that 89.5% of them had already rejected. This is a somewhat different type of retrospectivity than that at issue in *Ford*, which dealt with the application of the notwithstanding clause itself rather than its retrospective effects, so this argument is forging new and interesting ground.

The ATA also makes submissions that are more substantive in the limits they ask the court to place on section 33. For example, the ATA contends that the *BTSA* violates the requirements for invoking section 33 of the *Charter* because it takes a "shotgun approach" in applying to all the

rights and freedoms that legislatures are empowered to override (at paras 97-98), suggesting that the *BTSA* creates uncertainty about the scope of its enforcement. As an example, the ATA points out that it is "unclear whether Alberta intends that persons prosecuted under the Act have no legal rights such as, inter alia, the right to counsel and the presumption of innocence" given that section 33 was invoked in relation to sections 10 and 11 of the *Charter,* which guarantee these rights (at para 98(b)). The Supreme Court did rule in *Ford* that it is permissible for legislatures to invoke section 33 in relation to all the rights and freedoms that the section permits to be overridden in a single statute, noting that a legislature "may not be in a position to judge with any degree of certainty what provisions of the *Canadian Charter of Rights and Freedoms* might be successfully invoked against various aspects of the Act in question" (at 741). This argument thus seeks to make new ground with respect to the scope of section 33 as well.

Another substantive argument by the ATA is that the *BTSA* "adversely and unequally affects women, who make up approximately 75% of Alberta Teachers" (at para 98(d)). Because section 28 of the *Charter* guarantees all *Charter* rights and freedoms equally to male and female persons, and applies "notwithstanding anything in this *Charter*", the argument here is that section 28 trumps section 33 in protecting the rights of female teachers to gender equality in the context of section 2(b) (freedom of expression) and section 2(d) (freedom of association). A similar argument is being made in the Quebec case referenced above, which will be heard by the Supreme Court of Canada this month and is discussed below (see *Organisation mondiale sikhe du Canada,* now called *English Montreal School Board, et al v Attorney General of Quebec, et al,* 2025 CanLII 2818 (SCC) (*EMSB*)).

In the alternative, the ATA seeks a declaration that the *BTSA* violates *Charter* sections 2(b) and 2(d) for unjustifiably infringing the teachers' rights to strike and collectively bargain. This argument raises the question of whether courts retain jurisdiction to grant declarations of *Charter* violations in the face of section 33, even if they cannot strike the legislation down. This question is currently before the Supreme Court as well. As indicated above and discussed in more detail below, courts of appeal came to opposite conclusions in Quebec (see *Organisation mondiale sikhe du Canada)* and Saskatchewan (see *UR Pride* SKCA, leave to appeal and cross-appeal granted, 6 November 2025).

The ATA ultimately seeks an order to set aside the imposed labour contract and for the parties to resume bargaining, as well as damages. The success of some of the ATA's arguments will be influenced by the Supreme Court's decisions in *EMSB* and *UR Pride*, but a lower court could certainly rule on the relevant issues in the meantime.

Egale, Skipping Stone et al Challenge to the *PACSAA*

As noted in a previous post, Egale, Skipping Stone, and several youth commenced a constitutional challenge to section 1.92 of the *Health Professions Act,* which restricts access to gender-affirming hormone therapy for transgender youth. They successfully obtained an interim injunction from Justice Allison Kuntz in June, 2025, which enjoined the Lieutenant Governor in Council from proclaiming this section in force until the applicants' claim was finally adjudicated (see *Egale Canada v Alberta*, 2025 ABKB 394 (CanLII) (*Egale*)). Justice Kuntz found there was an arguable case that this section unjustifiably violates section 7 (the right to security of the person) and section 15 (equality rights) of the *Charter.* The Alberta government appealed this decision, and the appeal is scheduled to be heard in April 2026. In the meantime, the government passed the *PACSAA* and invoked the notwithstanding clause in relation to the relevant sections of the *Health Professions Act* as well as the *Education Act* and *Fairness and Safety in Sport Act*.

While the invocation of the notwithstanding clause overrides the interim injunction, it is noteworthy that the government issued Ministerial Order No. 31/2025 prior to *PACSSA* taking effect. This Order creates exceptions to section 1.92 such that trans youth can be prescribed hormone therapy, including puberty suppression and hormone replacement therapy, for treatment of gender dysphoria or gender incongruence, if:

- they commenced this treatment on or before proclamation of the restrictions or commenced the therapy in another province before moving to Alberta (clauses 1, 2).
- they are 16 or 17 and have parental, physician, and psychologist approval (clauses 3, 5).
- they are "diagnosed with a disorder of sex development" (i.e. are intersex; see clause 6).

The government had argued in *Egale* that the possibility of a Ministerial Order – which was within the Minister's discretion but had not been decided upon at the time – would mitigate some of the effects of section 1.92. However, Justice Kuntz ruled that she had to consider the legislative scheme as it existed at the time of the hearing (at para 26). Egale argued that even if such an Order was made, section 1.92 would be unconstitutional, which brings us to their ongoing challenge to the legislation now that section 33 of the *Charter* has been invoked.

In December 2025, Egale and Skipping Stone filed a motion to amend their claim to have sections 1.91 and 1.92 of the *Health Professions Act* declared unconstitutional for treading on the federal criminal law power. They argue that the amendments contain the features of criminal law – prohibitions, penalties, and a criminal law purpose that is aimed at banning practices the province considers "undesirable" (see here at paras 9.5, 71.1, 71.2). The significance of this argument is that the notwithstanding clause is only applicable to certain *Charter* rights and freedoms and does not empower governments to pass laws that are outside their jurisdiction under the *Constitution Act, 1867.* This scenario is reminiscent of the Ralph Klein era in Alberta, when the government passed a law purporting to limit marriage to opposite sex couples and invoked

section 33 of the *Charter* to protect this legislation. Although this law was never challenged before it expired in 2005, an argument could have been made that the province had overstepped its jurisdictional powers given that the federal government has exclusive powers over capacity to marry in section 91(26) of the *Constitution Act, 1867* (for further discussion of this often overlooked use of section 33, see here).

There is Supreme Court of Canada authority that supports the federalism argument of Egale and Skipping Stone. In *R v Morgentaler*, 1993 CanLII 74 (SCC), [1993] 3 SCR 463, the Court unanimously held that the government of Nova Scotia's attempt to ban abortion clinics in that province were an unconstitutional intrusion into the federal government's criminal law powers. Although the province argued that the law was aimed at restricting privatization of health care and maintaining quality of care, the Court found that the law had a moral purpose, evidenced in part by the legislative history and debates that showed opposition to free-standing abortion clinics (at 500-505).

The success of a similar argument in Alberta will depend on the court's characterization and classification of the relevant sections of the *Health Professions Act.* Throughout the legislative debates and litigation the government has maintained that it is seeking to protect trans and gender diverse youth, but many opposition MLAs and groups representing such youth have questioned that claim. Whether this purported purpose of the Act can be backed up by evidence, or the government acted colourably with a more political purpose in mind, remains to be seen, but the important role of courts in considering the constitutionality of legislation even after section 33 has been invoked is apparent here.

In the alternative, and similar to the ATA, Egale and Skipping Stone seek a declaration that the amendments to the *Health Professions Act* violate the *Charter* rights of gender diverse youth, arguing that the courts retain jurisdiction to grant such a declaration after the notwithstanding clause has been invoked (para 9.6). This argument – which would also be available in relation to the *Education Act* and *Fairness and Safety in Sport Act* – takes us to the two cases that are currently before the Supreme Court of Canada.

UR Pride et al Challenge to Saskatchewan's Name and Pronoun Policy/Law

I will begin with the constitutional challenge in *UR Pride,* as it bears many similarities to the Egale/Skipping Stone case in Alberta. Previous posts have detailed the history of this litigation here and here (in the interests of disclosure, I have been involved in this litigation as a member of the Women's Legal Education and Action Fund (LEAF)'s intervention case committee).

Saskatchewan introduced a policy requiring parental consent for students' and teachers' use of gender-affirming names and pronouns in schools in August 2023. This policy was challenged by

UR Pride and several youth, and they successfully obtained an injunction against the government based on the section 7 and 15 *Charter* rights of trans and gender diverse youth (see *UR Pride Centre for Sexuality and Gender Diversity v Saskatchewan (Education)*, 2023 SKKB 204 (CanLII)). Saskatchewan responded by passing the *Education (Parents' Bill of Rights) Amendment Act*, 2023, SS 2023, c 46, which enacted the relevant rules as legislation and declared that the Act applied notwithstanding sections 2, 7, and 15 of the *Charter*. UR Pride et al went back to court to seek an amendment to their pleadings, adding an argument that the legislation also violated the right to be free from cruel and unusual treatment under section 12 of the *Charter* (which had not been made subject to the notwithstanding clause). The claimants also argued that the court retained jurisdiction to grant a declaration that the Act unjustifiably violates sections 2, 7, and 15 of the *Charter* despite the notwithstanding clause having been invoked against those sections.

Justice Michael Megaw – the same justice who granted the injunction – allowed UR Pride et al to amend their pleadings and found that the court did have the jurisdiction to grant a declaration on the Act's compliance with the relevant rights and freedoms (see *UR Pride Centre for Sexuality and Gender Diversity v Government of Saskatchewan,* 2024 SKKB 23 (CanLII)). This decision was upheld by a four-person majority of the Saskatchewan Court of Appeal in *UR Pride* SKCA. Neither court ruled on whether a declaration should actually be ordered, deciding only the jurisdictional question.

Writing for the majority of the SKCA, Chief Justice Robert Leurer (Justices Georgina Jackson, Lian Schwann, and Jerome Tholl concurring) interpreted *Ford* to have left open the question of judicial review powers under section 33 and found that the Supreme Court had not decided this issue in other cases. They then undertook a purposive textual approach in finding that section 33 does not oust the jurisdiction of superior courts to issue declarations that legislation infringes the *Charter*. I will only address some of the SKCA's reasons for decision in this lengthy judgment.

Perhaps most crucially, the majority found that a section 33 declaration does not change the content of the rights and freedoms that are made subject to it. They rejected the argument of some commentators that use of section 33 "effectively substitutes the legislature's interpretation of a *Charter* right — and what constitutes a reasonable limit to it — for any possible meaning that a court might ascribe" (see para 73). Nor does the invocation of section 33 mean that the relevant *Charter* rights and freedoms "disappear completely" as the government of Saskatchewan effectively argued (at para 92). In the words of the SKCA majority, "The *Charter* is not written in disappearing ink that comes and goes every five years according to whether Parliament or a legislature has invoked s. 33" (at para 85). Rather, the notwithstanding clause suspends the operation of the relevant rights and freedoms for the period it is in effect (at para 91).
The ongoing role of the courts in interpreting rights and freedoms after section 33 has been invoked was also seen to be supported by broader constitutional principles related to democracy and constitutional dialogue. As the SKCA majority stated:

> … a proper expression of the purpose of s. 33 must not only recognize that it preserves an element of parliamentary sovereignty but that it does so in a way that encourages both *continual and repeated* democratic accountability. It also does so in a way that contemplates dialogue between the legislature, which may exercise the power to override certain guaranteed *Charter* rights and freedoms, and the courts, which are given the responsibility for interpreting (assigning meaning to) those guaranteed rights and freedoms… (at para 110, emphasis in original)

Thus while section 33 gives the legislature power to declare that legislation will operate notwithstanding certain *Charter* rights and freedoms for up to five years, courts retain jurisdiction to hear constitutional arguments and grant declarations during this time. In the words of the SKCA, "the idea of a legislative *last* word should [not] be equated with a legislature having the *only* word on the issue of whether legislation limits *Charter* rights" (at para 109, emphasis in original). Judicial declarations can provide important context for an informed exercise of democratic rights by voters (at paras 123-124) and allow governments to reconsider their use of section 33 (at para 119), which is consistent with *Ford*'s comment that legislatures may not fully appreciate the effects of their actions on *Charter* rights and freedoms. Although not addressed by the SKCA, LEAF also argued in its factum that for non-voters such as trans and gender diverse youth, judicial declarations are critical in affirming their rights and freedoms, contributing to their dignity, visibility, and access to justice (at paras 38-44).

The SKCA's acceptance that section 33 allows for a continuing role for courts in recognizing violations of rights and freedoms differs from the approach of the Quebec Court of Appeal (QCCA), as the SKCA majority noted at paras 117-125 of their decision. I turn to the QCCA's approach next.

Challenges to Quebec's *Act respecting the laicity of the State*

Quebec's *Act respecting the laicity of the State,* CQLR c L-0.3 (*Laicity Act*) restricts certain public-sector professionals (e.g. some lawyers and teachers) from wearing religious symbols (including clothing, jewellery, accessories, and headwear) when performing their functions (section 6). The *Laicity Act* also requires persons receiving public services to remove their face coverings in some circumstances (section 8). Aimed at enforcing the secularity of Quebec, the *Laicity Act* invokes section 33 of the *Charter* and declares that the Act applies notwithstanding the rights and freedoms in sections 2 and 7 to 15 of the *Charter* (*Laicity Act*, section 34).
Several constitutional challenges were mounted against the Act. In *Hak c Procureur général du Québec*, 2021 QCCS 1466 (CanLII), Justice Marc-André Blanchard accepted arguments that sections 6 and 8 of the *Laicity Act* (amongst other provisions) unjustifiably violate the democratic rights guaranteed by section 3 of the *Charter* and the minority language educational rights

guaranteed by section 23 of the *Charter*. Neither section 3 nor 23 is constitutionally subject to the notwithstanding clause in section 33 of the *Charter,* so these were key holdings in the challenge to the *Laicity Act.* However, Blanchard J dismissed arguments that were aimed at limiting the effects of section 33 with respect to other rights and freedoms. Focusing on the latter for the purposes of this post, at the QCCA, the Court held that the formal requirements set out in *Ford* were met in this case, and that the *Laicity Act* was therefore immune from judicial review with respect to possible violations of sections 2 and 7 to 15 of the *Charter* (*Organisation mondiale sikhe du Canada* at para 8, per Chief Justice Manon Savard and Justices Yves-Marie Morissette and Marie-France Bich). In contrast to the SKCA in *UR Pride*, the QCCA found that:

> … it would be contradictory to allow the legislature to use s. 33 to escape the grasp of one or the other of ss. 2 or 7 to 15 of the *Canadian Charter* … while subjecting the statute to judicial review of its compliance with these very provisions, as if it had not been exempted from their application. In a way, this would impose a kind of penalty for the use of s. 33: the legislature would be free to invoke this section and declare that such and such a statute has effect notwithstanding ss. 2 or 7 to 15, but, if it did so, it would have to explain itself before the courts in the event of a legal challenge. (at para 349)

According to the QCCA, once section 33 has been invoked, it is up to citizens to determine "the correctness of the legislature's political and legal choice" and to "make their point of view known through the tools of parliamentary democracy (e.g., elections, lobbying of deputies, petitions submitted to the legislature)" and constitutional tools "such as the exercise of freedom of expression or freedom of peaceful assembly" (at para 351).

The QCCA also dismissed the argument that because the *Laicity Act* disproportionately impacts Muslim women – a factual finding of Justice Blanchard, at least in the education context – it violates women's right to equal religious freedom and expression contrary to section 28 of the *Charter*. This post cannot do justice to the nuances of this argument and its support in constitutional text and history (for an overview see Kerri Froc, "Are You Serious? Litigating Section 28 to Defeat the Notwithstanding Clause" (2025) 114 SCLR (2d) 267; available here). In short, the QCCA's reasoning was that section 28 is an interpretive rather than substantive provision; it "conditions the interpretation — and hence the application" of other rights and freedoms as if it were incorporated into each (at para 451). As such, "insofar as s. 33 expressly allows legislatures to override ss. 2 and 7 to 15, it also allows them to override the effect of s. 28" (at para 505).

Section 28 has been largely ignored in case law since 1982 but may have been given new life by the Supreme Court in *Dickson v Vuntut Gwitchin First Nation*, 2024 SCC 10 (CanLII). In *Dickson*, the majority held that the shield for collective Indigenous rights in section 25 of the *Charter* may be subject to limits based on the sex equality guarantee in section 28 and its counterpart in section

35(4) of the *Constitution Act 1982*, which guarantees Aboriginal rights equally to men and women "notwithstanding any other provision of this Act." While not addressing section 33 of the *Charter*, *Dickson* suggests that section 28 may have more than interpretive force (for comments on this aspect of the case see here and here). This will be a major issue in *EMSB* at the Supreme Court and is the focus of several intervenor factums (see e.g. the factums of LEAF and the National Association of Women and the Law, available here). Recall that section 28 is raised in the ATA factum as one basis for challenging the *BTSA* in Alberta. It has also been argued that section 28 could be interpreted to guarantee gender (and not just sex) equality, although that argument is not currently before the courts in the *Egale* or *UR Pride* litigation. The Supreme Court's ruling on the scope of section 28 in guaranteeing sex equality in *EMSB* will be key to the likely success of these arguments.

The *EMSB* appeal is scheduled to be heard by the Supreme Court from March 23 to 27, and the case has more intervenors than ever before permitted by the Court. Of particular note is the intervention of the Attorney General of Canada (AGC), which is arguing that the pre-emptive use of section 33 should be subject to some limits. This is a particularly compelling submission coming from a government that has the power to use section 33 itself, although it has not done so to date. The AGC agrees with the view expressed in *UR Pride* SKCA that courts have jurisdiction to grant declarations of violations of *Charter* rights and freedoms despite the invocation of section 33 (at para 4). It also proposes the following limits on section 33:

- section 33 cannot apply in situations where the protections in sections 2 and 7 to 15 of the *Charter* overlap with other constitutional guarantees to which section 33 does not apply. (at para 4)
- section 33 applies temporarily, so it cannot be used in a manner "that would lead to an irreparable impairment of the rights and freedoms guaranteed by the Constitution." In other words, "any right or freedom referred to in an express declaration made under s. 33 must retain its integrity so that it can be fully exercised when the declaration expires—just as a lightbulb should shine as brightly as it did before being temporarily turned off." (at para 3)

One example of "irreparable impairment" given by the AGC includes "repeated declarations" under section 33 that "could amount, at a certain point, to abolishing the very right or freedom in question" (at para 40(i)). It is interesting to ponder this example in Alberta, where we have seen repeated use of section 33 in a short period of time rather than in relation to the same rights and freedoms over time. If the government's pre-emptive use of section 33 continues across a broad range of rights and freedoms over time, we may well ask whether *Charter* rights and freedoms have been effectively abolished in Alberta.

A second example is where the rights or freedoms in question are impaired "in such a way that they cannot be fully and concretely restored once the declaration under s. 33 expires" (at para 40

(ii)). One of the AGC's specific illustrations here is that "freedom of association, guaranteed in s. 2(d) of the *Charter*, could disappear if all trade unions were declared illegal and prohibited from engaging in any activity for a prolonged period" (*ibid*). This example goes beyond the *Charter*-impairing provisions of the *BTSA* and gives a sense of the magnitude of impact the AGC puts forward to engage this limit on section 33.

Finally, the third example is where a statute's invocation of section 33 is of an "exorbitant nature, result[ing] in an immediate and irreparable negation of the minimum conditions for maintaining the free and democratic society enshrined in our Constitution and the constitutional culture based on respect for rights and freedoms it guarantees" (at para 40(iii)). The concrete examples the AGC gives here are arbitrary executions and slavery.

Although not raised by the AGC, the time-sensitive nature of gender-affirming medical care for trans youth means that its restriction by *PACSAA* could also be characterized as an example of the "irreparable impairment" of *Charter* rights. This may be another basis for challenging the use of section 33 in the *Egale* litigation if the approach of the AGC is adopted by the Supreme Court.

Conclusion

On February 16 the Supreme Court Registrar wrote to the parties in *EMSB* with the following request:

> At the Court's request, the parties (not including intervenors) are to provide additional written submissions by no later than 5:00 PM EST on March 2, 2026. These submissions should address whether the Act respecting the laicity of the State infringes freedom of conscience, religion, and expression (set out in sections 2(a), 2(b) of the Canadian Charter of Rights and Freedoms and section 3 of the Charter of Human Rights and Freedoms of Quebec) and the right to equality (set out in section 15(1) of the Canadian Charter of Rights and Freedoms and in section 10 of the Charter of Human Rights and Freedoms of Quebec) in an unjustified manner in a free and democratic society.

Some commentators are speculating that this request signals the Court's willingness to entertain a declaration that the *Laicity Act* infringes those *Charter* rights and freedoms in respect of which the notwithstanding clause was invoked. This would be a positive outcome on the jurisdictional issue discussed in this post, affirming the critical role of courts in providing information necessary for members of the public to participate in our constitutional democracy. At the same time, a declaration does not remedy the rights violations, unless it spurs the government to change course. It is therefore hoped that the Court will also consider substantive limits on section 33 like those presented by section 28 of the *Charter* and the AGC's submissions, as such limits would allow for more impactful *Charter* remedies. It is noteworthy that *UR Pride* focuses on courts' declaratory

powers, so the *EMSB* case is currently the only opportunity for the Court to rule on such substantive limits.

Overall, the cases canvassed here illustrate the breadth of circumstances in which provincial governments have pre-emptively invoked the notwithstanding clause, as well as the breadth of arguments that public interest groups, rights-bearing individuals, and even the federal government have mounted in an effort to mitigate the effects of section 33 of the *Charter*. These arguments, in my view, present numerous compelling reasons why the Court should adopt the "lightbulbs shining as brightly" rather than "disappearing ink" approach to *Charter* rights and freedoms in the face of the notwithstanding clause.

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