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Saving Canada from juristocracy

How the *Charter's*  notwithstanding clause
protects democracy

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Justice Centre
for Constitutional Freedoms

We Defend
Freedom
in Canada

Abstract

The adoption of the *Canadian Charter of Rights and Freedoms* in 1982 substantially expanded judicial power to invalidate laws enacted by elected governments – a shift sometimes described as “juristocracy,” rule by the courts. Yet *Charter* section 33, the notwithstanding clause, protects democracy by allowing Parliament and provincial legislatures to shield legislation from being struck down by courts. After heavy early use by Quebec and decades of disuse elsewhere, several provinces have invoked section 33 more frequently since 2018. The political costs of invoking section 33 have been overstated, with some governments re-elected after using the clause repeatedly. This report argues that section 33 remains Canada’s distinctive institutional check on the power of unelected judges to interfere with the decisions of democratically elected representatives.

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Updates to this report

This is Version 1.0 of this report, which may be updated periodically.

Authorship

The primary author of this report is Nigel Hannaford, a veteran journalist and public policy analyst.

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Executive summary

The adoption of the *Canadian Charter of Rights and Freedoms* in 1982 significantly expanded the role of Canadian courts in deciding questions that had traditionally been resolved through the political process. Since 1982, courts have played a much larger role in resolving disputes over rights, freedoms, and public policy, including questions involving identity, labour, education, and society. Canadian judges now have substantial power to overturn decisions made by elected governments – a move towards “juristocracy” or rule by judges.

However, Canada and its *Charter* are unusually well-equipped to counter the problem of juristocracy, i.e., the problem of unelected judges interfering with the decisions of democratically elected representatives.

Section 33 of the *Charter* – the notwithstanding clause – gives elected legislatures clear, temporary, and renewable power to override court decisions. Declarations last five years and may be renewed again and again. Courts do retain power to interpret and rule upon the matters before them, but legislatures are not permanently subordinate to those interpretations.

This balance was built deliberately into the *Charter*. Section 33 emerged from the constitutional negotiations of 1981 as a compromise between judicial enforcement of entrenched rights and the preservation of legislative authority. Without section 33, which some Premiers insisted on as a condition for their support, the *Charter* would not have been added to Canada’s Constitution in 1982. Its five-year limit also ensures that governments seeking to opt out of judicial interpretations must periodically answer for that decision politically.

For decades, Canada’s political and media culture treated the use of section 33 as an attack on rights and freedoms, as though section 33 was contrary to the *Charter* rather than being an integral and legitimate part of the *Charter*. Outside Quebec, academics, politicians, and taxpayer-funded media have characterized section 33 as a “nuclear option”¹ and have discouraged its use.²

The use of section 33 can be broken down into three distinct historical phases.

First came heavy use, almost entirely by Quebec’s Parti Québécois government to protest the *Charter*’s very existence, plus one early use in Saskatchewan. The Quebec government attached an omnibus notwithstanding declaration to virtually every provincial statute

¹ <https://www.theglobeandmail.com/opinion/article-notwithstanding-clause-nuclear-option-ottawa-proportionate-response/>

² After initial heavy use by Quebec, a lengthy period of non-use followed between 2001 and 2018, compared by academic and parliamentary sources to “hibernation.”

between 1982 and 1985.³ In 1986, Saskatchewan’s Progressive Conservative government pre-emptively invoked section 33 to end a public-sector strike. In 1988, after the Supreme Court struck down Quebec’s French-only commercial signage rules in *Ford v. Quebec*, the province again responded with Bill 178 and a five-year override.⁴ The Quebec government’s response to *Ford* remains the textbook, early reactive use of section 33 against Supreme Court rulings.

The second phase has been called section 33’s “hibernation”⁵ by academic and parliamentary commentators. From 1989 to 2016, only Alberta made consequential use of the notwithstanding clause, including using it pre-emptively to shield amendments to its *Marriage Amendment Act* that included defining marriage as heterosexual only.

The third phase began with a revival of political interest in section 33. In 2017, Saskatchewan announced that it would invoke the clause following a trial judgment concerning funding for non-Catholic students attending Catholic schools. The resulting legislation passed in 2018, although it was never proclaimed into force after the government succeeded on appeal.

Since 2018, the governments of Alberta, Saskatchewan, Ontario and Quebec have all used section 33.

- In 2019, Quebec enacted Bill 21, its secularism law banning public employees from wearing religious symbols. It pre-emptively built the notwithstanding clause into the statute. The declaration was renewed in 2024.
- Ontario used the clause in 2021 after a court struck down its limits on third-party political advertising under section 2(b) freedom of expression. The legislation was later challenged under section 3 – the democratic right to vote, which section 33 cannot override – and the Supreme Court struck down the limits on that basis in 2025.
- Saskatchewan used the clause in 2023 with the Parents’ Bill of Rights, requiring parental consent before schools used preferred names or pronouns for students under 16.
- Alberta used the clause twice in 2025. After a court injunction blocked restrictions on medical interventions for gender-dysphoric minors, the government used Bill 9 and section 33 to restore the limits. In late 2025, Alberta invoked the clause in the Back to School Act to end a province-wide teachers’ strike.

³ The practice lapsed under the subsequent Liberal government.

⁴ When the declaration expired, Quebec amended the law rather than renew the override.

⁵ For example: Salvino, Caitlin. [The Notwithstanding Clause in the Canadian Charter of Rights and Freedoms](#). Toronto: Irwin Law / University of Toronto Press, 2025.



Section 33 has thus been used pre-emptively and reactively, on matters as broad as labour disputes, language and secularism, education funding, parental authority, and the regulation of medical interventions for minors.

Recent experience also challenges the assumption that invoking section 33 necessarily carries an intolerable political cost. Governments that invoked the clause in Quebec, Ontario, and Saskatchewan were subsequently returned to office. Most strikingly, Saskatchewan's government invoked section 33 in the 2023 *Parents' Bill of Rights* and was returned one year later with 52.26 percent of the popular vote. These results do not establish that voters endorsed any particular use of section 33, but they demonstrate that use of the clause is not necessarily politically fatal.

We argue that the transparent and politically accountable use of section 33 is Canada's distinctive and beneficial institutional check on juristocracy. Section 33 was deliberately included in the *Charter* by its framers, who intended to protect the supremacy of Parliament and provincial legislatures from judicial tyranny. A mature constitutional culture should regard careful invocation of section 33 as evidence of democratic health, not failure.

Juristocracy in Canada

When courts strike down as unconstitutional legislation affecting rights, identity, labour, education, or social policy, Canadians may complain of “judicial overreach,” “judicial activism,” or “juristocracy.”

Juristocracy is defined as the transfer of significant governing power from democratic institutions – legislatures and executives – to the judiciary, so that judges and courts become dominant decision-makers on major political, social, and policy questions.⁶ Canada is unusual among liberal democracies insofar as it possesses a constitutional tool designed precisely to limit that transfer of power.

Section 33 of the *Canadian Charter of Rights and Freedoms* – the “notwithstanding clause” – permits Parliament or a provincial legislature to declare that a law shall operate notwithstanding section 2 of the *Charter* (fundamental freedoms) or any of sections 7 through 15 (legal and equality rights). The clause may be invoked proactively, before a court has ruled on a law’s constitutionality, or in response to a court decision finding that a law violates one of those rights.

33.(1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this *Charter*.

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this *Charter* referred to in the declaration.

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

Section 33(1) – (4) of the Canadian Charter of Rights and Freedoms

⁶ Ran Hirschl. *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*. Harvard University Press, 2004



Section 33's effect is that legislatures are not permanently subordinate to court rulings that strike down federal and provincial laws. Through section 33, legislatures retain a clear power to opt out of court judgments for five years at a time, and those five-year terms can be renewed indefinitely.

The *Charter's* framers understood that constitutional rights, once judicialized, would generate reasonable disagreement about contested social questions. After all, section 33 was the negotiated price of the *Charter* itself; without it, several provinces would not have agreed to patriation. Section 33 is the mechanism that keeps Canada's system of judicial review from sliding into juristocracy.

Section 33 remains a legitimate, constitutionally defined instrument so that elected legislatures – not unelected judges – have the last word on the laws by which Canadians live. The political cost of using it has often been exaggerated. Most premiers who invoked it to shield legislation went on to win their next election.

Phase one: Early uses of section 33 (1982–1988)

Quebec's omnibus protest, 1982–1985

Between 1982 and 1985, the Parti Québécois government responded to the patriation of the Constitution (the *Constitution Act, 1982*), which Quebec had not signed, with a sweeping political protest.⁷ Through *An Act respecting the Constitution Act, 1982*, the government inserted a “notwithstanding” declaration into virtually every existing provincial statute and into all new legislation passed during the period. The effect was to shield the entire body of Quebec law from *Charter* challenges for five years – a symbolic rejection of the new constitutional order rather than a response to any specific court ruling.

When the original five-year periods began to expire, the newly elected Liberal government of Quebec, from 1985 onwards, chose not to renew the omnibus overrides.⁸ The new government also ended the practice of attaching a section 33 declaration to every new statute. Consequently, the broad, across-the-board exemptions from judicial scrutiny that had been put in place between 1982 and 1985 simply lapsed.

⁷ Brosseau, Laurence, and Marc-André Roy. “[The Notwithstanding Clause of the Charter](#).” Background Paper no. 2018-17-E. Library of Parliament, 7 May 2018.

⁸ *An Act respecting the Constitution Act, 1982* (Quebec). <https://archive.org/details/31761115499642>

The Saskatchewan Government Employees' Union case, 1986

In January 1986, the Saskatchewan Progressive Conservatives passed the *SGEU Dispute Settlement Act* to end a strike by the Saskatchewan Government Employees' Union and force public employees back to work.⁹

Because the legal status of the right to strike under *Charter* section 2(d) (freedom of association) was uncertain at the time, the government pre-emptively invoked section 33. This shielded the back-to-work law from *Charter* challenges based on freedom of association.

With section 33 in place and the strike settled, the union returned to work. Later, courts decided section 2(d) did not protect the right to strike anyway,¹⁰ and the government's pre-emptive use of section 33 proved superfluous. It was the earliest use of the notwithstanding clause outside Quebec that actually took effect, and was framed as necessary to resolve an essential public-service labour dispute.

Nine months after the passage of the *SGEU Dispute Settlement Act*, Premier Grant Devine's Progressive Conservatives won the 1986 Saskatchewan general election, albeit with a reduced majority.¹¹ This demonstrates that, even if many voters oppose using *Charter* section 33, doing so need not be political suicide.

Ford v. Quebec (Attorney General), 1988

In *Ford v. Quebec (Attorney General)* (1988), the Supreme Court struck down French-only commercial signage rules in the *Charter of the French Language* (Bill 101) as an unjustified violation of section 2(b) freedom of expression.

Four days after the SCC had rendered its ruling, Quebec responded on December 19, 1988, with Bill 178. The new law maintained tight restrictions on outdoor commercial signs and pre-emptively invoked section 33 (as well as the equivalent override under Quebec's own *Charter of Human Rights and Freedoms*) to shield the new law from courts for five years.

After the five-year period expired, Quebec did not renew the override. Instead, in 1993, it passed Bill 86, which allowed other languages on signs provided French remained

⁹ *SGEU Dispute Settlement Act*, SS 1986, c 111. <https://www.canlii.org/en/sk/laws/astat/ss-1986-c-111/latest/ss-1986-c-111.html>

¹⁰ In 1987, the Supreme Court of Canada decided three labour cases that came to be known as the Labour Trilogy, in which it held that section 2(d) did not protect a right to strike or collective bargaining.

¹¹ Elections Saskatchewan. "Twenty-First Provincial General Election (October 20, 1986)." Statement of Votes. <https://www.elections.sk.ca/reports-data/election-results/>



“markedly predominant,” bringing the regime closer to what the Supreme Court had indicated would be acceptable.

Phase two: Hibernation (1989–2017)

Between 1989 and 2017, outside Quebec’s routine renewals, there was only one significant new use of the clause: Alberta’s 2000 *Marriage Amendment Act*. Academic and parliamentary sources often describe the later part of this stretch as section 33’s “hibernation.”

Alberta’s *Marriage Amendment Act*, 2000

In the late 1990s and early 2000s, court decisions across Canada began using *Charter* section 15 (equality rights) to redefine marriage away from being the union of one man and one woman.

In March 2000, Alberta pre-emptively invoked section 33 in the *Marriage Amendment Act* to lock in a heterosexual-only definition of marriage. The Supreme Court later ruled that the capacity to marry was a matter of federal jurisdiction, rendering the provincial definition of no force.¹² The Alberta government’s action reflected majority public sentiment at the time.¹³ In 2001, Premier Ralph Klein won a landslide third majority, taking 74 of 83 seats in the Alberta legislature.¹⁴

Phase three: Governments increasingly reach for section 33 (2017 onward)

After three decades of relative disuse outside Quebec, provincial governments began invoking section 33 more frequently starting in 2017.

Funding non-Catholic students in Catholic schools, 2017–2018

Saskatchewan had long provided per-student public funding to Catholic separate schools just as it did to public schools. This included funding for non-Catholic students who

¹² The five-year declaration expired in 2005 and was not renewed.

¹³ Gallup polls suggest about [53% of Canadians opposed same-sex marriage](#). Same-sex marriage later became lawful nationwide under the federal *Civil Marriage Act* in 2005. Alberta later amended its legislation in 2014 to remove the heterosexual-only language.

¹⁴ Dunfield, Allison. “Ralph’s rule continues.” *The Globe and Mail*, 13 March 2001. <https://www.theglobeandmail.com/incoming/ralphs-rule-continues/article25701201/>.

attended Catholic schools. In practice, some Catholic schools – especially in smaller communities where local public schools had closed – enrolled a majority of non-Catholic students. The public school board of the Good Spirit School Division challenged this practice, arguing that public money was improperly subsidising a religious school system for students who did not belong to that faith.

In April 2017, the Saskatchewan Court of Queen’s Bench ruled that funding non-Catholic students in Catholic schools violated the state’s duty of religious neutrality under section 2(a) and equality rights under section 15(1) of the *Charter*. The Court found that the violation was not justified under section 1 and declared that the relevant funding provisions were of no force or effect.¹⁵

Saskatchewan Party Premier Brad Wall’s government immediately announced that it would invoke section 33 to protect the existing funding regime and the right of non-Catholic students to attend Catholic schools with public support. Legislation invoking section 33 was passed in 2018 but was never proclaimed into force.

In 2020, the Saskatchewan Court of Appeal unanimously overturned the trial decision, finding fundamental errors in the trial judge’s decision.¹⁶ The Supreme Court of Canada refused to hear a further appeal in 2021.¹⁷ The Wall government’s planned use of section 33 thus became unnecessary.

Government supporters saw the threatened override as a legitimate democratic response to a flawed judicial reading of rights; critics called it an overreach. Premier Wall retired in 2017, but his Saskatchewan Party went on to win the next election with 48 of 61 seats.¹⁸

Quebec’s *An Act respecting the laicity of the State*, 2019–present

In 2019, Quebec passed *Bill 21, An Act respecting the laicity of the State*,¹⁹ banning certain public employees (teachers, police officers, Crown prosecutors, and others) from wearing religious symbols at work.²⁰

¹⁵ *Good Spirit School Division No. 204 v. Christ the Teacher Roman Catholic Separate School Division No. 212*, 2017 SKQB 109.

¹⁶ [2020 SKCA 34](#).

¹⁷ Supreme Court of Canada, leave to appeal denied, 2021. <https://decisions.scc-csc.ca/scc-csc/scc-l-csc-a/en/item/18706/index.do>

¹⁸ The Saskatchewan party [won with 60.7%](#) of the vote.

¹⁹ *An Act respecting the laicity of the State*, SQ 2019, c 12. <https://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-21-42-1.html>.

²⁰ The ban applies to those considered to exercise the authority of the state.



The Quebec government built a pre-emptive section 33 declaration into the bill itself, shielding it from challenges based on freedom of religion and equality rights. Quebec renewed that declaration in May 2024, and the law remains in force today.

Several groups appealed to the Supreme Court of Canada. In March 2026, the Court held a four-day hearing on the matter. The case raises important questions:

1. Does Bill 21 itself violate *Charter* rights (the “substance” of the law)?
2. What power, if any, do courts have after section 33 has been invoked? Specifically, can judges issue a formal declaration that a law violates the *Charter* even though they cannot strike it down?
3. Are there any judicially enforceable limits on how governments may use the notwithstanding clause?²¹

A ruling is expected in late 2026.

Opposition to both the substance of Bill 21 and its use of section 33 has been strong and sustained. Civil-liberties organizations, Muslim women, other religious minorities, the federal government, and many English-speaking Quebecers regard the law as discriminatory. Nevertheless, polling has consistently shown majority support for Bill 21 inside Quebec.²²

Despite ongoing controversy, Premier François Legault’s Coalition Avenir Québec won an enhanced majority in the 2022 general election.²³

Third-party advertising limits in Ontario, 2021

In June 2021, the Ontario government passed the *Protecting Elections and Defending Democracy Act* (Bill 307),²⁴ which set spending limits on third-party political advertising in the year before a provincial election. The year before, a court had struck down similar limits as an unjustifiable limit on the section 2(b) freedom of expression. This time, however, the Ontario government re-enacted essentially the same rules and pre-emptively invoked section 33. The purpose was to restrict how much unions, advocacy groups, and other third parties could spend on issue advertising in the 12 months before a fixed-date election. This limited the ability of large unions and advocacy groups – which had consistently opposed Conservative governments – to run sustained pre-election

²¹ The Court is examining both the law’s compatibility with the *Charter* and the outer limits of section 33 itself.

²² See, for example, research from the Institute for Research on Public Policy:

<https://centre.irpp.org/research-studies/bill-21-and-the-notwithstanding-clause/>

²³ Quebec re-elects François Legault with landslide majority.” *The Globe and Mail*, 3 October 2022.

<https://www.theglobeandmail.com/canada/article-quebec-election-results-2022/>.

²⁴ *Protecting Elections and Defending Democracy Act*, 2021, SO 2021, c 31.

<https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-307>

advertising campaigns. The government framed the law as preventing U.S.-style, big-money influence.

Section 33 successfully shielded the law from court challenges asserting that the law violated freedom of expression, protected by section 2(b) of the *Charter*. However, challengers then argued that spending limits violated *Charter* section 3 – the right to vote – because a meaningful right to vote includes the right to an informed vote, which in turn requires access to information from third parties. And since the notwithstanding clause does not apply to *Charter* section 3, the government could not use it to shield the law from being struck down by the courts.

The law was in force through the June 2022 provincial election, in which Doug Ford's Progressive Conservatives won a second majority government.

In 2025, the Supreme Court ruled 5-4 that the spending limits unjustifiably violated the *Charter* section 3 right to an informed vote and declared them of no force or effect.²⁵ In short: section 33 did its intended job of shielding the legislation from section 2(b) freedom-of-expression challenges, but section 33 did not shield the legislation from section 3 democratic rights challenges.

Ontario's *Keeping Students in Class Act*, 2022

In early November 2022, amid an imminent strike of 55,000 education support workers represented by the Canadian Union of Public Employees (CUPE), the Ontario government passed the *Keeping Students in Class Act* (Bill 28).²⁶ The Act imposed a four-year contract on the workers, banned strikes, and set heavy fines for non-compliance (up to \$4,000 per day for individuals and \$500,000 per day for the union).

The Ontario government pre-emptively included a section 33 declaration in the bill, shielding it from court challenges asserting the violation of *Charter* section 2(d), freedom of association, which courts have interpreted as giving rights to unions.

However, the Ontario government reversed course in the face of a CUPE-led walkout of teachers, and widespread labour solidarity actions that closed many schools. The government withdrew Bill 28 less than two weeks after it became law and returned to bargaining. Because the legislation was repealed so quickly, it was not challenged in court.

²⁵ *Ontario (Attorney General) v. Working Families Coalition (Canada) Inc.*, 2025 SCC 5. <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20896/index.do>.

²⁶ *Keeping Students in Class Act*, 2022, SO 2022, c 19. <https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-28>.

Although use of the notwithstanding clause is often portrayed as politically dangerous, Premier Doug Ford later secured a third majority in a February 2025 snap election – despite having invoked section 33 twice before.²⁷

Saskatchewan's *Parents' Bill of Rights*, 2023

In August 2023, Premier Scott Moe's Saskatchewan Party government introduced a policy requiring parental consent before schools could use an opposite-sex first name or pronouns for any student under 16. The University of Regina Pride Centre (UR Pride) and others sought an injunction prohibiting the government from enforcing the law.²⁸

In September 2023, the Court of King's Bench granted the injunction, ruling that parental involvement and consent risked causing irreparable harm to gender-diverse youth.

The Saskatchewan government responded by turning its policy into legislation. In October 2023, it passed *The Education (Parents' Bill of Rights) Amendment Act* (Bill 137),²⁹ requiring parental consent when students under 16 wanted to use opposite-sex names and pronouns. It pre-emptively invoked section 33 of the *Charter* (together with a parallel override of the *Saskatchewan Human Rights Code*) so that courts could not block the law.

Supporters framed the law as protecting parental rights and ensuring that parents remain central to decisions about their children's identity at school. Critics, including LGBTQ organizations, some teachers, the provincial Human Rights Commission, and opposition parties, argued that the law forced the "outing" of vulnerable students and shut down legitimate rights claims. Federal ministers also criticized the move.

There was no climb-down by the Saskatchewan government. The law took effect and remains in force. It has become a clear, modern example of a provincial government using section 33 to limit judicial interference with social policy.

The case remains active. It is now before the Supreme Court on the same question raised in the Quebec Bill 21 litigation: whether courts may still issue a declaration that a law violates the *Charter* after section 33 has been invoked, even though they cannot strike the law down.

²⁷ Gray, Jeff and Laura Stone. "Doug Ford's Progressive Conservatives win third majority government." *The Globe and Mail*, 27 February 2025. <https://www.theglobeandmail.com/canada/article-doug-fords-progressive-conservatives-projected-to-form-third-majority/>

²⁸ UR Pride Centre for Sexuality and Gender Diversity. <https://www.urpride.ca/>.

²⁹ Government of Saskatchewan. "Parents' Bill of Rights passed and enshrined in legislation." 20 October 2023. <https://www.saskatchewan.ca/government/news-and-media/2023/october/20/parents-bill-of-rights-passed-and-enshrined-in-legislation>.

After using the notwithstanding clause in 2023, Premier Moe’s Saskatchewan Party went on to win re-election in 2024, with 52.3 percent of the popular vote.³⁰

Alberta’s restrictions on medical interventions for minors, 2024–2025

In October 2024, the Alberta government passed Bill 26, the *Health Statutes Amendment Act*.³¹ The Act banned gender-reassignment surgery for anyone under 18 and prohibited physicians from prescribing puberty blockers or cross-sex hormones to those under 16 (with limited exceptions for 16- and 17-year-olds).

In June 2025, at the request of Egale Canada, the Skipping Stone Foundation,³² and five “gender-diverse youth” (supported by their parents), the Court of King’s Bench issued an interim injunction suspending the ban.³³ Justice Allison Kuntz ruled that Bill 26 risked irreparable harm to gender-diverse-identifying youth. The interim injunction would remain in force for several years while the main (substantive) action would move ahead, eventually resulting in a substantive ruling. The effect of the injunction was that the restricted medical treatments remained available.

The Alberta government responded with Bill 9, the *Protecting Alberta’s Children Statutes Amendment Act*, passed on December 11, 2025.³⁴ By invoking section 33 of the *Charter*, Bill 9 shielded Bill 26 (and also Bill 27 on pronouns in schools and Bill 29 on women’s sports) from *Charter* challenges. Once Bill 9 was in force, the court’s interim injunction ceased to have effect, and the restrictions on medical interventions on gender-diverse-identifying minors were restored. Premier Danielle Smith stated, “We are not going to defer to unelected judges who do not have democratic accountability on their side.”³⁵

This was a reactive use of the notwithstanding clause: the government turned to section 33 only after a court had blocked its initial legislation.

The Alberta Teachers’ Association accused the government of “attempting to erase certain kids’ identities,”³⁶ and of using section 33 to block legal scrutiny. Supporters, however, such as John Hilton O’Brien of Parents for Choice in Education, favoured the three

³⁰ Elections Saskatchewan. 2024 general election results. <https://results.elections.sk.ca/>.

³¹ *Health Statutes Amendment Act*, 2024, SA 2024, c 16.

https://docs.assembly.ab.ca/LADDAR_files/docs/bills/bill/legislature_31/session_1/20230530_bill-026.pdf

³² Skipping Stone Foundation. <https://www.skippingstone.ca/>

³³ *Egale Canada v. Alberta*, 2025 ABKB 394.

³⁴ Government of Alberta. “Protecting youth, supporting parents and safeguarding female sport.” <https://www.alberta.ca/protecting-youth-supporting-parents-and-safeguarding-female-sport>.

³⁵ “Danielle Smith on using notwithstanding clause for transgender laws.” *CBC News*, November 2025. <https://www.cbc.ca/news/canada/edmonton/danielle-smith-charter-alberta-transgender-9.6985749>.

³⁶ Alberta Teachers’ Association. “ATA responds to passing of Bill 9.” <https://teachers.ab.ca/news/ata-responds-passing-bill-9>.



underlying laws as recognizing parents' agency and right to information about decisions affecting their own children.³⁷

Alberta's *Back to School Act*, 2025

In late October 2025, the Alberta government ended a province-wide teachers' strike that had closed schools to approximately 730,000 students for three weeks. The *Back to School Act* (Bill 2) ordered striking teachers back to work, imposed a multi-year collective agreement upon teachers, and banned further strikes until 2028.

The government pre-emptively included a section 33 declaration in Bill 2 to shield it from *Charter* challenges based on section 2(d) freedom of association. Canadian courts have interpreted that freedom to include a right to strike; without the override, a court could have blocked the back-to-work law on that ground.

The Alberta Teachers' Association applied for an interim injunction to suspend Bill 2 while its main constitutional challenge against Bill 2 proceeded. The court denied the application, and the law took effect as intended. A fuller constitutional hearing remains pending.

Public opinion was divided-to-negative on this particular use of section 33. Teachers and the Alberta Teachers' Association strongly opposed the override;³⁸ labour allies and some parents criticized it as an attack on workers' rights. It did not, however, produce the same rapid, province-wide mobilization that forced Ontario's 2022 repeal of the *Keeping Students in Class Act*.

There was no climb-down. Teachers returned to classrooms under the legislated terms.

The next Alberta provincial election, when public attitudes to Premier Smith's uses of section 33 may be tested, is scheduled for 2027.

Recommendations

Section 33 is Canada's direct constitutional check on juristocracy. It gives elected legislatures the power to opt out of court rulings on sections 2 and 7 to 15 for five years at a time, ensuring that courts do not have the permanent last word. The framers of the *Charter*

³⁷ "Alberta to invoke notwithstanding clause to shield 3 transgender bills from court challenges." CBC News, 18 November 2025. <https://www.cbc.ca/news/canada/edmonton/alberta-government-notwithstanding-clause-bills-9.6983786>.

³⁸ Striking Alberta teachers forced back to work by fast-tracked legislation, notwithstanding clause." CBC News, 27–28 October 2025. <https://www.cbc.ca/news/canada/edmonton/alberta-teachers-back-to-work-bill-9.6955558>.

understood that judges sometimes get it wrong, and designed section 33 to protect the expressed democratic will of the people from judicial interference.

Experience has shown clearly that there need not be a high political cost to invoking section 33; governments using this clause have frequently gone on to win elections. The public has repeatedly demonstrated that it can distinguish rights and freedoms from particular judicial interpretations of them.

Political actors should, therefore, treat careful, transparent use of the notwithstanding clause as a legitimate, constitutionally grounded mechanism, not as a dangerous “last resort.”

Likewise, media and academics should be measured in their reporting and analyses of section 33: it is a limited, constitutional measure subject to electoral judgement, not the “nuclear option” so often described.

A mature constitutional culture would regard the responsible invocation of section 33 as evidence of democratic health, not failure. Elected representatives answering to voters, not courts, must decide the public-policy questions that affect Canadians most.



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