

# The "Notwithstanding Clause"

Section 33 of the *Canadian Charter of Rights and Freedoms* is known as the "notwithstanding clause." It is also called the "override clause."

The clause lets governments pass laws that violate (go against) certain *Charter* rights (ie. equality rights, legal rights, and fundamental rights in section 2 or sections 7 to 15).



As it is part of the *Charter*, it is part of the *Canadian Constitution*, which is our most powerful law.



Including this clause was key to getting the *Charter* supported by the provinces when it was introduced in 1982.

The federal government has never used the notwithstanding clause. Provincial governments have rarely used it.

But there has been a recent, troubling trend of provinces using the clause to pass, or threaten to pass, regressive laws. Below are just some of the recent uses of section 33.

If a government uses the notwithstanding clause to pass legislation, it has to renew its use of the clause after 5 years.

Quebec was the only province that didn't sign on to the *Charter*. They passed legislation in 1982 that used the notwithstanding clause in every new law. They stopped doing that in 1985.

LEAF is currently involved in a Saskatchewan case involving section 33. We are arguing that, even when the notwithstanding clause has been used in a law, a court can still declare that the law violates *Charter* rights. Courts can't use that ruling to strike down the law but it remains meaningful for the public to have a court's opinion.

2019

Quebec used the clause to pass Bill 21, a law preventing certain public servants from wearing religious items at work.

2022

Ontario used the clause to introduce a law forcing education workers back to work, but withdrew the Bill after major public protest.

2023

Saskatchewan used the clause to pass a law requiring parental consent for students under 16 years old to be called by their proper pronouns or chosen name at school.