

# Quebec and Section 33



Why the  
Notwithstanding Clause  
Must Not Stand

Michael B. Davie

# Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand

**Patrick James**



## Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand:

**The Notwithstanding Clause and the Canadian Charter** Peter L. Biro, 2024-04-02 Section 33 what is commonly referred to as the notwithstanding clause NWC was written into the Canadian Charter of Rights and Freedoms to allow Parliament and the provinces to provisionally override certain Charter rights The Notwithstanding Clause and the Canadian Charter examines the NWC from all angles and perspectives considering who should have the last word on matters of rights and justice the legislatures or the unelected judiciary and what balance liberal democracy requires In the case of Quebec the use of the clause has been justified as necessary to preserve the province's culture and promote its identity as a nation Yet Quebec's preemptive and sweeping invocation of the clause also challenges the scope of judicial review and citizens' recourse to it and it tests the assumption that a dialogue between the judiciary and the legislature is always preferable in instances in which the legislative branch decides to suspend the operation of certain Charter rights and freedoms By virtue of its contested purposes interpretations operation and applications the NWC represents and to an extent defines both the character and the very real vulnerabilities of liberal constitutionalism in Canada The significance effects and legitimacy of the NWC have been vigorously debated within scholarship and among politicians and activists since the patriation of the Canadian Constitution in 1982 In *The Notwithstanding Clause and the Canadian Charter* leading scholars jurists and policy experts elucidate and prescribe reforms to the application of this consequential clause about which so much is written and around which there is relatively little consensus

*The Challenges of a Secular Quebec* Lucia Ferretti, François Rocher, 2023-09-15 In 2019 the Quebec National Assembly passed Bill 21 It prohibits among other things certain state employees in positions of authority including teachers prison guards police officers and justices of the peace from wearing religious symbols when providing public services Many political commentators denounced the move as running counter to Canadian multiculturalism and human rights Why did the government adopt this form of state secularism And why did it garner public support *The Challenges of a Secular Quebec* provides illuminating answers to these questions and explores why many Quebecers consider the law legitimate Contributors analyze the statute from different angles to provide a nuanced respectful discussion of its intentions and principles Given the province's singular history in North America the merits of the initiative to separate church and state must be considered within the Quebec context *The Challenges of a Secular Quebec* calls for a legal interpretation of Bill 21 that is sensitive to this difference

Constitutional Politics in Canada after the Charter Patrick James, 2011-01-01 The Charter of Rights and Freedoms was introduced in 1982 Since then Canada has experienced more than twenty five years of constitutional politics and countless debates about whether the Canadian federation is integrating or disintegrating There has however been no systematic attempt to identify general theories about Canada's constitutional evolution Patrick James corrects this oversight by using systemism a concept drawn from the philosophy of science to identify and assess five theories that fall into the liberal or communitarian paradigms These theories

are examined in the context of major issues such as the role of the courts or the status of Aboriginal peoples and debates among advocates and critics of each theory are used to work toward a greater understanding of constitutional wrangling in Canada. By adding clarity to familiar debates, this succinct assessment of major writings on constitutional politics sharpens our vision of the past and the future of the Canadian federation.

### **Judicial Review and Electoral Law in a Global**

**Perspective** Cristina Fasone, Edmondo Mostacci, Graziella Romeo, 2024-03-21 This book fills a gap in constitutional law by examining the global trend towards the substantive constitutional adjudication of electoral legislation. It explores the premises on which this judicial scrutiny is grounded, seeks to explain the trend, and examines its consequences for representative democracy. The book offers a comparative analysis of the issue, investigating how the exchange of models and arguments among judges has catalysed the progressive departure from a traditionally deferential approach to electoral norms, an approach that still persists in a few jurisdictions. To accomplish this, the book delves into the democratic foundations of electoral systems and their evolution. It also explores the methodological choices that constitutional judges face when dealing with electoral legislation. This groundwork sets the stage for an in-depth review of case law in more than fifteen legal systems spanning North and South America, Africa, Asia, Oceania, and Europe. The objective is to identify the underlying concept of democracy that courts aim to promote. The authors critically discuss the varying ideas of democracy evident in each jurisdiction, including the use of constitutional borrowing, and they analyse the effects of judgments on the relationship between courts, representative institutions, and voters. Given its global scope, the combination of theoretical and practical approaches, and the comprehensive comparative assessment, it provides this work of interest to academics in the fields of law, political science, and philosophy. It is also relevant for policymakers and judges in constitutional democracies across continents.

**Rights and Parliamentary Systems in Canada and Beyond** Emmett Macfarlane, 2025-08-26 Rights and Parliamentary Systems in Canada and Beyond brings together political scientists and legal scholars to explore rights and their limitations along with the governmental and legislative processes affecting them within Canada's parliamentary system. It also examines how these elements shape broader institutional relationships under the Canadian Charter of Rights and Freedoms and in comparative perspective. This interdisciplinary volume offers valuable in-depth analyses of timely issues, cases, and controversies involving rights and institutional dynamics. The book employs an array of methods, including legal analysis, qualitative case studies, content analysis, legal theory, research interviews, and policy analysis. With a forward-looking perspective, Rights and Parliamentary Systems in Canada and Beyond investigates how rights-based processes influence specific policies and offers new insights into the framing of rights, including administrative law and Aboriginal treaty rights during the COVID-19 pandemic. It also explores how aspects of parliamentary democracy affect governments, legislators, and the public. The book ultimately reveals how the institutional relationships at stake operate to protect or fail to protect rights in relation to government policy objectives.

**The Oxford Handbook of the Canadian Constitution** Peter Crawford

Oliver, Patrick Macklem, Nathalie Des Rosiers, 2017 The Oxford Handbook of the Canadian Constitution provides an ideal first stop for Canadians and non Canadians seeking a clear concise and authoritative account of Canadian constitutional law The Handbook is divided into six parts Constitutional History Institutions and Constitutional Change Aboriginal Peoples and the Canadian Constitution Federalism Rights and Freedoms and Constitutional Theory Readers of this Handbook will discover some of the distinctive features of the Canadian constitution for example the importance of Indigenous peoples and legal systems the long standing presence of a French speaking population French civil law and Quebec the British constitutional heritage the choice of federalism as well as the newer features most notably the Canadian Charter of Rights and Freedoms Section Thirty Five regarding Aboriginal rights and treaties and the procedures for constitutional amendment The Handbook provides a remarkable resource for comparativists at a time when the Canadian constitution is a frequent topic of constitutional commentary The Handbook offers a vital account of constitutional challenges and opportunities at the time of the 150th anniversary of Confederation

*Contested Words* Ian Cram, 2016-05-13 In modern liberal democracies rights based judicial intervention in the policy choices of elected bodies has always been controversial For some such judicial intervention has trivialized and impoverished democratic politics For others judges have contributed to a dynamic and healthy dialogue between the different spheres of the constitution removed from pressures imposed on elected representatives to respond to popular sentiment This book provides a critical evaluation of ongoing debates surrounding the judicial role in protecting fundamental human rights focusing in particular on legislative executive abridgment of a core freedom in western society namely liberty of expression A range of types of expression are considered including expression related to electoral processes political expression in general and sexually explicit forms of expression

**Constitutional Dialogue** Geoffrey Sigalet, Grégoire Webber, Rosalind Dixon, 2019-05-02 Identifies how and why dialogue can describe and evaluate institutional interactions over constitutional questions concerning democracy and rights

**DIVERSIDAD, DERECHOS FUNDAMENTALES Y FEDERALISMO. Un diálogo entre Canadá y España.** Josep Maria Castella Andreu, 2010-05-06

**Rights in Divided Societies** Colin Harvey, Alex Schwartz, 2012-07-20 This collection examines the role and value of rights in divided and post conflict societies approaching the subject from a comparative and theoretical perspective Societies emerging from violent conflict often opt for a bill of rights as part of a wider package of constitutional reform Where conflict is fuelled by longstanding ethno national divisions these divisions are often addressed through group differentiated rights Recent constitutional settlements have highlighted the difficulties in drafting a bill of rights in divided post conflict societies where the aim of promoting unity is frequently in tension with the need to accommodate difference In such cases a bill of rights might be a rallying point around which both minorities and the majority can articulate a common vision for a shared society Conversely a bill of rights might provide merely another venue in which to play out familiar conflicts further dividing an already divided society The central questions that animate the collection are 1 Can constitutional

rights provide a basis for unity and a common human rights culture in divided societies If so how 2 To what extent should divided societies opt for a universalistic package of rights protections or should the rights be tailored to the specific circumstances of a divided society providing for special group sensitive protections for minorities 3 Is a divided society more or less likely to adopt a bill of rights 4 How does the judiciary figure in the management or resolution of ethno national conflict 5 What are the general theoretical and philosophical issues at stake in a rights based approach to the management or resolution of ethno national divisions or other conflicts

**Leading for Equity and Social Justice** Andréanne Gélinas-Proulx, Carolyn M. Shields, 2022-04-27 Educational institutions and in particular educational leaders play critical roles in identifying and rectifying the many inequities that oppress marginalize and exclude individual students educational actors and some minoritized groups in Canadian education Leading for Equity and Social Justice provides a deep look at some of these inequities and injustices and offers transformative leadership as one way for leaders to stimulate support and foster equitable and socially just practices in educational institutions This collection emphasizes the systemic nature of inequality and supports the necessity of systemic change to target not only individuals but also structures policies and far reaching practices Focusing on various marginalized groups including the Indigenous community LGBTQ2S peoples refugees newcomers and specific groups of teachers chapters explore transformative leadership in practice and how to achieve inclusion respect and excellence in schools Arguing that leadership involves much more than simply putting policy into practice Leading for Equity and Social Justice promotes the need for leaders to recognize their role as advocates and activists

**Judicializing Everything?** Mark S. Harding, 2022-02-22 Nearly every common law jurisdiction in the world has adopted a charter or bill of rights Yet adopting a new rights document creates rather than resolves many fundamental constitutional questions Should constitutional rights be relevant in private disputes Does every political question need a constitutional or judicial answer Should courts and legislatures equally participate in addressing the scope of which issues are to be considered constitutional Judicializing Everything illustrates how debates surrounding these persistent judicial questions are best understood as part of an ongoing clash between distinct forms of constitutionalism on and off the bench Mark S Harding canvasses the perennial debates within the field of constitutional studies and provides novel ways of understanding key disagreements between judges and scholars alike Despite important formal differences between rights documents in Canada New Zealand and the United Kingdom Judicializing Everything shows that there are also considerable similarities in the kinds of cases arguments and legal outcomes in the three countries As political life becomes increasingly constitutionalized and judicialized this important book sheds light on the persistence of debates over bills of rights and their interpretation

**Red, White, and Kind of Blue?** David Schneiderman, 2015-01-01 Situated between two different constitutional traditions those of the United Kingdom and the United States Canada has maintained a distinctive third way federal parliamentary and flexible Yet in recent years it seems that Canadian constitutional culture has been moving increasingly in

an American direction Through the prorogation crises of 2008 and 2009 its senate reform proposals and the appointment process for Supreme Court judges Stephen Harper's Conservative government has repeatedly shown a tendency to push Canada further into the US constitutional orbit *Red White and Kind of Blue* is a comparative legal analysis of this creeping Americanization as well as a probing examination of the costs and benefits that come with it Comparing British Canadian and American constitutional traditions David Schneiderman offers a critical perspective on the Americanization of Canadian constitutional practice and a timely warning about its unexamined consequences

**Constitutional Justice, East and West** Wojciech Sadurski, 2002-12-31 How can the power of constitutional judges to overturn parliamentary choices on the basis of their own reading of the constitution be reconciled with fundamental democratic principles which assign the supreme role in the political system to parliaments This time honoured question acquired a new significance when the post communist countries of Central and Eastern Europe without exception adopted constitutional models in which constitutional courts play a very significant role at least in theory Can we learn something about the relationship between democracy and constitutionalism in general from the meteoric rise of constitutional tribunals in the post communist countries Can the discussions and controversies relating to constitutional review which have been going on for decades in more established democracies illuminate the sources of the strength of constitutional courts in Central and Eastern Europe These questions lie at the center of this book which focuses on the question of constitutional review in postcommunist states from a theoretical and comparative perspective The chapters contained in the book outline the conceptual framework for analyzing the sources the role and the legitimacy of constitutional justice in a system of political democracy From this perspective it assesses the experience of constitutional justice in the West where the model originated and in Central and Eastern Europe where the model has been implanted after the fall of Communism

**Political Losers** Michael B. Davie, 2001 History is invariably written from the perspective of the winners But losers also have stories to tell And there are valuable lessons to be learned from the defeated Join author Michael B Davie as he examines the meaning and significance of such diverse events as the 1700s Acadian expulsion in Canada Vietnam War and the defeat of Walter Mondale to Ronald Reagan in the United States and the forced famines of the Ukrainian Holocaust It's a fascinating look at those who faced life's trials and came in second

**Law, Politics and the Judicial Process in Canada** Frederick Lee Morton, 2002 Since the first edition of this popular textbook appeared in 1984 the Charter of Rights and Freedoms has transformed the role of the courts in Canadian politics The book introduces students to issues raised by the new political role of Canadian judges *Law Politics and the Judicial Process in Canada* features new introductions and new readings that deal with current issues in the realm of Canadian law and politics

**Constitutional Crossroads** Kate Puddister, Emmett Macfarlane, 2022-12-01 Four decades have passed since the adoption of the Constitution Act 1982 Now it is time to assess its legacy As *Constitutional Crossroads* makes clear the 1982 constitutional package raises a host of questions about a number of important issues including identity and pluralism

the scope and limits of rights competing constitutional visions the relationship between the state and Indigenous peoples and the nature of constitutional change This collection brings together an impressive assembly of established and rising stars of political science and law who not only provide a robust account of the 1982 reform but also analyze the ensuing scholarship that has shaped our understanding of the Constitution Contributors bypass historical description to offer reflective analyses of different aspects of Canada's constitution as it is understood in the twenty first century With a focus on the themes of rights reconciliation and constitutional change *Constitutional Crossroads* provides profound insights into institutional relationships public policy and the state of the fields of law and politics

**Abusive Constitutional Borrowing** Rosalind Dixon, David E. Landau, 2021 Law is fast globalizing as a field and many lawyers judges and political leaders are engaged in a process of comparative borrowing But this new form of legal globalization has dark sides it is not just a source of inspiration for those seeking to strengthen and improve democratic institutions and policies It is increasingly an inspiration and legitimization device for those seeking to erode democracy by stealth under the guise of a form of faux liberal democratic cover *Abusive Constitutional Borrowing* Legal globalization and the subversion of liberal democracy outlines this phenomenon how it succeeds and what we can do to prevent it This book addresses current patterns of democratic retrenchment and explores its multiple variants and technologies considering the role of legitimating ideologies that help support different modes of abusive constitutionalism An important contribution to both legal and political scholarship this book will be of interest to all those working in the legal and political disciplines of public law constitutional theory political theory and political science

***The First Amendment in Cross-Cultural Perspective*** Ronald J. Krotoszynski Jr., Ronald J. Krotoszynski, 2009-03 The First Amendment and its guarantee of free speech for all Americans has been at the center of scholarly and public debate since the birth of the Constitution and the fervor in which intellectuals politicians and ordinary citizens approach the topic shows no sign of abating as the legal boundaries and definitions of free speech are continually evolving and facing new challenges Such discussions have generally remained within the boundaries of the U S Constitution and its American context but consideration of free speech in other industrial democracies can offer valuable insights into the relationship between free speech and democracy on a larger and more global scale thereby shedding new light on some unexamined and untested assumptions that underlie U S free speech doctrine Ronald J Krotoszynski Jr compares the First Amendment with free speech law in Japan Canada Germany and the United Kingdom countries that are all considered modern democracies but have radically different understandings of what constitutes free speech Challenging the popular and largely American assertion that free speech is inherently necessary for democracy to thrive Krotoszynski contends that it is very difficult to speak of free speech in universalist terms when the concept is examined from a framework of comparative law that takes cultural difference into full account

***Government and Politics in Alberta*** Allan Tupper, Roger Gibbins, 1992 Alberta's politics are changing in response to powerful economic social and political forces The contributors



focus on developments since the election of the Progressive Conservatives in 1971

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## **Table of Contents Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand**

1. Understanding the eBook Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
  - The Rise of Digital Reading Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
  - Advantages of eBooks Over Traditional Books
2. Identifying Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
  - User-Friendly Interface
4. Exploring eBook Recommendations from Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
  - Personalized Recommendations
  - Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand User Reviews and Ratings
  - Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand and Bestseller Lists
5. Accessing Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand Free and Paid eBooks
  - Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand Public Domain eBooks
  - Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand eBook Subscription Services

- Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand Budget-Friendly Options
- 6. Navigating Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand eBook Formats
  - ePub, PDF, MOBI, and More
  - Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand Compatibility with Devices
  - Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand Enhanced eBook Features
- 7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
  - Highlighting and Note-Taking Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
  - Interactive Elements Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
- 8. Staying Engaged with Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
  - Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
- 9. Balancing eBooks and Physical Books Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
- 10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
- 11. Cultivating a Reading Routine Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
  - Setting Reading Goals Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
  - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
  - Fact-Checking eBook Content of Quebec And Section 33 Why The Notwithstanding Clause Should Not Stand
  - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
  - Utilizing eBooks for Skill Development
  - Exploring Educational eBooks

### 14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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