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The Supreme Court of Canada Rules on Bill 21: Key Takeaways From the Decision

On November 27, 2026, the Supreme Court of Canada released its long-awaited decision in *English Montreal School Board v Quebec (Attorney General)*, the challenge to Quebec's *Act respecting the laicity of the State*, commonly referred to as Bill 21. The decision leaves Bill 21 largely valid and operative as a result of the notwithstanding clause in section 33 of the *Canadian Charter of Rights and Freedoms*. The one exception is section 8 of Bill 21, which the Supreme Court held unjustifiably infringes section 3 of the *Charter* and is of no force or effect insofar as it applies to members of the National Assembly (MNA).

While that bottom-line result is clear, the reasoning is complex and flows from a deeply divided Court. Seven judges sat, and four sets of reasons were issued. Writing for three judges, Chief Justice Wagner held that once a legislature has validly invoked the notwithstanding clause, courts cannot issue a declaration that the protected law infringes the overridden rights. Four judges, Justices Kasirer, Martin, Karakatsanis, and O'Bonsawin, disagreed on that point. They held that superior courts retain their inherent jurisdiction to grant declaratory relief. Three judges, Justices Martin, Karakatsanis, and O'Bonsawin, also held that Bill 21 infringed certain rights under the *Charter* that could not be limited by the notwithstanding clause.

Below, we set out our preliminary analysis of the decision.

Background

Bill 21

Quebec's National Assembly passed Bill 21 in 2019. Section 6 prohibits certain persons in public positions of authority from wearing religious symbols while carrying out their functions. This includes the Minister of Justice, the President of the National Assembly, prosecutors, government lawyers, and school principals, vice principals and teachers. Section 8 requires a person's face to be uncovered to provide or receive certain public services. Sections 33 and 34 invoke the override clauses in section 52 of the Quebec *Charter* and section 33 of the *Canadian Charter* pre-emptively, to insulate the law from

challenge under both.

Six groups of plaintiffs challenged the law:

- Teachers and aspiring teachers who wear the hijab,
- A Catholic teacher who wears a crucifix
- A Sikh teacher who wears a turban
- A society of Jewish jurists
- A teachers' federation
- And the English Montreal School Board.

There were also a record-setting number of intervenors before the Supreme Court. The Chief Justice acknowledged that Bill 21's "stigmatizing and deleterious effects on the persons so affected, most of whom are Muslim women, … must not be underestimated."

The Superior Court

At trial, Justice Blanchard of the Quebec Superior Court largely upheld Bill 21. He found that the legislature had validly invoked the override clause, although he called the use of section 33 "excessive" because it was overly broad. He declined to grant a declaration that the law infringed sections 2 and 15, on the view that doing so would rest on a novel reading of section 33. He also held that section 28 is purely interpretive. He struck the face-covering rule for MNAs under section 3 and held that the symbols ban infringed the section 23 minority language education rights of English-language school boards. His reasons nevertheless described the law's impact as "a cruel consequence that dehumanizes the individuals affected."

The Court of Appeal

On February 29, 2024, the Quebec Court of Appeal (Chief Justice Savard and Justices Morissette and Bich) affirmed the trial judgment except on section 23. It reversed the English school board exemption and upheld the section 3 ruling. The Court of Appeal treated section 33 as a kind of "constitutional privative clause." In its view, using the override clauses prevents courts from granting any relief, "whether monetary or declaratory," and the question of consistency with sections 2 and 15 was moot in any event. It confirmed that section 28 has only an interpretive function.

The Decision

The Plurality: Section 33 has Only Formal Constraints, and Ends Judicial Review

The Chief Justice, Justices Côté and Rowe concurring, held that section 33 imposes only requirements of form. Its validity does not depend on a pressing and substantial objective, a prior judicial decision, or any substantive justification. Section 34 of Bill 21 met those formal requirements.

On declaratory relief, the Chief Justice accepted that superior courts have inherent jurisdiction to declare laws unconstitutional, but he held that section 96 provides "no basis for recognizing a residual jurisdiction" for courts to make a ruling on consistency with overridden rights. The central structural point is that sections 1 and 33 of the *Charter* are mutually exclusive:

> *The former permits the legislative body to limit rights by justifying the limit to the courts, while the latter permits it to limit rights by justifying the limit to voters. These mechanisms are mutually exclusive.*

The Chief Justice added that requiring a section 1 justification after section 33 has been invoked "would trivialize the function of s. 1." He held that the claim becomes hypothetical, because the override may be renewed or the law repealed, and that Quebec procedural law offers no basis for such a declaration. He concluded that a declaratory judgment is unavailable in cases where a legislative body has validly invoked section 33.

The Chief Justice also held that section 28 is interpretive and does not limit section 33, and that Bill 21 does not infringe section 23.

Justice Kasirer: Section 33 is "Not A Privative Clause"

Justice Kasirer, writing for himself alone, described his position as a middle ground. He held that Bill 21 is valid and operative, but the courts may, and should, declare its inconsistency with the *Charter*. On his reading of section 33(2) of the *Charter*, the text concerns the "operation" of the Act, not the jurisdiction of the courts. It reveals "no mention of the jurisdiction of the courts or the unavailability of a certain remedy for the litigant." The rights continue to exist, and so does the inconsistency. In his words, section 33 leaves "the final word … to the legislature," "the decisive word but, as others have observed, not the only word."

Justice Kasirer would have declared that sections 6 and 8 of Bill 21 infringe sections 2 and 15 of the *Charter* and sections 3 and 10 of the Quebec *Charter*, while holding that Bill 21 remains valid and operative by virtue of the override clauses. Bill 21's objective was pressing and substantial, but Quebec had not justified the infringements. Quebec had declined to make any

section 1 argument despite the Court's express invitation, a choice Justice Kasirer called "regrettable."

Justice Martin: Section 28 Protects Rights That Cannot Be Overridden by Section 33

Justice Martin, writing for herself alone, agreed that declaratory relief remains available and emphasized the "notice-giving function" of declarations. Without them, "the electorate may not understand the scope of the rights being limited … and they may accordingly be unable to hold their government to account."

However, Justice Martin went much further on the substance. She would have struck sections 6 and 8 outright. In her view, section 28 confers a free-standing, substantive sex-equality guarantee that section 33 cannot override, and Bill 21 unequally restricts women's religious freedom, expression and equality. Having found a breach of section 28, she saw no need for a separate declaration on sections 2 and 15, though she said she would otherwise have issued one.

Justices Karakatsanis and O'Bonsawin: Substantive Limits and "The Final Say"

The joint reasons of Justices Karakatsanis and O'Bonsawin went furthest. Like Justices Kasirer and Martin, they held that declaratory relief remains available, and that section 33 "facilitates dialogue not only between the courts and legislatures, but between the courts, legislatures and the electorate".

They also identified two substantive limits on section 33:

- It cannot permanently extinguish Charter rights.
- It cannot be used in a manner incompatible with the fundamental character of Canada's free and democratic society.

Bill 21 breached neither limit. They would nonetheless have struck sections 6 and 8 under section 28, "the *Charter*'s other notwithstanding clause", and found that the law infringes section 23 for English school boards.

Their reasons also catalogue the evidence of the law's effects. At the Centre de services scolaire de Montréal, every job application closed because of the law belonged to a Muslim woman who wore a hijab. In their view, the Court "should not be silent when asked by claimants to acknowledge that the Act infringes their rights and freedoms."

Where the Court Landed

Click the chart to view it at full size.

ISSUE	CHIEF JUSTICE WAGNER, JUSTICES CÔTÉ & ROWE	JUSTICE KASIRER	JUSTICE MARTIN	JUSTICES KARAKATSANIS & O'BONSAWIN
Can declaratory relief be granted if the notwithstanding clause is invoked?	No	Yes	Yes	Yes
Are there substantive limits on the notwithstanding clause?	No, only formal requirements	Yes (cannot be used to amend constitutional architecture)	Not necessary to decide	Yes (cannot permanently extinguish *Charter* rights, and cannot be used in a way that is incompatible with the fundamental character of Canada's free and democratic society)
Does section 28 of the *Charter* confer a substantive right to sex equality?	No	Not necessary to decide (must be invoked in connection with another right or freedom protected by the *Charter*, which in this case could be overridden)	Yes	Yes
Does Bill 21 infringe the minority language education rights?	No	No	Not decided	Yes

The Broader Implications

A. Declaratory Relief Remains Available

A majority of the judges who sat endorsed the availability of declaratory relief in cases when the notwithstanding clause is invoked. As a practical matter, that means litigation challenging potentially unconstitutional laws will continue, even where the notwithstanding clause is invoked.

In practical terms, that means governments will need to continue trying to lead evidence to justify legislation under section 1 of the *Charter*, if they want to avoid declarations of unconstitutional legislation. Governments that rely on section 33 in the future may find that strategic silence on section 1 is no longer cost-free, at least before courts that follow the four-judge view.

B. The Upcoming Saskatchewan Appeal

The question will return to the Court almost immediately. In November 2025, the Supreme Court granted leave in *Saskatchewan (Minister of Education) v UR Pride Centre for Sexuality and Gender Diversity*, which concerns Saskatchewan's 2023 law requiring parental consent before students under 16 can change their names or pronouns at school. That law was shielded by section 33. The Saskatchewan Court of Appeal held in 2025 that courts may still declare Charter violations despite section 33, and allowed the challenge to proceed on section 12, a right Saskatchewan did not name in its override. The Supreme Court is scheduled to hear the appeal on March 22 and 23, 2027.

Bill 21 leaves the Court in an unusual position for UR Pride. A majority of the judges who decided Bill 21 accepted that declaratory jurisdiction survives section 33. Some commentators had anticipated that a contrary ruling could render the Saskatchewan case moot. However, the fractured reasoning, coupled with the change in the Court's composition between the two decisions, have the potential to result in a different outcome.

C. Section 28 Does Not Confer a Substantive Right to Sex Equality

One of the most closely watched questions was whether section 28 of the *Charter* could succeed where sections 2 and 15 could not. Section 28 provides that, "[n]otwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons."

The challengers argued that this opening phrase puts sex equality beyond the reach of the notwithstanding clause. The

trial judge and the Court of Appeal had both rejected that argument, holding that section 28 is interpretive and does not enshrine a stand-alone right. A majority of the Supreme Court agreed that Bill 21 "is not invalid under s. 28." The plurality went further, holding that section 28 "does not confer a substantive right to sex equality that could be infringed by Bill 21."

Writing for himself and Justices Côté and Rowe, Chief Justice Wagner held that section 28 "has an interpretive and not a normative function." It guarantees that every *Charter* right is interpreted and applied in accordance with sex equality, without establishing a stand-alone equality guarantee separate from section 15. As a result, section 28 "cannot be invoked independently to ground a claim where a law or state action appears to be discriminatory against women or men". Because section 28 guarantees sex equality only "to the extent — and only to the extent — that these rights and freedoms are themselves guaranteed by the Charter," it has nothing to attach to once those rights are validly overridden.

On the plurality's view, section 28 "does not shield ss. 2 and 7 to 15 from the application of s. 33." Nor does it "prevent lawmakers from having recourse to s. 33 where doing so would create a discriminatory distinction based on sex."

Justice Kasirer supplied the fourth vote, by a different route. He agreed that Bill 21 is not invalid under section 28. However, he found it unnecessary to decide whether section 28 has an autonomous purpose. Whatever its nature, section 28 is tied to sections 2 and 15, which cannot ground a declaration of invalidity once overridden, so it is "subject to the effects of s. 33."

Justices Martin, Karakatsanis and O'Bonsawin would have held that section 28 is both interpretive and substantive, and that it stands outside section 33. Justices Karakatsanis and O'Bonsawin called it "the Charter's other notwithstanding clause." They noted that section 28 was originally within the scope of section 33 and was removed by unanimous agreement during patriation. On their view, sections 6 and 8 would have been struck because their burden falls disproportionately on Muslim women.

Our Involvement

Sahar Talebi, Paul-Erik Veel, and Mina Alam of Lenczner Slaght acted for the intervener the Canadian Council of Muslim Women. The CCMW argued that courts must remain open to declare Charter infringements even when section 33 is invoked. That position was adopted in the reasons of four of the seven judges, and CCMW's submissions were cited specifically in the

reasons of three of them.

CCMW's position was that declaratory relief is often the only constitutional mechanism capable of recognizing rights infringements, documenting their evidence, demanding public accountability, and informing the electorate, especially where legislation disproportionately affects minorities, who have limited impact through the ballot box and rely on courts as important institutional venues.

Justice Kasirer echoed the CCMW's concerns, writing that the electoral check "does not adequately protect vulnerable minorities" and that a declaration serves to "acknowledge and record the harms" and "require public accountability." He also cited CCMW in finding that a declaration would have a real remedial effect for claimants. Justices Karakatsanis and O'Bonsawin cited CCMW for the proposition that minorities "have limited impact at the ballot box," in grounding section 33 in a conception of democracy "richer" than majority rule.