File Number: 41231

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUÉBEC)

BETWEEN:

ENGLISH MONTREAL SCHOOL BOARD,
MUBEENAH MUGHAL and PIETRO MERCURI

APPELLANTS
(Respondents on Cross-Appeal)

– and –

ATTORNEY GENERAL OF QUÉBEC,
JEAN-FRANÇOIS ROBERGE, in his official capacity,
SIMON JOLIN-BARRETTE, in his official capacity

RESPONDENTS
(Appellants on Cross-Appeal)

– and –

MOUVEMENT LAÏQUE QUÉBÉCOIS, and
FRANÇOIS PARADIS, in his official capacity

RESPONDENTS

(*Style of cause continued on next page*)

FACTUM OF THE INTERVENER
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Rules 47 and 55 of the *Rules of the Supreme Court of Canada*

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(Style of cause continued)

AND BETWEEN:

WORLD SIKH ORGANIZATION OF CANADA
AMRIT KAUR

APPELLANTS
(Respondents on Cross-Appeal)

– and –

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

AND BETWEEN:

ICHRAK NOUREL HAK,
NATIONAL COUNCIL OF CANADIAN MUSLIMS (NCCM),
CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

APPELLANTS
(Respondents on Cross-Appeal)

– and –

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JEAN-FRANÇOIS ROBERGE, in his official capacity,
SIMON JOLIN-BARRETTE, in his official capacity

RESPONDENTS
(Appellants on Cross-Appeal)

– and –

FRANÇOIS PARADIS, in his official capacity
MOUVEMENT LAÏQUE QUÉBÉCOIS
POUR LES DROITS DES FEMMES DU QUÉBEC

RESPONDENTS

AND BETWEEN:

FÉDÉRATION AUTONOME DE L'ENSEIGNEMENT

APPELLANT
(Respondent on Cross-Appeal)

– and –

ATTORNEY GENERAL OF QUÉBEC,
JEAN-FRANÇOIS ROBERGE, in his official capacity,
SIMON JOLIN-BARRETTE, in his official capacity

RESPONDENTS
(Appellants on Cross-Appeal)

AND BETWEEN:

ANDRÉA LAUZON, HAKIMA DADOUCHE, BOUCHERA CHELBI, and LEGAL COMMITTEE OF THE COALITION INCLUSION QUÉBEC

APPELLANTS
(Respondents on Cross-Appeal)

– and –

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

AND BETWEEN:

THE LORD READING LAW SOCIETY

APPELLANT
(Respondent on Cross-Appeal)

– and –

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

– and –

QUÉBEC COMMUNITY GROUPS NETWORK, ICHRAK NOUREL HAK, NATIONAL COUNCIL OF CANADIAN MUSLIMS (NCCM), CORPORATION OF THE CANADIAN

CIVIL LIBERTIES ASSOCIATION, FÉDÉRATION AUTONOME DE L'ENSEIGNEMENT, ANDRÉA LAUZON, HAKIMA DADOUCHE, BOUCHERA CHELBI, LEGAL COMMITTEE OF THE COALITION INCLUSION QUÉBEC,

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PART I: OVERVIEW

1. This appeal addresses how to interpret section 33 of the *Canadian Charter of Rights and Freedoms* (the "***Charter***"),[1] and whether courts have jurisdiction to review and grant remedies once it has been invoked. This is a novel legal question that will have far reaching impacts on the scope and limits of *Charter* rights in Canada and the relationship between individuals and the state, as well as courts and legislatures.

2. Section 33 does not bar rights claimants from accessing relief that can mitigate against *Charter* harms. Even after section 33 is invoked, courts retain jurisdiction to grant *Charter* remedies so long as they do not render the legislation subject to section 33 inoperative. Courts can grant a range of practical remedies after a legislature invokes section 33. Courts apply legal tests when granting *Charter* remedies and these legal tests include internal limits that prevent courts from overstepping their role as guardians of the constitution within a parliamentary democracy.

3. This interpretation accords with the Saskatchewan Court of Appeal's holding that courts retain jurisdiction to grant declaratory relief after a legislature invokes section 33.[2] The interpretation advanced in this factum elaborates on the Saskatchewan Court of Appeal's holding by recognizing that courts retain jurisdiction to grant additional *Charter* remedies, such as damages and exclusion of evidence.[3]

4. Conversely, the Québec Court of Appeal held that the invocation of section 33 suspended sections 2 and 7 to 15 of the *Charter,*[4] and ousted its jurisdiction to consider whether *Loi 21, Loi sur la laïcité de l'État* ("***Loi 21***")[5] infringes those sections.[6] It further held that the invocation of

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[1] *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK),* 1982, c 11 (the "***Charter***").
[2] *Saskatchewan (Minister of Education) v UR Pride Centre for Sexuality and Gender Diversity*, 2025 SKCA 75 ("***UR Pride***") at ¶7.
[3] Robert Leckey & Eric Mendelsohn, "The Notwithstanding Clause: Legislatures, Courts and the Electorate" (2022) 72 UTLJ 189 at 209 ("**Leckey & Mendelsohn – The Notwithstanding Clause**"); Leonid Sirota, "Does the *Charter's* 'notwithstanding clause' exclude judicial review of legislation? Not quite!" (23 May 2019) *Concurring Opinion*
[4] *World Sikh Organization of Canada v Québec*, 2024 QCCA 254 ("***World Sikh Organization of Canada***") at ¶328.
[5] *Loi 21, Loi sur la laïcité de l'État*, LQ 2019 c 12 ("***Loi 21***").
[6] *World Sikh Organization of Canada* at ¶8, ¶315, 368.

section 33 precluded the Court from granting a declaration as to whether *Loi 21* infringed sections 2 and 7 to 15 or from awarding damages, which were sought by the Appellant Lauzon Group.[7]

5. The Québec Court of Appeal's interpretation of section 33 is not supported by the text of the provision, a purposive reading of it, or any other accepted aides of constitutional interpretation. Unless overturned by the Supreme Court of Canada, the Court of Appeal's fettering of courts and their remedial duties under the constitution will negatively impact civil liberties in Canada and the ability of individuals to hold governments accountable for violating those rights.

PART II: POSITION ON THE QUESTION AT ISSUE

6. Invoking section 33 of the *Charter* does not oust the Court's jurisdiction to engage in judicial review. Section 33 neither suspends *Charter* protections, nor bars *Charter* relief. It imposes a limitation on the types of *Charter* remedies that can be granted, precluding declarations that render legislation subject to section 33 inoperable. Judicial review is permitted following the invocation of section 33 to determine if the *Charter* remedies a claimant seeks are appropriate in the circumstances.

PART III: STATEMENT OF ARGUMENT

A. This Court Must Interpret Section 33 of the *Charter* as Part of the Constitution

7. The starting point of *Charter* interpretation is the text of the provision.[8] The only consequence of invoking section 33, according to the English wording, is that the impugned legislation "shall have such operation as it would have but for the provision of this *Charter* referred to in the declaration."[9] The provision is expressly limited to ensuring that the legislation subject to section 33 operates, even if there is a prior or subsequent judicial finding of *Charter* non-compliance. It does not immunize state action from *Charter* scrutiny or the granting of remedies other than those that prevent its continued operation.

8. Section 33 contains no language to suggest that its effect is to oust either judicial review or the availability of *Charter* relief that does not render legislation inoperative. It does not suspend *Charter* rights or otherwise cause them to disappear.[10] An interpretation of section 33 that excludes all *Charter* remedies betrays the language of the provision and its place in the broader *Charter*

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[7] *World Sikh Organization of Canada* at ¶¶373-377.
[8] *Québec (Attorney General) v 9147-0732 Québec inc.*, 2020 SCC 32 ("***9147-0732 Québec***") at ¶8.
[9] *Charter*, s 33(2).
[10] *UR Pride* at ¶85.

framework. Such an interpretation cannot be read-in to the terms "operate" or "operation". The entire provision would have to be redrafted to achieve this effect. Courts are cautioned against taking such redrafting exercises, particularly in the *Charter* context, and especially when doing so would diminish the protection of *Charter* rights and freedoms.

9. The English and French version of the *Charter's* text are "equally authoritative."[11] Thus, "the exercise of discerning legislative intent can properly include the search for a shared meaning between the two linguistic texts, typically identified by reading both versions together".[12] The Appellants Lord Reading Law Society and Lauzon Group have outlined how the text of the French provision is consistent with our reading of the English provision.[13] The Saskatchewan Court of Appeal determined that the shared meaning of the English and French versions of section 33 was consistent with the Court retaining jurisdiction to grant declarations.[14]

10. Section 33 is not formulated as a privative or ouster clause. Other jurisdictions have adopted explicit ouster clauses. An explicit ouster clause would make it clear that the scope of the court's power was being curtailed. For example, the Queensland *Human Rights Act, 2019* explicitly ousts the jurisdiction of courts to grant declaratory relief:[15]

> The Supreme Court cannot make a declaration of incompatibility about a statutory provision if an override declaration is in force in relation to the provision.

11. *Charter* interpretation requires more than simply reading the text. The *Charter* must be read in a generous and liberal manner, giving meaning to the rights and remedial powers it contains.[16] Reasonable and demonstrably justified limitations on *Charter* rights must be clear and express and cannot be inferred.

12. There are no hierarchies among the *Charter*'s provisions.[17] Wherever conflicts appear to arise between individuals with competing rights, or between individual rights and state powers,

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[11] *The Constitution Act, 1982* Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 57 (the "***Constitution Act, 1982***").
[12] *Dickson v Vuntut Gwitchin First Nation*, 2024 SCC 10 at ¶121.
[13] *Mémoire de L'Appelante, L'Association De Droit Lord Reading* at ¶¶99-108; *Mémoire des Appelants Andréa Lauzon, Hakima Dadouce, Bouchera Chelbi et Comité Juridique de la Coalition Inclusion Québec* at ¶¶80-84.
[14] *UR Pride* at ¶¶97-102, 105.
[15] *Human Rights Act, 2019*, (Qld) s 53(3).
[16] *9147-0732 Québec* at ¶7.
[17] *Gosselin (Tutor of) v Québec (Attorney General)*, 2005 SCC 15 at ¶¶23-27.

courts should interpret the provision to give effect to both.[18] The Québec Court of Appeal's interpretation runs afoul of these principles by impermissibly privileging one dimension of section 33 over other constitutional provisions, and state powers over individual rights.

13. Section 33 forms part of the Canadian constitution and, like all provisions, must be read in harmony with the other constitutional provisions, including the remedial provisions at section 24 of the *Charter* and the protection of the core judicial function of superior courts at section 96 of the *Constitution Act, 1867*.[19] Section 33 limits the remedies related to operability, but these other constitutional provisions support a reading of section 33 that reserves other avenues for claimants to achieve practical recourse for *Charter* violations. These other avenues include *Charter* remedies granted under section 24 and through the courts' inherent jurisdiction.

14. The history of a *Charter* provision is also relevant to its interpretation.[20] The notwithstanding clause builds on a tradition of similar provisions, designed to "*reduce* the instances of legislative rights infringements by requiring [a legislature] to explicitly state in law its intention to operate outside of the constraints of the rights and freedoms otherwise protected."[21] Earlier rights-protecting statutes, like the *Canadian Bill of Rights*, could not bind future legislatures, and so notwithstanding provisions were added to these statues to compel future legislatures to "expressly declare" when laws would infringe protected rights.[22] The requirement of an express declaration was intended to increase transparency, enhance public debate, ensure a political cost for legislatures that infringed on rights, and thereby dissuade them from passing such rights-infringing legislation.

15. The *Charter's* notwithstanding clause requires infringements to be explicit, so that the public can hold the government to account. The structure of section 33 entrusts the electorate with holding governments accountable for the legislative invocation of the notwithstanding clause.[23] The five-year sunset provision means that a government must face the public at the ballot box

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[18] *R v NS,* 2012 SCC 72 at ¶32.
[19] *The Constitution Act, 1867,* 30 & 31 Vict, c 3, s 96; *UR Pride* at ¶132.
[20] *9147-0732 Québec*, at ¶16, ¶20.
[21] Eric M Adams & Erin R J Bower, "Notwithstanding History: The Rights-Protecting Purpose of Section 33 of the Charter" (2022) 26:2 Review of Constitutional Studies/Revue d'études constitutionelles 121 at 141 ("**Adams & Bower – Notwithstanding History**").
[22] *Canadian Bill of Rights*, SC 1960 c 44, s 2; and see Adams & Bower – Notwithstanding History at 128-30.
[23] *World Sikh Organization of Canada* at ¶351.

before it can renew the notwithstanding clause.[24] Litigation can "inject the perspectives of individuals and groups most directly impacted by the law into the constitutional debate."[25] Courts can inform the public of *if* and *how* a law violates a *Charter* right, and whether that violation is reasonably justifiable under section 1. This judicial guidance "might be especially important where the majoritarian parliamentary processes shut out a vulnerable minority."[26] The public can take account of this legal analysis when deciding how to vote. A court's ability to grant remedies in the *Charter* context must balance government autonomy with the need for government accountability.[27]

16. Constitutional principles also matter in *Charter* interpretation. Courts use them to understand "the character and the larger objects of the *Charter* itself... the language chosen to articulate the specific right or freedom, [and] the historical origins of the concepts enshrined."[28] As submitted by the appellants Lord Reading Law Society, constitutional principles, including constitutionalism and the rule of law, protection of minorities, and democracy support an interpretation of section 33 that preserves some jurisdiction for the courts after its invocation.[29]

17. Legality matters too. Since the adoption of the *Charter,* "the Canadian system of government was transformed to a significant extent from a system of Parliamentary supremacy to one of constitutional supremacy."[30] As a polity that operates under a system of constitutional supremacy, the principle of legality is foundational to the Canadian democratic order and must inform the interpretation of section 33. Legality incorporates two related ideas: "that state action should conform to the Constitution and statutory authority and that there must be practical and effective ways to challenge the legality of state action."[31]

18. The availability of *Charter* remedies including not just declarations, but also other remedies, such as damages and exclusion of evidence, promotes legality and the protection of minorities. These other remedies promote legality by ensuring claimants have practical and

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[24] Leckey & Mendelsohn – The Notwithstanding Clause at 198-99.
[25] Adams & Bower – Notwithstanding History at 143.
[26] Leckey & Mendelsohn – The Notwithstanding Clause at 201.
[27] *Canada (Attorney General) v Power*, 2024 SCC 26 ("***Power***") at ¶79.
[28] *Toronto (City) v Ontario (Attorney General),* 2021 SCC 34 at ¶55.
[29] *Mémoire de L'Appelante, L'Association De Droit Lord Reading* at ¶¶115, 122.
[30] *Power* at ¶55.
[31] *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society,* 2012 SCC 45 at ¶31.

effective ways to challenge state action. These other remedies advance the protection of minorities, by enabling courts to mitigate the harms that befall vulnerable minorities when state action unjustifiably infringes their *Charter* rights yet continues to operate because of section 33.[32]

19. When courts consider whether to grant *Charter* remedies after the invocation of section 33, they are not usurping the role of the legislature or undertaking an impermissible policy-making role. Rather, courts provide their *legal* analysis of whether the legislation or state conduct infringes the *Charter* and what remedies, if any, are appropriate in the circumstances. If the question before them is not a legal question and asks them to overstep their proper role, courts can decline to decide the question as non-justiciable.[33] The Saskatchewan Court of Appeal held that courts remain "equipped to answer the question of whether the legislation operates to limit the mentioned *Charter* rights after the [section 33] declaration has been made."[34] Courts also remain equipped to consider whether other *Charter* remedies are warranted.

B. The Law of *Charter* Remedies Must Inform this Court's Interpretation of Section 33

20. The law of *Charter* remedies must inform the interpretation of section 33. The law of *Charter* remedies has developed over the past four decades into an established jurisprudence. Granting remedies is the courts' "most meaningful function under the *Charter*."[35] The correct interpretation of section 33 must be reconciled with the existing doctrine of *Charter* remedies.

21. It is consistent with the law of *Charter* remedies to interpret section 33 as only barring remedies that render state conduct inoperative. The law governing *Charter* remedies distinguishes between those remedies that preclude state action from operating and those that do not. The internal frameworks governing different remedies ensure that courts do not to overstep their proper role when granting relief. In this appeal, where the Court is asked only about the availability of declarations, its reasoning could impact the availability of other *Charter* remedies. It should ensure that its reasons preserve their availability.

22. Courts have identified three sources of *Charter* remedies:

a. **section 52 of the *Constitution Act, 1982*:**[36] provides for declaratory relief that

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[32] Robert Leckey, "Advocacy Notwithstanding the Notwithstanding Clause" (2019) 28:4 Constitutional Forum/Forum constitutionell 1 at 5.
[33] *Finlay v Canada (Minister of Finance),* 1986 CanLII 6 (SCC), [1986] 2 SCR 607, at ¶33.
[34] *UR Pride* at ¶122.
[35] *Power* at ¶31.
[36] *The Constitution Act, 1982,* s 52.

legislation is unconstitutional and thus rendered of no force and effect.

b. **section 24 of the *Charter***: provides remedies for harms flowing from legislation or state conduct that is unconstitutional.

c. **the inherent jurisdiction of section 96 courts**: allows remedies for harms flowing from legislation or state conduct that is unconstitutional.

23. Section 52 provides claimants declaratory relief against *Charter*-infringing legislation rendering it of no force and effect. The provision grants no alternative remedies. It only applies to law and not state conduct more broadly. The availability of the remedy of striking down legislation is ousted by section 33, as the remedy would render legislation inoperative.

24. Courts can rely on section 24 and inherent jurisdiction to grant a broad range of remedies to address *Charter*-infringing legislation, including any form of relief that it considers appropriate and just in the circumstances. These two sources of *Charter* relief can also be directed against state conduct.

25. Courts have granted a wide ambit of *Charter* remedies to address an array of circumstances including injunctions, constitutional exemptions, damages, state-funded counsel, costs, stays of proceedings, sentence reductions, *habeas corpus*, and the exclusion of evidence. Many of these remedies do not render legislation inoperative. Instead, they provide relief that reflects the nature of the *Charter* infringement and the circumstances of the claimant.

26. *British Columbia Civil Liberties Association v Canada (Attorney General)*[37] illustrates the robust, flexible approach to *Charter* remedies that Canadian courts have developed over the past 40 years to ensure that remedies are available when breaches occur. In that case, the British Columbia Civil Liberties Association ("BCCLA") challenged the constitutionality of the federal government's administrative segregation regime. The Court held that the administration of the regime breached the *Charter*, including section 7, but the legislation itself was drafted in a constitutional manner. Since section 52 could only remedy unconstitutional legislation, the provision could not provide relief to address the infringement. The same was true under section 24(1), because the BCCLA was a public interest standing litigant and the Court held that section 24(1) remedies require personal harm. The Court ruled that an appropriate and just remedy in the

[37] *British Columbia Civil Liberties Association v Canada (Attorney General),* 2019 BCCA 228 leave to appeal to SCC granted, 2020 CanLII 10501 (SCC).

circumstances could be granted pursuant to its inherent jurisdiction. In other words, despite the limits of section 52 and section 24 to provide an appropriate remedy for the breach, one existed under the Court's inherent jurisdiction, which also forms part of our constitutional structure.

27. *Charter* remedies have their own internal frameworks to guide courts in determining if they are appropriate and just in the circumstances. These frameworks, read in conjunction with section 33, ensure the judicial branch does not overstep its constitutional role. Consider two such remedies: *Charter* damages under section 24(1) and the exclusion of evidence under section 24(2).

i. *Charter* Damages under Section 24(1)

28. The Supreme Court of Canada recognizes that monetary compensation may be an appropriate remedy for *Charter* infringements under section 24(1).[38] To establish an entitlement to *Charter* damages, a claimant must prove that their *Charter* right has been infringed, and that such an infringement was *not* reasonably justifiable under section 1**.**

29. Once a claimant shows an *unjustifiable* infringement of *Charter* rights, courts must take account of additional constraints before granting damages. In *Ward*, the Court emphasized that damages should compensate the claimant, vindicate the *Charter* right, and deter the state from future breaches.[39] Yet, these aims need to be weighed against countervailing factors, including the chilling effect that *Charter* damages can have on government conduct. Where the state establishes that "*Charter* damages would interfere with good governance… [then] damages should not be awarded unless the state conduct meets a minimum threshold of gravity."[40] Furthermore, absent passing legislation which is "clearly unconstitutional" or otherwise demonstrating "bad faith or abuse of power"[41] a legislature may be able to rely on a public law rule that provides them with limited immunity from damages "for harm suffered as a result of the mere enactment or application of a law that is subsequently declared to be unconstitutional."[42]

30. Existing jurisprudence provides courts with guidance about when *Charter* damages should be awarded, and these principles provide sufficient safeguards against overuse of judicial powers following the invocation of section 33.

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[38] *Power* at ¶17, ¶118.
[39] *Vancouver (City) v Ward,* 2010 SCC 27 ("***Ward***"), at ¶4.
[40] *Ward*, at ¶39.
[41] *Power,* 2024 SCC 26 at ¶¶99-112.
[42] *Mackin v New Brunswick (Minister of Finance); Rice v New Brunswick,* 2002 SCC 13 at ¶78.

ii. The Exclusion of Evidence under Section 24(2)

31. Section 24(2) of the *Charter* provides accused persons the remedy of excluding evidence in criminal proceedings. Evidence can be excluded to address *Charter*-infringing state conduct or legislation. Section 33 cannot immunize state conduct from judicial review; courts always retain the ability to exclude evidence for *Charter*-infringing state conduct. When section 33 is invoked with respect to legislation, courts can still grant a section 24(2) remedy to exclude evidence, because granting such a remedy does not affect the operability of the legislation. Rather, the constitutionality of legislation is a distinct legal question from whether evidence collected under the legislation should be excluded pursuant to section 24(2).[43] Even when legislation is unconstitutional, a claimant must still prove their entitlement to the remedy of evidence exclusion.

32. There are three preconditions to a remedy under section 24(2):[44] "(a) the applicant's rights or freedoms as guaranteed by the *Charter* must have been unjustifiably limited or denied; (b) the evidence must have been obtained in a manner that unjustifiably limited or denied a guaranteed right or freedom; [and] (c) having regard to all the circumstances, the admission of the evidence in the proceedings must be capable of bringing the administration of justice into disrepute." If these three preconditions are met, then the evidence will be excluded.

33. Section 24(2) remedies historical *Charter* breaches while section 33 precludes remedies that prevent the continued operation of legislation. They serve disparate purposes. Section 33 does not hold a greater importance than section 24(2). Nothing in the text of section 33 permits it to limit the remedies available under section 24(2). The only reading of section 33 that permits section 24(2) to function as intended is to read section 33 as barring remedies that prevent the continued operation of legislation, and not as a categorical denial of all forms of *Charter* relief.

C. The Availability of *Charter* Remedies Underscores that Judicial Review is not Moot

34. A legislature's invocation of section 33 does not render an otherwise valid application for judicial review of legislation moot because a court can grant declaratory relief or any other *Charter* remedy that does not prevent the legislation from operating.

35. The doctrine of mootness provides that courts are not to hear matters where there is no live controversy before a court. Once the notwithstanding clause is invoked, there is no longer a "live controversy respecting the *operation* of the legislation"; however, there remains a live controversy

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[43] *R v Pike*, 2024 ONCA 608 at ¶91, ¶¶124-125.
[44] *R v Wijma*, 2021 BCSC 1801 at ¶14.

with respect to the question of whether the legislation violates the *Charter*.[45] There might also be a question — as there is in this case — about whether the Court should grant other *Charter* remedies. These situations are entirely unlike the case of *Borowski* where the challenged legislation had already been struck down, and the plaintiff was asking the Supreme Court of Canada to opine, in the abstract, on whether sections 7 and 15 of the *Charter* applied to fetuses.[46]

36. The Québec Court of Appeal determined that it was a moot question whether *Loi 21* "unjustifiably restricts" the *Charter* rights of "Québec state employees, representatives and actors… because the *Act* would still have force and effect notwithstanding any infringement of these rights."[47] The Appellants have outlined the practical effects of declarations of invalidity including for educating the public and for determining the validity of the legislation once the five-year sunset period expires.[48]

37. Judicial review after the invocation of section 33 serves additional practical ends. Beyond declarations, courts may grant other remedies to address specific instances of *Charter*-infringing legislation or conduct. Courts can grant such remedies because section 33 leaves their jurisdiction to engage in judicial review intact, except regarding those remedies that would render legislation inoperative. If this court opts to strike this claim as moot, it must clearly limit its holding to this set of facts and not foreclose applicants in other cases from seeking *Charter* remedies following the invocation of the notwithstanding clause.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 15th DAY OF SEPTEMBER 2025.

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[45] Gregoire Webber, "Notwithstanding Rights Review or Remedy? On the Notwithstanding Clause and the Operation of the Legislation (2021) 71 UTLJ 510 at 534.
[46] *Borowski v Canada (Attorney General),* 1989 CanLII 123, [1989] 1 SCR 342.
[47] *World Sikh Organization of Canada* at ¶379.
[48] *Mémoire de L'Appelante, L'Association De Droit Lord Reading* at ¶¶117-118; *Mémoire des Appelants Andréa Lauzon, Hakima Dadouce, Bouchera Chelbi et Comité Juridique de la Coalition Inclusion Québec* at ¶78; and see *UR Pride* at ¶¶183-187.

PART IV: TABLE OF AUTHORITIES