

**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 and 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 next page)

**FACTUM OF THE INTERVENER,
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(Pursuant to Rules 37 and 42 of the Rules of the Supreme Court of Canada)**

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(Style of cause continued)

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WORLD SIKH ORGANIZATION OF CANADA and AMRIT KAUR

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RESPONDENTS ON CROSS-APPEAL

-and-

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT /
APPELLANT ON CROSS-APPEAL

AND BETWEEN:

**ICHRAK NOUREL HAK, NATIONAL COUNCIL OF CANADIAN MUSLIMS and
CANADIAN CIVIL LIBERTIES ASSOCIATION**

APPELLANTS /
RESPONDENTS ON CROSS-APPEAL

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APPELLANTS ON CROSS-APPEAL

-and-

**FRANÇOIS PARADIS, IN HIS OFFICIAL CAPACITY, MOUVEMENT LAÏQUE
QUÉBÉCOIS and POUR LES DROITS DES FEMMES DU QUÉBEC**

RESPONDENTS

AND BETWEEN:

FÉDÉRATION AUTONOME DE L'ENSEIGNEMENT

APPELLANT /
RESPONDENT ON CROSS-APPEAL

-and-

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AND BETWEEN:

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

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AND BETWEEN:

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FEMMES DU QUÉBEC, MOUVEMENT LAÏQUE QUÉBÉCOIS, ENGLISH
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INTERVENERS

(Rule 33)

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(Rule 55)

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PART I – OVERVIEW AND STATEMENT OF FACTS

1. This appeal concerns racialized minority Muslim women who are disproportionately impacted by a law that reduces them to second-class citizens. It is about whether the judiciary can uphold their entitlement to equal rights under the *Canadian Charter of Rights and Freedoms* (“the *Charter*”).¹ The Attorney General of Quebec (“AG Quebec”) and others seek to use the section 33 “notwithstanding clause” to reinstate Canada to a *de facto* system of legislative supremacy that existed pre-*Charter* and consistently afforded women (particularly Indigenous and racialized women) lesser human rights.²
2. A purposive interpretation of section 28 of the *Charter* provides an answer to this predicament. This provision, included at the insistence of the founding mothers of the National Association of Women and the Law (NAWL)³ and other feminist advocates, entrenched a constitutional safeguard to protect women’s rights. Every phrase in section 28 was deliberately chosen to ensure that women’s rights were not diminished in the name of collective interests, including cultural interests and preserving social convention.⁴ Its history also includes the fight to free it from eleventh-hour attempts to make it subject to section 33.⁵ The protection of women’s equal rights “notwithstanding anything” else reflects Canadian women’s struggle and ultimately a “constitutional choice”⁶ not to create a hierarchy, but to eliminate gendered hierarchies of rights.

¹ [Canadian Charter of Rights and Freedoms](#), Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*].

² See for example *Bliss v Attorney General of Canada*, [1979] 1 SCR 183 at p 190-192; *Attorney General of Canada v Lavell*, [1974] SCR 1349 at p 1365; *Morgentaler v The Queen*, [1976] 1 SCR 616 at p 633.

³ National Association of Women and the Law, “[Women’s Human Right to Equality: A Promise Unfulfilled](#)” (Submission to the Special Joint Committee on the Constitution of Canada, 32nd Parl, 1st Sess) (1980) at p 7.

⁴ Kerri Anne Froc, “[The Untapped Power of Section 28 of the Canadian Charter of Rights and Freedoms](#)” (PhD Dissertation, Queen’s University 2015) at 164-165, 179 and 198 [Froc].

⁵ *Ibid* at 213-214, 220–221.

⁶ *Dickson v Vuntut Gwitchin First Nation*, 2024 SCC 10 at para 108 [Dickson].

PART II – STATEMENT ON POINTS IN ISSUE

3. NAWL submits that section 28 functions as: (1) an overarching interpretive principle that mandates reading the *Charter* through a gender lens; (2) a substantive, interdependent *right* that can ground a finding of unconstitutionality; and (3) a substantive *limit* to rights-limiting or overriding sections including sections 1, 25 and 33.

PART III – ARGUMENT

4. Section 28’s interpretive function is uncontroversial. Additionally, section 28 has two substantive functions. As a substantive interdependent *right*, section 28 can ground a finding of unconstitutionality if there is unequal enjoyment of an underlying right or freedom. As a substantive *limit* to *Charter* limits,⁷ section 28 ensures that a section 33 invocation cannot shield a law that results in women’s unequal enjoyment of rights. If a government attempts to do so, the section 33 invocation is of no force or effect in so far as it conflicts with section 28, enabling a Court to find that the law violates sections 15(1) or 2(a) (for instance), notwithstanding section 33.
5. While NAWL invites the Court to recognize both substantive functions, either can lead to a finding that the *Act respecting the laicity of the State*⁸ is unconstitutional, based respectively on a violation of section 28 or sections 15(1) and/or 2(a).

Section 28 is not merely interpretive

6. Section 28 is a constitutional directive that requires interpreting rights and freedoms through a gender lens.⁹ This means that Courts should always consider the gender implications of interpretations that otherwise may seem “neutral and objective”.¹⁰ This gender lens must account for differences among women. Indeed, section 28’s reference to “male and female persons” calls for an intersectional analysis of how people experience

⁷ Beverley Baines, “[Section 28 of the Canadian Charter of Rights and Freedoms: A Purposive Interpretation](#)” (2005) 17:1 CJWL at 61 [Baines].

⁸ [CQLR, c L-0.3](#).

⁹ *New Brunswick (Minister of Health and Community Services) v G (J)*, [\[1999\] 3 SCR 46](#) at para 115 [G (J)].

¹⁰ Katherine T Bartlett, “Feminist Legal Methods” (1990) 103:4 Harv L Rev 829 at 837.

the effects of laws as whole persons, recognizing that women have a variety of personal characteristics.¹¹ Section 28’s legislative history demonstrates that a key element of its purpose was to ensure equality for racialized and Indigenous women.¹²

7. However, section 28 cannot be merely interpretive. This Court has dispelled the notion that a provision placed under the “General” heading must be purely interpretive.¹³ Importantly, section 28 does not use language that connotes an interpretive role like “construed”¹⁴, “interpreted”¹⁵, or “deemed to include”¹⁶, but rather the word “guaranteed”, signaling a duty to ensure the equal enjoyment of rights. It is unreasonable to conclude that section 28 would omit the express interpretive language employed in adjacent provisions if its intended function were purely interpretive. Further, seeing section 28 as purely interpretive would make it redundant with section 15(1), which already “applies to and supports all other rights.”¹⁷

Section 28 is a substantive interdependent right

8. Section 28 enshrines a substantive right to equal enjoyment of other *Charter* rights. As such, it is distinct from a general equality guarantee,¹⁸ imposing a duty on the state to treat people equally when taking actions implicating other, underlying rights. Simply because an equal rights guarantee takes some of its content from other rights does not mean it is bereft of its own substantive content and therefore must be merely interpretive. There may be a violation of an equal rights guarantee even in the absence of a violation of an underlying right, so long as the claim falls within the ambit of the latter.¹⁹

¹¹ Shreya Atrey, “A Prioritarian Account of Gender Equality,” in Rebecca J. Cook, ed, *Frontiers of Gender Equality: Transnational Legal Perspectives* (Philadelphia: University of Pennsylvania Press, 2023) 55-67.

¹² Froc, *supra* note 4 at 199–200.

¹³ Dickson, *supra* note 6 at paras [158-159](#).

¹⁴ *Charter*, *supra* note 1 at [s. 25](#) and [s. 26](#).

¹⁵ *Ibid* at [s. 27](#).

¹⁶ *Ibid* at [s. 30](#).

¹⁷ *Andrews v Law Society of British Columbia*, [\[1989\] 1 SCR 143](#) at 185; see also *G (J)*, *supra* note 9 at para [115](#) (reasons of L’Heureux-Dubé, Gonthier, and McLachlin JJ).

¹⁸ Baines, *supra* note 7 at 68.

¹⁹ See, re art 14 of the [European Convention on Human Rights](#); *Wessels-Bergervoet v the Netherlands*, [Application No. 34462/97](#), European Court of Human Rights, Judgment of 4 June 2002, final on 4 September 2002; *E.B. v France [GC]*, [Application No. 43546/02](#), Judgment of

9. NAWL suggests that a section 28 violation would require the claimant to prove:
 - (a) that the law engages a protected right or freedom (the distinction falls “within the ambit” of a right referred to in the *Charter*);
 - (b) resulting in unequal enjoyment of the right or freedom as between men and women.
10. A section 28 violation cannot be justified under section 1, since section 28 applies notwithstanding “anything,” including section 1. Therefore, a section 28 violation leads to the conclusion that the law (or the offending parts of the law) is unconstitutional.
11. Importantly, section 28 cannot be included in a law’s section 33 invocation. A section 33 invocation can only cover the underlying right. Courts below found that this neutralizes section 28 because “there are no longer any rights or freedoms to be guaranteed equally to men and women.”²⁰ NAWL submits this is legally incorrect. The underlying rights, such as freedom of religion and the right to equality, are still “referred to” (in French: *mentionnés*) in the *Charter* regardless of whether section 33 is invoked. In any case, a section 33 declaration does not modify or extinguish *Charter* rights or freedoms.²¹ Its effect is on the legislation itself, permitting it to operate notwithstanding a *Charter* violation, while leaving the underlying rights intact.²²

Section 28 is a substantive *limit* to *Charter* limits

12. While a law can be found unconstitutional for violating section 28, another avenue is to recognize instead a violation of women’s sections 15(1) or 2(a) rights, notwithstanding section 33. In that case, section 28 prevents sections 1, 25 or 33 from shielding a law that results in women’s unequal enjoyment of *Charter* rights.

22 January 2008, Grand Chamber. See, re art 10 of the [Quebec Charter of rights and freedom: Quebec \(Commission des droits de la personne et des droits de la jeunesse\) v Bombardier Inc \(Bombardier Aerospace Training Center\)](#), [2015 SCC 39](#) at para [54](#).

²⁰ *Organisation mondiale sikhe du Canada c Procureur général du Québec*, [2024 QCCA 254](#) at paras [476-477](#), citing first instance judgement at para 875 with approval [*Organisation mondiale*].

²¹ *Saskatchewan (Minister of Education) v UR Pride Centre for Sexuality and Gender Diversity*, [2025 SKCA 74](#) at para [78](#) [*UR Pride*].

²² *Ibid* at para [85](#). See also Robert Leckey and Eric Mendelsohn, “The Notwithstanding Clause: Legislatures, Courts and the Electorate”, (2022) 72:2 UTLJ 1 at 196-196.

a. Section 28 applies “notwithstanding” *Charter* limits like section 33

13. The *Charter* must be interpreted purposively, beginning with its text.²³ The text of section 28 states that its equal rights mandate for male and female persons applies “notwithstanding anything” in the *Charter*.²⁴ This includes section 33, when it is invoked to shield an impugned law or provision. Consequently, the scope of section 33’s shield ends where it conflicts with the guarantee of equal enjoyment of rights found in section 28.
14. Section 28’s history supports this interpretation. As the original notwithstanding clause, section 28 was added to the draft *Charter* to respond to the risk that women’s rights would be undermined by collective interests advanced under sections 1, 25 or 27.²⁵ It was later proposed that section 28 be amended to read “Notwithstanding anything in this Charter except section 33...” However, sustained feminist advocacy resulted in Parliament and the provinces unanimously agreeing to maintain the original language of section 28, ensuring it was not subject to the section 33 override.²⁶
15. The AG Quebec’s submissions in effect interpret section 28 as if its text had been “This Charter shall be interpreted in a manner consistent with equal rights between male and female persons.”²⁷ To support negating the “notwithstanding anything” opening clause, the AG Quebec relies on one statement by Joe Clark, overlooking section 28’s more nuanced legislative history. Section 28 was included in the draft *Charter* thanks to a motion by the NDP, government support, and feminist advocacy.²⁸ Mr. Clark’s Opposition motion was to *reinstate* section 28’s original wording and scope. Further, section 28’s meaning cannot be ascertained from one statement by one parliamentarian, but even if it did, the parliamentary record demonstrates that he viewed an unencumbered section 28 as a substantive equal rights guarantee, as significant for women as the *Persons Case*.²⁹

²³ *Quebec (Attorney General) v 9147-0732 Québec inc*, [2020 SCC 32](#) at para 8.

²⁴ *Charter*, *supra* note 1 at [s. 28](#).

²⁵ *Froc*, *supra* note 4 at 165, 179 and 198.

²⁶ *Ibid* at 214, 220–221.

²⁷ Factum of the Attorney General of Quebec, submitted August 12, 2025 at paras 217-245.

²⁸ *Organisation mondiale*, *supra* note 20 at para 481.

²⁹ *E.g. House of Commons Debates*, [32nd Parl, 1st Sess, No 11](#) (November 9, 1981) at 12634; *House of Commons Debates*, [32nd Parl, 1st Sess, No 12](#) (November 20, 1981) at 13050.

b. Dickson supports section 28 acting as a limit to Charter shields

16. By confirming that section 28 limits section 25, this Court has provided jurisprudential support for NAWL’s position that section 28 limits shielding provisions of the *Charter*.
17. Section 25 is a “shield” that upholds “collective rights and freedoms of Indigenous people,”³⁰ protecting “Indigenous difference against inappropriate erosion by individual *Charter* rights.”³¹ Similarly, section 33 shields laws advancing collective interests (as interpreted by the legislature) from *Charter* rights;³² it is even described by the AG Quebec as shielding a province’s specific collective social and cultural interests.³³ These two shields are “functionally parallel.”³⁴ Section 1 can likewise permit the continued operation of *prima facie* rights-offending legislation for reasons related to advancing collective interests.³⁵ Since section 28’s “notwithstanding anything” makes no distinction between those sections, it should delimit them in similar ways.
18. The section 25 shield is subject to “the equality guarantee for ‘male and female persons’ under s.28 of the Charter.”³⁶ As such, section 28 “ensure[s] that a right protected under section 25 does not shelter gender-based discrimination.”³⁷ In other words, Indigenous governments are free to invoke section 25 to shield *prima facie* rights-offending laws, but only to the extent that they affect men and women equally.
19. Like section 25, section 33 can shield a law when *Charter* rights are asserted, but only to the extent that doing so does not offend section 28’s guarantee of equal enjoyment of those rights. To find otherwise would

³⁰ *Dickson*, *supra* note 6 at para [107](#).

³¹ *Ibid* at paras [118](#) and [123](#).

³² *Organisation mondiale*, *supra* note 20 at paras [319](#), [370](#) and [499](#); *UR Pride*, *supra* note 21 at paras [56](#), [59](#), and [185](#).

³³ Factum of the Attorney General of Quebec, submitted August 12, 2025 at para 187. See also Caitlin Salvino, “A Tool of the ‘Last Resort’: A Comprehensive Account of the Notwithstanding Clause Political Use from 1982-2021”, (2022) 16:1 *Journal of Parliamentary and Political Law* 11 at 24 [Salvino].

³⁴ Kerri Anne Froc and Paul Akio Mochizuki McGregor, “[Where Shielding Clauses Yield: Women’s Equal Rights following the Supreme Court’s Dickson Decision](#)” (September 5, 2025) at 8 [Froc and Mochizuki McGregor].

³⁵ *Canada (Attorney General) v JTI-Macdonald Corp*, [2007 SCC 30](#) at paras [37](#) and [45](#).

³⁶ *Dickson*, *supra* note 6 at para [110](#).

³⁷ *Ibid* at para [173](#).

create a constitutional anomaly, suggesting that the guarantee of gender equality is fundamental, but only when asserted against Indigenous self-governing communities. . . . The powerful, all-encompassing text of Section 28—“Notwithstanding anything in this Charter”—provides no textual basis for such an exception.³⁸

20. Likewise, section 1 cannot justify a *prima facie* rights violation when doing so would result in women’s unequal enjoyment of *Charter* rights. In other words, section 1’s scope is limited to the extent that it conflicts with section 28. In *N.A.P.E.*³⁹ and *Centrale des Syndicats*,⁴⁰ the only two Supreme Court cases to recognize a *prima facie* section 15(1) sex equality violation justified under section 1, none of the parties raised section 28 as precluding governmental recourse to section 1.⁴¹ Nonetheless, NAWL submits that this is a coherent and logical interpretation of section 28’s “notwithstanding anything” clause, one that was intended and anticipated at patriation.⁴²

c. *Dickson* supports respecting a constitutional choice without being absolutist

21. *Dickson* also provides a response to the concern that section 28 creates a hierarchy of rights, in a way that can be seen as impossible and absolutist. Regarding section 25, the Court was able to give “precedence”⁴³ to collective Indigenous rights without making their protection “absolute”.⁴⁴ This was accomplished by ensuring “[p]riority is given to collective Indigenous rights only when they conflict with an individual’s *Charter* right.”⁴⁵
22. Like section 25, section 28 reflects a “constitutional choice”⁴⁶ to protect women’s equal enjoyment of rights against the effects of other sections of the *Charter*. To guard against an absolutist interpretation, section 28 limits other sections only in cases of conflict. In other words, legislators are free to invoke sections 1, 25 or 33 to permit the continued

³⁸ Froc and Mochizuki McGregor, *supra* note 34 at 8.

³⁹ *Newfoundland (Treasury Board) v N.A.P.E.*, [2004 SCC 66](#).

⁴⁰ *Centrale des syndicats du Québec v Québec (Attorney General)*, [2018 SCC 18](#).

⁴¹ But see *R v Red Hot Video Ltd*, [\(1985\) 18 CCC \(3d\) 1, 45 CR \(3d\) 36 \(BCCA\)](#) at para 49.

⁴² Froc, *supra* note 4 at 206 and 379. See also Baines, *supra* note 7 at 55; André Morel, “[La clause limitative de l’article 1 de la Charte canadienne des droits et libertés](#)” (1983) 61 Canadian Bar Review 69 at 87-88.

⁴³ *Dickson*, *supra* note 6 at para [107](#).

⁴⁴ *Ibid* at para [110](#).

⁴⁵ *Ibid*.

⁴⁶ *Ibid* at para [108](#).

operation of *prima facie* rights-offending legislation, but only to the extent that this invocation does not offend the constitutional choice to protect women’s equal enjoyment of *Charter* rights.

23. Understanding section 28 as a limit to *Charter* limits that prevails only in case of conflict assuages the concerns that it could be used to defeat section 15(2) or 32.⁴⁷
24. An apparent conflict between sections 15(2) and 28 in cases of affirmative action can easily be reconciled by interpreting section 28 through the lens of substantive equality.⁴⁸ Contrary to the AG Quebec’s suggestion, laws that ameliorate women’s disadvantage do not conflict with, but rather further, the equal rights guarantee.⁴⁹ It is of no event that, in the past, Quebec has unnecessarily invoked section 33 to support such laws.⁵⁰
25. Similarly, it is not clear how a uniform provision like section 32, which defines the scope of the *Charter*’s application, could violate the guarantee of equal enjoyment of rights. The existence of conflict between sections 28 and 32 is entirely hypothetical. Further, section 28 protects the equal enjoyment of *Charter* rights against erosion by other provisions; it does not create new, non-*Charter* rights for women.⁵¹ Since *Charter* rights regulate the relationship between the state and those subject to its laws, section 28 cannot extend them to the private context.

d. Section 33 cannot shield laws that result in women’s unequal enjoyment of rights

26. The courts below gave precedence to section 33 in case of conflict with section 28, by applying section 33’s override *before* considering the effect of section 28.⁵² With respect, this contradicts the wording of section 28 by giving it no power in relation to section 33.
27. Logically, “notwithstanding anything” cannot mean “notwithstanding anything except section 33,” as the two formulations were expressly debated, and the legislature chose the

⁴⁷ *Hak c Procureur général du Québec*, [2021 QCCS 1466](#) at paras [824](#) and [871](#); Factum of the Attorney General of Quebec, submitted August 12, 2025 at para 237.

⁴⁸ *Fraser v Canada (Attorney General)*, [2020 SCC 28](#) at paras [42](#) and [72](#).

⁴⁹ Factum of the Attorney General of Quebec, submitted August 12, 2025 at para 237.

⁵⁰ Salvino, *supra* note 33 at 18-25.

⁵¹ Froc and Mochizuki McGregor, *supra* note 34 at 13-14.

⁵² *Organisation mondiale*, *supra* note 20 at paras [476-477](#), citing first instance judgement at para 875 with approval.

former.⁵³ Section 28 has evident priority over section 33, both chronologically and in terms of the scope of their “notwithstanding” clauses. In case of conflict, section 28 can prevent section 33 from having its effect on sections 15(1), 2(a) or others.

28. NAWL proposes the following framework to determine if a law’s section 33 invocation conflicts with section 28:
- (a) Has section 33 been validly invoked?⁵⁴
 - (b) Is there a right or rights “referred to” in the *Charter* at issue, covered by the law’s section 33 invocation (e.g. section 15 or 2(a))?
 - (c) Would the law’s section 33 invocation result in the unequal enjoyment of the right(s) at issue between men and women?⁵⁵

If the three steps are satisfied, the section 33 invocation is of no force or effect to the extent that it conflicts with section 28. This means that a court can exercise its power to invalidate provisions of the legislation that violate women’s right(s) referred to at step b, notwithstanding section 33.

29. Importantly, the debate regarding whether section 33 is capable of extinguishing underlying rights is irrelevant where section 28 functions as a limit to *Charter* shields. Indeed, even if section 33 were capable of extinguishing rights, section 28 prevents it from having this effect where it would be contrary to the guarantee of equal enjoyment of rights. This reasoning is supported by *Dickson*, where the Court held that the shielding power of section 25 was constrained by the external rule set out in section 28, ensuring it “does not shelter gender-based discrimination.”⁵⁶ Likewise, section 28 delimits the scope of the section 33 invocation where the equal enjoyment of rights between male and female persons is at stake,⁵⁷ ensuring section 33 does not extinguish or override rights if that would result in unequal enjoyment. This interpretation ensures neither section 28, nor section 33

⁵³ See *R v Prosper*, [1994] 3 SCR 236 at p 266.

⁵⁴ *Ford v Quebec (Attorney General)*, [1988] 2 SCR 712 at p 741.

⁵⁵ *Froc and Mochizuki McGregor*, *supra* note 34 at 20-21.

⁵⁶ *Dickson*, *supra* note 6 at paras 173 and 182.

⁵⁷ *Froc and Mochizuki McGregor*, *supra* note 34 at 15.

is rendered meaningless. It also does not unduly infringe on parliament’s ability to have the last word.⁵⁸ As Froc and Mochizuki McGregor explain,

“[In *Dickson*, the] Court did not question the VGFN’s authority to enact laws concerning its governance; it established the constitutional boundaries within which that authority must be exercised. Similarly, a court applying section 28 to a section 33 invocation would not be questioning the legislature’s political mandate. It would simply be enforcing a pre-existing, higher-order constitutional rule: that whatever else a legislature may do, it cannot legislate in a manner that denies the equal guarantee of rights and freedoms to women and men, even when invoking section 33.”

Conclusion

30. A finding that section 28 is nothing but an interpretive aid, redundant with section 15(1) and subordinate to sections 33 and 1 would require this Court to ignore section 28’s explicit text and purpose. Yet despite being written in the strongest possible language (“notwithstanding anything”), section 28 has been viewed as symbolic and its substantive component deemed “illogical”.⁵⁹
31. This Court must make clear that the protection of gender equality in the *Charter* is not symbolic; it is the last bastion against patriarchal interpretations of collective interests that can and often do target women, especially racialized women.

PART IV – SUBMISSIONS REGARDING COSTS

32. NAWL does not seek costs and asks that no costs be awarded against it.

PART V – ORDER SOUGHT

33. NAWL takes no position on the outcome of this appeal.

⁵⁸ *UR Pride*, *supra* note 21 at para [109](#).

⁵⁹ *Organisation mondiale*, *supra* note 20 at para [502](#).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of September, 2025.



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PART VI – TABLE OF AUTHORITIES & LEGISLATION

Case Law	Paragraph References (to Memorandum)
<i>Andrews v Law Society of British Columbia</i> , [1989] 1 SCR 143	7
<i>Attorney General of Canada v Lavell</i> , [1974] SCR 1349	1
<i>Bliss v Attorney General of Canada</i> , [1979] 1 SCR 183	1
<i>Canada (Attorney General) v JTI-Macdonald Corp</i> , 2007 SCC 30	17
<i>Centrale des syndicats du Québec v Québec (Attorney General)</i> , 2018 SCC 18	20
<i>Dickson v Vuntut Gwitchin First Nation</i> , 2024 SCC 10	2, 7, 17, 18, 21, 22, 29
<i>E.B. v France [GC]</i> , Application No. 43546/02 , Judgment of 22 January 2008, Grand Chamber	8
<i>Ford v Quebec (Attorney General)</i> , [1988] 2 SCR 712	28
<i>Fraser v Canada (Attorney General)</i> , 2020 SCC 28	24
<i>Hak c Procureur général du Québec</i> , 2021 QCCS 1466	23
<i>Morgentaler v The Queen</i> , [1976] 1 SCR 616	1
<i>New Brunswick (Minister of Health and Community Services) v G (J)</i> , [1999] 3 SCR 46	6, 7
<i>Organisation mondiale sikhe du Canada c Procureur général du Québec</i> , 2024 QCCA 254	11, 15, 17, 25, 30
<i>R v Prosper</i> , [1994] 3 SCR 236	27
<i>Quebec (Attorney General) v 9147-0732 Québec inc</i> , 2020 SCC 32	13
<i>Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc (Bombardier Aerospace Training Center)</i> , 2015 SCC 39	8
<i>Newfoundland (Treasury Board) v N.A.P.E.</i> , 2004 SCC 66	20

<i>R v Red Hot Video Ltd</i> , (1985) 18 CCC (3d) 1, 45 CR (3d) 36 (BCCA)	20
<i>Saskatchewan (Minister of Education) v UR Pride Centre for Sexuality and Gender Diversity</i> , 2025 SKCA 74	11, 17, 29
<i>Wessels-Bergervoet v the Netherlands</i> , Application No. 34462/97 , European Court of Human Rights, Judgment of 4 June 2002, final on 4 September 2002	8
Secondary Sources	
André Morel, “ La clause limitative de l’article 1 de la Charte canadienne des droits et libertés ” (1983) 61 Canadian Bar Review 69	20
Beverley Baines, “ Section 28 of the Canadian Charter of Rights and Freedoms: A Purposive Interpretation ” (2005) 17:1 CJWL 45–70	4, 8, 20
Caitlin Salvino, “A Tool of the ‘Last Resort’: A Comprehensive Account of the Notwithstanding Clause Political Use from 1982-2021”, (2022) 16:1 Journal of Parliamentary and Political Law 11	17, 24
<i>House of Commons Debates</i> , 32nd Parl, 1st Sess, No 11 (November 9, 1981)	15
<i>House of Commons Debates</i> , 32nd Parl, 1st Sess, No 12 (November 20, 1981)	15
Katherine T Bartlett, “Feminist Legal Methods” (1990) 103:4 Harv L Rev 829	6
Kerri Anne Froc, “ The Untapped Power of Section 28 of the Canadian Charter of Rights and Freedoms ” (PhD Dissertation, Queen’s University 2015)	2, 6, 14, 20,
Kerri Anne Froc and Paul Akio Mochizuki McGregor, “ Where Shielding Clauses Yield: Women’s Equal Rights following the Supreme Court’s Dickson Decision ” (September 5, 2025)	17, 19, 25, 28, 29,
National Association of Women and the Law, “ Women’s Human Right to Equality: A Promise Unfulfilled ” (Submission to the Special Joint Committee on the Constitution of Canada, 32nd Parl, 1st Sess) (1980)	2
Robert Leckey and Eric Mendelsohn, “The Notwithstanding Clause: Legislatures, Courts and the Electorate” (2022) 72:2 UTLJ 1	11

Shreya Atrey, “A Prioritarian Account of Gender Equality,” in Rebecca J. Cook, ed, Frontiers of Gender Equality: Transnational Legal Perspectives (Philadelphia: University of Pennsylvania Press, 2023)	6
Statutes, Regulations, Legislation	
<i>Act respecting the laicity of the State</i> , CQLR, c L-0.3 FR	5
Canadian Charter of Rights and Freedoms , Part 1 of the <i>Constitution Act, 1982</i> , being Schedule B to the <i>Canada Act 1982 (UK)</i> , 1982, c 11	1-3, 7, 10, 12, 13, 14-16, 18-28, 30-33, 35, 36