Charter: A Course

A podcast about Canadian Constitutional Law & Litigation

Season 2, Episode 2: Section 33: The Notwithstanding Clause

About the Series

Charter: A Course is a podcast created by the David Asper Centre for Constitutional Rights (the Asper Centre) and hosted by the Asper Centre's Executive Director Cheryl Milne.

Charter: A Course focuses on Canadian constitutional law and litigation. In each episode, we highlight the accomplishments of U of T Law's faculty and alumni involved in leading constitutional cases and issues. Each episode also includes a "Practice Corner", where we talk about the ins and outs of what it means to be a constitutional litigator.

Whether you are a law student, a lawyer, or just an interested person, we hope that you learn about an aspect of constitutional law and litigation that interests you in our podcast.

Show Notes

This episode focuses on section 33 of the Canadian Charter of Rights and Freedoms, otherwise known as the 'notwithstanding clause'. Recognized as a distinctive Canadian legal invention, the notwithstanding clause creates a legislative tool that permits federal, provincial or territorial legislatures to declare an act or provision of an act to operate notwithstanding sections 2 and 7 to 15 of the Charter.

With the help of our distinguished guest Professor Emerita Lorraine Weinrib we discuss section 33's unique role within Canada's constitutional democracy, its development, its operation, the political implications of it thus far, and the existing jurisprudence on its application.

In our "Practice Corner", we will be speaking to two lawyers, Gregory Bordan and Marion Sandilands, who are involved in the legal challenge against the invocation of the notwithstanding clause in Quebec's Bill 21, An Act respecting the laicity of the State.

Find a full transcript of this episode HERE.

Case Links

In this episode, the following cases were discussed:

Ford v. Quebec (Attorney General), [1988] 2 SCR 712
Hak c. Procureure générale du Québec, 2019 QCCS 2989
Toronto (City) v. Ontario (Attorney General), 2021 SCC 34

About the Asper Centre

The Asper Centre, a part of the University of Toronto's Faculty of Law since 2008, is devoted to realizing constitutional rights through advocacy, research and education. The Centre aims to play a vital role in articulating Canada's constitutional vision to the broader world. The cornerstone of the Centre is a legal

clinic that brings together students, faculty and members of the bar to work on significant constitutional cases and advocacy initiatives. The Centre was established through a generous gift from U of T law alumnus David Asper (LLM '07).

Thank You's

Charter: A Course is proudly sponsored by the University of Toronto's affinity partner **TD Insurance.** We would like to thank our sponsor, and you can discover the benefits of affinity products here.

We would like to thank the creators of our theme music for Charter: A Course. Constitutional law professor Howie Kislowicz and law professor Rob Currie gave us the licence to use their constitutional law shanty in exchange for a donation to the Calgary Food Bank. The song's performers are: Vanessa Carroll, Rob Currie, Howie Kislowicz, Avinash Kowshik, Anna Lund, Patricia Paradis, Elin Sigurdson, Lyle Skinner, and Dave Wright. You can listen to the entire shanty here: Charter a Course. Please consider contributing to your local food bank!

Thank you to Caitlin Salvino, JD student at the University of Toronto, Faculty of Law and Asper Centre Summer Research Assistant in 2022, for her contributions to the production of this episode and for taking over hosting duties in the main interview with Professor Weinrib.

Thank you to our wonderful guests on this episode, University of Toronto Faculty of Law Professor Emerita Lorraine Weinrib, and lawyers Gregory Bordan and Marion Sandilands.

Thank you to our audio editor Liam Morrison of Bell Room Media Solutions.

Lastly, we are very grateful to you, our listeners, for taking the time to join us on as we continue to Charter a course into podcasting!