

APPENDIX

TABLE 1 QUÉBEC – OMNIBUS USE

Act in which Notwithstanding Declaration Appears	What is Enacted Notwithstanding the <i>Charter</i> ?	Section of <i>Canadian Charter</i> in Notwithstanding Declaration	Section of Provincial Human Rights Statute in Notwithstanding Declaration	Year in which Notwithstanding Declarations Enacted	Year in which Notwithstanding Declarations Expired or Repealed
<p data-bbox="194 388 459 600"><i>An Act respecting the Constitution Act, 1982</i>, ss. 1–2 inserted notwithstanding declarations into every provincial statute enacted before 23 June 1982.¹</p> <p data-bbox="214 621 459 839">In addition, notwithstanding declarations were inserted in every act enacted until December 1985 when the government lost the elections.</p>	<p data-bbox="492 450 746 543">Every act of the province enacted before 23 June 1982.</p> <p data-bbox="492 699 746 761">Every act of the province subsequently enacted</p>	ss. 2, 7–15 (all)	None	1982 Continuously, 1982–1985	<p data-bbox="1700 481 1870 512">Expired in 1987</p> <p data-bbox="1671 688 1905 771">Last notwithstanding declaration expired in December 1990</p>

1. CQLR c L-4.2 [Act 1.1].

TABLE 2 QUÉBEC – PENSION PLANS LEGISLATION

#	Act in which Notwithstanding Declaration Appears	What is Deviating?	Section of <i>Canadian Charter</i> Deviated From	Section of <i>Québec Charter</i> Deviated From	Initial Enactment	Renewals ²
2.1	<i>Act respecting the Pension Plan of Certain Teachers</i> , s. 62 ³	“The provisions of this Act”	s. 15 (equality)	s. 10 (equality)	“A” <i>An Act respecting the Pension Plan of Certain Teachers and amending various legislation respecting the pension plans of the public and parapublic sectors, 1986⁴</i>	“B” <i>An Act to amend various legislative provisions respecting pension plans in the public and parapublic sectors, 1991⁵</i> “C” <i>An Act to amend the Charter of human rights and freedoms and other legislative provisions, 1996⁶</i> “D” <i>An Act respecting the Pension Plan of Management Personnel, 2001⁷</i> “E” <i>An Act to amend the Act respecting the Pension Plan of Peace Officers in Correctional Services and other legislative provisions, 2004⁸</i> “F” <i>An Act to amend various pension plans in the public sector.⁹</i> “G” <i>An Act respecting the implementation of recommendations by the pension committee of certain pension plans in the public sector and amending various legislative provisions.¹⁰</i> “H” <i>An Act amending certain Acts establishing public sector pension plans.¹¹</i> (This renewal will expire on 1 January 2025)
2.2	<i>Act respecting the Government and Public Employees Retirement Plan</i> , s. 223.1 ¹²	Specific provisions concerning pension eligibility ¹³	s. 15 (equality)	s. 10 (equality)	“A”	Acts B–H.
2.3	<i>An Act respecting the Teachers Pension Plan</i> , s. 78.1 ¹⁴	Specific provisions concerning pension eligibility ¹⁵	s. 15 (equality)	s. 10 (equality)	“A”	Acts B–H.
2.4	<i>An Act respecting the Civil Service Superannuation Plan</i> , s. 114.1 ¹⁶	Specific provisions concerning pension eligibility ¹⁷	s. 15 (equality)	s. 10 (equality)	“A”	Acts B–H.
2.5	<i>An Act respecting the Pension Plan of Management Personnel</i> , s. 211 ¹⁸	Specific provisions concerning pension eligibility ¹⁹	s. 15 (equality)	s. 10 (equality)	“D” <i>An Act respecting the Pension Plan of Management Personnel, 2001²⁰</i>	Acts E–H.

2. This is relevant only regarding the *Canadian Charter*; the NWCs in provincial rights protecting documents do not include a sunset mechanism.

3. CQLR c R-9.1 [Act “A” or Act 2.1].

4. Act “A,” *supra* note 3, ss 62, 87, 97, 105. Section 62 enacted the notwithstanding declaration. Section 87 of Act “A” enacted the notwithstanding declaration in *Act respecting the Government and Public Employees Retirement Plan*, CQLR c R-10 [Act 2.2]. Section 97 enacted the declaration in *Act respecting the Teachers Pension Plan*, CQLR c R-11 [Act 2.3]. Section 105 enacted the declaration in *Act respecting the Civil Service Superannuation Plan*, CQLR c R-12 [Act 2.4].

5. SQ 1991 c 14 [Act “B”], ss 1, 29, 37, 43. Section 1 of Act “B” renewed the declaration in Act 2.1. Section 29 renewed the declaration in Act 2.2. Section 37 renewed the declaration in Act 2.3. Section 43 renewed the declaration in Act 2.4.

6. SQ 1996, c 10 [Act “C”], ss 5–8. Section 5 of Act “C” renewed the notwithstanding declaration in Act 2.1. Section 6 renewed the declaration in Act 2.2. Section 7 renewed the declaration in Act 2.3. Section 8 renewed the declaration in Act 2.4.

7. CQLR c R-12.1 [Act “D” or Act 2.5], ss 211, 235, 360, 392. Section 211 of Act “D” enacted the notwithstanding declaration within the Act. Section 235 renewed the declaration in Act 2.1. Section 360 renewed the declaration in Act 2.2. Section 378 renewed the declaration in Act 2.3. Section 392 renewed the declaration in Act 2.4.

8. SQ 2004, c 39 [Act “E”], ss 78, 174, 196, 214, 272. Section 78 of Act “E” renewed the notwithstanding declaration in Act 2.1. Section 174 renewed the declaration in Act 2.2. Section 196 renewed the declaration in Act 2.3. Section 214 renewed the declaration in Act 2.4. Section 272 renewed the declaration in Act 2.5.

9. SQ 2009, c 56 [Act “F”], ss 2, 10, 13, 17, 23. Section 2 of Act “F” renewed the notwithstanding declaration in Act 2.1. Section 10 renewed the declaration in Act 2.2. Section 13 renewed the declaration in Act 2.3. Section 17 renewed the declaration in Act 2.4. Section 23 renewed the declaration in Act 2.5.

10. SQ 2014, c 11 [Act “G”].

11. SQ 2019, c 25 [Act “H”].

12. See Act 2.2, *supra* note 4.

13. The notwithstanding declaration refers to sections 98 and 115.4. *Ibid*, s 223.1.

14. Act 2.3, *supra* note 4.

15. The notwithstanding declaration refers to ss 28, 32 and 51. *Ibid*, s 78.1.

16. Act 2.4, *supra* note 4.

17. The notwithstanding declaration refers to sections 56, 84, the first paragraph of section 90, and the ninth paragraph of section 96. *Ibid*, s 114.1.

18. Act 2.5, *supra* note 7.

19. The notwithstanding declaration (s 211) refers to sections 139 and 148. *Ibid*.

20. Act 2.5, *supra* note 7, ss 211, 235, 360, 378, 398. Section 211 of Act 2.5 enacted the Act’s notwithstanding declaration. Section 235 renewed the declaration in Act 2.1. Section 360 renewed the declaration in Act 2.2. Section 378 renewed the declaration in Act 2.3. Section 392 renewed the declaration in Act 2.4.

TABLE 3 QUÉBEC – EDUCATIONAL REFORM LEGISLATION

#	Act in which Notwithstanding Declaration Appears	What is Deviating?	Section of <i>Canadian Charter</i> Deviated From	Section of <i>Québec Charter</i> Deviated From	Initial Enactment	Renewal
3.1	<i>Act respecting the Conseil supérieur de l'éducation</i> , ss. 31–32 ²¹		s. 2(a) (freedom of religion) and s. 15 (equality)	s. 3 (fundamental freedoms, including freedom of religion) and s. 10 (equality)	<i>An act to again amend the Education Act and the Act respecting the Conseil supérieur de l'éducation and to amend the Act respecting the Ministère de l'Éducation</i> , 1986 ²²	“J” <i>Education Act, 1988</i> ²³ “L” <i>An Act respecting certain declarations of exception in Acts relating to education, 1994</i> ²⁴ “M” <i>An Act respecting certain declarations of exception in Acts relating to education, 1999</i> ²⁵ Repealed by Act “N” in 2001 ²⁶ “N” <i>An Act to amend various legislative provisions respecting education as regards confessional matters</i> ²⁷
3.2	<i>An Act respecting the Ministère de l'Éducation</i> , ss. 17–18 ²⁸	The provisions of this Act which grant rights and privileges to a religious confession ²⁹	s. 2(a) (freedom of religion) and s. 15 (equality)	s. 3 (fundamental freedoms, including freedom of religion) and s. 10 (equality)	“I”	Acts J–M Repealed by Act “N” in 2001
3.3	<i>The Education Act for Cree, Inuit and Naskapi Native persons</i> , ss. 720–721 ³⁰		s. 2(a) (freedom of religion) and s. 15 (equality)	s. 3 (fundamental freedoms, including freedom of religion) and s. 10 (equality)	“I”	Acts J–O S. 720 was repealed in 2005 by Act O. The notwithstanding declaration, last renewed by Act O, expired on July 1, 2008.
3.4	<i>Education Act</i> , ss. 726–27 ³¹		s. 2(a) (freedom of religion) and s. 15 (equality)	s. 3 (fundamental freedoms, including freedom of religion) and s. 10 (equality)	“J” <i>Education Act, 1988</i> ³²	Acts L–O S. 726 was repealed in 2005 by Act O. The notwithstanding declaration, last renewed by Act O, expired on July 1, 2008.
3.5	<i>An Act respecting school elections</i> , s. 283–84 ³³		s. 2(a) (freedom of religion) and s. 15 (equality)	s. 3 (fundamental freedoms, including freedom of religion) and s. 10 (equality)	“K” <i>An Act respecting school elections, 1989</i> ³⁴	Act L S. 283 was repealed in 2000 by Act M. ³⁵ S. 284 expired after 5 years (on July 1, 1999) and was not renewed.
3.6	<i>An Act to amend various legislative provisions of a confessional nature in the education field</i> , s. 14 ³⁶	Replacement of Catholic or Protestant moral and religious programs with classes in ecumenism or ethics and religious culture.	s. 2(a) (freedom of religion) and s. 15 (equality)	s. 3 (fundamental freedoms, including freedom of religion) and s. 10 (equality)	“O” An Act to amend various legislative provisions of a confessional nature in the education field ³⁷ (This renewal expired on July 1, 2008)	
3.7	<i>An Act respecting private education</i> , ss. 175–76 ³⁸				<i>An Act respecting private education, 1992</i> ³⁹	

21. CQLR c C-60, ss 31-32 [Act 3.1].

22. SQ 1986, c 101 [Act “I”], ss 10-12. Section 10 of Act “I” enacted the notwithstanding declaration in Act 3.7. Section 11 enacted the declaration in *The Education Act for Cree, Inuit and Naskapi Native persons*, CQLR c I-14, ss 720-21 [Act 3.3]. Section 12 enacted the declaration in *Act respecting the Ministère de l'Éducation, du Loisir et du Sport*, CQLR c M-15, ss 17-18 [Act 3.2].23. CQLR c I-13.3, ss 726-27 [Act 3.4 or Act “J”], ss 571-72, 655-56, 662-63. Sections 571-72 of Act “J” re-enacted the declarations in Act 3.1. Sections 655-56 enacted the declarations in Act 3.3. Sections 662-63 enacted the declarations in the Act 3.2. Aside from renewing the notwithstanding declarations, the declaration in each act was split into two sections—one regarding the *Canadian Charter* and one regarding the *Québec Charter*. This explains why each renewal was done in two sections and why I use “declarations” instead of “declaration.” The reason the declarations were re-enacted after two years rather than five is that some of the education acts underwent reform (this explains why Act “I”, is entitled “*An act to again amend the Education Act and the Act respecting the Conseil supérieur de l'éducation and to amend the Act respecting the Ministère de l'Éducation*” while Act “J” is entitled “*Education Act*”). The content of the declarations was not changed. The text of the declarations was technically changed from “[T]his act, as far it grants rights and privileges...” to the current text of “[T]he provisions of this Act which grant rights and privileges...”

24. SQ 1994, c 11 [Act “L”], s 1. Unlike the enactment and first re-enactment of the declarations (in Acts “I” and “J”), the second and third re-enactments (in Acts “L” and “M”) were accomplished by one single section that applied to all five declarations.

25. SQ 1999, c 28, [Act “M”], s 1. The notwithstanding declarations were renewed for only two years, rather than the five-year maximum; there’s an indication in the debates that the National Council of the Parti Québécois recommended the government repeal the notwithstanding declarations, with a permissible two-year transitional period. See Québec, National Assembly, *Journal des débats (Hansard) of the National Assembly*, 36-1, vol 36 No 39 (2 June 1999).

26. SQ 2000, c 24 [Act “N”], ss 15, 16, 50, 51. Sections 15 and 16 of Act “N” repealed the declarations in Act 3.1. Sections 50 and 51 repealed the declarations in Act 3.2.

27. *Ibid.*, ss 44, 61. Section 44 of Act “N” renewed the declaration in Act 3.4. Section 61 renewed the declaration in Act 3.3.28. Act 3.2, *supra* note 22, ss 17-18.

29. This is the text of all the notwithstanding declarations. Act 3.5 uses the term “religious denomination” instead of “religious confession.”

30. Act 3.3, *supra* note 22.31. Act 3.4, *supra* note 23.32. Act “J,” *supra* note 23, ss 571-72, 655-56, 662-63. Sections 571-72 of Act “J” re-enacted the declarations in Act 3.1. Sections 655-56 enacted the declarations in Act 3.3. Sections 662-63 enacted the declarations in Act 3.2.

33. CQLR c E-2.3 [Act 3.5 or Act “K”], ss 283-84.

34. *Ibid.*35. Act “M,” *supra* note 25, s 7.

36. SQ 2005, c 20 [Act 3.6 or Act “O”], s 17.

37. *Ibid.*, ss 9, 11.

38. CQLR c E-9.1 [Act 3.7].

39. *Ibid.*

TABLE 4 QUÉBEC – OTHER LEGISLATION

	Act in which Notwithstanding Declaration Appears	What is Enacted Notwithstanding the Charter?	Section of <i>Canadian Charter</i> in Notwithstanding Declaration	Section of Provincial Human Rights Statute in Notwithstanding Declaration	Year in which Notwithstanding Declarations Enacted	Year in which Notwithstanding Declarations Expired or Repealed
4.1	<i>An Act to amend the Act to promote the development of agricultural operations</i> , s. 16 ⁴⁰	“The distinction based on age” in certain provisions ⁴¹	s. 15 (equality)	None	1986	Repealed in 1987 ⁴²
4.2	<i>An Act to amend the Charter of the French language</i> , s. 10 ⁴³	Two specific provisions regarding French-only signs and firm names ⁴⁴	s. 2(b) (freedom of expression) and s. 15 (equality)	s. 3 (fundamental freedoms, including freedom of expression) and s. 10 (equality)	1988	Not re-enacted in 1993 ⁴⁵
4.3	<i>An Act respecting the laicity of the State</i> , 2019 ⁴⁶	The entire act	ss. 2, 7–15 (all)	ss. 1–38 (all)	2019	Will expire in 2024

40. SQ 1986, c 54 [Act 4.1].

41. The notwithstanding declaration (s 16) refers to sections 3 and 5. See *ibid.*

42. The notwithstanding declaration was not explicitly repealed. The entire *Act to promote the development of agricultural operations* was replaced by *Act respecting Farm Financing*, SQ 1987, c F-1.2. The replacement act did not include a notwithstanding declaration.

43. SQ 1988, c 54 [Act 4.2].

44. The notwithstanding declaration (section 10) refers to sections 1 and 6, which amend sections 58 (signs) and 68 (firm names) of the *Charter of the French language*. See *ibid.*

45. The notwithstanding declarations were not re-enacted because sections 58 and 68 were amended to become compliant with the *Charter*. See *An Act to Amend the Charter of the French language*, SQ 1993, c 40, ss 18, 22.

46. SQ 2019 c 12 [Act 4.3].

TABLE 5 OTHER PROVINCES

	Province/ Act in which Notwithstanding Declaration Appears	What is Enacted Notwithstanding the <i>Charter</i> ?	Section of <i>Canadian Charter</i> in Notwithstanding Declaration	Section of Provincial Human Rights Statute in Notwithstanding Declaration	Year in which Notwithstanding Declarations Enacted	Year in which Notwithstanding Declarations Expired or Repealed
5.1	Yukon <i>Land Planning and Development Act</i> , s. 39(1) ⁴⁷	“The provisions of this act relating to the nomination of persons to be members of the [planning] Board or Committees by the Council for Yukon Indians”	s. 15 (equality)	None	1982	The act was never brought into force or repealed.
5.2	Saskatchewan <i>An Act to provide for Settlement of a Certain Labour-Management dispute between the Government of Saskatchewan and the Saskatchewan Government Employees’ Union</i> , s. 9 ⁴⁸	“This Act”	s. 2(d) (freedom of association)	The entire Saskatchewan Human Rights Code	1986	Expired in 1991 ⁴⁹
5.3	Saskatchewan <i>An Act to amend The Education Act, 1995 (School Choice Protection Act)</i> ⁵⁰	Section 2.1	ss. 2 and 15	The Saskatchewan Human Rights Code, “particularly sections 4, 12 and 13 of that Act.”	2018	The act was never brought into force or repealed.
5.4	Alberta <i>Marriage Act</i> , s. 2 ⁵¹	“This Act”	ss. 2, 7–15 (all)	The entire Alberta Bill of Rights	2000 ⁵²	Expired, by operation of law, 23 March 2005.
5.5	Ontario <i>An Act to amend the Election Finances Act</i> , s. 4 ⁵³	“This Act” (inserted in the Election Finances Act) ⁵⁴	ss. 2, 7–15 (all)	The entire Ontario Human Rights Code	2021 ⁵⁵	Will expire in 2026

47. SY 1982, c 22 [Act 5.1].

48. SS 1984-85-86, c 111.

49. Since the purpose of this Act was to settle a specific labour dispute, there was no need to renew it.

50. SS 2018, c 39 [Act 5.3].

51. RSA 2000, c M-5.

52. *Marriage Amendment Act*, SA 2000, c 3, s 5.

53. SO 2021, c 31 [Act 5.5].

54. *Election Finances Act*, RSO 1990, c E.7, s 53.1.55. Act 5.5, *supra* note 53.

TABLE 6 QUÉBEC EDUCATIONAL REFORM

1 PERIOD	2 STAGE	3 PROTECTED BY ACT	4 GENERAL THEME	5 CONSTITUTIONAL STATUS				9 RELATIONSHIP BETWEEN S. 33 AND RIGHTS
				Rights and Privileges of S. 93 Groups (Catholics & Protestants in Montreal and Québec City, and minority Catholics & Protestants in the rest of Québec)		Extending Rights and Privileges to Non-S. 93 Groups (Other Catholics and Protestants in Québec)		
				Provided For	Protected By	Provided For	Protected By	
Before 1982 (Pre-Charter)	1	N/A	Religion-based education system	Yes	s. 93	Yes	Protection Unnecessary	N/A
1982 – 1983	2	OM (Omnibus Bill)	Religion-based education system	Yes	s. 93	Yes	s. 33	Used to preserve the existing educational structure and to <i>extend</i> the rights violations in s. 93
1983 – 1986	3	OM (Omnibus Bill)	<p>Failed attempt at reform</p> <p>The Québec government made its first attempt to replace religious school boards with English and French school boards with Bill 40 (1983), but the Bill was withdrawn due to public protest.</p> <p>In 1984, Bill 3 created English and French school boards while preserving confessional and dissentient school boards, but it was struck down by the Superior Court in 1985 for violating s. 93.</p>	Yes	s. 93	Yes	s. 33	Does not affect s. 93 groups but is used to shield the rights extended to non-s. 93 groups while reform, the purpose of which is to decrease the rights violation, was taking place
1986 – 1997	4	Act I (1986), Act J (1988), Act K (1989), Act L (1994)	<p>Partial reform</p> <p>Religion-based education system</p> <p>until 1988, when Act G created a mixed system in which school boards were organized around language, but confessional boards within the boundaries of Montreal and Québec were maintained and minorities in the rest of the province had the right to dissent.</p>	Yes	s. 93	Yes	s. 33	
1997	5	Act L (1994)	<p>Elimination of s. 93 protection</p> <p>S. 93A was inserted into the <i>Constitution Act, 1867</i> to allow Québec to reorganize schools around language. During the transition, the NM was used to shelter all elements of religious education from the <i>Charter</i>.</p>	Yes	s. 33	Yes	s. 33	
1998 – 2008	6	Act M (1999), Act N (2001), Act O (2005)	<p>Complete reform</p> <p>In 2000, the religious structure of the school system was eliminated, and schools could no longer declare themselves Catholic or Protestant. Catholics and Protestants retained the right to religious instruction until 2008, when it was replaced with a non-denominational course on ethics and religious culture.</p>	Yes	s. 33	Yes	s. 33	With the elimination of the s. 93 protection, s. 33 was used to shield the existing structure in relation to both groups while reform was taking place
2008 – Present	7		Language-based education system	No	Protection unnecessary	No	Protection unnecessary	Use of s. 33 unnecessary