

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

1ST SESSION, 43RD LEGISLATURE, ONTARIO
1 CHARLES III, 2022

Bill 37

An Act respecting the use of the notwithstanding clause

Mrs. L. Collard

Private Member's Bill

1st Reading November 15, 2022

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill enacts the *Notwithstanding Clause Limitation Act, 2022*. The Act would provide that bills cannot invoke the notwithstanding clause in the *Canadian Charter of Rights and Freedoms* except in certain circumstances.

If the clause is invoked by a minister of the Crown, the Attorney General is required to table a report in the Assembly detailing how its use can be demonstrably justified in a free and democratic society and describing why alternatives to its use were deemed inadequate.

Bills invoking the notwithstanding clause shall not be adopted by the Legislative Assembly without a two-thirds majority of its members.

An Act respecting the use of the notwithstanding clause

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Limitation on use of notwithstanding clause

1 (1) A bill of the Legislative Assembly shall not include a declaration pursuant to section 33 of the *Canadian Charter of Rights and Freedoms* stating that a provision in an Ontario law operates notwithstanding a provision of the *Canadian Charter of Rights and Freedoms*, except in accordance with subsection (2).

Use permitted in certain circumstances

- (2) A bill of the Legislative Assembly may include a declaration described in subsection (1) if,
- (a) the bill addresses an urgent and critical situation of a temporary nature that seriously endangers the lives, health or safety of Ontarians;
 - (b) the bill would amend an Act containing a provision that has been found by a court to have contravened the *Canadian Charter of Rights and Freedoms*; and
 - (c) the declaration would only declare the contravening provision in the amended Act to operate notwithstanding the provisions of the *Canadian Charter of Rights and Freedoms* that it has been found to contravene.

Attorney General's report

Application

2 (1) This section applies to every bill introduced in the Legislative Assembly by a minister of the Crown that includes a declaration described in subsection 1 (1).

Report

- (2) For every bill described in subsection (1), the Attorney General shall cause to be tabled in the Legislative Assembly a report detailing,
- (a) how the declaration described in subsection 1 (1) can be demonstrably justified in a free and democratic society; and
 - (b) what alternatives were considered before the government introduced a bill with this declaration and why they were deemed to be inadequate.

Timing

- (3) The report described in subsection (2) must be tabled within 30 days after the day the bill was introduced.

Adoption requires two-thirds majority

3 A bill containing a declaration described in subsection 1 (1) shall not be adopted by the Legislative Assembly unless it receives the approval of at least two-thirds of members elected to the Legislative Assembly.

Commencement

4 This Act comes into force on the day it receives Royal Assent.

Short title

5 The short title of this Act is the *Notwithstanding Clause Limitation Act, 2022*.