

Notwithstanding Clause: Majority see increased use problematic, would pursue abolition

Majority in all provinces except Quebec would abolish the clause; three-in-five Quebecers would keep it

January 26, 2023 – As Prime Minister Justin Trudeau and Quebec Premier François Legault [draw lines in the sand](#) over that province's recent use of the Canadian Charter of Rights and Freedoms' notwithstanding clause, new data from the non-profit Angus Reid Institute finds Canadians concerned with its increased use.

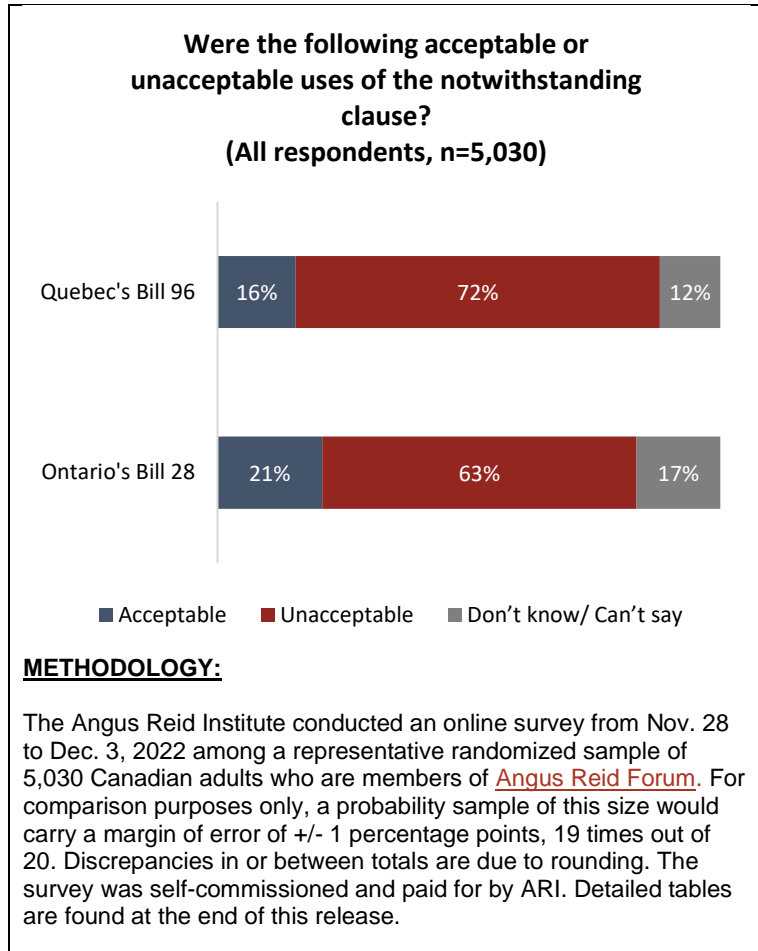
Trudeau said he intends to better regulate use of the clause and might turn to the Supreme Court of Canada for a ruling on its use; Legault responded by saying that doing so would be a "frontal attack" on "Quebec's democracy and people."

In terms of public opinion, three-in-five (58%) say they have been "concerned" (32%) or "very concerned" (26%) with the recent popularity of the clause with provincial governments. Nearly as many – 55 per cent – would like to see it abolished.

In addition, majorities of Canadians believe the two uses of the clause by Ontario and Quebec in 2022 were unacceptable. Quebec's Bill 96, which promotes the use of French by restricting the use of English in many settings in the province, is believed to be an unacceptable use of the notwithstanding clause by approaching three-quarters (72%) of Canadians. A plurality (44%) in Quebec disagrees. Since the clause's inception with the constitution in 1982, Quebec has [invoked it more than any other province](#), including in 2019 with Bill 21, a ban on religious symbols for public employees.

In the fall of 2022, Ontario passed and then quickly repealed Bill 28, which imposed a contract on education support workers and circumvented their right to strike for four years with the clause. More than three-in-five Canadians (63%), including 64 per cent of Ontarians, believe Premier Doug Ford's government's use of the clause was unacceptable. Ontario has invoked the clause [two times](#), and considered using it a third, all under Ford, though only one bill has been passed and not repealed.

For Canadians, the worry is that the notwithstanding clause, officially section 33 of the Charter Rights and Freedoms, weakens the rights and freedoms of their fellow citizens. Half (48%) say this, outnumbering those who instead believe the clause strengthens them (10%) or has no effect (19%). As well, there is



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significant belief the increased use of the clause is damaging national unity. Half (53%) of Canadians say this, nearly double those (28%) who disagree.

More Key Findings:

- Residents in the two provinces with the most recent uses of the notwithstanding clause find themselves on opposite sides of the spectrum of concern. Two-thirds (67%) in Ontario are concerned with the increasing use of the clause by provinces, the highest in the country. Concern is lowest in Quebec, at two-in-five (41%).
- Seven-in-ten (71%) who voted for Premier François Legault and Coalition Avenir Québec in the 2022 election believe Bill 96 was an acceptable use of the notwithstanding clause.
- Sentiment on the notwithstanding clause is largely unchanged in the 30 years since Angus Reid last asked this question. In February 1992, 59 per cent wanted to abolish the notwithstanding clause and 41 per cent wanted to keep it. Now, 55 per cent would abolish it and 45 per cent would keep it.
- Since 1992, the opinion of the clause has moved the most in Quebec. The proportion of the population in that province who would keep the clause has grown by 10 points, from 53 per cent to 63 per cent.

About ARI

*The **Angus Reid Institute (ARI)** was founded in October 2014 by pollster and sociologist, Dr. Angus Reid. ARI is a national, not-for-profit, non-partisan public opinion research foundation established to advance education by commissioning, conducting and disseminating to the public accessible and impartial statistical data, research and policy analysis on economics, political science, philanthropy, public administration, domestic and international affairs and other socio-economic issues of importance to Canada and its world.*

Because its small population precludes drawing discrete samples over multiple waves, data on Prince Edward Island is not released.

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Part One: Canadians weigh in on recent examples of notwithstanding clause

2022 was a year of flashbacks to the 1980s for Canada – inflation reached peaks not seen [since 1983](#) and the constitution, passed initially in 1982, was again a hot button political topic. While it has been used before, the last time two separate provincial legislatures passed bills invoking the notwithstanding clause – section 33 of the Charter of Rights and Freedoms – was [in 1986](#). One was almost immediately repealed – [Ontario's Bill 28](#), which used the clause to prevent education workers from striking in response to an imposed contract – while another – Quebec's Bill 96, which restricts the use of English in many public and official settings – is being [challenged in court](#).

The notwithstanding clause was included in the charter as an ["escape hatch"](#), a concession by the federal government [to the provinces](#) who felt a charter without one would make vest too much power in the courts. Since 2018, the notwithstanding clause has been considered or invoked [seven times](#). This represents an awakening of the clause from a period of dormancy – there were [only four invocations](#) between [1990 and 2017](#). From 1982 to 1989, the clause was invoked 15 times, including immediately on the constitution's passing by Quebec in 1982 [in a blanket attempt to exempt all statutes passed in the province](#) from charter review.

Prime Minister Justin Trudeau [heavily criticized](#) the use of the notwithstanding clause by Ontario in 2022, but [had largely stayed quiet](#) on Quebec's Bill 96 and earlier Bill 21 until recently. In January, Trudeau said in an interview with La Presse that he planned to regulate the use of the notwithstanding clause. "There should be a political consequence to such a decision. But we are experiencing a certain trivialization of this suspension of rights," [said Trudeau](#). He also said he was considering [turning to the Supreme Court of Canada](#) for a [reference](#) on the clause.

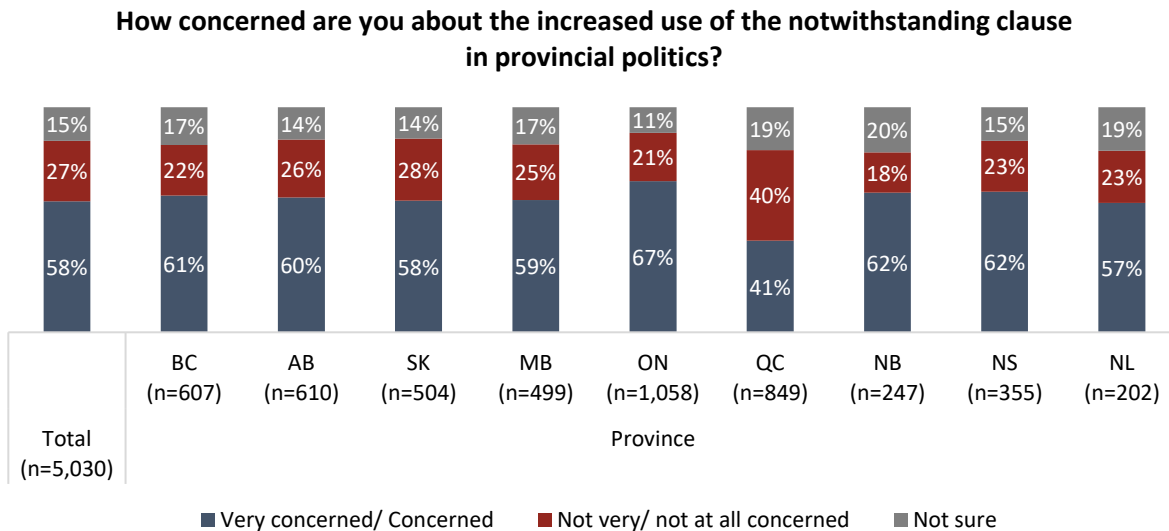
Concern with use outpaces non-concern by more than two-to-one

On balance, Canadians are more concerned than not with the notwithstanding clause's increased use. Three-in-five (58%) say they fret over the recent popularity of the clause, which has been considered or invoked [by four provinces since 2018](#) after not being seen since 2005. One-quarter (27%) are not concerned.

In all provinces except Quebec, the province that has used the clause [the most](#) in its history, approaching three-in-five say they worry of the increased frequency of use of section 33 of the charter. In Quebec, as many say they are concerned (41%) as not (40%) with the clause's return to prominence. Comparatively, in Ontario, where Premier Doug Ford's government has wielded the clause three times since being elected in 2018, two-thirds (67%) are worried about its increased use:

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Ontario's dispute with education workers

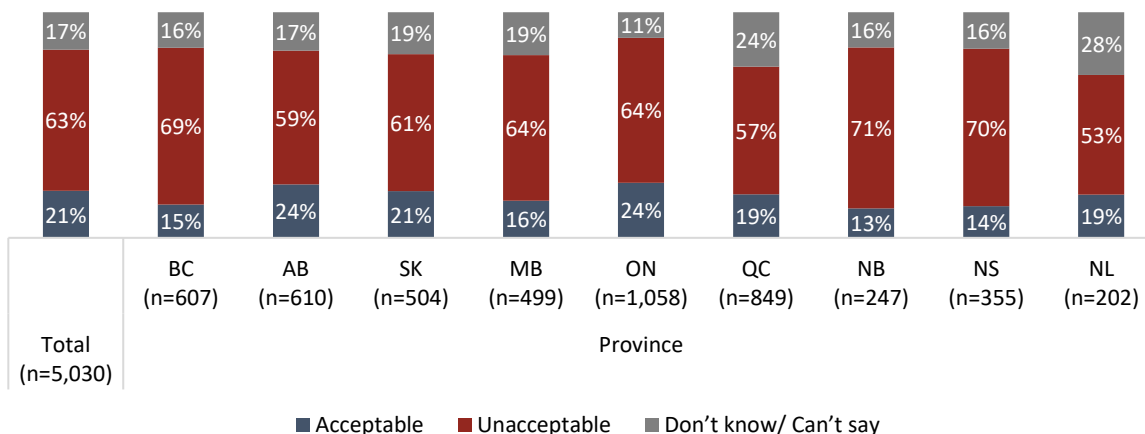
In November, to head off a potential strike from education support workers, Ontario's government [passed Bill 28](#), which imposed a four-year contract and made it illegal for the workers to take job action in response by invoking the notwithstanding clause. This use of the clause was [widely](#) criticized. In defiance, the union [planned to strike anyway](#), while [preparing to mobilize a general strike](#) in Ontario in response to the bill. The Ford government backed down, [repealing Bill 28](#). Eventually the two sides settled on [a contract](#).

Three-times as many Canadians say Bill 28 was an unacceptable use (63%) of the notwithstanding clause as not (21%). The sentiment that it was not a proper use of section 33 of the charter is the majority opinion in all provinces in the country, including Ontario (64%):

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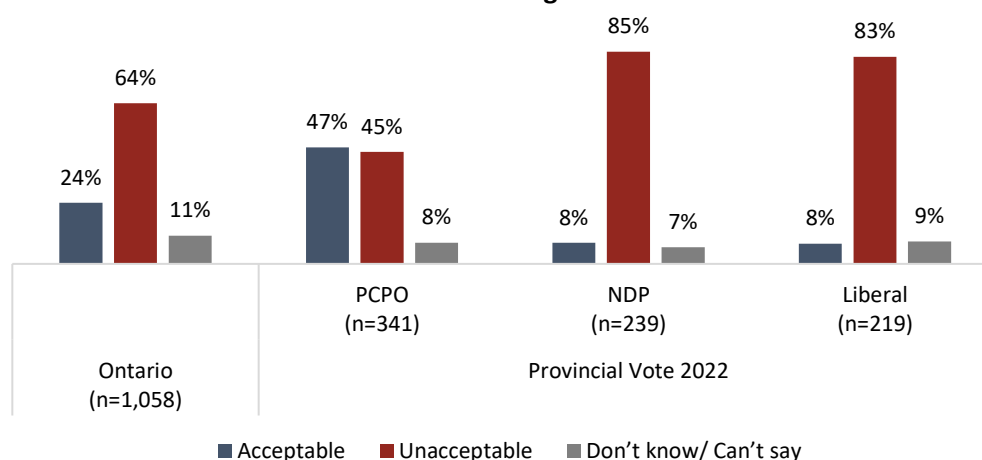
Was Ontario's Bill 28 an acceptable or unacceptable use of the notwithstanding clause?



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However, in Ontario, there is a political divide on this matter. More than four-in-five of those who voted NDP (85%) and Liberal (83%) in the June provincial election believe it was unacceptable for the Ford government to invoke the notwithstanding clause in Bill 28. Those who voted for Ford and the Progressive Conservative Party of Ontario (PCPO) are as likely to believe it was acceptable (47%) as not (45%):

Was Ontario's Bill 28 an acceptable or unacceptable use of the notwithstanding clause?



Quebec's Bill 96

Quebec's government under Premier François Legault has made big splashes with its use of the notwithstanding since the Legault-led Coalition Avenir Québec first won a majority in 2018. First, in 2019,

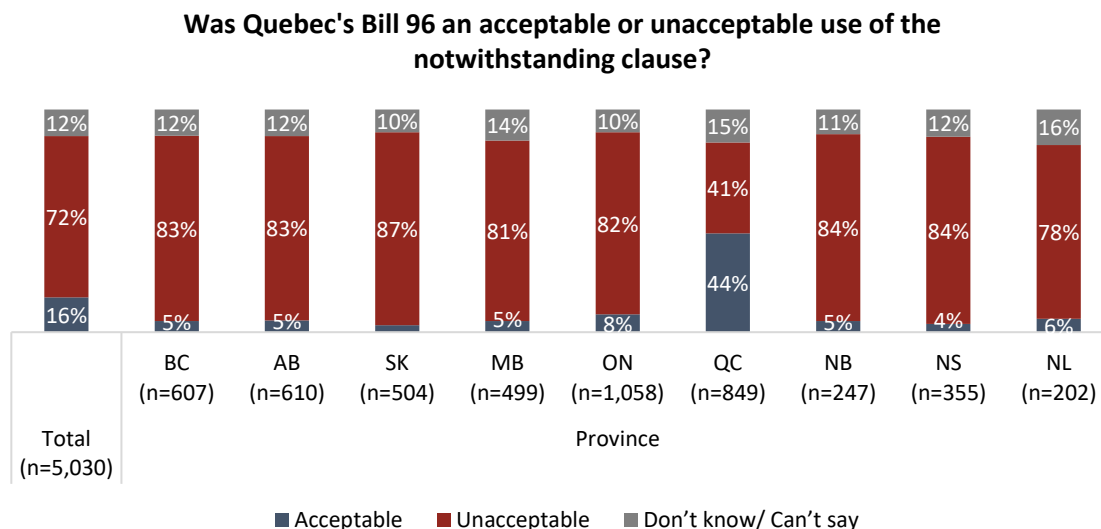
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when the government passed Bill 21, which prohibits the wearing of religious symbols by public employees. [Data collected in June 2022 by the Angus Reid Institute](#) found more than half (54%) of Quebecers in support of Bill 21, 39 per cent were opposed. A hearing on the bill in the Quebec court of appeal wrapped up [in November](#), with a decision expected in the coming months.

Then, in May, Legault and the CAQ government passed Bill 96, [a broad piece of legislation](#) aimed at protecting the use of French language in the province by restricting the use of English in many settings, including in the legal system. Quebecers were varied on their views on Bill 96 in June. While overall 54 per cent supported Bill 96, [some measures inside the bill received more support than others](#). Bill 96 is [facing legal challenges](#), though they have not yet been heard in court.

Approaching three-quarters of Canadians (72%) say Bill 96 was an unacceptable use of the notwithstanding clause. One-in-six disagree, including more than two-in-five (44%) in Quebec. Quebec is the only province where a plurality of residents believe it was an acceptable use of section 33 of the charter. In all other provinces, those that believe it was a proper use number fewer than one-in-ten:



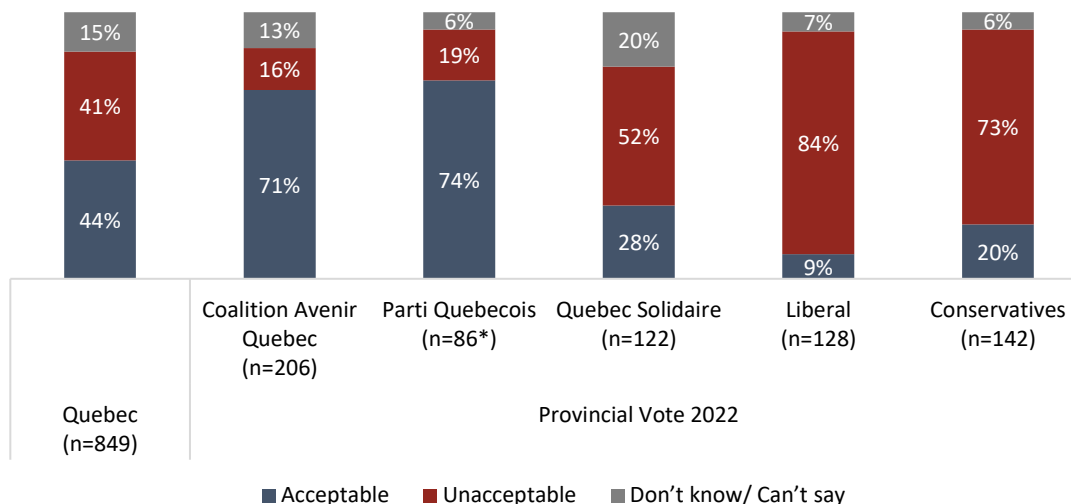
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Seven-in-ten (71%) of those who voted for Legault and CAQ believe it was acceptable to invoke the notwithstanding clause in Bill 96. More than four-in-five (84%) past Liberal voters, three-quarters (73%) of Conservative voters, and half (52%) of Quebec Solidaire voters disagree. The latter is notable since [Solidaire supported the government](#) in passing the bill in May.

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Was Quebec's Bill 96 an acceptable or unacceptable use of the notwithstanding clause?



**Smaller sample size, interpret with caution*

Part Two: What effect is the notwithstanding clause having on Canada?

National unity and the notwithstanding clause

Critics of the recent uses of the notwithstanding clause have argued that it is [threatening the national unity of Canada](#). The Charter of Rights may be irrelevant, "if provincial governments routinely bypass it on the way to crafting legislation that impacts fundamental freedoms," [wrote Chantal Hebert](#) in response to Ford's pre-emptive use of the clause with Bill 28.

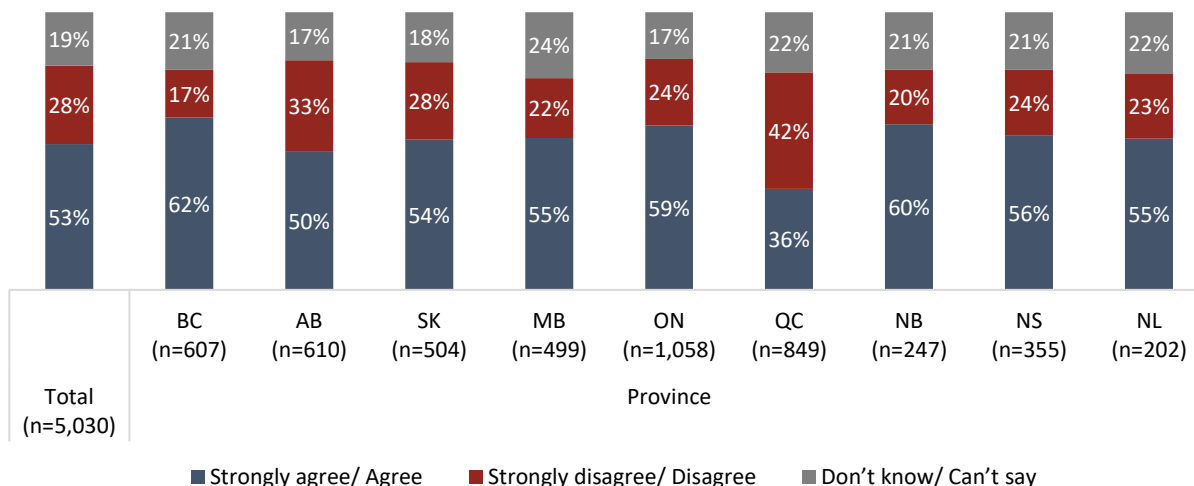
Half (53%) of Canadians believe provinces that use the notwithstanding clause are undermining national unity while one-quarter (28%) disagree. The latter includes two-in-five in Quebec (42%), the only province where more people disagree than agree with that statement.

As Alberta wrestles against the constitution with [Premier Danielle Smith's Sovereignty Act](#), one-third (33%) there disagree that use of the notwithstanding clause is undermining national unity, more than any province but Quebec:

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**Agree vs. disagree -
"Provinces that use the notwithstanding clause undermine national unity"**

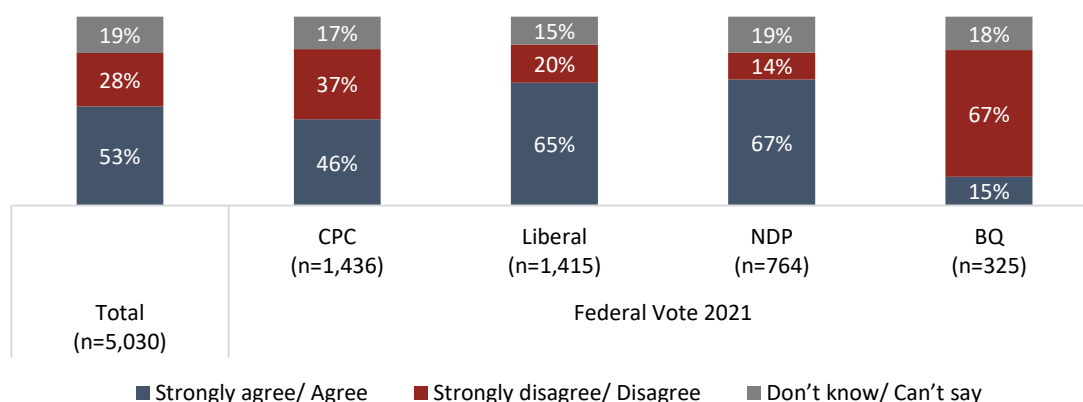


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Saskatchewan and Alberta are two provinces where the CPC earned the majority of votes in the 2021 federal election. Those two provinces are behind only Quebec when it comes to the proportion of residents who believe use of the notwithstanding clause does not undermine national unity, as seen in the graph above. Those who voted Conservative (37%) in last year's federal election are more likely than those who voted Liberal (20%) and NDP (14%) to believe that provinces aren't undermining national unity by using the notwithstanding clause.

Still, the plurality of Conservative voters (46%) say national unity is under threat from the notwithstanding clause. Few (15%) of those who voted for the Bloc Québécois agree:

**Agree vs. disagree -
"Provinces that use the notwithstanding clause undermine national unity"**



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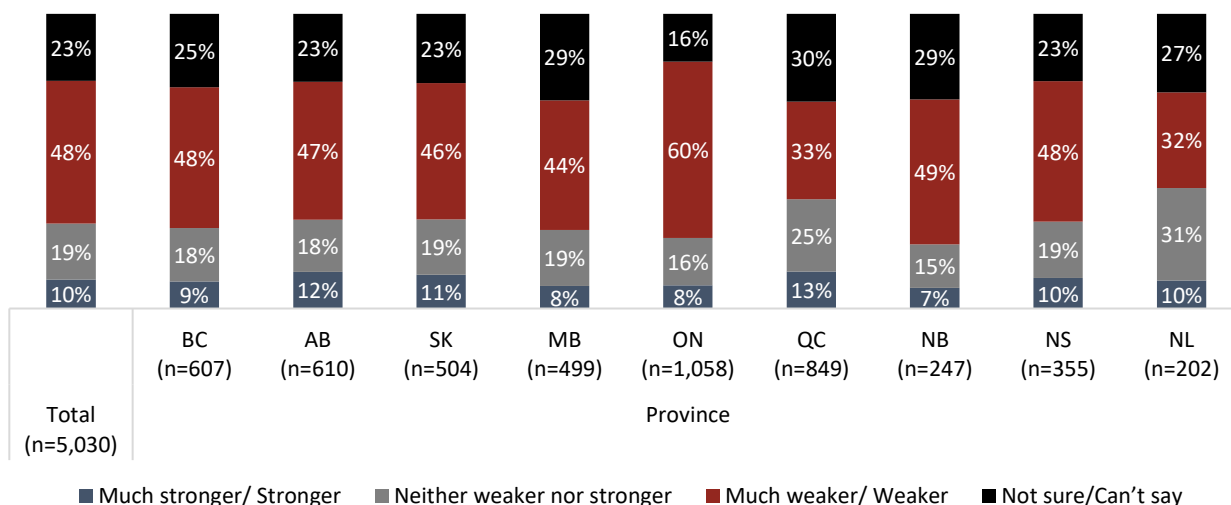
Half believe clause weakens constitutional rights and freedoms of Canadians

Many feel the right to religious freedom is under threat in Quebec because of the passing of Bill 21. A Quebec teacher was told she could no longer teach in a classroom because she wore a hijab. In a ruling on Bill 21, a Quebec superior court judge wrote the law “violates” the religious freedom of Muslim women. Trudeau, in his interview with La Presse, worried increased use of the clause in general had “reduced the political costs of the suspension of fundamental rights.”

Half (48%) of Canadians believe the notwithstanding clause weakens the rights and freedoms as enshrined in the country’s constitution, more than the number who believe the clause has no effect (19%) or instead strengthens them (10%).

The belief the notwithstanding clause weakens constitutional rights and freedoms is highest in Ontario (60%) and lowest in Newfoundland and Labrador (32%) and Quebec (33%). In those latter two provinces, there is a stronger belief that section 33 of the Charter of Rights and Freedoms has no effect than in other jurisdictions:

Would you say the use of the notwithstanding clause generally weakens or strengthens the constitutional rights and freedoms of Canadians?



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Majority would abolish clause

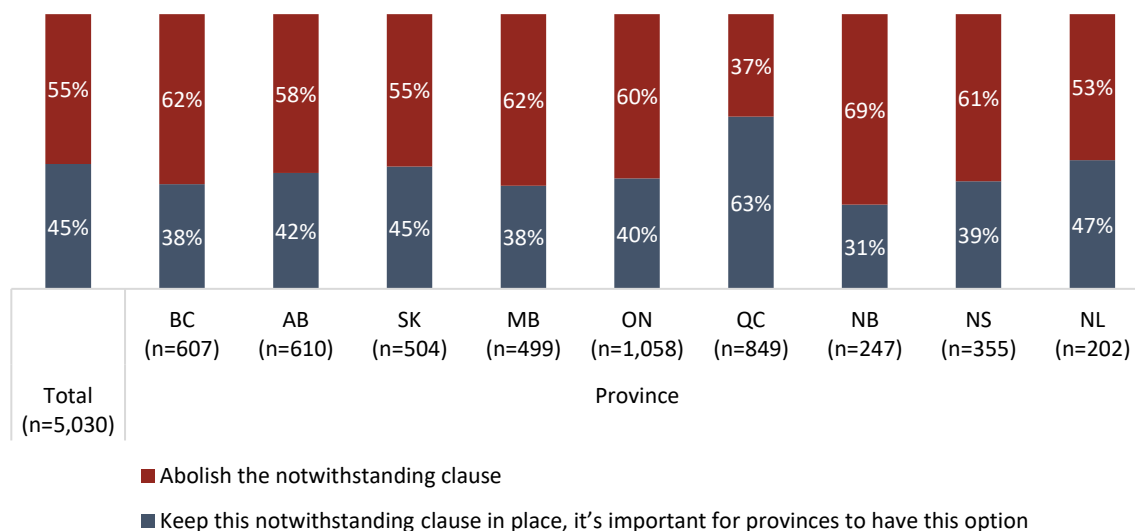
A majority of Canadians (55%) want to see Canada scrap the notwithstanding clause, while 45 per cent would keep it in place. In order to abolish the clause, Canada would need to amend the constitution, which is unlikely to happen given any constitutional amendment requires approval from the House of Commons, the Senate and at least two thirds of the provinces.

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Approaching two-thirds (63%) in Quebec, which never formally approved the constitution in the first place, would keep the notwithstanding clause:

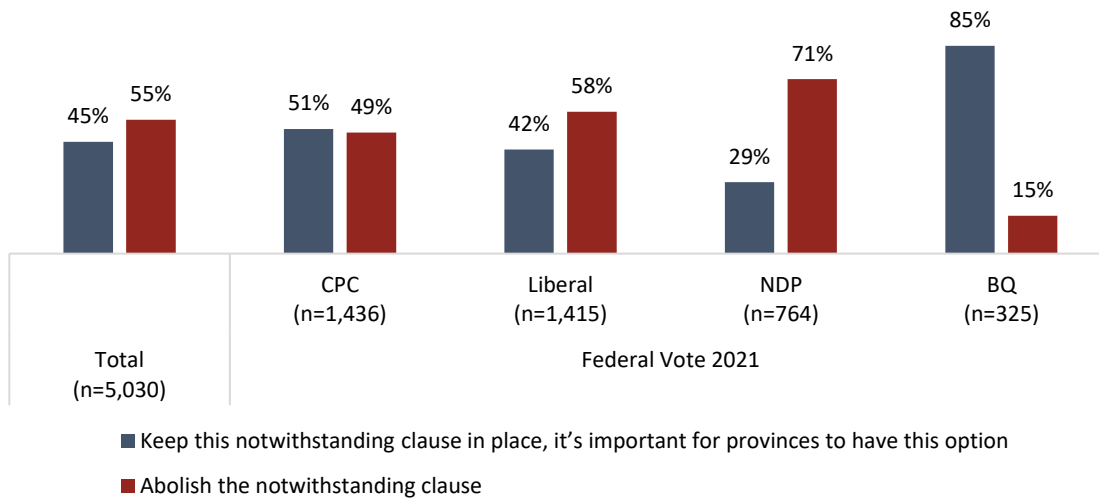
Overall, do you think that Canada should:



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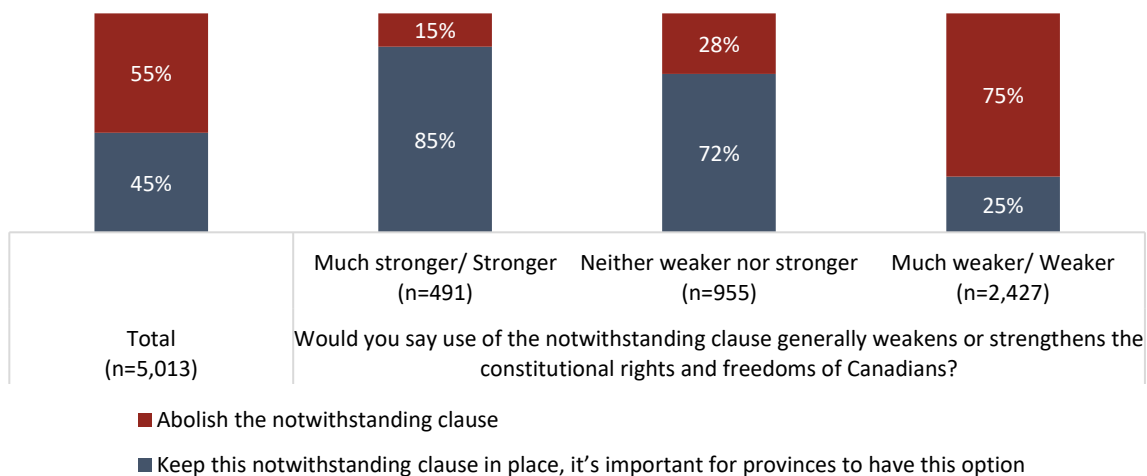
Half (51%) of past CPC voters would keep the notwithstanding clause, while half (49%) would ditch it. Three-in-five (58%) of those who voted Liberal in 2021 say they would abolish the clause, while two-in-five (42%) want to keep it in place. Past NDP voters are the most likely of the supporters of the four major political parties to want to abolish the clause (71%). Four-in-five (85%) who voted for the Bloc Québécois last year would keep section 33 in place:

Overall, do you think that Canada should:



Three-quarters of those that believe the notwithstanding clause weakens the rights of Canadians say it should be abolished. However, one-quarter believe the clause should be kept as a tool for the provinces. Approaching three-quarters (72%) of those who believe section 33 of the charter has no effect on the rights and freedoms of Canadians, and more than four-in-five (85%) of those who believe it strengthens them, believe that the clause should be kept:

Overall, do you think that Canada should:



The view from 1992

Support for the notwithstanding clause has increased slightly in the decades since it was first enacted. Angus Reid surveyed on the clause in February 1992, finding two-in-five Canadians (41%) wanted to

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keep it in place and three-in-five (59%) wanted to abolish it. Support for the clause has increased most significantly in Quebec, where it has increased 10 points (53% to 63%) since 1992:

Overall, do you think that Canada should: (Change from Feb. 1992 noted)							
	Total	Region					
		BC	AB	SK/MB	ON	QC	ATL
Keep this notwithstanding clause in place	45% (+4)	38% (+3)	42% (+4)	41% (+3)	40% (+3)	63% (+10)	39% (-3)
Abolish the notwithstanding clause	55% (-4)	62% (-3)	58% (-4)	59% (-3)	60% (+3)	37% (-10)	61% (+3)

For detailed results by age, gender, region, education, and other demographics, [click here](#).

For detailed results by age, gender, provincial vote, education and other demographics for Quebec, [click here](#), and for Ontario, [click here](#).

For detailed results by whether the respondent believes the notwithstanding clause weakens or strengthens the constitutional rights and freedoms of Canadians, [click here](#).

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