

# Section 33 (Notwithstanding Clause): The Charter's Sleeping Giant by Prof Barbara Billingsley

Billingsley, Barbara. "Section 33: The Charter's Sleeping Giant." *21st Windsor Year Book of Access to Justice* 331 (2002): 331-346.

Section 33 was included in the Canadian Charter of Rights and Freedoms as a concession to those who were concerned that the Charter would enable Canadian courts to override the democratic principles of Parliamentary supremacy. At its inception, however section 33 was also widely feared as a threat to the significance of the individual rights and freedoms set out in the Charter. Has this fear materialized? Over the past twenty years, section 33 has seen very little use, although calls and proposals for its use recently seem to have increased. Nevertheless, section 33 remains a constitutional tool which governments may consider when attempting to balance Canada's sometimes conflicting constitutional principles (such as, the principles of democracy and respect for minority rights). With these ideas in mind this paper attempts to describe the role which section 33 presently plays in the Charter based on this section's use over the past twenty years and its purpose as contemplated in 1982. The paper concludes that section 33 is a sleeping giant within the Charter: now mostly quiet and unthreatening but, if awakened by increased and unnoticed or unopposed use, still capable of significantly changing Canada's constitutional and legislative landscape. The responsibility for controlling section 33's future role in the Charter lies primarily with the Canadian public; the first step in fulfilling this role is for the public to note that, whatever its current status, section 33 remains a constitutional giant.

Read the article [here](#).

*The Centre for Constitutional Studies is grateful to the Windsor Year Book of Access to Justice and Professor Barbara Billingsley for their support in making the article available to the public on its website.*