

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN)**

B E T W E E N:

**GOVERNMENT OF SASKATCHEWAN AS REPRESENTED BY THE MINISTER OF
EDUCATION**

**APPELLANT/
RESPONDENT ON CROSS-APPEAL**

-and-

UR PRIDE CENTRE FOR SEXUALITY AND GENDER DIVERSITY

**RESPONDENT/
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(Pursuant to Rule 42 of the Rules of the Supreme Court of Canada)

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PART I - OVERVIEW

1. Justice for Children and Youth (JFCY) seeks to assist this Honourable Court by providing a child-rights informed analysis of the core issues in dispute, namely: 1) the availability of judicial review and declaratory relief when the Notwithstanding Clause of s. 33 of the *Canadian Charter of Rights and Freedoms*¹ (“Notwithstanding Clause”, and “*Charter*”) has been pre-emptively invoked in legislation; and, 2) the permissibility of amending the pleadings of UR Pride Centre for Sexuality and Gender Diversity (“UR Pride”) to include a claim under s. 12 of the *Charter*. JFCY submits that this Honourable Court’s analysis must place the human rights of children, whose interests are directly at stake, at the centre of each of the issues under consideration.

2. That enhanced protections are owed to children in the application and interpretation of legal rights has been unequivocally recognized by this Honourable Court,² and derives, at least in part, from Canada’s obligations as a signatory to the United Nations *Convention on the Rights of the Child* (“*UNCRC*”),³ and in accordance with the overall values of the *Charter*.

3. A child-rights respecting approach, informed by domestic and international human rights law, supports the availability of judicial review and the issuance of declaratory relief, and supports permitting the amendment of UR Pride’s application to include a claim under s. 12 of the *Charter*. The fundamental interests, rights, integrity, dignity, and security of gender-diverse children are at stake, and access to judicial review of those interests is required in this case.

4. Children, their access to justice, their rights, dignity, and their views, are often ignored, left to the side, and overridden. JFCY asks this Court to ensure that children are not overlooked in the determination of the legal questions in this matter. The Notwithstanding Clause and how its invocation is to be addressed is a crucial access to justice issue for all people in Canada. This Court’s decision in this matter will have a direct and significant impact on many disenfranchised

¹ *Canadian Charter of Rights and Freedoms*, pt 1 of the *Constitution Act, 1982*, being sched B to the *Canada Act 1982* (UK), [c 11](#) [“*Charter*”].

² *R v Sharpe*, 2001 SCC 2 at [para 177](#) [*Sharpe*]; *AB v Bragg Communications Inc*, 2012 SCC 46 at [para 17](#) [*AB*]; *Ontario (Children's Lawyer) v Ontario (Info. and Privacy Commissioner)*, 2018 ONCA 559 at [para 74](#).

³ United Nations *Convention on the Rights of the Child*, [Can. T.S. 1992 No.3](#). [“*UNCRC*”].

people, most obviously here on gender-diverse children who seek agency, safety, and security in school. We ask this Honourable Court to directly address the equity and human rights of children, and ground a contextual analysis in the lived realities of the gender-diverse children whose rights under the *Charter* - ss. 2, 7, 12, 15, and 33 - are at stake.

PART II - QUESTIONS IN ISSUE

5. JFCY submits that in determining whether the pre-emptive invocation of s. 33 of the *Charter* prevents courts from reviewing legislation for *Charter* compliance and issuing declaratory relief, and whether UR Pride's proposed s. 12 claim may proceed, the Court must consider:

- A. that children are an equity seeking group who are uniquely and inherently vulnerable members of society, and whose interests must be at the centre of this Honourable Court's analysis, in order to protect their substantive interests and as a matter of access to justice;
- B. the applicability of international law, specifically the *UNCRC*, and the best interests of the child principle, including their right be heard;
- C. the specific and recognized vulnerability of gender-diverse children, and the access to justice issues that underpin the court's analysis.

PART III - STATEMENT OF ARGUMENT

A. Unique and Inherent Vulnerability of Children at the Centre of Analysis

6. In order to adequately account for the impact of the *Charter* considerations in this case, children must be at the centre of each of the issues this Honourable Court considers. Children are a uniquely vulnerable equity-seeking group, whose access to justice and dignified place in society are routinely overlooked, or actively suppressed. Gender-diverse children are additionally vulnerable due to their overlapping and intersecting experiences of marginalization. In order to support and ensure that children's dignity is supported in this Court's analysis, the rights and interests at stake in this appeal must be considered from the vantage point of the group of children whose interests are engaged. The analysis must:

- ensure that special protections are in place to actually protect vulnerable equality-seeking members of society;
- use the best interests of the child framework as the foundation, because the rights and interests of children are at stake; and
- use tools that are most relevant to considering children’s rights, including international instruments like the *UNCRC*, and the General Comments developed thereunder.⁴

7. This Honourable Court has repeatedly stated that: “[r]ecognition of the inherent vulnerability of children has consistent and deep roots in Canadian law.”⁵ As described by Canada’s Standing Senate Committee on Human Rights, “Children are the only group in Canada – left out on the basis of age alone – with no voice, no vote, and little access to powerful lobby groups, the media, or legal services.”⁶ Citing the UN Committee on the Rights of the Child and UNICEF Innocenti Research Centre, the Senate Committee goes on to note that: “children’s voices rarely inform government decisions, yet they are one of the groups most affected by government action or inaction. Children are not merely underrepresented; they are almost not represented at all” [internal citation omitted].⁷

8. The issues on appeal in this matter are issues of access to justice. The factual underpinnings of this case squarely concern whether the rights of children will be considered by the courts. Children have limited capacity as individuals to organize and protest against oppressive, discriminatory, or cruel actions, and they are specifically barred from democratic participation in

⁴ The General Comments developed under the *UNCRC* provide detailed explanatory and interpretive content, and are persuasive interpretive tools, which have been regularly used by Canadian courts, including in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at [paras 66-67](#); *JESD v YEP*, 2018 BCCA 286 at [para 38](#); and *Justice for Children and Youth v JG*, 2020 ONSC 4716 at [para 62](#).

⁵ *AB*, *supra* note 2 at [paras 17-19](#); see also *R v DB*, 2008 SCC 25 paras [41](#), [48](#); *R v CP*, 2021 SCC 19 at [para 85](#).

⁶ Canada, Parliament, Senate, Standing Committee on Human Rights, *Children: the silenced citizens: effective implementation of Canada's international obligations with respect to the rights of children*, 39th Parl, 1st Sess, No 10 (April 2007) (Chair: Raynell Andreychuk) at [p 27](#).

⁷ *Ibid*.

elections as a result of their age. Children’s access to judicial review to identify and evaluate breaches of their rights has heightened significance to this uniquely vulnerable group. The constitutional questions at issue here are fundamentally about access to justice in the sense of having access to the courts in order for a marginalized and vulnerable group of people to have their rights heard, considered, validated, and possibly vindicated. Equally significant is the important access to justice impact that judicial review provides in terms of elevating the rights issues in the public discourse and public consciousness.

9. Declaratory relief can highlight breaches of children’s rights to adults who have the political and social power to respond to the courts’ findings. Declaratory relief may, as in this case, be one of the only available avenues of recourse for those whose rights are in question.

10. The same considerations apply to the question of whether the amended pleadings that add a s. 12 *Charter* claim should be permitted. The facts of this case bring into stark focus the powerful and integral role declaratory relief and the amendments to the pleadings can play for equity seeking groups, like children. This role must be a consideration in this case.

B. The UNCRC – the Best Interests of the Child, their Right to be Heard and Participate, Must be Applied

11. It is a well-established principle that Canadian law must be interpreted to comply with Canada’s international treaty obligations,⁸ and that the *Charter* is presumed to provide at least as great a level of protection as international human rights instruments that Canada has ratified.⁹ Absent clear wording to the contrary, courts must not interpret domestic law in a manner that would violate Canada’s international commitments.¹⁰

12. Canada’s international human rights commitments provide a framework for the interpretation of the legal principles at stake in this matter, including the interpretation of s. 33 of

⁸ *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, 2004 SCC 4 at [para 31](#); *Sharpe*, *supra* note 2 at [para 175](#); *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at [para 70](#) [*Baker*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras [72](#), [105](#).

⁹ *Health Services and Support-Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27 at [para 70](#).

¹⁰ *R v Hape*, 2007 SCC 26 at [para 53](#) [*Hape*].

the *Charter*. This Court has clearly affirmed that where the express wording of the *Charter* is capable of supporting a construction that is compliant with Canada’s international obligations, that is the construction that should be adopted.¹¹ As restated in *Hape*:

The content of Canada’s international human rights obligations is... an important indicia of the meaning of the “full benefit of the *Charter*’s protection” ... the *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified.¹²

13. Canada ratified the *UNCRC* in 1991.¹³ The *UNCRC* and the General Comments created thereunder articulate the human rights and equity realization of children as individuals and as an equity seeking group. Gender-diverse children have intersectional equity interests that significantly increase their vulnerability, marginalization, and exclusion, and significantly impede their access to justice beyond what already exists for children generally. Children’s access, equity, dignity, and participatory interests require special protection in order to be meaningfully realized.¹⁴

i. Best-Interests of the Child as a Primary Consideration on Issues that Affect Children

14. This internationally-grounded child-rights approach is required and accepted in Canada. As this Court has stated “Protecting children through the ‘best interests of the child’ principle is widely understood and accepted in Canada’s legal system.”¹⁵

15. Article 3 of the *UNCRC* mandates that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”¹⁶

16. The best interests of the child framework and analysis is not only a primary consideration where a sole identifiable child is impacted by an action, but where children as a group are impacted.

¹¹ *Ibid* at [para 56](#).

¹² *Ibid* at [para 55](#).

¹³ The Government of Canada ratified the *UNCRC* on December 12, 1991.

¹⁴ *UNCRC*, *supra* note 3, at [preamble](#); *R v Mills*, 2019 SCC 22 at [para 23](#); *R v CP*, 2021 SCC 19 at [paras 68, 85](#); *Baker*, *supra* note 8 at [para 71](#).

¹⁵ *Kanhasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at [paras 36-39](#) [*Kanhasamy*].

¹⁶ *UNCRC*, *supra* note 3 at [art 3.1](#).

This Court’s recognition of that collective human right is important for the meaningful realisation of the equity and dignity of children.

17. Whether a matter is “concerning children” is to be understood broadly and the best interests of the child principle is to be applied in all matters that directly or indirectly impact children, including where it impacts an identified group of children or children in general.¹⁷ Where a matter may impact an identified group of children or children in general, the best interests of the child principal must be a primary consideration.¹⁸

18. The best interests of the child analysis is elucidated in *UNCRC* General Comment 14, which states:

The legal duty applies to all decisions and actions that directly or indirectly affect children. Thus, the term “concerning” refers first of all, to measures and decisions directly concerning a child, **children as a group or children in general**, and secondly, to other measures that have an effect on an individual child, **children as a group or children in general**, even if they are not the direct targets of the measure. As stated in the Committee’s general comment No. 7 (2005), such actions include those aimed at children (e.g. related to health, care or education), as well as actions which include children and other population groups (e.g. related to the environment, housing or transport) (para. 13 (b)). **Therefore, “concerning” must be understood in a very broad sense [emphasis added].**¹⁹

19. Whether judicial review of legislation is available where the government has pre-emptively invoked the Notwithstanding Clause is clearly a question that concerns children, as evidenced by the factual foundations of the present matter. Whether UR Pride is permitted to amend their Application to include a s. 12 *Charter* claim also clearly concerns children, because it is the s. 12 rights of gender-diverse children in the Saskatchewan education system that are at issue.

20. As a result, this Court must consider the impact that foreclosing judicial review and eliminating the possibility for declaratory relief will have on the dignity, access to justice, *Charter* and human rights of the vulnerable children whose interests are at stake.

¹⁷ United Nations Committee on the Rights of the Child, *General Comment No 14, (2013) on the right of the child to have his or her best interests taken as a primary consideration*, CRC/C/GC/14, 29 May 2013 at [para 6, 10](#).

¹⁸ *Ibid* at [para 6](#).

¹⁹ *Ibid* at [para 19](#).

21. Children's access to justice, rights realization, voice, and their participation in the body politic is precarious at best. Foreclosing access to judicial review of impugned legislation where s. 33 of the *Charter* has been invoked, or concluding that *Charter* rights are moot or do not exist by the invocation of s. 33, will ensure that children's access to justice, voice, and participation are completely eliminated.

ii. Children's Right to be Heard and Participate on Issues that Affect Them

22. Linked to the required best interests of the child analysis is children's right to be heard under article 12 of the *UNCRC*, "either directly or through a representative, in any judicial or administrative proceeding affecting him or her."²⁰ The *UNCRC*'s General Comment 12 states: "article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives."²¹

23. Declining to permit judicial review of the impugned legislation and foreclosing the possibility of declaratory relief would prevent gender-diverse children's perspectives from being heard respecting a matter that directly impacts them on a daily basis.

24. Additionally, foreclosing access to judicial review will delay a substantive consideration of the issues by at least five years. Children perceive the passage of time differently from adults, and the impact of time passing is different for children. General Comment 14 under the *UNCRC* states that "delays in or prolonged decision-making have particularly adverse effects on children as they evolve."²² A five year delay would result in some children impacted by this legislation having their ability to be heard, and potentially their only available avenue of recourse or remedy fully blocked for most, if not all, of the years during which their rights are impacted. To do so would be contrary to the best interests of children and would entirely bar the voices of these children from being heard. This outcome further supports a finding that judicial review be available where the Notwithstanding clause has been pre-emptively invoked.

²⁰ *Ibid* at paras [43-45](#).

²¹ United Nations Committee on the Rights of the Child, *General Comment No 12 (2009), The right of the child to be heard*, [CRC/C/GC/12, 20 July 2009](#) at para 74[*Gen Com 12*].

²² *Supra* note 17 at [para 93](#).

25. JFCY submits that nothing in s. 33 of the *Charter* supersedes the jurisdiction of the courts to judicially review legislation for a violation of *Charter* rights and issue declaratory relief. The *Charter* is to be interpreted in light of its larger objects.²³ The freedoms protected by the *Charter* are “founded in respect for the inherent dignity and the inviolable rights of the human person”.²⁴ In the interpretation of various *Charter* rights, the courts consistently refer to the inherent dignity, autonomy, and worth of people.²⁵ International law also consistently refers to the inherency and inalienability of rights guaranteed by the international human rights treaties.²⁶

26. Equality, fairness, and dignity are felt daily, and are essential components of a just and democratic society. The articulation and recognition of these values and rights must be protected as such. While the invocation of the Notwithstanding clause permits governments to temporarily enact legislation that violates the rights enshrined in ss. 2 or 7-15 of the *Charter*, to conclude that those rights no longer exist or are moot during the period of s. 33 invocation would erode democracy, and negate inherency and inalienability. It would fly in the face of the *Charter*'s purpose and Canada's international obligations to interpret s. 33 as creating a counterfactual world where rights and freedoms themselves cease to exist, or renders moot a claim to *Charter* rights recognition. Section 33 cannot be interpreted to erase or eliminate the dignity and *Charter* rights

²³ *Taylor v Newfoundland and Labrador*, 2026 SCC 5 at [para 72](#) [*Taylor*], citing *Hunter v Southam Inc*, 1984 CanLII 33 (SCC), [1984] 2 SCR 145 at [p 156](#); *R v Big M Drug Mart Ltd*, 1985 CanLII 69 (SCC), [1985] 1 SCR 295 at [para 117](#).

²⁴ *Taylor* at [para 78](#).

²⁵ *R v Bissonnette*, 2022 SCC 23 (CanLII), [2022] 1 SCR 597 at [para 5](#); *The Regional Municipality of Waterloo v Named Respondents and Persons Unknown*, 2026 ONSC 2971 at [para 109](#); *Black v Law Society of Alberta*, 1989 CanLII 132 (SCC), [1989] 1 SCR 591 at [p 620](#); *Selkirk et al v Trillium Gift of Life Network et al*, 2021 ONSC 2355 at [para 66](#).

²⁶ UNCRRC, *supra* note 3 at [preamble](#), [arts 6, 37](#); *Gen Com 12*, *supra* note 21 at [paras 75, 79](#); United Nations, *International Convention on the Elimination of All Forms of Racial Discrimination*, 1 December 1965, 660 UNTS 195, [preamble](#) (entered into force 4 January 1969); United Nations, *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, [preamble](#), [arts 6, 10, 47](#) (entered into force 23 March 1976); United Nations *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3, [preamble](#), [art 25](#) (entered into force 3 January 1976); United Nations, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85, [preamble](#) (entered into force 26 June 1987); United Nations, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, 2515 UNTS 3, [preamble](#), [arts 1, 3, 10](#) (entered into force 3 May 2008).

of gender-diverse children while they are at school; to do so would be to fully disregard and trample on their inherent dignity, worth, and autonomy.

C. Specific vulnerability of gender-diverse children is essential context for access to justice considerations and legal issues determination

27. There is a growing awareness, including at law in Canada, of the unique challenges faced by transgender people as “among the most marginalized in our society”²⁷; people whose lives are marked by “disadvantage, prejudice, stereotyping, and vulnerability”, and who “often find their very existence the subject of public debate and condemnation.”²⁸

28. There is additional recognition that gender-diverse children face significant barriers, adversity, social isolation, and poor outcomes across a wide range of domains, including education, health, bullying and violence, and future prospects.²⁹ As this Court has stated, the best interest of the child analysis is highly contextual and must be responsive to the specific context and vulnerabilities of a child and children.³⁰ This context of extreme adversity and exclusion is at the heart of all issues before this Honourable Court.

29. It is essential, in the best interests of gender-diverse children, that the impugned legislation be judicially reviewed, and be evaluated for compliance with s.12 of the *Charter*.

30. There is a critical issue to be determined and a serious case to be made regarding the claimed violation of s. 12 of the *Charter*. In *Canadian Doctors for Refugee Care v Canada*, the Court cited the long-standing maxim from the Supreme Court of Canada, that “in its modern application, the meaning of ‘cruel and unusual treatment or punishment’ must be drawn ‘from the evolving standards of decency that mark the progress of a maturing society.’”³¹

31. This context of heightened victimization, marginalization, and barriers is integral to considering the best interests including the right to be heard of children in this matter. It is essential,

²⁷ *Oger v Whatcott (No 7)*, 2019 BCHRT 58 at [para 62](#) [*Oger*].

²⁸ *Hansman v Neufeld*, 2023 SCC 14 at [paras 85-89](#), citing *Oger* at [para 62](#), and *CF v Director of Vital Statistics (Alta)*, 2014 ABQB 237 at [para 58](#).

²⁹ *Oger*, *supra* note 28 at [para 62](#).

³⁰ *Kanthasamy*, *supra* note 15 at [para 35-39](#).

³¹ *Canadian Doctors for Refugee Care v Canada (Attorney General)*, 2014 FC 651 at [paras 612-613](#), citing *R v Smith (Edward Dewey)*, 1987 CanLII 64 (SCC) at [1089](#).

in the best interests of the child, and gender-diverse children in particular, that the impugned legislation be evaluated for compliance with s. 12 of the *Charter*. There is a reasonable cause of action, and a pressing and relevant justiciable case to be tried. It is essential to ensure that the *Charter* rights of children are fully canvassed and understood.

D. Conclusion

32. In this case, this Honourable Court’s analysis must integrate an understanding of the specific and heightened marginalization and vulnerability of gender-diverse children. A child-rights respecting analysis will recognize the rights-affirming constitutional significance, and practical utility to judicial review and declaratory relief, where a government has pre-emptively invoked the Notwithstanding Clause, and the necessity of adjudicating the possibility of a s.12 *Charter* violation.

33. For gender-diverse children, a court’s consideration of their *Charter* rights and a corresponding declaration in spite of the s. 33 invocation, is their only access to justice and dignity. This is a group of people who, by virtue of their age, not only have no access to the democratic process, or to other avenues of pursuing recognition and respect for their dignity, equality, and rights, but also may be in a position where attempting to do so would be actively dangerous by virtue of their gender identity. As stated above, for many across Canada, access to declaratory relief may be the only avenue for their rights to be fairly considered, adjudicated, and possibly vindicated.

PARTS IV and V - SUBMISSIONS ON COSTS and ORDERS REQUESTED

34. JFCY seeks no costs and requests that none be awarded against it. JFCY takes no position regarding the specific outcome of the appeals.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of June, 2026.



Justice for Children and Youth
Mary Birdsell and Allie McMillan
Counsel for the Intervener, Justice for Children and Youth

PART VI – TABLE OF AUTHORITIES & STATUTORY PROVISIONS

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<p>United Nations, <i>Convention on the Rights of Persons with Disabilities</i>, 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) Preamble Art 1, 3, 10</p> <p>Nations Unies, <i>Convention relative aux droits des personnes handicapées</i>, le 13 décembre 2006, 2515 UNTS 3 (entrée en vigueur le 3 mai 2008) Préambule Art 1, 3, 10</p>	25
<p>United Nations <i>Convention on the Rights of the Child</i>, Can TS 1992 No 3 (entered into force 2 September 1990)</p> <p>Nations Unies, <i>La Convention relative aux droits de l'enfant</i>, Can TS 1992 No 3 (entrée en vigueur le 2 septembre 1990)</p>	2, 13, 15, 25
<p>United Nations, <i>International Convention on the Elimination of All Forms of Racial Discrimination</i>, 1 December 1965, 660 UNTS 195 (entered into force 4 January 1969) Preamble</p> <p>Nations Unies, <i>Convention internationale sur l'élimination de toutes les formes de discrimination raciale</i>, le 21 décembre 1965, 660 UNTS 195 (entrée en vigueur le 4 janvier 1969) Préambule</p>	25
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