S.C.C. File No.: 38921

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

B E T W E E N :

CITY OF TORONTO

Appellant

- and -

ATTORNEY GENERAL OF ONTARIO

Respondent

- and -

TORONTO DISTRICT SCHOOL BOARD, ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF BRITISH COLUMBIA, CITYPLACE RESIDENTS' ASSOCIATION, CANADIAN CONSTITUTION FOUNDATION, INTERNATIONAL COMMISSION OF JURISTS (CANADA), FEDERATION OF CANADIAN MUNICIPALITIES, DURHAM COMMUNITY LEGAL CLINIC, CENTRE FOR FREE EXPRESSION AT RYERSON UNIVERSITY, CANADIAN CIVIL LIBERTIES ASSOCIATION, ART EGGLETON, BARBARA HALL, DAVID MILLER AND JOHN SEWELL, DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, PROGRESS TORONTO, MÉTIS NATION OF ONTARIO, MÉTIS NATION OF ALBERTA, AND FAIR VOTING BRITISH COLUMBIA

Interveners

FACTUM OF THE INTERVENER, CANADIAN CONSTITUTION FOUNDATION

(Pursuant to Rules 37 and 42 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

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PART I—OVERVIEW

1. The Constitution gives provinces the power to make and unmake the rules of municipal government. Even if they render "the previous electoral expression of candidates and voters … meaningless"[1] by changing the structure of municipal governments during elections, neither section 2(*b*) nor section 3 of the *Charter* stands in their way. Section 92(8) of the *Constitution Act, 1867* empowers provincial legislatures not only to create municipal democracy but also to modify it, however wise or unwise doing so may be. The Constitution entitles those who oppose such changes to a political remedy at the next provincial election, not to a legal one in the courts.

2. The Appellant and numerous interveners disagree with this statement of constitutional law, as did the application judge and the dissenting judges in the Court of Appeal. In their view, section 2(*b*) prevents a province from "meddling" in a municipal democracy by "blow[ing] up the efforts, aspirations and campaign materials of … aspiring candidates, and the reciprocal engagement of many informed voters", "once … [a municipal] election has commenced".[2] Righteous as that position may be, this Court cannot accept it without undermining the principles of constitutional interpretation that the Court has repeatedly endorsed, most recently in *9147-0732 Québec inc*.[3] The Canadian Constitution Foundation ("**CCF**") intervenes to explain why this is so.

3. Holding the line on constitutional interpretation is necessary for the protection of civil liberties, even if courts must sometimes refrain from striking down imprudent laws. Experience teaches that, if rights are interpreted too expansively, courts will too readily find limits on those rights to be justified under section 1.[4] Courts that "overshoot"[5] the scope of *Charter* guarantees

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1 Appellant's Factum, ¶61.

2 *Toronto (City) v. Ontario (Attorney General)*, 2019 ONCA 732 [**Appeal Judgment**], ¶123, 136, per MacPherson J.A. (dissenting). **See also:** Appellant's Factum, ¶68.

3 *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32 [***9147-0732 Québec inc.***], ¶8-13. **See also:** *ibid.*, ¶126, per Abella J. (dissenting).

4 **See:** P.W. Hogg, "Interpreting the Charter of Rights: Generosity and Justification" (1990), 28 Osgoode Hall L.J. 817 [**Hogg, "Interpreting"**], at 819 (Book of Authorities [**BOA**], Tab 7, p. 338); *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 [***LSBC v. TWU***], ¶186-94, per Rowe J.

5 *R. v. Stillman*, 2019 SCC 40, ¶21, and *R. v. Poulin*, 2019 SCC 47, ¶53, both quoting P.W. Hogg, *Constitutional Law of Canada* (5th ed. Supp.) [**Hogg, *Constitutional Law***], at 36-30 (BOA, Tab 8, p. 361).

risk diluting them. That is the danger of this appeal. It is a hard case. But, if section 2(*b*) is to protect political expression as robustly as it must, then not every aspect of electoral participation can constitute political expression. This Court should say so.

4. Resolving this appeal requires the Court to do more than decide what section 2(*b*) protects and what it does not, and whether courts may invalidate laws because they are inconsistent with unwritten constitutional principles. Explicitly or implicitly, the Court will also model the constitutional methodology that courts should use to answer novel questions of constitutional law, like those presented here. The CCF makes two submissions on this methodological issue.

5. First, the purposes of constitutional provisions, which are properly discerned by careful attention to their text and context, restrict the scope of *Charter* rights, including facially unqualified rights like the freedom of expression. The purpose of section 2(*b*) cannot be to protect in municipal elections what section 3 protects in provincial and federal elections, because the *Charter*'s text excludes municipal elections from the scope of section 3. That is an omission, not a gap. If section 2(*b*)'s text and context circumscribe the freedom it guarantees — and they should — then section 2(*b*)'s protection of political expression in municipal elections must end where, in provincial and federal elections, section 3's protection begins.

6. Second, constitutional purpose, understood through text and context, also forecloses the use of unwritten constitutional principles to declare laws of no force or effect under section 52(1) of the *Constitution Act, 1982*. Section 52(1) provides that "any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect". Unwritten constitutional principles are not "provisions of the Constitution". Nor can they extend the reach of written constitutional provisions beyond what those provisions' purposes (as determined through text and context) permit.

7. These conclusions about the scope of the freedom of expression and the role of unwritten principles reflect the methodological maxim that, in interpreting the Constitution, "the purposive inquiry must begin by examining the text".[6] If this Court reads sections 2(*b*) and 52(1) more broadly than their text or the constitutional scheme allow — as the Appellant and numerous interveners urge this Court to do — then it will foreclose the very sort of democratic accountability that the

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[6] *9147-0732 Québec inc.* (S.C.C., 2020), *supra* note 3, ¶12.

Appellant and those interveners purport to defend. For better or worse, section 92(8) of the *Constitution Act, 1867* gives provincial legislatures the power to meddle with municipal elections. Section 3 of the *Charter* ensures that voters can, if they choose, punish provincial legislators for doing so. Courts should not usurp that choice by expanding the scope of section 2(*b*) beyond what its purpose permits. By using a disciplined approach to constitutional interpretation, as it has done in other cases, this Court can restore the power of accountability to Canadians, respect the limits of the judicial role, and better protect constitutional rights. It should do so.

PART II—STATEMENT OF ARGUMENT

1. Text and context should guide the purposive interpretation of section 2(*b*)

8. The Appellant submits that section 2(*b*) of the *Charter* guarantees a right to "effective representation" in municipal elections.[7] In deciding whether this is so, this Court should begin with the text and scheme of the *Charter* itself.

9. Sections 2(*b*) and 3 guarantee different rights and protect different interests.[8] To the extent that the *Charter* protects electoral participation, as distinct from political expression during an election campaign, it does so in section 3. "[E]xpression", in section 2(*b*), should not be interpreted in a manner that would extend section 3's protection beyond what section 3 allows.[9] This is clear from looking at "the meaning and purpose of the other specific rights and freedoms with which [section 2(*b*)] is associated within the text of the *Charter*",[10] and reflects this Court's instruction to read constitutional provisions together, "so that the Constitution operates as an internally consistent harmonious whole".[11]

10. To interpret and apply section 2(*b*), or any constitutional provision, in a novel factual or legal context — like the one presented in this appeal — a court should not seek to identify the

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7 Appellant's Factum, ¶108.

8 *Harper v. Canada (Attorney General)*, 2004 SCC 33, ¶67; *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, ¶79-80.

9 **See:** *R. v. Cornell*, [1988] 1 S.C.R. 461, at 477-78.

10 *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at 344. **See also:** *9147-0732 Québec inc.* (S.C.C., 2020), *supra* note 3, ¶13; *ibid.*, ¶126, per Abella J.

11 *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59 [***Trial Lawyers***], ¶25. **See also:** *Reference re Senate Reform*, 2014 SCC 32, ¶26.

provision's purpose in the ether, or even primarily on the basis of case law. Rather, purposive interpretation should start with constitutional text and context.[12] Courts must ensure that constitutional provisions' "[p]urposes do not eclipse or supersede the language chosen", but rather "are used to delimit the meaning of the text in a way that ensures the achievement of the purpose of the right or freedom but within the reasonable bounds of the language as written".[13]

11. *Charter* interpretation is not statutory interpretation.[14] Statutory interpretation aims to "discern legislative intent".[15] *Charter* interpretation, by contrast, seeks to ascertain the meaning of a right or freedom "by an analysis of the purpose of such a guarantee" and "in the light of the interests it was meant to protect".[16] As this Court observed in *Stillman*, however, "[t]he effect of a purposive approach is normally going to be to narrow the scope of the right".[17] Courts must not resort to broad statements of purpose, unmoored from a provision's text and context, to read rights more expansively than the *Charter* itself allows.[18]

12. In *9147-0732 Québec inc.*, this Court affirmed that constitutional interpretation "must first and foremost have reference to, and be constrained by, th[e] text", which is the first indicator of a provision's purpose.[19] It must also have regard to context, since "[t]he language, structure, and history of the constitutional text" all "constrain[]" the scope of the protected right or freedom.[20]

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[12] **See:** *Caron v. Alberta*, 2015 SCC 56 [***Caron***], ¶16; *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 [***PSERA Reference***], at 394, per McIntyre J.

[13] B. Oliphant, "Taking Purposes Seriously: The Purposive Scope and Textual Bounds of Interpretation Under the *Canadian Charter of Rights and Freedoms*" (2015), 65 U.T.L.J. 239, at 262 (emphasis added) (BOA, Tab 1, p. 34).

[14] **See:** *R. v. S. (R.J.)*, [1995] 1 S.C.R. 451, at 520-521, per Iacobucci J.

[15] *British Columbia v. Philip Morris International, Inc.*, 2018 SCC 36, ¶17.

[16] *Big M Drug Mart Ltd.* (S.C.C., 1985), *supra* note 10, at 344. **See also:** *9147-0732 Québec inc.* (S.C.C., 2020), *supra* note 3, ¶7.

[17] *Stillman* (S.C.C., 2019), *supra* note 5, ¶21, quoting Hogg, *Constitutional Law*, *supra* note 5, at 36-30 (BOA, Tab 8, p. 361).

[18] **See:** L. Sirota & B. Oliphant, "Originalist Reasoning in Canadian Constitutional Jurisprudence" (2017), 50 U.B.C. L. Rev. 505, at 539-40 (BOA, Tab 5, pp. 213-214).

[19] *9147-0732 Québec inc.* (S.C.C., 2020), *supra* note 3, ¶9, 11.

[20] *PSERA Reference* (S.C.C., 1987), *supra* note 12, at 394, per McIntyre J. **See also:** *Poulin* (S.C.C., 2019), *supra* note 5, ¶57; *Stillman* (S.C.C., 2019), *supra* note 5, ¶21; *Big M Drug Mart Ltd.*, *supra* note 16, at 344.

For purposive interpretation to maintain its legitimacy, courts must begin with the constitutional text that Parliament and the provincial legislatures have enacted, rather than with "judicial elaborations" endorsed in the jurisprudence: the constitutional law that judges have made.[21] When it is grounded in the *Charter*'s text and structure, purposive interpretation ensures that the judicial enforcement of *Charter* protections reflects Canada's constitutional architecture, *i.e.*, "the deliberate choice of our provincial and federal legislatures in adopting the *Charter* to assign an interpretive role to the courts".[22] That "interpretive role" is to ensure the protection of the particular interests that it was each provision's purpose to guarantee — as determined through careful analysis of the provision's text and context.[23]

13. Departing from this approach not only risks the legitimacy of purposive interpretation, it also threatens civil liberties. In reading *Charter* provisions more broadly than their text and context allow, courts tend to shift the burden of determining constitutionality away from the interpretation of the *Charter* and towards the more subjective justification analysis under section 1. Faced with a choice between using constitutional interpretation to reckon with the extent of a *Charter* right and using the *Oakes* test to reach a case-specific conclusion, many judges understandably prefer the latter. This approach is inconsistent with the democratic principles that underlie the Constitution, however. Unlike the *Charter*'s operative provisions, section 1 entrusts the ultimate protection of constitutional rights to judicial discretion.[24] Consequently, an absence of methodological discipline in determining the ambit of the *Charter*'s guarantees leads courts to arrogate to themselves the decision of what is constitutionally protected and what is not. That decision must instead rest with Canadians, through the representatives who are empowered to amend the *Charter*.[25]

14. By defining *Charter* rights more broadly than their purposes (discerned through constitutional text and context) permit, and by relying on section 1 to filter meritorious rights claims

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[21] **See:** P.J. Monahan, "Judicial Review and Democracy: A Theory of Judicial Review" (1987), 21 U.B.C. L. Rev. 87, at 122 (BOA, Tab 6, p. 292).

[22] *Vriend v. Alberta*, [1998] 1 S.C.R. 493, ¶132 (emphasis added).

[23] *Caron* (S.C.C., 2015), *supra* note 12, ¶37, quoting *R. v. Blais*, 2003 SCC 44, ¶40.

[24] **See:** J.B. Kelly, "The *Charter of Rights and Freedoms* and the Rebalancing of Liberal Constitutionalism in Canada, 1982-1997" (1999), 37 Osgoode Hall L.J. 625, at 661-62 (BOA, Tab 4, pp. 143-144).

[25] **See:** Appeal Judgment, *supra* note 2, ¶77.

from unmeritorious ones, courts make it easier for claimants to establish that a *Charter* right has been limited in a particular case, but also easier for the government to establish that the limitation is or was justified.[26] Courts that broadly circumscribe constitutional rights, and that consequently rely on proportionality-based justification to police limitations on those rights, paradoxically make rights and freedoms less certain, not more.[27]

15. Yet, that is what the Appellant asks this Court to do. By advancing a claim under section 2(*b*) that, in the context of a provincial or federal election, would be advanced under section 3, the Appellant invites this Court to be insufficiently attentive to the distinct and necessarily limited interests that each *Charter* provision protects.[28] The Court of Appeal majority properly recognized the primacy of the constitutional text in this regard:

> [T]he basic structure of the *Charter* must be respected. Although the coverage of particular rights can overlap, the content of one right cannot be subsumed by another, or used to inflate its content. The application judge's analysis wrongly imports the content of s. 3 into s. 2(*b*) in order to circumvent the decision of the constitutional framers not to extend the protection of s. 3 to municipal elections.[29]

16. Not only can "doctrines pertaining to s. 3 [not] be imported to expand the reach of s. 2(*b*)",[30] but the constitutional choice to protect participation in federal, provincial, but not municipal elections in section 3 must inform the interpretation of section 2(*b*). The provisions of the Constitution, read in context, "must have been intended to express the full measure of constitutional protection".[31] One *Charter* guarantee cannot legitimately be used as a vehicle to cloak in

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[26] **See:** Hogg, "Interpreting", *supra* note 4, at 819 (BOA, Tab 7, p. 338); *LSBC v. TWU* (S.C.C., 2018), *supra* note 4, ¶186-94, per Rowe J.

[27] **See:** G. Huscroft, "Proportionality and the Relevance of Interpretation", in G. Huscroft et al., eds., *Proportionality and the Rule of Law: Rights, Justification, Reasoning* (2014), at 188-89 (BOA, Tab 3, pp. 87-88).

[28] **See:** *Gosselin v. Quebec (Attorney General)*, 2002 SCC 84, ¶203, per Basatrache J. (dissenting). **See also:** G. Huscroft, "A Constitutional 'Work in Progress'? The *Charter* and the Limits of Progressive Interpretation" (2004), 23 S.C.L.R. (2d) 413, at 425 (BOA, Tab 2, p. 70).

[29] Appeal Judgment, *supra* note 2, ¶76.

[30] *Toronto (City) v. Ontario (Attorney General)*, 2018 ONCA 761, ¶17.

[31] *Transpacific Tours Ltd. v. Director of Investigation & Research* (1985), 25 D.L.R. (4th) 202 (B.C. S.C.), ¶20 (WL).

constitutional protection that which another *Charter* guarantee has expressly excluded.[32] To the extent that sections 2(*b*) and 3 each apply to certain aspects of participation in a municipal elections, courts may not use section 2(*b*) to overcome the exclusion of municipal elections from section 3.[33]

17. The Appellant asks this Court to reject this approach and to adopt an understanding of our Constitution explicitly rejected by our constitutional framers. It proposes to rely on unwritten constitutional principles to overcome the textual and contextual constraints on the scope of the freedom of expression, and thus to make the constitutionality of the impugned legislation turn on findings of fact under section 1, rather than on constitutional interpretation under section 2(*b*). The Court of Appeal appropriately declined to do this.[34] This Court should, too.

2. The same approach to constitutional interpretation should be applied to section 52(1)

18. The Appellant submits that courts may resort to unwritten constitutional principles as a basis for striking down laws under section 52(1) of the *Constitution Act, 1982*. This, too, is a matter of constitutional interpretation. This Court must determine the circumstances in which section 52(1) empowers courts to invalidate duly enacted laws. It should adopt and employ the same interpretive method described above with respect to section 2(*b*) of the *Charter*: it should use constitutional text and context to determine the purpose, and thus the scope, of section 52(1).

19. Section 52(1) provides that "any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect". Section 52(2) defines "[t]he Constitution of Canada" as "includ[ing] … the *Canada Act 1982*, including this Act; … the Acts and orders referred to in the schedule; and … any amendment to any Act or order referred to in paragraph (a) or (b)".

20. Unwritten constitutional principles are not "provisions of the Constitution". Though the word "includes" in section 52(2) means that the list of constitutional documents is not closed,[35]

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[32] **See:** *S. (R.J.)* (S.C.C., 1995), *supra* note 14, at 520, 533; *R. v. Therens*, [1985] 1 S.C.R. 613, at 647-48; *Curr v. The Queen*, [1972] S.C.R. 889, at 895-96.

[33] **See:** *R. v. Rodgers*, 2006 SCC 15, ¶23; *R. v. K.M.*, 2011 ONCA 252, ¶72.

[34] **See, e.g.:** Appeal Judgment, *supra* note 2, ¶77.

[35] **See:** *Reference re Remuneration of Judges of the Provincial Court (P.E.I.)*, [1997] 3 S.C.R. 317 [***PEI Reference***], ¶91-93, citing *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319, at 378.

that does not expand the scope of judicial power under section 52(1). Only if a component of the Constitution contains one or more "provisions" can it be inconsistent with an impugned law for the purpose of invalidating that law under section 52(1). A purposive interpretation of section 52(1), grounded in its text and context, dictates that courts may strike down laws only on the basis of inconsistency with "provisions", not principles.[36] To hold otherwise would require rewriting section 52(1) to read: "any law that is inconsistent with ~~the provisions of~~ the Constitution is, to the extent of the inconsistency, of no force or effect". Tellingly, in its submissions on unwritten constitutional principles, the Appellant does not engage with the text and context of section 52(1) at all.

21. The more difficult question is the extent to which unwritten principles inform the interpretation of written constitutional provisions. It is possible to read this Court's pronouncements on this question as being in conflict with one another. In *Imperial Tobacco*, Major J. stated that the unwritten principle of the rule of law "is not an invitation to trivialize or supplant the Constitution's written terms…. On the contrary, it requires that courts give effect to the Constitution's text, and apply, by whatever its terms, legislation that conforms to that text".[37] In the *P.E.I. Reference*, however, Lamer C.J. held that "[t]he preamble identifies the organizing principles of the *Constitution Act, 1867*, and invites the courts to turn those principles into the premises of a constitutional argument that culminates in the filling of gaps in the express terms of the constitutional text".[38] And, in *Trial Lawyers*, McLachlin C.J. held that section 96 of the *Constitution Act, 1867*, buttressed by the unwritten principle of the rule of law, barred the provincial legislatures from using their power under s. 92(14) to impose hearing fees that limit access to the courts.[39]

22. The common thread through these cases is that, even if unwritten principles may inform the interpretation and application of constitutional text, and even if they can "fill[] … gaps" in the constitutional text, they cannot alter or "undermine the delimitation of those rights chosen by our

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[36] **See:** *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49 [***Imperial Tobacco***], ¶60; *Campisi v Ontario*, 2017 ONSC 2884, ¶55, aff'd 2018 ONCA 869.

[37] *Imperial Tobacco* (S.C.C., 2005), *supra* note 36, ¶67.

[38] *PEI Reference* (S.C.C., 1997), *supra* note 35, ¶104.

[39] *Trial Lawyers* (S.C.C., 2014), *supra* note 11, ¶36-40.

constitutional framers".[40] When there is no textual guidance from the Constitution, unwritten principles may play a bigger role.[41] But when there is clear textual guidance, as in this case, unwritten principles cannot "be taken as an invitation to dispense with the written text of the Constitution".[42] They "are … invested with a powerful normative force, and are binding upon both courts and governments", but courts should ultimately "insist upon the primacy of our written constitution".[43]

23. In deciding this appeal, this Court should confirm that when a court is asked to invalidate a law on the basis of both written constitutional provisions and unwritten constitutional principles, the court should not consider these to be separate requests; one must be part and parcel of the other. As McIntyre J. described purposive interpretation more than three decades ago, "[t]he interpretation of … all constitutional documents, is constrained by the language, structure, and history of the constitutional text, by constitutional tradition, and by the history, traditions, and underlying philosophies of our society".[44] Like the Constitution's structure and history, unwritten principles help courts to apply the constitutional text because they constrain its interpretation. But they cannot change it.

24. Unwritten principles "do not confer on the judiciary a mandate to rewrite the Constitution's text."[45] Invalidation of a law under section 52(1) requires inconsistency with a constitutional "provision[]". Those provisions — including every section of the *Charter* — reflect deliberate choices of inclusion and exclusion, which unwritten constitutional principles are powerless to disturb. As the Court of Appeal recognized, unanimously on this point:

> To use such indeterminate, open-ended, and contested concepts as grounds to invalidate legislation would be, as the Supreme Court has observed, to devolve into "judicial governance"…. As La Forest J. wrote, "[t]he ability to nullify the laws of democratically elected representatives derives its legitimacy from a super-

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[40] *Imperial Tobacco* (S.C.C., 2005), *supra* note 36, ¶65.

[41] *Ontario (Attorney General) v. G*, 2020 SCC 38, ¶120.

[42] *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 [***Secession Reference***], ¶53. **See also:** *PEI Reference* (S.C.C., 1997), *supra* note 35, ¶93.

[43] *Secession Reference* (S.C.C., 1998), *supra* note 42, ¶53-54.

[44] *PSERA Reference* (S.C.C., 1987), *supra* note 12, at 394, per McIntyre J. (emphasis added).

[45] *Lalonde v. Ontario (Commission de restructuration des services de santé)* (2001), 56 O.R. (3d) 505 (C.A.), ¶121.

legislative source: the text of the Constitution."[46]

25. The purpose of section 52(1), discerned by analysis of its text and context, precludes reliance on unwritten constitutional principles to invalidate legislation. In this respect, as with the interpretation of section 2(*b*) of the *Charter*, the particular outcome of this appeal will be less consequential than the manner in which this Court decides it. The means will ultimately matter more than the ends.

PART III—SUBMISSIONS CONCERNING COSTS

26. CCF requests that no costs be awarded either for or against it.

PART IV—ORDER SOUGHT

27. The CCF takes no position with respect to the disposition of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of January, 2021.

Adam Goldenberg / Jacob Klugsberg

[46] Appeal Judgment, *supra* note 2, ¶87 (emphasis added; citation omitted), quoting *Imperial Tobacco* (S.C.C., 2005), *supra* note 36, ¶52-53, and *PEI Reference* (S.C.C., 1997), *supra* note 35, ¶314-316, per La Forest J. **See also:** Appeal Judgment, *supra* note 2, ¶99, per MacPherson J.A. (dissenting).

PART V—TABLE OF AUTHORITIES

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