

Religion, Rights and the Role of the Courts





Confederation of Tomorrow

The Confederation of Tomorrow surveys are annual studies conducted by an association of the country's leading public policy and socio-economic research organizations. The surveys give voice to Canadians about the major issues shaping the future of the federation and their political communities.

The 2023 study consists of a survey of 5,300 adults, conducted online in the provinces between January 26 and February 9; and by telephone in the territories between January 24 and February 26.

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The Environics Institute for Survey Research was established by Michael Adams in 2006 with a mandate to conduct in-depth public opinion and social research on the issues shaping Canada's future. It is through such research that Canadians can better understand themselves and their changing society.

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Introduction

Quebecers and other Canadians continue to differ on how governments should best express their neutrality with regard to religion. Outside Quebec, a majority favour a form of neutrality that would see the government not interfere with how people practice their religion. In Quebec, the more popular choice is a prohibition on public servants visibly displaying their religious affiliation when providing services to the public. Preferences have changed little since 2020 in both parts of the country.

Canada-wide, there has also been little change in opinions as to whether the Supreme Court or Parliament should have the final say when a law is struck down because it is found to conflict with the Canadian Charter of Rights and Freedoms, and whether in such cases the government should be allowed to override the Court's decision. But among francophones in Quebec, there are signs of a modest evolution in favour of legislatures rather than the courts.

Last year marked the 40th anniversary of the Canadian Charter of Rights and Freedoms. While the Charter as a whole remains popular, the occasional use by governments of its provision allowing them to override certain Charter rights (Section 33) continues to spark controversy. The Quebec government has used this “notwithstanding clause” to insulate laws on religion and language from judicial review; while the current Government of Ontario has relied on it several times since coming to power in 2018 (though, in one recent case involving back-to-work legislation, the government withdrew the use of Section 33 in the face of union and public opposition). In the context of these events, the 2023 Confederation of Tomorrow Survey revisited public views on the relationship between governments and the courts, and on how governments should best express their religious neutrality – the issue at the heart of Quebec’s Bill 21.

Favoured approach to religious neutrality

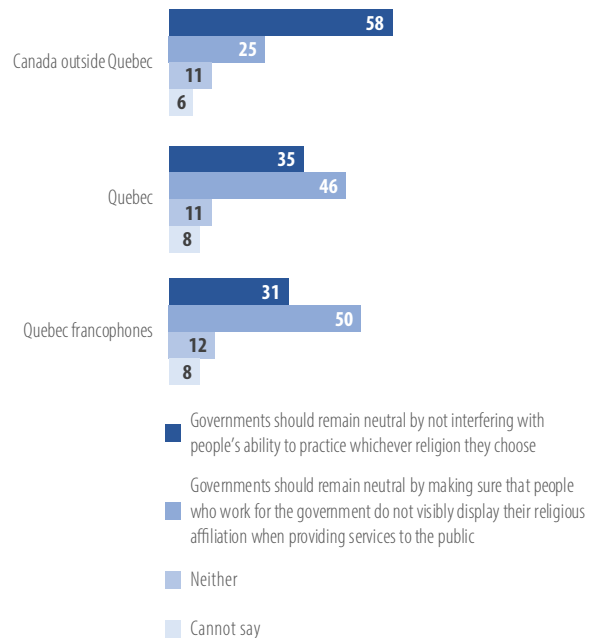
Quebecers in general, and francophone Quebecers in particular, continue to favour a different approach to religious neutrality than other Canadians.

The 2023 Confederation of the Tomorrow Survey first reminded participants that Canadian society is made up of people from many different religions, as well as many people who do not practice any religion at all. It then asked, when thinking about governments and religions, which of two approaches they prefer.

- Outside Quebec, a majority (58%) favour governments remaining neutral by *not interfering with people's ability to practice whichever religion they choose*. This compares to 25 percent who say that governments should remain neutral by *making sure that people who work for the government do not visibly display their religious affiliation* when providing services to the public. An additional 11 percent favour neither of these approaches, and six percent choose not to provide an answer.
- In Quebec, there is no majority preference. A plurality (46%) favour governments remaining neutral by *making sure that people who work for the government do not visibly display their religious affiliation* when providing services to the public. Fewer (35%) say that governments should remain neutral by *not interfering with people's ability to practice whichever religion they choose*. An additional 11 percent favour neither of these approaches, and eight percent choose not to provide an answer.
- Preference for the approach to neutrality that would see governments *prohibit public servants from visibly displaying their religious affiliation* when providing services to the public is slightly higher among francophone Quebecers (reaching 50%) – though with only one in two francophone Quebecers selecting the option, it is far from a consensus. Fewer francophone Quebecers (31%) prefer the option of the government *not interfering with the practice of religion*, and 20 percent either prefer neither option or choose not to respond.

Preferred approach to religious neutrality

2023 Canada and Quebec



Q.8

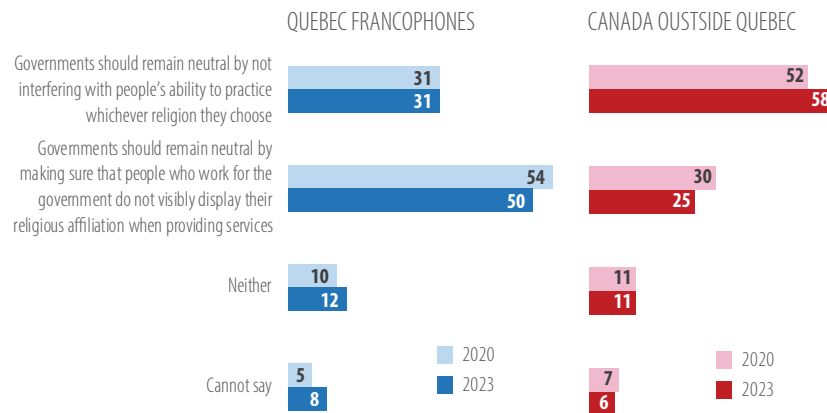
Our society is made up of people from many different religions, as well as many people who do not practice any religion at all. Thinking about governments and religions, which of the following approaches do you prefer?

Compared to 2020, there has been little change in views on the question of how governments should best express their religious neutrality. Preference for the approach to neutrality that would see governments prohibiting public servants from visibly displaying their religious affiliation has fallen by five points in Quebec (from 51% to 46%) – and by four points among francophones in Quebec (from 54%

to 50%) – and also by five points outside Quebec (from 30% to 25%). This shift is a modest one; however, at the very least it can be said that, in both parts of the country, in the context of intense public discussion of Quebec’s Bill 21, support for the option of prohibiting of public servants from visibly displaying their religious affiliation has weakened very slightly.

Preferred approach to religious neutrality

2020-2023 Canada and Quebec Francophones



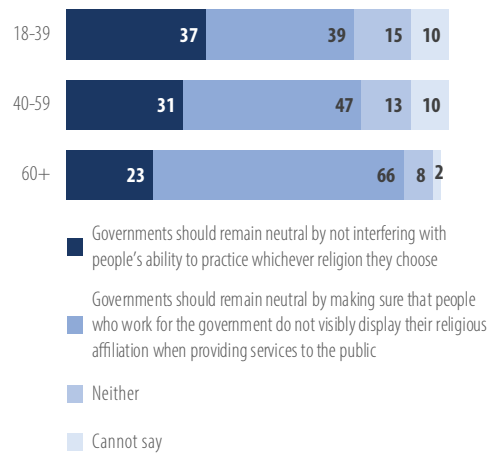
Q.8

Our society is made up of people from many different religions, as well as many people who do not practice any religion at all. Thinking about governments and religions, which of the following approaches do you prefer?

Looking specifically at the most recent responses from 2023, opinions on this question among francophone Quebecers, differ by age and gender. Men (55%) are more likely than women (45%) to prefer the option of prohibiting public servants from visibly displaying their religious affiliation when providing services to the public. The same is true of older francophones in the province compared to their younger counterparts. Only 39 percent of those between the ages of 18 and 39 favour the prohibition public servants displaying their religious affiliation, compared to 47 percent of those between the ages of 40 and 59, and 66 percent of those age 60 and older. Quebec francophones in this oldest age group are three times more likely to favour the prohibition option over non-interference, while those between the ages of 18 and 39 are evenly split.

Preferred approach to religious neutrality

2023 Quebec Francophones, by age



Q.8

Our society is made up of people from many different religions, as well as many people who do not practice any religion at all. Thinking about governments and religions, which of the following approaches do you prefer?

By comparison, in Canada outside of Quebec, there are no meaningful differences in opinion on this question between men and women, or between older and younger age groups.

Among Quebec francophones, preference for the approach to neutrality that would see governments prohibiting public servants from visibly displaying their religious affiliation when providing services to the public is also higher among those with a more nationalist outlook. For instance, it is higher among those who agree that the French language is threatened (58%), compared to those disagree (31%); and among those who say that Quebec is not treated with respect within Canada (59%), compared to those who say it is respected (47%). It is also higher among those who identify as mainly a sovereigntist (72%), as opposed to those who say they are mainly a federalist (48%). Finally, it is higher among those who support the government Coalition Avenir Québec party (66%) or the Parti Québécois (62%); and lower among those who support Québec Solidaire (41%) or the Parti Libéral du Québec (40%).¹

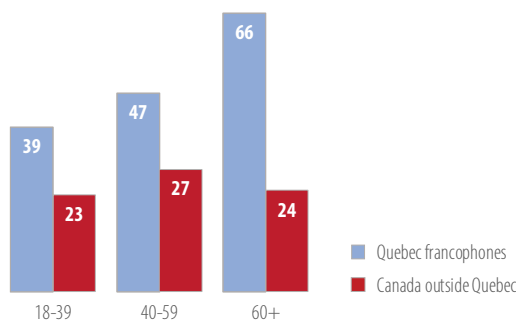
It is notable, however, that among those who do not take these more nationalist positions, opinions on the two approaches tend to be more divided, rather than heavily favouring non-interference over the prohibition of the visible display of religious affiliation by public servants. Only among francophone supporters of the Parti Libéral du Québec does support for non-interference cross the 50-percent threshold (54%).

Opinions on this question are also related to views on immigration, but only somewhat. Among Quebec francophones, those who disagree that there is too much immigration to Canada are four percentage points less likely than those who agree to favour the prohibition on public servants displaying their religious affiliation (49%, compared to 53%). And compared to those who agree there is too much immigration, those who disagree are 13 points more likely to favour non-interference with religion (38%, compared to 25%), and eight points less likely to favour neither option or to offer no response (13%, compared to 21%).

Preferred approach to religious neutrality

2023 Canada and Quebec Francophones, by age

Governments should remain neutral by making sure that people who work for the government do not visibly display their religious affiliation when providing services to the public



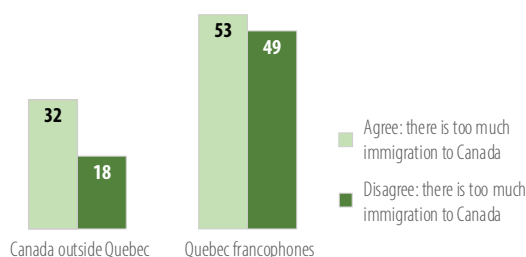
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Our society is made up of people from many different religions, as well as many people who do not practice any religion at all. Thinking about governments and religions, which of the following approaches do you prefer?

Preferred approach to religious neutrality

2023 Canada and Quebec Francophones, by view on immigration

Governments should remain neutral by making sure that people who work for the government do not visibly display their religious affiliation when providing services to the public



Q.8

Our society is made up of people from many different religions, as well as many people who do not practice any religion at all. Thinking about governments and religions, which of the following approaches do you prefer?

¹ Among francophones in the province, the sample sizes for each of these groups is as follows: CAQ = 239; PQ = 147; QLP = 128; QS = 92.

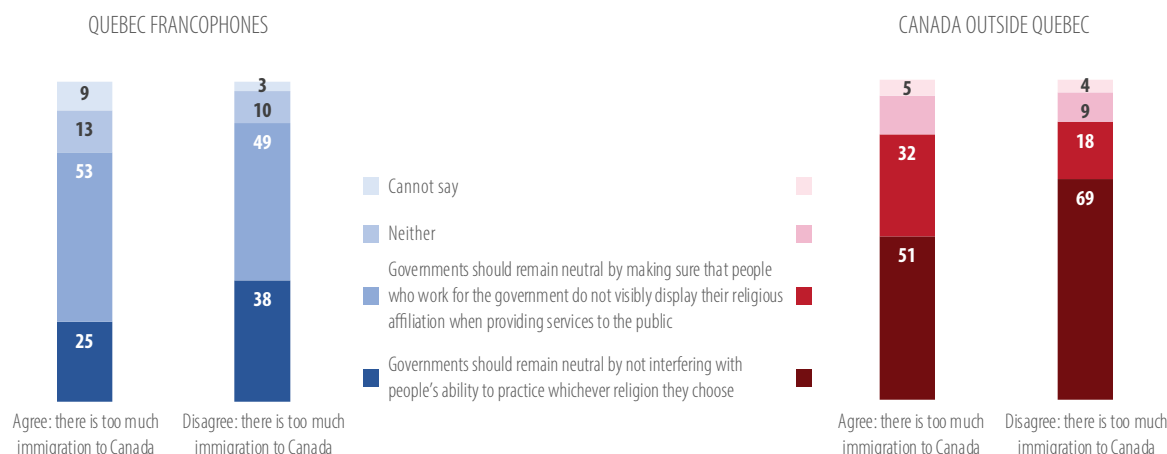
Even among those who disagree that there is too much immigration to Canada, however, a plurality of Quebec francophones favour prohibiting public servants from visibly displaying their religious affiliation when providing services to the public.

In the rest Canada, the situation is reversed. As in Quebec, views on immigration appear to have an effect, with those who agree that there is too much immigration being much more likely to favour prohibiting public servants from visibly displaying their religious affiliation (32%, compared to 18% for those who disagree that there is too much immigration). But outside Quebec, even among those who agree that there is too much immigration, the other option – non-interference with religion – is the more popular one (51%).

In this context, it is worth noting that Quebec francophones do not differ from other Canadians in their answers to the question on immigration: in both parts of the country, about one in two agree, and about two in five disagree. And, as discussed, in each part of the country, preferences on how governments should exercise religious neutrality are related to views on immigration. But the difference between Quebecers and other Canadians lies not in attitudes toward immigration, but rather in differences in the importance attached to a version of religious neutrality wherein religious affiliation is not visible within the realm of the state.²

Preferred approach to religious neutrality

2023 Canada and Quebec Francophones, by view on immigration



Q.8

Our society is made up of people from many different religions, as well as many people who do not practice any religion at all. Thinking about governments and religions, which of the following approaches do you prefer?

² This point is discussed in more detail in the report from the 2020 survey. See: *Values, Religion and the State*.

The relationship between the legislature and the courts

In practice, the Quebec government has advanced its approach to religious neutrality (or *laïcité*) by enacting an ***Act Respecting the Laicity of the State***, otherwise known as Bill 21. The law prohibits certain types of public servants, such as judges, police officers and teachers from “wearing religious symbols in the exercise of their functions.” The law is controversial, with critics opposing it on the grounds that it is an affront to individual rights to freedom of expression and religion, as well as to equality rights. Accordingly, the law’s constitutionality is currently being challenged in court. However, in order to pre-empt the law being struck down by the courts, the Quebec government invoked Section

33 of the Canadian Charter of Rights and Freedoms (the “notwithstanding” clause), which allows governments to enact laws notwithstanding certain Charter provisions.

The Quebec government is not the only one to have invoked Section 33. The current Government of Ontario has relied on it three times to help advance its agenda since it came to power in 2018, though its most recent use of clause – to bring an end to a strike by education support workers – was withdrawn in the wake of union and public opposition.

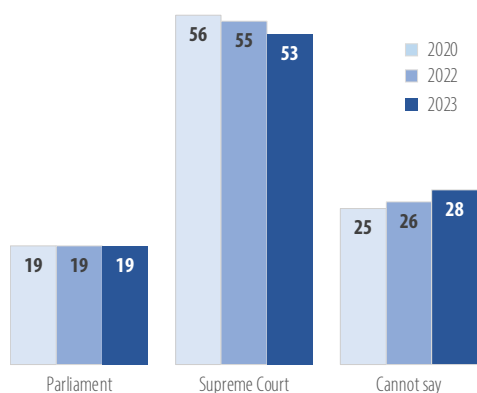
In the light of these events, the 2023 Confederation of Tomorrow Survey revisited the question of how Canadians view the relationship between legislatures and the courts.

Should Parliament or the Supreme Court have the final say?

Over the four decades since the Canadian Charter of Rights and Freedoms was enacted, a majority of Canadians have consistently expressed their comfort with the idea that the Supreme Court might strike down a law duly passed by Parliament, should the Court find that it conflicts with the Charter.³ However, the proportion siding with the Court has declined slightly since 2020 – and, for the first time, has fallen below the 50-percent threshold in Quebec – while uncertainty has edged up.

Currently, 53 percent of Canadians say that the Supreme Court should have the final say in cases where Parliament passes a law, but the Supreme Court of Canada says it is unconstitutional on the grounds that it conflicts with the Charter of Rights. Far fewer (19%) take the contrary position that Parliament should have the final say. However, a significant minority (28%) are unsure and choose neither option.

Parliament, the Court and the Charter: who has the final say? 2020-2023



Q.44

When Parliament passes a law but the Supreme Court of Canada says it is unconstitutional on the grounds that it conflicts with the Charter of Rights, who should have the final say, Parliament or the Supreme Court?

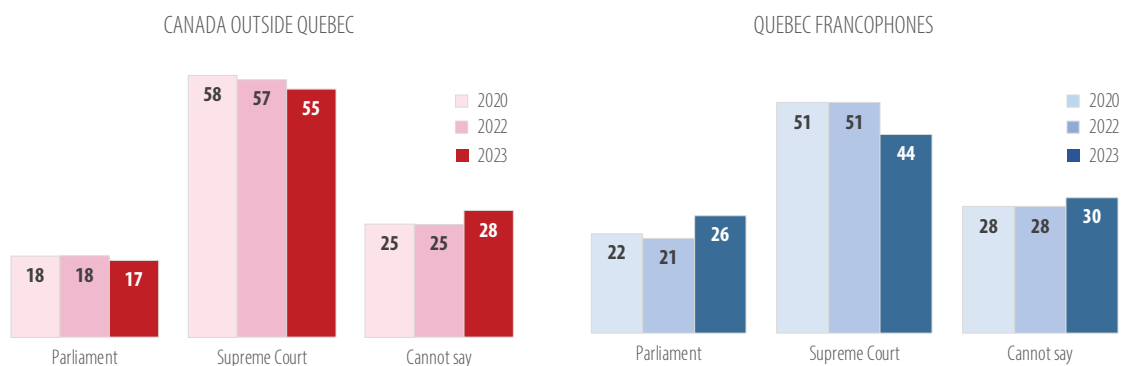
³ The longer-term trends in public opinion on this issue were presented in the reports from the 2022 survey published on the occasion of the 40th anniversary of the Canadian Charter of Rights and Freedoms. Comparisons over a longer period are complicated by the fact that the “don’t know” responses are much lower in the telephone surveys conducted prior to 2019 than in the online surveys conducted since that date (this is because “don’t know” is not mentioned as a response option by telephone interviewers, but is presented on screen as an option in online surveys). For the sake of consistency, this report focuses on the results from the Confederation of Tomorrow surveys, which have been conducted annually using the same methodology since 2019.

Since 2020, the proportion siding with the Supreme Court has declined by three points, and the proportion that takes neither side has increased by a similar proportion (the proportion saying that Parliament should have the final say has remained unchanged). Among francophones in Quebec, however, the proportion saying that the Supreme Court should have the final say is down by seven points compared to 2020 (declining from 51% to 44%). The proportion of francophone Quebecers siding with Parliament is up by four points, and the proportion taking neither side is up two points.

These changes are quite modest. Moreover, in both Quebec and the rest of Canada, it remains the case that only a minority feels certain that Parliament, and not the Court, should have the final say. At the very least, however, the results suggest that ongoing debates about controversial legislation such as Quebec's Bill 21 or Ontario's attempt to end the strike by education support workers have not had the effect of reinforcing public opinion in favour of the role of the Court in striking down laws.

Parliament, the Court and the Charter: who has the final say?

2020-2023 Canada and Quebec Francophones



Q.44

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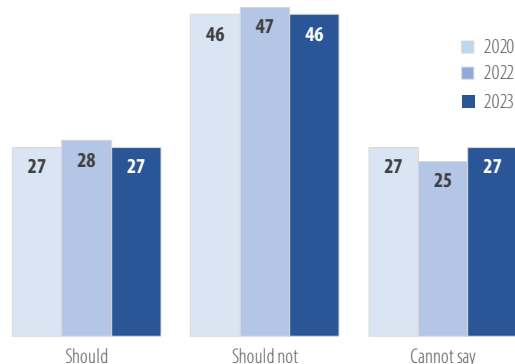
Should governments be able to override court decisions based on the Charter?

In Quebec, at least, a similar trend is evident when the survey asks about the idea behind the notwithstanding clause.

Canada-wide, there has been no change in opinion since 2020 about whether governments should be allowed to overrule the courts in cases where a law is declared unconstitutional on the grounds that it violates the Charter. A plurality of Canadians (46%) say that government should not have this override power, while only about one in four (27%) say that they should, and the same proportion (27%) take neither side.

Among Quebec francophones, however, there has been a slight drop since 2020 in the proportion saying that governments should not have this override power (from 37% to 33%) and a slight increase in the proportion saying they should (from 33% to 36%). As with the previous question, this is a very modest shift. But in the context of public discussion in the province about the use of Section 33 of the Charter to protect laws on religion and language from judicial review, the key point is that there has been no movement in the other direction (that is, no increase in the proportion that says government should not have the power to overrule the courts).

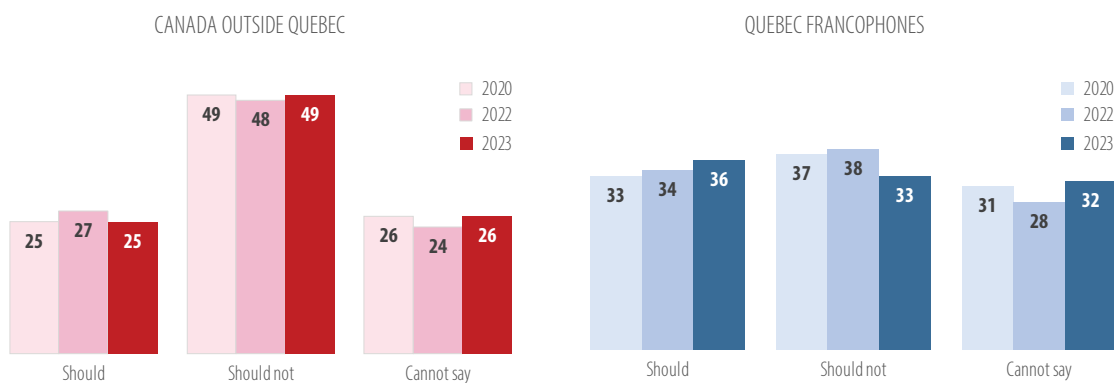
Parliament, the Court and the Charter: should governments be allowed to override Charter? 2020-2023



Q.45

As you may know, in certain cases, the Canadian Constitution gives governments the power to overrule the courts by passing a law, even though the courts have declared it to be unconstitutional because it violates the Charter of Rights and Freedoms. Do you think that governments should or should not have this power?

Parliament, the Court and the Charter: should governments be allowed to override Charter? 2020-2023 Canada and Quebec Francophones



Q.44

When Parliament passes a law but the Supreme Court of Canada says it is unconstitutional on the grounds that it conflicts with the Charter of Rights, who should have the final say, Parliament or the Supreme Court?

As mentioned, outside Quebec, views on whether governments should have the power to overrule the courts by passing a law, even though the courts have declared it to be unconstitutional because it violates the Charter of Rights and Freedoms, are unchanged. More specifically, there has been no change in Ontario, where the current government has faced criticism for its use of the Charter's notwithstanding clause. In 2023, 49 percent of Ontarians say that governments should not have this power, twice as many as the proportion that says they should (25%). In 2020, the respective figures were virtually identical (50% and 27%, respectively).

Some changes in opinion are evident, however, in other individual provinces. In Saskatchewan, the proportion against the idea that governments can overrule the courts in such cases increased by 12 percentage points between 2020 and 2023 (from 45% to 57%). But there has been an eight-point drop in the proportion taking this view in New Brunswick (from 52% to 44%).

An additional change of interest is among Conservative party supporters, both at the federal level and in Ontario. Historically, conservative parties are thought to have been more supportive of the principle of elected legislatures having the final say on how competing rights should be balanced in a liberal democratic society, and thus more comfortable with the idea behind the Charter's notwithstanding clause. But since 2020, there has been a nine-point increase in the proportion of federal Conservative Party supporters who say that governments should not have the power to overrule the courts in Charter-related cases (from 47% to 56%). There has been a similar 10-point shift among support of the Progressive Conservative Party in Ontario (from 45% to 55%). Whether this shift is a reaction to the recent uses of the notwithstanding clauses in Quebec and Ontario, or a sign of a more general wariness of government powers such as those exercised during the lockdown periods of the COVID-19 pandemic, is not clear.

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