

Not Merely Interpretative: The Supreme Court's Application of Section 25 of the Charter of Rights and Freedoms and its Implications for Section 28

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I. Introduction

Quebec's Bill 21¹ purports to protect the secular nature of the state by prohibiting public officials in certain positions from wearing religious clothing or symbols, among other measures. As a flagrant violation of the freedom of religion guarantee under the *Charter of Rights and Freedoms*² ("Charter"), the Quebec National Assembly invoked section 33's notwithstanding clause³ in order to shield the law from the effects of judicial review. Despite this shielding effect, though, the law is nonetheless subject to ongoing constitutional litigation. One of the claimants' central arguments is that section 28 of the *Charter*,⁴ which provides special protection for the equality of the sexes, prevents the application of the notwithstanding clause in this case by virtue of the fact that the law disproportionately impacts Muslim women. The substantive effect of section 28 in relation to section 33 is in fact the dominant view within constitutional law texts,⁵ but there are some commentators who assert that it is a mere interpretative provision that only serves to guide the interpretation of other rights.

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1 *Act respecting the laicity of the State*, SQ 2019, 1st Sess, 42nd Leg, c 12.

2 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [Charter].

3 *Ibid*, s 33.

4 *Ibid*, s 28.

5 Peter W Hogg and Wade K Wright, *Constitutional Law of Canada: Student Edition* (Toronto: Thomson Reuters, 2021) at 1524; Guy Régimbald & Dwight Newman, *The Law of the Canadian Constitution* (Toronto: LexisNexis, 2013) at 681; Joel Bakan et al, *Canadian Constitutional Law* (Toronto: Emond Montgomery,

Section 28 reads: “Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.”⁶ The text, purpose, and legislative history of section 28 all support the argument that, although the notwithstanding clause applies to section 15 equality rights, it cannot be invoked to derogate from the equal rights of male and female persons. However, while this proposition has been accepted by lower courts in a couple of instances,⁷ the jurisprudence generally remains indecisive, as some rulings favour characterizing it as an interpretative clause. This was most recently held by the Quebec Court of Appeal in its February 2024 decision in the Bill 21 case.⁸

In this paper, I argue that a recent Supreme Court of Canada (“SCC”) decision — one unrelated to section 28 — establishes an important precedent that may encourage the courts to reverse the jurisprudential trend against a proper interpretation of section 28. In *Dickson v Vuntut Gwitchin First Nation*⁹ (“*Vuntut Gwitchin*”) the SCC dealt with the question of whether a residency requirement of the Vuntut Gwitchin First Nation (“VGFN”) Constitution for the elected Chief and Councillors to reside on settlement land or relocate there within 14 days of their election was subject to the *Charter*, and if so, whether the requirement was nevertheless shielded against *Charter* challenge by section 25. A majority of the Court determined that section 25 can serve as a “shield” with respect to protecting collective Indigenous rights against the enforcement of individual *Charter* rights.

As one of the provisions in the “General” section of the *Charter*, section 25, like section 28, was thought by some to be a merely interpretative provision with little substantive import. While it is important to recognize that each *Charter* provision has its own unique wording, purpose, and legislative history, I argue that going forward, the decision in *Vuntut Gwitchin* will need to be reconciled if courts are going to persist with an impoverished reading of section 28. I argue that both provisions share key features, in that although they do not establish *freestanding* rights, they are nonetheless of substantive import. Both provisions operate to condition, and even negate or block, the application of other sections of the *Charter*. In this sense, the tendency among commentators to characterize these provisions as either standalone rights guarantees or merely interpretative provisions is a false dichotomy. Indeed, a middle ground between these two options is precisely what the majority of the Court in *Vuntut Gwitchin* has determined with respect to section 25, a reality that opens an obvious jurisprudential door to a similar reading of section 28.

II. The Debate Over Section 28

Section 28 has received very little attention at the Supreme Court, and the question of what, if any, substantive role it might play vis-à-vis other provisions of the *Charter* has not been directly tested. Section 28 has been used to help guide interpretation in the context of assess-

2003) at 1114, quoting Dale Gibson, *The Law of the Charter: Equality Rights* (Toronto: Carswell, 1990) at 42-5.

6 *Charter*, *supra* note 2, s 28.

7 *Boudreau v Lynch*, [1984] NSJ No 489, 66 NSR (2d) 271; *Syndicat de la fonction publique c Procureur general du Québec*, [2004] JQ no 21, [2004] RJQ 524.

8 *Organisation mondiale sikhe due Canada c Procureur general du Québec*, 2024 QCCA 254.

9 2024 SCC 10 [*Vuntut Gwitchin*].

ing other *Charter* rights or discrete areas of law.¹⁰ Some scholars regard these cases as evidence that section 28 is merely an interpretative provision. However, in *R v Kapp*, the SCC's Justice Bastarache asserts in a lone concurrence that section 28's protection of "gender equality '[n]otwithstanding anything in this Charter'"¹¹ means that, to the extent section 25 provides a shield for Indigenous collective rights, it is limited in the context of gender equality. This suggests the possibility that section 28, by virtue of its plain language, has the effect of limiting or blocking the application of other provisions of the *Charter*. Nonetheless, as a concurrence, Justice Bastarache's opinion is far from determinative.

In scholarly commentary, views of section 28 run the gamut from those asserting it is effectively an absolute, standalone right that even negates the application of section 1's reasonable limits clause¹² to those presenting it as a mere interpretative provision whose sole function is to help guide the interpretation of the rights enumerated in other sections of the *Charter*.¹³ As with any question of constitutional interpretation, these assessments rely on analyses of the text, purpose, and legislative history surrounding the provision.¹⁴ My own brief analysis along these lines follows, but it crafts a middle ground between these polarized views.¹⁵

The text of section 28 plainly prevents the application of section 33 to protect laws that discriminate on the basis of sex. That section 28 opens with such a broad and clear *non obstante* clause must be taken seriously. The phrase "[n]otwithstanding anything in this Charter"¹⁶ cannot be limited to merely guiding the interpretation of other provisions precisely because if that was all section 28 was meant to do, then the *non obstante* clause would be completely unnecessary. Instead, section 28 necessarily preserves the sex-based equality rights in a way

10 See for example, *R v Hess*; *R v Nguyen*, [1990] 2 SCR 906.

11 *R v Kapp*, [2008] 2 SCR 483, 2008 SCC 41, at para 97.

12 Kerri Froc, *The Untapped Power of Section 28 of the Canadian Charter of Rights and Freedoms*, PhD Thesis, Kingston, Faculty of Law, Queen's University, 2015 (unpublished). See also Kerri Froc, "A Prayer for Original Meaning: A History of Section 15 and What It Should Mean for Equality" (2018) 38(1) NJCL 35 at 84; Kerri Froc, "Shouting into the Constitutional Void: Section 28 and Bill 21" (2019) 28(4) Const Forum Const 19.

13 Asher Honickman, "Deconstructing Section 28", *Advocates for the Rule of Law Blog* (June 29, 2019), online: <<https://www.ruleoflaw.ca/deconstructing-section-28/>>; Maxime St-Hilaire, "L'article 28 de la Charte Canadienne des droits et libertés: des dispositions interprétatives sujettes à interprétation", *Double Aspect Blog* (February 4, 2020), online: <<https://doubleaspect.blog/2020/02/04/25293/>>; Gerard J Kennedy, "They're All Interpretative: Towards a Consistent Approach to ss 25-31 of the *Charter*" (2023) 56:3 UBC L Rev 743. For his part, Kennedy makes a distinction between "interpretative guides" and "interpretative trumps," the latter reflecting the potential capacity of some of the provisions in the General section of the *Charter* to negate the application of other provisions. He nonetheless views this as "interpretative," whereas I suggest here that this can be understood as the relevant provisions having a substantive purpose and effect even if they are not standalone rights. I make this semantic argument because although section 28 may not establish a standalone right, its purpose is nonetheless to offer a special — indeed, substantive — form of protection for the equal rights of male and female persons.

14 Some also highlight how international law/conventions might inform the interpretation of section 28. I will exclude such considerations from my own analysis, given that they cannot possibly be determinative of such unique, domestic provisions like this one.

15 For another analysis adopting a middle ground view on section 28, see Jesse Hartery, "Equality and the Notwithstanding Clause: Considering the Nature and Application of Section 28 of the Canadian *Charter*" (2023) 64:4 *Les Cahiers de Droit* 683. Hartery's conclusions about the relationship between sections 28 and 33 nonetheless differ substantially from my own.

16 Emphasis mine.

that distinguishes them from other rights, including other equality rights, through the *non obstante* clause. The wording of section 28 is plain enough that the leading textbook in Canadian constitutional law does not bother to question the matter, it simply states that “the power of legislative override (under s. 33) applies to s. 15, but not to s. 28.”¹⁷ The authors are much more equivocal, however, about whether section 1 applies to laws infringing on sex equality.¹⁸ Other constitutional textbooks adopt a similar position, stating that section 28’s text “obviously” prevails over section 33 even though the latter can derogate from section 15.¹⁹ This textual reading of section 28 is more complicated on the matter of section 1. The wording seems to make clear that the intention is not to provide for an absolute, standalone right because it speaks directly to “the rights referred to in [the Charter],” meaning that the provision is positioned *in relation to* all of the rights in the *Charter*. Taking a purposive approach to the interaction between the various *Charter* provisions, section 1 can reasonably be read as applying to section 28 because it stands for the principle that all of the rights within the *Charter* can be subject to reasonable limits.²⁰ In this context, while section 28’s text unequivocally privileges sex-based equality in a manner that excludes it from section 33’s ambit, the fact that it sets out a relational rather than standalone reading of sex-based equality means that we cannot ignore section 1’s wording either, which applies to all of the rights “set out in” the *Charter*.

Beyond the text, the most comprehensive accounts of the development of section 28 and its explicit relationship with section 33 also support the understanding that the notwithstanding clause cannot be used to protect laws that discriminate on the basis of sex. Kerri Froc’s scholarly account,²¹ and Penney Kome’s journalistic account,²² demonstrate clearly that an active campaign by women’s groups against an initial draft that would have included section 28 within the notwithstanding clause’s ambit persuaded federal and provincial leaders to amend the draft and instead shield section 28 against it. Froc incisively details the efforts directed at the federal government and provincial premiers, including considerable evidence that most of the politicians who would eventually change their minds understood fully the substantive consequences of removing section 28 from section 33’s ambit.²³

Critics of this perspective admit that Froc’s account in particular is “persuasive,”²⁴ but they tend to downplay the significance of the legislative history on the basis that a consideration of the intent of the framers ought not to be considered determinative as to the legal meaning of a provision.²⁵ It is certainly true that framers intent is not the be-all, end-all of constitu-

17 Hogg and Wright, *supra* note 5.

18 *Ibid*, noting only that it is “possible” that section 1 does not qualify section 28.

19 Régimbald and Newman, *supra* note 5. See also Bakan et al, *supra* note 5.

20 Froc, *The Untapped Power of Section 28*, *supra* note 12, acknowledges a similar suggestion by Mary Eberts, “Sex-Based Discrimination and the *Charter*” in *Equality Rights and the Canadian Charter of Rights and Freedoms*, Anne Bayefsky & Mary Eberts, eds (Toronto: Carswell, 1985) 183 at 215, citing John D Whyte, “The Effect of the *Charter of Rights* on Non-Criminal Law and Administration” (1982) CHRR C/82-7 at C/82-10. However, Froc suggests this reading is in “conflict with the structure of the *Charter*, which establishes section 1 as an external limitation to rights” (at 379-80).

21 Froc, *The Untapped Power of Section 28*, *supra* note 12.

22 Penney Kome, *The Taking of Twenty-Eight: Women Challenge the Constitution* (Toronto: Women’s Educational Press, 1983).

23 Froc, *The Untapped Power of Section 28*, *supra* note 12 at 210-20.

24 Honickman, *supra* note 13.

25 *Ibid*. See also St-Hilaire, *supra* note 13.

tional meaning, in part because their substantive views cannot always be known, in addition to the fact that there may not be unanimity with respect to those views even when they can be known. While as a general rule the historical evidence surrounding particular provisions should not necessarily be given tremendous weight, more weight should be afforded when the details of that history are directly relevant to why the text as written appears as it does. The very crux of the issue here — whether section 33 can be applied to protect laws that discriminate on the basis of sex — was determined by the political lobbying and eventual decision to alter the *Charter's* ultimate wording (and its meaning). While perhaps not determinative of meaning independent of the primacy of the text, this particular legislative history should be afforded significant weight, and critics are unable to offer a plausible alternative account.

Couple the plain meaning of the text with the legislative history, and the purpose of section 28, and specifically its relationship to section 33, is inescapable. The main factor that defenders of the merely interpretative perspective can cling to is the jurisprudence, with its relatively paltry and mixed record. The Supreme Court's decision in *Vuntut Gwitchin*, however, provides further relief on the side of those who view section 28 as having some substantive import.

III. Section 25, *Vuntut Gwitchin*, and Implications for Section 28

Cindy Dickson, a member of the Vuntut Gwitchin First Nation (“VGFN”), argued that the VGFN Constitution's residency requirement for the elected Chief and Councillors discriminates against her as a non-resident of the settlement land and thus violates her section 15 equality rights under the *Charter*. Six of the SCC's seven justices agreed that the *Charter* applies to the VGFN Constitution, with Justice Rowe in dissent determining that it is unnecessary to address arguments concerning the role played by section 25. The remaining justices split four-to-two on their interpretation of section 25, with the majority determining that it does indeed act as a shield against the *Charter* claim.

The majority determination that the *Charter* applies to the laws of self-governing Indigenous communities, while significant, is not the focus of this analysis. Instead, my focus is on the substantive application of section 25. The text of section 25 is as follows:

25 The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

In the majority's judgment, “s. 25 allows for the assertion of individual Charter rights except where they conflict with Aboriginal rights, treaty rights, or ‘other rights and freedoms’ that are shown to protect Indigenous difference.”²⁶ They agreed that the residency requirement was “[t]ied to ancient practices of government that connect leadership of the VGFN community to the settlement land” and that it protects Indigenous difference.²⁷

²⁶ *Vuntut Gwitchin*, *supra* note 5 at para 5.

²⁷ *Ibid* at para 6.

The majority engage in a significant discussion of section 25's purpose, focusing on "its text, the Charter's character and larger object, and the provision's history."²⁸ Importantly, they also suggest that section 25 has both "shield' and 'interpretative' aspects."²⁹ The justices describe "the purpose of s. 25 of the Charter as ensuring that the designated rights and freedoms of Indigenous peoples are protected where giving effect to conflicting individual Charter rights and freedoms would diminish Indigenous difference."³⁰ This aligns closely, the majority write, with the goals of section 35's Aboriginal and treaty rights, which pertain centrally to the reconciliation of Crown sovereignty with Indigenous presence on the land, and thus "[s]ection 25 echoes the aspiration to reconcile the guarantee of individual rights and freedoms in the Charter for all Canadians with the distinctive collective rights of Indigenous peoples."³¹

Regarding section 25's text, the majority conclude it "plainly suggests the protective purpose of the provision"³² and that it has "both interpretative and shield dimensions, both of which are relevant to the purpose of the clause."³³ They reject the argument, advanced by some scholars, that the phrase "shall not be construed" implies only an "interpretative dimension" for section 25.³⁴ The phrase is not present in the French-language text of the *Charter*, which is "more 'declaratory' of the protective effect of s. 25."³⁵ The majority also point to the extrinsic evidence, including testimony and debates before Parliament over section 25's purpose, and wording in support of its "protective purpose" (even as they note they "would not assign definitive weight to external evidence" to assess the provision's purpose).³⁶ They then conclude that section 25 serves to:

... protect certain Indigenous collective rights from the application of conflicting individual Charter rights or freedoms, when such application would diminish the Indigenous difference protected and recognized by the collective rights. When the application of the individual right would undermine in an essential and non-incidental way the Indigenous difference protected by the collective right, s. 25 directs that the collective right be given primacy.³⁷

This is not an absolute shield, and it only comes into play in specific contexts, outlined at some length by the majority, particularly when the conflict between the rights at stake is irreconcilable.³⁸ Importantly, the reasoning does not imply that section 25 represents a set of freestanding rights, but rather recognizes existing rights and acts only in the protective sense described above. The majority explicitly note that "a party seeking the protection of s. 25 for a right alleged to be an 'other' right must establish both the existence of the right and the fact that the

28 *Ibid* at para 112.

29 *Ibid*.

30 *Ibid* at para 117.

31 *Ibid*.

32 *Ibid* at para 119.

33 *Ibid* at para 124.

34 *Ibid* at para 120.

35 *Ibid* at para 123, citing Jane M Arbour, "The Protection of Aboriginal Rights within a Human Rights Regime: In Search of an Analytical Framework for Section 25 of the *Canadian Charter of Rights and Freedoms*" (2003) 21 SCLR (2d) 3 at 27.

36 *Ibid* at paras 140-2.

37 *Ibid* at para 143.

38 *Ibid* at paras 158-64.

right protects or recognizes Indigenous difference.”³⁹ Further, they state that there “is broad consensus that s. 25 does not create new substantive rights or freedoms.”⁴⁰

The majority’s conclusions that there are both “shield” and “interpretative prism” aspects to section 25 suggests that, to the extent that the scholarly commentary frames discussion of certain *Charter* provisions as being either interpretative or as providing freestanding rights, it operates from a false dichotomy. In this regard, a *Charter* provision that does not operate to entrench freestanding rights on its own is not automatically a mere interpretative provision. Instead, as we see from the majority in *Vuntut Gwitchin*, provisions can have substantive effects on the application or operation of other *Charter* provisions in ways that protect or privilege specific rights, even if the former provisions only refer to the rights in question rather than providing a freestanding protection for them. The parallels here to section 28 should be clear: a provision with both interpretative and substantive import, that does not provide a standalone right but nonetheless conditions the relationship of the rights in question, and that has as one of its core purposes a protective function that can block the application of other provisions of the *Charter*.

The dissenting justices suggest that reading section 25 to include a protective “shield” function risks creating *Charter* “no go” zones.⁴¹ Like the majority, they undertake an analysis of the provision’s text, purpose, and history (with reference to parliamentary debates during section 25’s development), as well as the jurisprudence. In many ways this analysis accords with much of what the majority concludes. For example, the dissenting justices conclude their discussion of the purpose and history of section 25 by stating, “[t]o summarize, s. 25 furthers a particular purpose: to ensure that the introduction of a constitutionally entrenched bill of rights in Canada did not have the effect of abrogating or derogating from the unique rights held by Indigenous peoples that stem from their identity as Indigenous peoples.”⁴² Rather than disagreeing with how the majority characterizes the VGFN residency requirement, the dissenters instead suggest that any conflict between individual *Charter* rights and the collective rights reflected in the VGFN Constitution are “more appropriately considered as part of the s. 1 analysis, in which an Indigenous government would seek to justify a *prima facie* infringement of an individual *Charter* right on the basis of pressing collective interests, rather than as a reason why *Charter* rights do not apply at all.”⁴³ The dissenting justices also note that “[i]f all that is required to attract the protective effect of s. 25 is for an Indigenous nation to have broad self-government powers, and exercise those powers in a manner that is expressly linked to some aspect of Indigenous difference, the result will be broad immunity for Indigenous governments from *Charter* compliance.”⁴⁴

A key difference between the majority and dissenting views is therefore section 25’s scope, with the dissenters suggesting that the majority’s “Indigenous difference” perspective threatens to protect too sweeping a set of laws from the *Charter*’s ambit. Only when a “true conflict” arises is section 25 engaged, and at this point, the dissenters argue, “a form of balancing

39 *Ibid* at para 150.

40 *Ibid* at para. 152.

41 *Ibid* at para 287.

42 *Ibid* at para 308.

43 *Ibid* at para 332.

44 *Ibid* at para 334.

must occur to reconcile the competing interests at play.”⁴⁵ The dissent outlines that section 25 affords primacy to collective Indigenous rights only when an individual *Charter* right significantly impacts the collective right, and only where “the impugned exercise of the collective Indigenous right is necessary to the Indigenous community’s distinctive culture.”⁴⁶ In view of this narrow scope, the dissenters conclude that characterizing section 25 as a shield “that ousts any interpretive role, balancing, or reconciliation of competing interests” is inappropriate.⁴⁷

Yet it is interesting to note that the dissenting judgment does effectively imply that section 25 acts to shield laws against *Charter* claims, if only in more narrow circumstances. In their analysis of the VGFN residency requirement, it is only after the dissenters determine that it does not fall within the ambit of section 25 that they turn to a section 1 analysis.⁴⁸ The implication here is that where laws fall under the narrow scope the dissenting judgment affords section 25, and with the conditions outlined, the collective Indigenous rights at stake win out in the resultant balancing. In that light, the distinction made by the dissenters between a “shield” and an “interpretive prism” is one without a significant difference. The real distinction is how narrowly the collective Indigenous rights are construed for section 25 purposes.

The majority judgment on section 25 reinforces the preceding argument I have presented about section 28 in two important ways. First, the majority’s decision makes it clear that a *Charter* provision doesn’t have to reflect a standalone right to have a substantive effect on the application of another provision. The Court’s ruling in *Vuntut Gwitchin* illustrates that framing section 25’s purpose as either merely guiding the interpretation of other provisions of the *Charter* or as standing as a full-fledged standalone set of rights presents a false dichotomy. A provision can be both interpretative and protective of rights in a way that has important effects beyond providing merely interpretative guidance.

Second, *Vuntut Gwitchin* puts to rest the claim that all of the provisions in the General section of the *Charter* are merely interpretative in this narrow sense. It is important not to understate the relevance of this fact. The critics of the substantive view of section 28 point to the General heading as significant for reinforcing their argument that all of the provisions are merely interpretative and do not serve as trumps to other provisions.⁴⁹ In so doing, they ignore or downplay fundamental textual differences between various provisions. Consider, for example, section 27, which reads that “[t]his Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.” When contrasted with the wording of section 25 or section 28, the substantive purpose of those provisions as compared to the explicitly interpretative function of section 27 becomes all the more obvious. Those who see all of the provisions as merely interpretative have no convincing explanation for these dramatic textual differences.

45 *Ibid* at para 339.

46 *Ibid* at paras 340-1.

47 *Ibid* at para 343.

48 *Ibid* at paras 391-5.

49 Honickman, *supra* note 13; St-Hilaire, *supra* note 13. Kennedy, *supra* note 13 also places great emphasis on the shared interpretative nature of all of the provisions under the General heading, but he notes the idea that section 28 serves as a “trump” to section 33 is not necessarily inconsistent with an interpretative view.

This unconvincing framework — treating all the provisions under the General heading as the same — is also a significant aspect of the Quebec Court of Appeal’s recent decision in the Bill 21 challenge: “all the provisions immediately surrounding s. 28 and grouped under the same heading set out, in one way or another, interpretative instructions. It is logical to conclude that this is also the case for s. 28, which confirms the meaning already conveyed by the wording of its main proposition.”⁵⁰ This, coupled with the Court of Appeal’s insistence that section 28 only refers to sections 2 to 23 (the rights sections), leads it to the conclusion that “s. 28 does not restrict s. 33.”⁵¹ The Court of Appeal’s formulation is that section 28 has no effect on section 33 because once section 33 is applied to laws in relation to the rights enumerated in its ambit (sections 2 and 7 to 15), those rights “no longer” exist or “would be of no effect,” and thus section 28 ceases to have any protection to provide with respect to the equal rights of male and female persons.⁵² It is a reading that discounts the reference to “anything in this Charter,” is dismissive of the legislative history, and is erected on the false dichotomy of section 28 either being a standalone right or a mere interpretative provision.

The Supreme Court’s decision in *Vuntut Gwitchin* places some of the Court of Appeal’s reasoning into a different perspective. Once it becomes clear that section 25 operates as a shield to other provisions of the *Charter*, it becomes increasingly difficult to argue that section 28 cannot offer the sort of protection against section 33 contemplated by both its plain wording and legislative history. The argument that all of the provisions in the *Charter*’s General section are merely interpretative no longer holds. On the contrary, some of these provisions can wield both interpretative and substantive significance in the way I suggest here, despite not standing as independent or freestanding rights. If the Bill 21 litigation proceeds to the Supreme Court, *Vuntut Gwitchin* should serve as an important precedent for understanding not only what is possible with respect to certain provisions under the General heading of the *Charter*, but also what is demanded by their true purpose.

50 *Organisation mondiale sikhe due Canada*, *supra* note 8 at para 455.

51 *Ibid* at para 477.

52 *Ibid*. This tortured formulation can be seen at para 493.

