

# Legal Centre News

Volume 58

Making a Difference in the Community Since 1989

Fall 2022



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This volume of the Peterborough Community Legal Centre newsletter features articles on a few of the many overlapping issues of inequality facing people in our community today, including:

- An overview of the disproportionate vulnerability of low-income residents in Peterborough to the acute and sustained impacts of climate change;
- A short description of the opportunities for recourse available to workers who experience human rights discrimination at work;
- A joint call for the Ontario government to reconsider Bill 23 based on its impacts for affordable housing and conservation;
- The prevalence of Intimate Partner Violence (IPV) in the workplace and the responsibility of employers to recognize and take action against instances of IPV
- A summary of the 2022 Housing is Fundamental report, including 5 key insights for low-income residents
- A brief history and discussion of the implications of the Notwithstanding Clause as initiated by the Ontario government

All images in this newsletter are credited and some articles include links to sources. These links are accessible on the digital copy of the newsletter, or visit our website using the QR code on the back cover for a list.

*Thanks for reading!*

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# COP 27 and Peterborough's inaction on climate change: How Low-Income and Disabled people will be most affected

As part of COP 27's Global Day Action on November 12, 2022, climate activists and concerned citizens in Peterborough gathered to express their discontent with our city's action on climate change. COP 27 is the 2022 [United Nations Climate Change Conference](#) which took place in Egypt. Approximately 190 countries were in attendance, including Canada.

The following article looks at Peterborough's progress on meeting climate change targets and the impact that climate change is having and will have on low income people.

The City of Peterborough [declared a Climate Emergency](#) on September 23rd, 2019, following a trend of over 450 local governments around the world, including 40 municipalities in Canada. As part of the declaration, the City made a commitment to 45% Green House Gas emission reductions by 2030, which was celebrated as a leap forward from its 2016 commitment to 30% by 2031. Additionally, the declaration claimed that the City would

aim for [net-zero](#) emissions by 2050.

Not only are these commitments misaligned with the latest climate science, they are not being met with the required urgency and action from stakeholders in Peterborough.

## Misaligned Climate Science

Scientists [previously believed](#) that the planet could sustain a threshold of warming between 3% and 5% above pre-industrial levels. This was the threshold at which we could avert the worst impacts of climate change and preserve a livable planet. However, last year the Intergovernmental Panel on Climate Change provided an [unsettling update](#): recent science shows that we may start to see unprecedented and irreversible changes to our climate at a level of only 1% above pre-industrial levels, a level of warming which has already been surpassed. By pushing meaningful emission reductions to 2030 and 2050, the City of Peterborough's targets are misaligned with this latest climate science.

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Image credit: CLIFFORD SKARSTEDT / PETERBOROUGH EXAMINER

# COP 27 and Peterborough's inaction on climate change: How Low-Income and Disabled people will be most affected

## Inaction = Missed Targets

Peterborough's follow-through on these targets has been similarly disappointing. For example, in order to achieve a 45% emissions reduction by 2030, the City would have had to reduce its current emissions levels by 4% each year between 2019 and 2030. There have been [no reported reductions](#). This means that the City will now have to reduce its emissions by 7% in 2023, and each year after that until 2030. The task becomes more difficult as it becomes more urgent with each year that passes.

## Disproportionate Burden of Risk

The City of Peterborough's misalignment and inaction on climate targets will most severely impact low-income and disabled people, including those who are on fixed incomes like ODSP and OW. This fact will become increasingly clear as Peterborough continues to experience extreme weather, from sustained heat waves to the extraordinarily dangerous and damaging [derecho storm](#) that ripped through our city and surrounding area in May 2022.

There are many ways that low income and disabled residents will be disproportionately vulnerable to the impacts and risks associated with climate change. There are, perhaps, two categories of impacts and risks experienced by low income and disabled individuals: Acute and Sustained.

## Acute Impacts and Risks

Acute Impacts and Risks are those in the immediate aftermath of an extreme weather event. These impacts and risks should be short term, but without sufficient commitment at the local government level, resources may not be available to resolve issues quickly. Examples of acute impacts and risks include:

- Houseless residents will be extremely exposed and in serious danger during and in the immediate aftermath of harsh weather events;
- Disabled residents who rely on public infrastructure like sidewalks and buses may experience difficulty getting around and accessing essential services;
- Tenants will experience more frequent and more serious repair and maintenance issues or disruption to vital services.

For example, at PCLC, we receive calls from renters whose properties have still not been fully restored from the derecho storm nearly 6 months ago however the [backlog in Ontario's Landlord and Tenant Board](#) (LTB) has meant that tenants are not able to hold their landlords accountable.

## Sustained Impacts and Risks

Sustained Impacts and Risks are those that will be experienced over a longer period of time, as a result of our warming climate. The warming climate will result in more dry and hot weather which will increase the likelihood of heat waves, droughts and forest fires and will result in many other sustained impacts and risks that will disproportionately impact low income and disabled individuals, including:

- The increased likelihood of crop loss globally will result in rising cost of food;
- The rising cost of food will mean less donations to food banks, yet more demand for food banks;
- Changes to our local ecosystem will result in increased [prevalence of ticks, bed bugs and other pests](#) which carry diseases like Lyme disease;
- The increased prevalence of pests will result in housing infestations;
- Access to water for household use will become scarce and more expensive;

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# COP 27 and Peterborough's Inaction on Climate Change: How Low-Income and Disabled People will be Most Affected

- The scarcity of water will result in higher electricity costs as Ontario's grid will be limited by its reliance on hydroelectric power generation;
- High electricity costs will be compounded as air conditioning will become a necessity for young, old or disabled members of households;
- the increased levels of [air pollution](#) will result in difficulty and complications for individuals with heart or lung conditions;
- As our planet and lifestyles irreversibly change individuals will experience increased levels of [despair](#), [anxiety and loss](#) resulting in instances of mental health crisis.

## Resiliency Strategy

Acknowledging the risk and vulnerability of the City of Peterborough to the effects of extreme weather, as a result of climate change, the City also developed the [Community Climate Change Resiliency Strategy](#) (CCCRS). The CCCRS recommends [various strategies](#) for the mitigation of risk and vulnerability to extreme weather in our community, including:

- reducing flood risk and protecting water quality;
- reducing damage to infrastructure from extreme weather events;
- educating residents and businesses about the impacts of climate change;
- increasing the capacity of the local economy to adapt to changes.

The above strategies may address some of what is experienced by low income and disabled residents of the City however, there is a remarkable lack of consideration of the ways that these residents experience risk and vulnerability more acutely than the average resident. For example, the term "low income" is used only 3 times in the Resiliency Strategy report from February 2020 to refer to the vulnerability of low income residents to poor air quality during instances of extreme heat. Additionally, the priorities in the Resiliency Strategy placed "vulnerable populations" after entities such as organizations, institutions and businesses. This choice indicates who the the priority stakeholders are of the committee and in the subsequent report.

It is well established that low income, underserved and otherwise marginalized populations, including racialized or disabled communities, are the most vulnerable to changes in the climate. In order to support its low income and disabled residents in a reality shaped by climate change, Peterborough will need to recognize and meaningfully respond to the acute and sustained risks that they experience.



Image credit: CLIFFORD SKARSTEDT / PETERBOROUGH EXAMINER

# Where Should Unionized Workers go to Make a Human Rights Complaint?



Image credit: Canva

In 2021, the Supreme Court of Canada (“SCC”) determined that unionized employees in Manitoba were not able to file human rights complaints but were instead required to go through the labour arbitration process because labour arbitrators held exclusive jurisdiction over matters under the collective agreement including human rights claims (see Northern Regional Health Authority v. Horrocks).

At the time of the SCC decision, Ontario courts held that the Human Rights Tribunal of Ontario (“HRTO”), and labour arbitrators held concurrent jurisdiction, meaning unionized employees could decide to go through either the labour arbitration process or the human rights process when bringing human rights complaints. The SCC decision called into question whether the Ontario interpretation was correct.

A recent case from the HRTO, *Weilgosh v. London District Catholic School Board*, re-establishes that unionized employees in Ontario still maintain the right to file a

human rights complaint with the HRTO or through labour arbitration.

In coming to this conclusion, the HRTO recognized that while the Ontario Labour Relations Act provides exclusive jurisdiction to labour arbitrators to hear human rights complaints, section 45 and 45.1 of the Ontario Human Rights Code (“Code”) demonstrates a clear legislative intent to displace a labour arbitrator’s exclusive jurisdiction over matters arising under the Code. Specifically, these sections permit the HRTO to defer or dismiss an application that has been/is being dealt with through another proceeding, such as arbitration.

While employees still have the ability to choose which process they wish to use to bring a human rights complaint, employers also maintain the right to ask the HRTO to defer/dismiss an application that could be resolved through labour arbitration. All of this is to say that despite the SCC decision, the status quo remains in Ontario for the time being.

# Joint Letter to the Ontario Government About Bill 23 the "More Homes Built Faster Act"

*To: Hon. Doug Ford, Premier  
Hon. Steve Clark, Minister of Municipal Affairs and Housing  
Hon. Michael Parsa, Associate Minister of Housing*

The new provincial housing legislation is a lengthy and complex bill. While we welcome provincial efforts to grapple with the affordable housing crisis, and this bill does offer some areas of progress for affordable housing, it unfortunately also includes areas of considerable concern.

The bill definitely takes important steps that will help expand supply and also create new units of affordable housing. Reduced taxes on nonprofit development and on affordable housing could lower costs and make more projects viable. As-of-right permissions for secondary suites should remove some barriers to new, more affordable homes.

However, the bill also includes policies that have a negative impact on affordability. Unaddressed, the issues outlined in this letter will undermine the goals of this legislation, threatening its ability to create any net affordability in Ontario.

## **The bill undermines municipal programs that create affordable housing**

The bill, as it is currently written, would eliminate the charges that developers currently pay toward housing. This will, according to recent estimates, eliminate hundreds of millions of dollars that municipalities rely on for housing programs, and dramatically reduce municipal affordable housing efforts.

The bill also constrains municipal efforts to require affordable housing in new developments. The new limits on Inclusionary Zoning are well below the targets in bylaws that local governments have already passed - bylaws that were based on the local economic feasibility studies the Ministry required. It is worth underscoring that these bylaws are one of the only tools that municipalities have to create the much-needed affordable housing for people experiencing homelessness across Ontario.

These aspects of the bill will cut hundreds of millions of dollars from municipal investments in affordable housing and cancel plans that would have built thousands of new, permanently affordable homes.

## **The bill will speed up the loss of existing affordable homes**

The bill gives the Minister the power to cancel rental housing protection programs that ensure that when apartment buildings are redeveloped, the affordable units are replaced at affordable prices. Those programs have saved over 4,000 affordable homes, and their loss would put more pressure on affordable housing. Losing those protections would accelerate the already rapid loss of affordable rental units and undermine efforts to increase the supply of affordable homes.

## **The bill risks undermining affordability for families**

The bill cuts taxes and fees on developers, eliminating millions in funding that is used to build roads and sewers, as well as parks and other amenities. But those roads and sewers are still needed, and funding them will now put significant pressure on the property tax base, even though tax increases would be difficult for families to afford in these tough times.

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# CONTINUED...Joint Letter to the Ontario Government About Bill 23 the "More Homes Built Faster Act"

Municipalities have expressed grave concerns about the impact of these changes on their ability to balance budgets and keep property taxes in line.

## Nothing in the bill ensures that new homes, built with public incentives, are affordable

Though developers will benefit from hundreds of millions in tax cuts and incentives under this bill, there is nothing that requires them to build affordable units or pass any of their savings on to renters or homebuyers. While lower taxes and reduced regulatory requirements may lead developers to offer homes at less than the current market rates, there is nothing in the bill that prevents them from continuing to charge what buyers are willing to pay.

## The bill ignores the most important task in creating affordable housing: new investment

While regulatory reform is useful, and more supply is warranted, virtually everyone in the sector agrees that, without new investment in affordable and deeply affordable housing, we will not successfully address the housing crisis. Although this is the government's third legislative initiative on housing, there is still no coherent investment plan that can enable the public, private, or nonprofit sectors to build the amount of affordable and deeply affordable housing needed.

Housing legislation should center the housing needs of the people who call Ontario home. Deregulating development will not address the housing needs of those most at risk of not having adequate housing.

We urge you to reassess the current legislation, amend the provisions identified here, and move quickly to focus on investing in affordable and deeply affordable housing.

Sincerely,

*This joint letter was written and shared by the [Advocacy Centre for Tenants Ontario](https://www.ato.org/).*

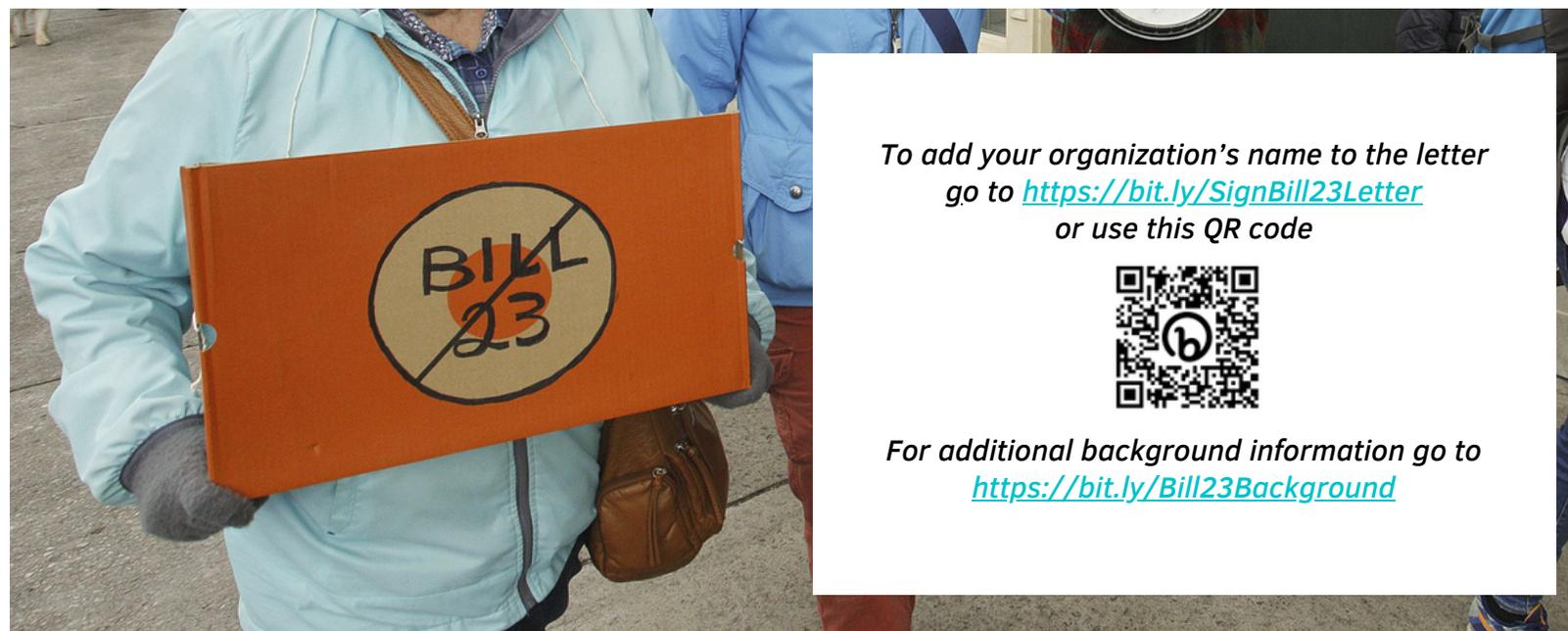


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# Intimate Partner Violence in the Workplace: A Risk for all Workers



There are many risks associated with going to work each day. Most of the time these risks relate to equipment malfunctions, use of toxic chemicals, and unsafe working conditions. However, workplace violence is also a source of risk in the workplace. Workplace violence may be caused by co-workers, managers, supervisors, clients, or customers, and in some instances intimate partners; the latter is often referred to as domestic violence or intimate partner violence (“IPV”). Employers in Ontario and across Canada are required to take every precaution reasonable in the circumstances to protect workers from IPV.

IPV can impact the workplace in a variety of ways, such as affecting worker productivity, increased absenteeism, low workplace morale, and overall it places the workplace at risk of injury, not just for the targeted worker, but all workers.

For employers, being proactive about the potential threat of IPV is essential for protecting workers. In Ontario employers are required to have a workplace violence policy which should include how to identify and respond to IPV. Workers should be trained on any workplace policy, especially relating to violence. Some employees may not know what IPV looks like. For instance, a worker may receive multiple calls or visits at work by their partner, which may seem innocuous but could be sign of IPV. Other signs of IPV include, verbal abuse of the targeted worker or others in the workplace, repeatedly phoning the worker, or threatening calls or unwelcome visits. Workers experiencing IPV may appear sad, lonely, withdrawn, may miss work more than usual, may act nervous when the partner is near, or may have trouble focusing on work.

Employers should also consider creating processes for identifying and responding to incidents of IPV in the

workplace. This could include a reporting process for workers and supervisors to follow if they believe a colleague is experiencing IPV, how threats to workers will be dealt with, and how to repair the workplace after an incident. Processes could also include when and if documentation of an incident will occur, what to do when a worker does not show up to work when there is a concern they may be experiencing IPV, and how to notify all workers of the potential violence.

When an employer learns of a potential threat, they are required to assess the risk. In order to do so, employers may consider danger assessment training, or implementing IPV screening practices. Such training will ensure workers know how to identify and respond to incidents of IPV when they happen.

Offering resources to workers after an incident of IPV has occurred is another step employers can take to ensure a safe and healthy workplace for all workers. Resources could include, counselling services, health and safety programs, or connecting with local community agencies for additional support. In Ontario, a worker who has or is experiencing IPV may be entitled to 5 paid days off, with an additional 5 to 10 days of unpaid leave. Employers should ensure any policies or processes relating to IPV include information leave requirements so workers are aware of their rights and the employer’s responsibilities.

As targeted workers are more likely to report incidents of IPV to a colleague rather than to Human Resources/Management, having policies and processes in place on IPV in the workplace can decrease the risk for everyone in the workplace, thereby making the workplace safer for all workers.

# Housing is Fundamental, 2022

Housing is fundamental yet it is increasingly unattainable and unaffordable for many in the Peterborough region. Each year, the [Housing is Fundamental Report](#) provides a comprehensive overview of issues of affordability, access, and inequality in the housing market in Peterborough, effectively demonstrating the need for government regulation and funding to better support low-income residents in our city. The 2022 Report continues this important role.

There are five key insights on Peterborough's housing situation in this year's report:

**1** *Our city's housing crisis has turned into an emergency:* Since the report was published, then Mayor Dianne Therrien [declared a state of emergency](#) on homelessness.

**2** *Apartment scarcity is a major issue:* In 2021, the vacancy rate for apartments in Peterborough dropped to 1%, the lowest point since 2012 and the lowest vacancy rate in Ontario. As the Report's author, Paul Armstrong, writes: "ours is a tight rental market with very few options for those who want to rent or relocate". One of the devastating consequences of having so few options for renting/relocating is that tenants are more likely to endure mistreatment by their landlords; tenants may not feel that have any other rental options. Additionally, the [backlog at the LTB](#) means that they may not feel like they have reasonable opportunity to enforce their rights.

**3** *Peterborough's high rents and low incomes force too many low income people to choose between food and housing:* Peterborough's Medical Officer of Health, Dr. Thomas Piggott [states](#):

*"As an integral social determinant of health, income plays a significant role in the health of individuals and our community. Individuals and families earning low incomes are faced with decisions between spending their limited income on basic human necessities like food or housing, forcing people to rely on services like food banks or give up some expenses entirely. Inadequate access to nutritious food and safe housing is a huge detriment to one's health physically, mentally, and socially."*

**4** *"Affordable" housing is unattainable for many:* Affordability refers to a standard at which a household pays no more than 30% of before-tax income on housing. An individual would need to make a minimum hourly wage of \$16.51 for a bachelor apartment and \$21.52 for a one-bedroom for those units to be "affordable" in Peterborough. The minimum wage, which is \$15.50 in Ontario, is clearly insufficient. See also the [Living Wage Report](#) for Peterborough.

**5** *Financialization represents a serious threat:* The rental market in Peterborough is being increasingly financialized by commercial and small landlords who purchase rental properties as investment opportunities. Investors are able to maximize their returns by taking advantage of the lack of effective rent control to raise rental prices through vacancy de-control and [above guideline rent increase](#) (AGI) provisions in the housing legislation. The vacancy de-control system allows landlords to raise the rent without any controls when a tenant moves out. The AGI system allows landlords to obtain rent increases above the provincial guideline. The *Housing is Fundamental Report* shows that while there has been a 7.7% increase in average market rent since 2020, the average asking rent for vacant units was 22.4% higher than those still occupied, demonstrating the need for rent control rather than vacancy de-control. *We need adequate regulations to defend low income tenants against the impact of financialization and we need public investment in social housing.*

# The Notwithstanding Clause: A Brief History

*You may have heard a lot recently about the “notwithstanding clause” in the context of the fall 2022 strike by educational workers. As you know, the government of Ontario brought in legislation (Bill 28) which prevented educational support workers from going on strike. Since the right to strike is constitutionally protected, the province had to use the “notwithstanding clause” to prevent the education workers challenging the legislation in court. Bill 28 stated that collective bargaining rights were suspended “notwithstanding sections 2, 7 and 15 of the Canadian Charter of Rights and Freedoms.” Bill 28 also suspended rights contained in the Ontario Human Rights Code.*

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After wide-spread public criticism, the province repealed Bill 28. At the time of writing, educational workers are back in schools and a tentative settlement has been reached.

The Ford government has used the notwithstanding clause in the past. In June 2021, the government used the clause to limit third party election financing. The Ford government threatened to use the clause in 2018 when it decided to reduce the number of City Councillors during the municipal election. Other provinces have also invoked the notwithstanding clause. The federal government has never used the notwithstanding clause.

## What is the notwithstanding clause?

Section 33 of the *Canadian Charter of Rights and Freedoms* allows a provincial or federal government to override certain portions of the *Charter* when passing a law. The override power lasts for five years and then expires unless the government decides to re-enact it. The sections of the *Charter* which are subject to the notwithstanding clause are sections 2 and sections 7-15. Those sections include some very important rights called “fundamental freedoms” which include the right to freedom of religion, freedom of

expression and freedom of the press, peaceful assembly and freedom of association. The notwithstanding clause can also be used to override “legal rights” which include protection against unreasonable search and seizure, arbitrary detention, rights on arrest, rights in criminal proceedings, protection against cruel and unusual punishment, protection against self-incrimination and the right to a translator. Very importantly, the notwithstanding clause can be used to override “equality rights” which provide protection against discrimination on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. These rights have been extended by the courts to include protection from discrimination on the basis of personal characteristics that cannot be changed such as sexual orientation.

Section 33 cannot override mobility and democratic rights under the *Charter*.

## Why does our *Charter* contain an override clause?

There was a lot of debate and negotiation between the provinces and the federal government when the concept of a charter of rights was introduced in Canada in the early 1980's. Some provinces were concerned that the charter would upset the balance of power between the provinces and the federal government. Others were concerned that the charter would give the courts too much power to challenge the democratically elected legislature. Eventually, the notwithstanding clause was accepted as a compromise in order to get an agreement on the introduction of the *Canadian Charter of Rights and Freedoms* into Canadian law. The concept of a notwithstanding clause is unusual in constitutional law. For example, the American constitution does not contain a similar provision.

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# CONTINUED...The Notwithstanding Clause: A Brief History

A photograph showing a person's hands holding a white protest sign with purple lettering. The sign reads: "WE RAISE FUTURE GENERATIONS PAY US OUR WORTH #CUPE5555". The background shows a street scene with trees and a traffic light.

Image credit: CLIFFORD SKARSTEDT / PETERBOROUGH EXAMINER

## What's the problem?

At the time the notwithstanding clause was added to the *Charter*, concerns about potential abuse by governments of this power to override fundamental rights were waved aside on the basis that there would be serious political consequences for any government that tried to use it so it was unlikely that any government would take the risk. In fact, the notwithstanding clause has been enacted in provincial legislation 21 times between 1982 and 2022.

Clearly, public criticism held the Ford government back this time, but the prospect of public criticism has often not been enough to prevent provincial governments from overriding *Charter* freedoms when the *Charter* got in the way of achieving a political goal. This is a problem because either we have fundamental freedoms and legal and equality rights...or we don't. In a democracy, it should not be up to the government of the day to decide which situation we are in.

Another issue is that the Ford government did not wait for a court ruling that would determine whether Bill 28 was justified or not before enacting the notwithstanding clause. Bill 28 was enacted to prevent the unions from taking the government to court. This is a problem because the courts have an important role to play in developing our constitution. The *Charter* allows individuals to challenge

the government through the court system. The legal decisions that result from these cases set precedents which develop our understanding of what *Charter* rights actually mean. For example, protection against discrimination on the basis of sexual orientation is not listed in the *Charter* but, we have that constitutional protection thanks to a series of court decisions that have expanded the listed protections to include protection against discrimination on the basis of inherent personal characteristics.

Finally, even though a particular government may have a mandate to legislate based on winning a majority in the last election, the *Charter* is not simply about protecting majority rights. It also protects minority rights. The notwithstanding clause offers a temptation to governments to gain favour with a majority of voters by taking steps to restrict the rights of an unpopular minority.

In conclusion, the notwithstanding clause has been used by provincial governments in ways that were not intended or expected when the *Charter* was brought into Canadian law in 1982. This calls into question the protective strength of our constitution against government overreach. As a society, we need some direction as to when the notwithstanding clause can be used. That direction likely has to come from the Supreme Court of Canada in a procedure known as a "reference".

# Wondering how to get involved with the Peterborough Community Legal Centre? *Become a member!*

## The Objects of the Legal Centre

The objects of the Legal Centre are:

- To provide legal services or paralegal services or both including activities reasonably designed to encourage access to such services or to further such services and services designed to promote the legal welfare of the low income residents of the County of Peterborough, on a basis other than fee-for-service;
- To provide legal information and education and to encourage access to knowledge of legal rights;
- To provide legal representation to low-income residents of the County of Peterborough;
- To identify areas of law affecting low-income members of our society and to advocate reform.

## Membership

The Centre is directed by its members. If you live in the City or County, and are 16 years of age or older, you can become a member. If you are a member, you can:

- Vote at the Annual General Meeting
- Stand for election to the Board of Directors if you are over 18.
- Get the Legal Centre's newsletter twice a year.

There is no fee to become a member. You do not need to be a member to get help from us. Membership is for three years and takes effect 30 days after approval by the Board of Directors. A letter will be sent to you confirming your membership.

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### *How to become a member of the Legal Centre in 4 steps:*

**1**

Call the Legal Centre at 705-749-9355 and leave a voicemail with your Name, Telephone number and address.

**2**

We will mail you a Membership application with a stamped envelope addressed to the Legal Centre.

**3**

Complete the Membership application, insert it in the stamped envelope addressed to the Legal Centre.

**4**

Mail the sealed, stamped envelope addressed to the Legal Centre by dropping it in a Mailbox or bring it to the Post Office. You will not need to buy postage.

### *Contact us!*

[www.ptbo-clc.org](http://www.ptbo-clc.org)

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*\*All references included in this newsletter are linked in the digital copy and listed on the website*