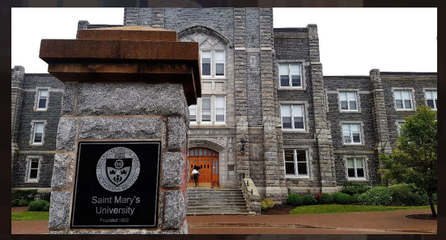
— THE DOCKET

Spring 2025

Justice Centre

for Constitutional Freedoms

Challenging a frivolous discrimination complaint in Nova Scotia



In a 2019 article posted to the website of the Society for Academic Freedom and Scholarship, St. Mary's University professor John MacKinnon recounted his experience with "student Q" – an indigenous student taking one of his classes. Q had been allowed to withdraw from a course she was failing *ten days past the withdrawal deadline*. Normally, accommodations like this are granted only in extreme circumstances, such as medical issues or the death of a family member. In his article, professor MacKinnon questioned "[h]ow many academic regulations have been relaxed or ignored, how many transcripts tampered with, how many grades inflated and pseudo-subjects concocted in deference to the imperatives of 'indigenization'?"

Later that year, the student realized that "Q" referred to herself and brought the article to the attention of professor MacKinnon and the University. Professor MacKinnon and the student agreed to mediation under a University Conflict Resolution Advisor. As a result, professor MacKinnon apologized to the student. The article was removed from the Society's website. Then, *thirteen months* after she had become aware of the article, she filed a discrimination complaint against the University and the Society to the Nova Scotia Human Rights Commission. In her complaint, she reported feeling demeaned, mocked, and labeled by the article. The Commission then escalated the case by referring the complaint to the Board of Inquiry to determine whether discrimination had taken place under Nova Scotia's *Human Rights Act*.

Our lawyers are asking the Supreme Court of Nova Scotia to rule that the complaint should never have been referred to the Board of Inquiry and that it should be dismissed altogether. Court rulings have established that human rights laws do not exist to prevent hurt feelings, humiliation, or offensiveness. On the contrary, those laws are meant to address only "the most extreme type of expression that has the potential to incite or inspire discriminatory treatment against protected groups on the basis of a prohibited ground." There is no evidence of discrimination having occurred. Further, professor MacKinnon in his article raised an issue of public importance: the integrity of academic institutions. To improperly label speech on important topics of public policy as "discriminatory" would violate freedom of expression as protected by section 2(b) of the *Charter.* Chris Fleury, lawyer for the Society, remarked, "To permit meritless complaints to proceed to a Board of Inquiry would create a chilling effect on the free expression of the Society for Academic Freedom and Scholarship and of all citizens"

Educating the next generation about freedom

We continue to educate the public about the value of rights and freedoms through our active case updates, videos, podcast, public meetings, and networking events.

We know that the future of our country depends on the next generation. That's why we continue to develop a high school curriculum on the *Canadian Charter of Rights and Freedoms*. At the moment, we are developing and teaching courses on the freedom of association and the Canadian judicial system. We look forward to launching an online version of the curriculum in early 2026.

Your donation makes a difference

The Justice Centre relies on voluntary donations to carry out its mission to defend the constitutional freedoms of Canadians through litigation and education. When you give, you support our team of lawyers, researchers, and advocates in defence of a free Canada. We do not accept any government funding.

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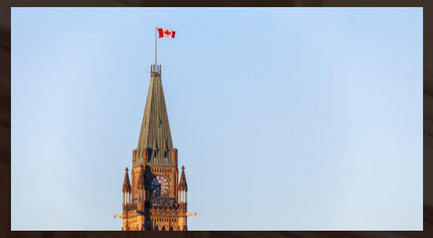
In this Docket

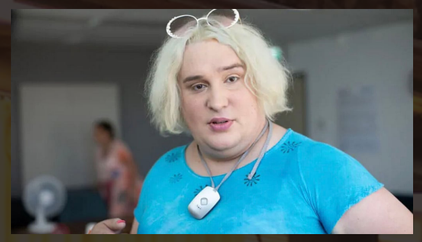
Federal Court recognizes citizens' right to challenge a Prime Minister's prorogation decision



On January 6, Prime Minister Trudeau announced his decision to prorogue Parliament until March 24. Parliamentary business and proceedings were shut down entirely for eleven weeks. The day after that announcement, our lawyers filed a constitutional challenge to the Prime Minister's decision on behalf of applicants David MacKinnon and Aris Lavranos. We argued that the Prime Minister's decision undermined the constitutional principles of parliamentary sovereignty, responsible government, the rule of law and democracy, and the separation of powers. As constitutional lawyer James Manson put it, "It is for Parliament to oversee and supervise the government; it is not for the government to oversee and supervise Parliament." We were the first in Canadian history to invite a court to define the scope of a Prime Minister's power to advise prorogation. Recognizing the urgent and compelling nature of our case, Federal Court Chief Justice Paul S. Crampton granted our motion for an expedited hearing, which took place in Ottawa on February 13 and 14.

We are disappointed that the Federal Court dismissed our challenge on March 6. However, we secured important victories along the way, despite the dismissal. The Federal Court rejected many of the government's arguments and ruled that private citizens do *have standing* to challenge a Prime Minister's decision to prorogue Parliament, that courts *can review and rule upon* decisions to prorogue Parliament, and that even unwritten constitutional principles *can protect* the Canadian public from the exercise of prerogative power beyond its limits. As Chief Justice Crampton suggested in his decision, these issues "may well have future importance" to Canadians.

Protecting female-only spaces for women



Jonathan Yaniv was born a biological male and self-identifies as a female. In 2019, Yaniv applied to be a contestant in Canada Galaxy Pageants, a Toronto-based beauty pageant for women and girls. At this pageant, female contestants as young as six change their clothing and undress in common areas. No males (including fathers and male guardians of contestants) are permitted in those spaces. Canada Galaxy Pageants developed a formal policy of accepting the applications of women and of transgender females *who have fully transitioned and who no longer have male genitals*. When Canada Galaxy Pageants asked if Yaniv had fully transitioned, Yaniv did not answer the question. Yaniv then filed a human rights complaint, alleging discrimination on the basis of gender identity, expression, and sex. Yaniv seeks $10,000 in damages for "injury to dignity and feelings" and asks the Ontario Human Rights Tribunal to rule that a beauty pageant for women cannot refuse participation to someone with male genitals.

Our lawyers applied for the summary dismissal of Yaniv's complaint in 2020. In January 2025, we heard back from the Tribunal that it might soon be rendering a decision on whether to dismiss the complaint or move forward to a hearing. Constitutional lawyer Allison Pejovic stated, "It is imperative that biological women and girls, and fully transitioned transgender females, have safe, secure, female-only places where they won't have to worry about seeing male genitals, or about having individuals with male genitals looking at them."

Exposing an Ontario school board's ban on recording public meetings

On February 24, our lawyers sent a legal warning letter to the Waterloo Catholic District School Board (WCDSB), advising them that their prohibition on photography and audio/video recordings of public meetings is unconstitutional. Waterloo Region resident Jack Fonseca attended a public WCDSB meeting on January 27. He pulled out his phone to take a photo, as he and others had done at previous WCDSB meetings, but security told him he could take no more than one photo.

Mr. Fonseca reached out to the WCDSB for clarification on the rules about recording. Shortly afterwards, the WCDSB updated its website to say that photography and audio-video recordings were banned, yet no official policy prohibited recordings.

Our warning letter notes that the ban on recordings violates section 2(b) of the *Charter*, which protects "expression, including freedom of the press and other media of communication," and concludes by warning the WCDSB that a failure to remove the prohibitions on recordings may lead to legal action.

Constitutional lawyer Hatim Kheir stated, "School boards are an important form of local democracy, and recording public meetings is important because many voters and taxpayers are not able to attend in person. The ability of attendees to photograph, record, and disseminate what occurs at meetings helps the broader public get engaged. The ability to record a public meeting is protected by the Constitution and promotes the democratic function of school boards."

Opposing an Edmonton bylaw that suppresses free speech and democracy

On February 21, our lawyers sent a legal warning letter to the Mayor and City of Edmonton, advising them that their proposed Public Spaces Bylaw violated the rule of law and the *Charter* freedoms of expression and peaceful assembly. This bylaw will require permits for any gatherings of more than 100 persons in Edmonton, even for gatherings in parks and other public spaces that would not impact the movement of traffic or people.

The City Manager will also have sole and unlimited discretion to issue permits (or not), and to impose undefined restrictions on citizens. Permits can be cancelled at any time, leaving protestors uncertain from moment to moment whether they are engaged in a lawful activity. Constitutional lawyer Glenn Blackett remarked, "The bylaw ends up not being 'the rule of law' but instead becomes 'the rule of the City Manager.'"

The bylaw even bans behaviour that makes another person feel "troubled," "worried," or "unwelcome," which "strikes at the heart of democratic, social, and scientific dissent," according to Mr. Blackett. If the bylaw passes, law enforcement officers will be encouraged to consider factors such as income, race, and gender identity when deciding whether to enforce the bylaw. "To know how the bylaw applies to them, it seems citizens will literally need to consider their own skin colour, sexuality, religion, and income," stated Mr. Blackett.