

C A N A D A

SUPERIOR COURT

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
N°:

GIUSEPPE ORTONA, having a place of business at 6000, Fielding Avenue, district of Montréal, Province of Québec, H3X 1T4

and

ENGLISH MONTREAL SCHOOL BOARD, domiciled at 6000, Fielding Avenue, district of Montréal, Province of Québec, H3X 1T4

Applicant

v.

PROCUREUR GÉNÉRAL DU QUÉBEC, having a place of business at 1 Notre-Dame Street East, suite 8.01, in the city and district of Montréal, Province of Québec, H2Y 1B6

Respondent

**APPLICATION FOR JUDICIAL REVIEW AND DECLARATORY JUDGMENT,
NOTICE OF CONSTITUTIONAL QUESTION
(articles 76, 142 and 529 CCP)**

**IN SUPPORT OF THIS APPLICATION, THE APPLICANTS STATE AS
FOLLOWS:**

I. INTRODUCTION

1. Bill 96, *An Act respecting French, the official and common language of Québec*, LQ 2022, c 14 (“Bill 96”) violates the Constitution in at least three ways: (a) it infringes the constitutional right to equal access to the law in English and French and to use either English or French before the courts of Québec under s. 133 of the *Constitution Act, 1867*; (b) it purports to unilaterally amend the *Constitution Act, 1867*, which amendments are *ultra vires* the National Assembly, and (c) the *Charter of the French Language*, CQLR c C-11 (“CFL”), as amended

by Bill 96, impermissibly infringes the right to management and control of minority language education exercised by the English Montreal School Board (“EMSB”) under s. 23 of the *Canadian Charter of Rights and Freedoms* (“*Charter*”).

2. Neither s. 133 of the *Constitution Act, 1867*, the constitutional amending formula under Part V of the *Constitution Act, 1982*, nor s. 23 of the *Charter* are subject to the notwithstanding clause (s. 33 of the *Charter*).

3. Section 133 of the *Constitution Act, 1867* guarantees the constitutional right to equal access to the law in English and French, and the right to use either English or French before the courts, at both the federal and provincial levels.

4. The jurisprudence of the Court of Appeal of Québec and the Supreme Court of Canada since 1979 on s. 133 of the *Constitution Act, 1867* confirms that: (a) legislation in Québec must be enacted in French and English, and that both versions have equal force of law; (b) s. 133 protects the right to use either language exclusively in the courts; and (c) the rights guaranteed under s. 133 of the *Constitution Act, 1867* cannot be unilaterally amended, either by the National Assembly of Québec or by Parliament.

5. In 1979, the Supreme Court of Canada unanimously declared invalid provisions of the CFL, which purported to give prevalence to the French version of laws and to require that pleadings be filed in French, or in both French and English. The Supreme Court rejected the government of Québec’s claim that it could unilaterally amend s. 133 of the *Constitution Act, 1867* as part of the constitution of the province (*Blaikie et al v Attorney-General of Québec*, [1979] 2 SCR 1016 (“*Blaikie No. 1*”).

6. Bill 96 revives the very same debate that was settled by the Supreme Court of Canada in 1979.

7. Section 7.1 of the CFL, as amended by s. 5 of Bill 96, gives prevalence to the French version of laws as a rule of ultimate interpretation, thereby undermining the equal authority of the English and French versions of legislation.

8. Sections 9 and 208.6 of the CFL, as amended by s. 5 and 116 of Bill 96, require that legal persons prepare and submit a certified French translation to all pleadings filed in English at their own cost, in violation of the right to use either language exclusively before the courts.

9. Sections 10 and 11 of the CFL, as amended by s. 5 of Bill 96, require simultaneous release of a French version of judgments rendered in English, creating disadvantage in obtaining access to a judgment in English.

10. Sections 12 and 13 of the CFL, as amended by s. 5 of Bill 96, as well as s. 88.1 of the *Courts of Justice Act*, CQLR c T-16 (“*CJA*”), as enacted by s. 158.2 of Bill 96, and sections 6, 9, 9.1 and 25 of the *Regulation respecting the selection procedure of candidates for the office of judge of the Court of Québec, municipal court judge and presiding justice of the peace*, CQLR c T-16, r 4.1 (“*Regulation respecting the selection procedure for provincial judges*”), as amended by ss. 162.2, 162.5, 162.6 and 162.7 of Bill 96 respectively, establish a selection process for judicial and quasi-judicial appointments that limits the power to

appoint English-speaking judges and decision-makers and systemically excludes the requirements of s. 133 of the *Constitution Act, 1867* from consideration in those selection processes, all of which is incompatible with s. 133 of the *Constitution Act, 1867*.

11. Section 159 of Bill 96 purports to unilaterally amend the *Constitution Act, 1867*, notably to affirm that French is the sole official language of Québec. The *Constitution Act, 1867* is part of the Constitution of Canada; Québec therefore lacks the jurisdiction to unilaterally amend it.

12. Section 23 of the *Charter* guarantees the exclusive right to management and control by the representatives chosen by the minority language community over aspects of minority language education pertaining matters of language and culture.

13. Decisions pertaining to the use of the language of the minority, and other languages by and within a minority language school board, go to the heart of the protection conferred by s. 23 of the *Charter*. Minority language school boards have the exclusive authority to make such decisions, including the right to create and maintain an environment in which staff, students, families and community members can interact and thrive in the language of the minority.

14. Sections 26 and 41 of the CFL, as amended by s. 16 and 29 of Bill 96, require that English language school boards¹, including the EMSB, use French, or both French and English together, in a wide range of internal written communications and documents, including in (a) all documents that are not “connected to teaching”, (b) all internal written communications exchanged between more than two people that are not “connected to teaching”, as well as (c) written communications between the employer and staff members and various documents in the employment relationship. These provisions infringe the right to management and control over the language of communications within English language school boards.

15. Sections 8 and 26 of the CFL, as amended by s. 5 and 16 of Bill 96, require that the council of commissioners of English language school boards, including the EMSB, (a) adopt regulations and similar acts in French, or in both French and English, with the French version prevailing in case of discrepancy, and (b) use French, or both French and English together, in written communications and documents exchanged between more than two

¹ Pursuant to *An Act to amend mainly the Education Act with regard to school organization and governance*, SQ 2020, c 1 (“Bill 40”), “English language school boards” were renamed “English language school service centres” in all provincial legislation, including the CFL (s. 312). On August 10, 2020, the Superior Court ordered a stay of the application of Bill 40 to English language school boards: *Quebec English School Boards Association v Attorney General of Quebec*, 2020 QCCS 2444 (“QESBA-CS”), conf *Attorney General of Quebec v Quebec English School Board Association*, 2020 QCCA 1171 (“QESBA-CA”). In this application, the term “English language school board” is used to refer to both an English language school board, as that term was used in legislation prior to Bill 40, and an English language school service centre, as the term is used in Bill 40 and Bill 96.

commissioners as well as notices of meeting, agendas and minutes of council meetings. These provisions infringe the right to management and control over the language of communications among the representatives designated by s. 23 rightsholders.

16. Sections 16, 16.1, 21, 21.1 to 21.4, 21.7 and 26, as amended by ss. 8, 13, 14 and 16 of Bill 96, notably require that English language school boards, including the EMSB, use French, or both French and English together, in their written communications, contracts and agreements with other English language school boards, organisations and businesses of the English-speaking community, other governments including the federal government, and organisations and businesses that work with, or provide services to, the English language school board. These provisions infringe the right to management and control over the use of the language of the minority and other languages by English language school boards.

17. Sections 21.11, 23 and 26 of the CFL, as amended by ss. 14 and 16 of Bill 96, require that English language school boards, including the EMSB, and legal persons or enterprises that provide services to the school board, use French, or both French and English together, in the provision of non-pedagogical services. These provisions infringe the right to management and control over the use of the language of the minority and other languages by English language school boards.

18. Section 24 of the CFL requires that bodies recognized under s. 29.1 of the CFL erect their signs and posters in French, or in both French and another language with the French text predominating. To the extent that s. 24 of the CFL requires that English language school boards, including the EMSB, use French, or both French and English together, in signs and posters within the school board and its schools, s. 24 of the CFL infringes the right to management and control over the use of the language of the minority and other languages.

19. Sections 128.6 to 134.6 of the CFL, as enacted by s. 73 of Bill 96, notably mandate the *Office québécois de la langue française* (“OQLF”) to monitor the use of French within English language school boards, including the EMSB, to determine whether the use of French and other languages within an English language school board is compliant, and to require that an English language school board implement measures regarding the use of French and other languages within it. These provisions infringe the right to management and control over matters of language and culture within English language school boards.

20. These infringements of s. 23 of the *Charter* are not justified under s. 1 of the *Charter*.

21. As such, this application for judicial review and declaratory judgment seeks:

- (a) to have the following provisions declared of no force or effect on the basis of inconsistency with s. 133 of the *Constitution Act, 1867*:

- i. ss. 7.1, 12 and 13 para. 1 of the CFL, as enacted by s. 5 of Bill 96 (which enters into force on June 1, 2022);
 - ii. s. 13 para. 2 of the CFL, as enacted by s. 5 of Bill 96 (which enters into force on the date the first French Language Commissioner appointed under s. 185 of the CFL, enacted by s. 133 of Bill 96, takes office);
 - iii. s. 9 of the CFL, as enacted by s. 5 of Bill 96 (which enters into force three months after June 1, 2022);
 - iv. ss. 10 and 11 of the CFL, as enacted by s. 5 of Bill 96 (which enters into force two years after June 1, 2022);
 - v. s. 208.6 of the CFL, as enacted by s. 116 of Bill 96 (which enters into force three months after June 1, 2022);
 - vi. s. 88.1 of the CJA, as enacted by s. 158.2 of Bill 96 (which enters into force on June 1, 2022); and
 - vii. ss. 6, 9, 9.1 and 25 of the *Regulation respecting the selection procedure for provincial judges*, as amended by ss. 162.2, 162.5, 162.6 and 162.7 of Bill 96 respectively (which enter into force on June 1, 2022); and
- (b) to have s. 159 of Bill 96 declared *ultra vires* the National Assembly of Québec;
- (c) to have the following provisions declared of no force or effect to the extent that they impermissibly infringe s. 23 of the *Charter*:
- i. s. 8 of the CFL and the amendments thereto at s. 5 of Bill 96 (which enters into force on June 1, 2022);
 - ii. s. 14 of the CFL;
 - iii. s. 16 of the CFL;
 - iv. s. 16.1 of the CFL, as enacted by s. 8 of Bill 96 (which enters into force one year after June 1, 2022);
 - v. s. 17 of the CFL;
 - vi. s. 18 of the CFL, as amended by s. 9 of Bill 96 (which enters into force one year after June 1, 2022);
 - vii. s. 18.1 of the CFL, as enacted by s. 10 of Bill 96 (which enters into force one year after June 1, 2022);
 - viii. s. 19 of the CFL, as amended by s. 11 of Bill 96 (which enters into force one year after June 1, 2022);
 - ix. s. 21 of the CFL and the amendments thereto at s. 13 of Bill 96 (which enters into force one year after June 1, 2022);
 - x. ss. 21.1, 21.2, 21.3, 21.4, 21.7 and 21.11, as enacted by s. 14 of Bill 96 (which enters into force one year after June 1, 2022);
 - xi. s. 22 of the CFL;
 - xii. s. 23 of the CFL;
 - xiii. s. 24 of the CFL;

- xiv. s. 26 of the CFL, and the amendments thereto at s. 16 of Bill 96 (which enters into force one year after June 1, 2022);
- xv. s. 41 of the CFL, and the amendments thereto at s. 29 of Bill 96 (which enters into force on June 1, 2022); and
- xvi. ss. 128.6 to 134.6 of the CFL, as enacted by s. 73 of Bill 96 which enters into force on June 1, 2022²).

II. THE APPLICANT, GIUSEPPE ORTONA

22. Giuseppe Ortona was elected commissioner for the Rivières-des-Prairies ward of the EMSB in 2014. In 2018, he became vice-chair of the EMSB.

23. In 2020, Mr. Ortona was elected chair of the EMSB.

24. Mr. Ortona is a Canadian citizen who received his primary instruction in English at Nesbitt Elementary School in Montréal, and as a result, Mr. Ortona has rights under s. 23 of the *Charter*.

25. Mr. Ortona holds a certificate of eligibility for English language education under s. 73 of the CFL.

III. THE APPLICANT, ENGLISH MONTREAL SCHOOL BOARD (“EMSB”)

26. The EMSB is an English-language school board established in 1998 pursuant to s. 111 of the *Education Act*, CQLR c I-13.3 (“*Education Act*”).

27. The EMSB is a legal person established in the public interest pursuant to s. 113 of the *Education Act*.

28. The EMSB’s territory encompasses that part of the island of Montréal extending from the eastern border of the borough of Rivières-des-Prairies – Pointe-aux-Trembles in the City of Montréal, to the western borders of Ahuntsic-Cartierville, Saint-Laurent, the municipality of Côte-Saint-Luc, the municipality of Montreal-West, and Le Sud-Ouest.

29. With a youth and adult sector population of approximately 44,000 students in more than 70 schools and centres, the EMSB is the largest English-language school board in Québec.

30. English-language schools in Québec are community hubs for the English-speaking community, which ensure the transmission and preservation of the community’s culture and heritage, while enhancing its vitality (*Solski (Tutor of) v Quebec (Attorney General)*, 2005 SCC 14 at para 3).

31. Pursuant to s. 23 of the *Charter*, citizens of Canada (a) who have received their primary school instruction in Canada in English or (b) of whom any child has received or is receiving primary or secondary school instruction in English in

² With the exception of the second paragraph of sections 128.6, 128.8 and 134.4 of the CFL which enter into force three months after the date on which the first language policy of the State provided for in s. 29.9 of the CFL, enacted by s. 19 of Bill 96, is approved. The second paragraph of sections 128.6, 128.8 and 134.4 do not apply to English language school boards.

Canada, have the right to have all their children receive primary and secondary school instruction in English out of public funds in Québec.

32. The EMSB is administered by a council of commissioners pursuant to s. 143 of the *Education Act*, as it read on February 7, 2020 prior to the adoption of Bill 40, *An Act to amend mainly the Education Act with regard to school organization and governance*, SQ 2020, c 1, which has been stayed in relation to English-language school boards.³ The council of commissioners is composed of a chairperson and ten commissioners elected pursuant to the *Act respecting school board elections*, CQLR c E-2.3, as well as four commissioners representing the Parents' Committee established pursuant to s. 189 of the *Education Act*.

33. As elected representatives of citizens who have the right to have their children receive instruction in English on the EMSB's territory, the council of commissioners of the EMSB exercises their right to management and control and ensures the implementation of the right to English-language instruction in the EMSB's territory under both the *Education Act* and s. 23 of the *Charter*.

34. In keeping with its mandate, the EMSB uses English as the primary language of instruction in its schools and as a language of communications.

IV. PROVISIONS OF BILL 96 ARE INCOMPATIBLE WITH SECTION 133 OF THE CONSTITUTION ACT, 1867

a) Section 133 of the Constitution Act, 1867

35. Section 133 of the *Constitution Act, 1867* provides:

Use of English and French Languages

133. Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.

36. The purpose of s. 133 of the *Constitution Act, 1867* is to "ensure full and equal access to the legislatures, laws and the courts for francophones and anglophones alike" (*Re Manitoba Language Rights*, [1985] 1 SCR 721 at 739 (unanimous)).

³ QESBA-CS, conf QESBA-CA. Pending the outcome of the challenge to Bill 40, the *Education Act*, the *Act respecting school elections* and other legislation amended by Bill 40, as they apply to English language school boards, must therefore be read today as they were in force on February 7, 2020.

37. Section 133 is intended “to remove the question of the use of the two languages, English and French, from the possibility of the arbitrary, or capricious or even very simply of the wish perceived legitimate by the majority, whether English in the central Parliament or francophone in the Legislature of Quebec”, such that its federal and provincial aspects are indivisible (*Blaikie et al v Attorney General of Quebec*, [1978] CS 37 (QCCS) at 273-274, 281).

38. In 1977, the National Assembly of Québec enacted the *Charter of the French Language*, LQ 1977, c. 5 (“1977 CFL”), including the following provisions pertaining to the language of the legislature and the courts:

CHAPTER III

THE LANGUAGE OF THE
LEGISLATURE AND THE COURTS

7. French is the language of the legislature and the courts in Québec.

8. Legislative bills shall be drafted in the official language. They shall also be tabled in the National Assembly, passed and assented to in that language.

9. Only the French text of the statutes and regulations is official.

10. An English version of every legislative bill, statute and regulation shall be printed and published by the civil administration.

11. Artificial persons addressing themselves to the courts and to bodies discharging judicial or quasi-judicial functions shall do so in the official language, and shall use the official language in pleading before them unless all the parties to the action agree to their pleading in English.

12. Procedural documents issued by bodies discharging judicial or quasi-judicial functions or drawn up and sent by the advocates practising before them shall be drawn up in the official language. Such documents may, however, be drawn up in another language if the natural person for

CHAPITRE III

LA LANGUE DE LA LÉGISLATION ET
DE LA JUSTICE

7. Le français est la langue de la législation et de la justice au Québec

8. Les projets de loi sont rédigés dans la langue officielle. Ils sont également, en cette langue, déposés à l'Assemblée nationale, adoptés et sanctionnés

9. Seul le texte français des lois et des règlements est officiel.

10. L'Administration imprime et publie une version anglaise des projets de loi, des lois et des règlements.

11. Les personnes morales s'adressent dans la langue officielle aux tribunaux et aux organismes exerçant des fonctions judiciaires ou quasi-judiciaires. Elles plaident devant eux dans la langue officielle, à moins que toutes les parties à l'instance ne consentent à ce qu'elles plaident en langue anglaise.

12. Les pièces de procédure émanant des tribunaux et des organismes exerçant des fonctions judiciaires ou quasi-judiciaires ou expédiées par les avocats exerçant devant eux doivent être rédigées dans la langue officielle. Ces pièces peuvent cependant être rédigées dans une autre langue si la

whose intention they are issued expressly consents thereto.

personne physique à qui elles sont destinées y consent expressément.

13. The judgments rendered in Québec by the courts and by bodies discharging judicial or quasi-judicial functions must be drawn up in French or be accompanied by a duly authenticated French version. Only the French version of the judgment is official.

13. Les jugements rendus au Québec par les tribunaux et les organismes exerçant des fonctions judiciaires ou quasi-judiciaires doivent être rédigés en français ou être accompagnés d'une version française dûment authentifiée. Seule la version française du jugement est officielle.

39. In 1978, the Superior Court of Québec found that ss. 7 to 13 of the 1977 CFL were inconsistent with s. 133 of the *Constitution Act, 1867*, and that the National Assembly of Québec could not unilaterally amend s. 133 of the *Constitution Act, 1867*, such that ss. 7 to 13 of the 1977 CFL were declared invalid (*Blaikie et al v Attorney General of Quebec*, [1978] CS 37 (QCCS)). This ruling was unanimously affirmed by a seven-member panel of the Court of Appeal of Québec ([1978] CA 351), and all nine judges of the Supreme Court of Canada ([1979] 2 SCR 1016).

40. In the aftermath of the Supreme Court of Canada's judgment in *Blaikie No. 1*, the National Assembly enacted the *An Act respecting a judgment rendered in the Supreme Court of Canada on 13 December 1979 on the language of the legislature and the courts in Québec*, SQ 1979, c 61, notably providing for the official adoption of English versions of legislation which had been enacted only in French, and enacting s. 40.1 of the *Interpretation Act*, RSQ c I-16.

41. Sections 40 and 40.1 of the *Interpretation Act* then provided as follows:

40. The preamble of every statute shall form part thereof, and assist in explaining its purport and object.

40. Le préambule d'une loi en fait partie et sert à en expliquer l'objet et la portée.

In case of doubt, the construction placed on any Act shall be such as not to impinge on the status of the French language.

Les lois doivent s'interpréter, en cas de doute, de manière à ne pas restreindre le statut du français.

40.1 In case of discrepancy between the French text and English text, the French text prevails.

40.1 En cas de divergence entre les textes français et anglais de l'article 40, le texte français prévaut.

42. In 1985, in *Re Manitoba Language Rights*, [1985] 1 SCR 721 at 776-778 ("*Re Manitoba Language Rights*"), the Supreme Court of Canada unanimously concluded that a rule of interpretation favouring one linguistic version over another is inconsistent with the requirement under s. 133 of the *Constitution Act, 1867* and s. 23 of the *Manitoba Act, 1870* that both linguistic versions must be official and have equal authority.

43. In 1993, s. 40.1 of the *Interpretation Act* was repealed and the offending sections 7 to 13 of the 1977 CFL (see paragraph 38 above) were ultimately replaced in *An Act to amend the Charter of the French Language*, SQ 1993, c 40, with the following provisions:

CHAPTER III

THE LANGUAGE OF THE
LEGISLATURE AND THE COURTS

7. French is the language of the legislature and the courts in Québec, subject to the following:

(1) legislative bills shall be printed, published, passed and assented to in French and in English, and the statutes shall be printed and published in both languages;

(2) the regulations and other similar acts to which section 133 of the Constitution Act, 1867 applies shall be made, passed or issued, and printed and published in French and in English;

(3) the French and English versions of the texts referred to in paragraphs 1 and 2 are equally authoritative;

(4) either French or English may be used by any person in, or in any pleading in or process issuing from, any court of Québec.

8. Where an English version exists of a regulation or other similar act to which section 133 of the *Constitution Act, 1867* does not apply, the French text shall prevail in case of discrepancy.

9. Every judgment rendered by a court of justice and every decision rendered by a body discharging quasi-judicial functions shall, at the request of one of the parties, be translated into French or English, as the case may be, by the civil

CHAPITRE III

LA LANGUE DE LA LÉGISLATION ET
DE LA JUSTICE

7. Le français est la langue de la législation et de la justice au Québec sous réserve de ce qui suit:

1° les projets de loi sont imprimés, publiés, adoptés et sanctionnés en français et en anglais, et les lois sont imprimées et publiées dans ces deux langues;

2° les règlements et les autres actes de nature similaire auxquels s'applique l'article 133 de la Loi constitutionnelle de 1867 sont pris, adoptés ou délivrés, et imprimés et publiés en français et en anglais;

3° les versions française et anglaise des textes visés aux paragraphes 1° et 2° ont la même valeur juridique;

4° toute personne peut employer le français ou l'anglais dans toutes les affaires dont sont saisis les tribunaux du Québec et dans tous les actes de procédure qui en découlent.

8. S'il existe une version anglaise d'un règlement ou d'un autre acte de nature similaire auxquels ne s'applique pas l'article 133 de la *Loi constitutionnelle de 1867*, le texte français, en cas de divergence, prévaut.

9. Tout jugement rendu par un tribunal judiciaire et toute décision rendue par un organisme exerçant des fonctions quasi-judiciaires sont traduits en français ou en anglais, selon le cas, à la demande d'une partie, par l'Administration tenue d'assumer les

administration bound to bear the cost of operating such court or body. coûts nécessaires au fonctionnement de ce tribunal ou de cet organisme.

b) Prevalence of the French version over the English version of legislation violates s. 133 of the *Constitution Act, 1867*

44. Section 7.1 of the CFL, as amended by s. 5 of Bill 96, provides as follows:

7.1. In the case of a discrepancy between the French and English versions of a statute, regulation or other act referred to in paragraph 1 or 2 of section 7 that cannot be properly resolved using the ordinary rules of interpretation, the French text shall prevail. 7.1. En cas de divergence entre les versions française et anglaise d'une loi, d'un règlement ou d'un autre acte visé au paragraphe 1° ou 2° de l'article 7 que les règles ordinaires d'interprétation ne permettent pas de résoudre convenablement, le texte français prévaut.

45. The well-established rule in Canada for the interpretation of bilingual legislation is that when the ordinary rules of interpretation cannot resolve ambiguities in one or both versions, the “shared meaning rule” applies. The “shared meaning rule” provides that an interpretation that gives effect to the shared meaning of the English and French versions prevails when this common meaning is itself consistent with the legislator’s intent: *R v Daoust*, 2004 SCC 6, at paras 26-31.

46. The shared meaning rule of interpretation gives equal authority to both linguistic versions when specific linguistic ambiguities arise that cannot be resolved using the ordinary rules of interpretation.

47. Prior attempts to adopt rules of interpretation of bilingual legislation that give prevalence to one linguistic version over another have been found unconstitutional by the Supreme Court of Canada, notably in *Blaikie No. 1* and *Re Manitoba Language Rights*.

48. A rule of interpretation that gives prevalence to one linguistic version over another is incompatible with s. 133 of the *Constitution Act, 1867*, regardless of whether prevalence to the French version is given in all cases, or as an ultimate rule of interpretation.

49. Section 7.1 of the CFL, as enacted by s. 5 of Bill 96, gives preference to the French version of legislation in resolving semantic conflicts between the two linguistic versions, thereby undermining the equal authority and status of the English and French versions.

50. As an English language school board, the EMSB consults and uses the English version of legislation to determine its rights and obligations.

51. Section 7.1 of the CFL, as enacted by s. 5 of Bill 96, is incompatible with the equal status of the English and French versions of legislation.

52. Section 7.1 of the CFL, as enacted by s. 5 of Bill 96, violates s. 133 of the *Constitution Act, 1867* and is thereby of no force or effect pursuant to s. 52 of the *Constitution Act, 1982*.

c) The additional burden of translating pleadings drawn up in English into French violates the right to use either English or French in the courts under s. 133 of the *Constitution Act, 1867*

53. Section 9 of the CFL, as amended by s. 5 of Bill 96 and which enters into force three months after June 1, 2022, provides as follows:

English version unavailable at this time. 9. Une traduction en français certifiée par un traducteur agréé doit être jointe à tout acte de procédure rédigé en anglais émanant d'une personne morale.

La personne morale assume les frais de la traduction.

54. Section 116 of Bill 96 further introduces s. 208.6 of the CFL, which enters into force three months after June 1, 2022 and provides as follows:

English version unavailable at this time. 208.6. L'acte de procédure auquel n'est pas joint, en contravention à l'article 9, une traduction certifiée par un traducteur agréé ne peut être déposé au greffe d'un tribunal ou au secrétariat d'un organisme de l'Administration qui exerce une fonction juridictionnelle ou au sein duquel une personne nommée par le gouvernement ou par un ministre exerce une telle fonction.

Le greffier ou le secrétaire avise sans délai la personne morale concernée du motif pour lequel l'acte de procédure ne peut être déposé.

55. Section 133 of the *Constitution Act, 1867* enables all persons to use "either the English or French Language" in their pleadings before the courts, thereby ensuring full and equal access to the courts in English and French.

56. Section 133 does not distinguish between legal and natural persons, providing this right to "any person".

57. Sections 9 and 208.6 of the CFL, as enacted by s. 5 and 116 of Bill 96, are similar in effect to ss. 11, 12 and 89 of the 1977 CFL, which were at issue in *Blaikie No. 1*:

11. Artificial persons addressing themselves to the courts and to bodies 11. Les personnes morales s'adressent dans la langue officielle aux tribunaux et

discharging judicial or quasi-judicial functions shall do so in the official language, and shall use the official language in pleading before them unless all the parties to the action agree to their pleading in English.

aux organismes exerçant des fonctions judiciaires ou quasi-judiciaires. Elles plaident devant eux dans la langue officielle, à moins que toutes les parties à l'instance ne consentent à ce qu'elles plaident en langue anglaise.

12. Procedural documents issued by bodies discharging judicial or quasi-judicial functions or drawn up and sent by the advocates practising before them shall be drawn up in the official language. Such documents may, however, be drawn up in another language if the natural person for whose intention they are issued expressly consents thereto.

12. Les pièces de procédure émanant des tribunaux et des organismes exerçant des fonctions judiciaires ou quasi-judiciaires ou expédiées par les avocats exerçant devant eux doivent être rédigées dans la langue officielle. Ces pièces peuvent cependant être rédigées dans une autre langue si la personne physique à qui elles sont destinées y consent expressément.

89. Where this act does not require the use of the official language exclusively, the official language and another language may be used together.

89. Dans les cas où la présente loi n'exige pas l'usage exclusif de la langue officielle, on peut continuer à employer à la fois la langue officielle et une autre langue.

58. In *Blaikie No. 1*, the Supreme Court of Canada declared ss. 11 and 12 of the 1977 CFL invalid, confirming the Superior Court of Québec's conclusion that s. 133 guaranteed the right to the exclusive use of either language, and that the obligation to join a French version to a pleading produced in English was incompatible with s. 133.

59. By requiring that a legal person who exercises their right to use English in the courts effectively use French as well, ss. 9 and 208.6 of the CFL, as amended by Bill 96, are likewise incompatible with the right to use "either" language guaranteed by s. 133 of the *Constitution Act, 1867*.

60. By requiring that a legal person who exercises their right to use English in their pleadings provide a French translation at their own cost, the law imposes additional burdens on such litigants compared to litigants who use French, undermining its purpose, including the guarantee of ensuring equal access to the courts.

61. Consistent with its mandate as an English language school board, the EMSB exercises its right under s. 133 of the *Constitution Act, 1867* to use English before the courts.

62. For instance, the EMSB is exercising its right to use English in current litigation, notably based on the right to manage and control English language education under s. 23 of the *Charter*.

63. Sections 9 and 208.6 of the CFL, as enacted by ss. 5 and 116 of Bill 96, violate the EMSB's right to use either English or French as provided by s. 133 of

the *Constitution Act, 1867*, and impose additional burdens (including in terms of cost and time to prepare pleadings) for using English that are incompatible with the text and purpose of s. 133 of the *Constitution Act, 1867*.

64. The delay associated with obtaining a certified translation encourages, and may even require, that litigants forego their right to use English in the courts to avoid prejudice, such as in urgent situations.

d) Requirement for release “immediately and without delay” of the French version of judgments rendered in English will cause disadvantage in the release of English judgments, which is incompatible with s. 133 of the *Constitution Act, 1867*

65. Sections 10 and 11 of the CFL, as amended by s. 5 of Bill 96 and which enters into force two years after June 1, 2022, provide as follows:

English version unavailable at this time. 10. Une version française doit être jointe immédiatement et sans délai à tout jugement rendu par écrit en anglais par un tribunal judiciaire lorsqu’il met fin à une instance ou présente un intérêt pour le public.

Tout autre jugement rendu par écrit en anglais est traduit en français à la demande de toute personne; celui rendu par écrit en français est traduit en anglais à la demande d’une partie.

Les frais de la traduction effectuée en application du présent article sont assumés par le ministère ou l’organisme qui l’effectue ou qui assume les coûts nécessaires à l’exercice des fonctions du tribunal qui a rendu le jugement.

11. Section 10 applies, with the necessary modifications, to any decision rendered in the exercise of an adjudicative function by an agency of the civil administration or by a person appointed by the Government or a minister and exercising such a function within such an agency.

11. L’article 10 s’applique, compte tenu des adaptations nécessaires, à toute décision rendue dans l’exercice d’une fonction juridictionnelle par un organisme de l’Administration ou par une personne nommée par le gouvernement ou par un ministre qui exerce une telle fonction au sein d’un tel organisme.

66. Sections 10 and 11 of the CFL, as enacted by s. 5 of Bill 96, will pressure judges into rendering their judgments in French to avoid delays associated with translation, or cause delay in the release of the judgment in order to release them simultaneously in French and English, resulting in disadvantage for parties

whose chosen language is English in obtaining access to a judgment in their language.

67. The disadvantage for parties whose chosen language is English who must await simultaneous release of a judgment in both languages, or request a translation of a judgment rendered in French, is inconsistent with the purpose of s. 133 of the *Constitution Act, 1867* of ensuring equal access to the courts.

68. Sections 10 and 11 of the CFL, as enacted by s. 5 of Bill 96, are incompatible with s. 133 of the *Constitution Act, 1867*, and thereby invalid.

e) Limitations on hiring of bilingual judges negatively impact the exercise of rights under s. 133 of the *Constitution Act, 1867*

69. Sections 12 and 13 of the CFL, as enacted by s. 5 of Bill 96, provide as follows:

English version unavailable at this time. 12. Il ne peut être exigé de la personne devant être nommée à la fonction de juge qu'elle ait la connaissance ou un niveau de connaissance spécifique d'une langue autre que la langue officielle sauf si le ministre de la Justice, après consultation du ministre de la Langue française, estime que, d'une part, l'exercice de cette fonction nécessite une telle connaissance et que, d'autre part, tous les moyens raisonnables ont été pris pour éviter d'imposer une telle exigence.

English version unavailable at this time. 13. Il ne peut être exigé de la personne devant être nommée par le gouvernement ou un ministre pour exercer une fonction juridictionnelle au sein d'un organisme de l'Administration qu'elle ait la connaissance ou un niveau de connaissance spécifique d'une langue autre que la langue officielle sauf si le ministre responsable de l'application de la loi constitutive de l'organisme, après consultation du ministre de la Langue française, estime que, d'une part, l'exercice de cette fonction nécessite une telle connaissance et que, d'autre part, tous les moyens raisonnables ont été pris pour éviter d'imposer une telle exigence.

De même, une telle exigence ne peut être imposée à la personne devant être

nommée par l'Assemblée nationale pour exercer une telle fonction au sein de la Commission d'accès à l'information ou de la Commission de la fonction publique sauf si le commissaire à la langue française estime que, d'une part, l'exercice de cette fonction nécessite une telle connaissance et que, d'autre part, tous les moyens raisonnables ont été pris pour éviter d'imposer cette exigence.

70. Section 158.2 of Bill 96 enacts s. 88.1 of the *Courts of Justice Act*, CQLR c T-16, which provides:

English version unavailable at this time. 88.1 Le ministre de la Justice ne peut exiger un critère additionnel à ceux déterminés en vertu du paragraphe 4 du premier alinéa de l'article 88, en lien avec la connaissance ou le niveau de connaissance spécifique des candidats à la fonction de juge d'une langue autre que la langue officielle, sauf si, conformément à l'article 12 de la *Charte de la langue française* (chapitre C-11), le ministre estime, après consultation du ministre de la Langue française, que, d'une part, l'exercice de cette fonction nécessite une telle connaissance et que, d'autre part, tous les moyens raisonnables ont été pris pour éviter d'imposer un tel critère.

Dans son évaluation, le ministre ne peut être tenu de prendre en considération d'autres données que celles relatives au nombre de juges qui ont une connaissance d'une langue autre que la langue officielle et au nombre d'audiences tenues en application de l'article 530 du *Code criminel* (Lois révisées du Canada (1985), chapitre C-46) dans une telle langue.

71. Section 162.2 of Bill 96 amends s. 6 of the *Regulation respecting the selection procedure of candidates for the office of judge of the Court of Québec, municipal court judge and presiding justice of the peace*, CQLR c T-16, r 4.1 ("*Regulation respecting the selection procedure for provincial judges*"), as follows (amendments underlined):

English version unavailable at this time. 6. Le secrétariat dépose sur le site Internet du ministère de la Justice un

rapport annuel sur les travaux des comités de sélection. Ce rapport contient une analyse des nominations à la fonction de juge eu égard à la représentation des hommes et des femmes et à celle des communautés culturelles.

Dans ce rapport, le secrétariat présente également, pour chacun des districts ou chacune des cours, le cas échéant, les données relatives au nombre de juges qui ont une connaissance d'une langue autre que la langue officielle et au nombre d'audiences tenues en application de l'article 530 du Code criminel (Lois révisées du Canada (1985), chapitre C-46) dans une telle langue.

Le secrétaire transmet une copie de ce rapport au ministre de la Justice.

72. Section 162.5 of Bill 96 amends s. 9 of the *Regulation respecting the selection procedure for provincial judges* as follows (amendments underlined):

English version unavailable at this time. 9. L'avis comprend les renseignements suivants:

1° les conditions légales d'admissibilité à la fonction de juge;

2° la cour et la chambre, le cas échéant, où il y a un poste à pourvoir;

3° le lieu où la résidence du juge sera fixée, le cas échéant;

4° l'obligation, pour une personne intéressée, de soumettre sa candidature au secrétariat à la sélection des candidats à la fonction de juge, au moyen du formulaire prévu à l'annexe A, et celle de fournir les documents exigés au soutien de cette candidature;

5° les critères de sélection prévus à l'article 25 servant à l'évaluation de la candidature de tout candidat rencontré par un comité de sélection;

5.1° le critère exigé par le ministre de la Justice en vertu de l'article 88.1 de la

Loi sur les tribunaux judiciaires
(chapitre T-16), le cas échéant;

6° l'adresse du secrétariat;

7° la date limite pour soumettre sa candidature.

73. Section 162.6 of Bill 96 enacts section 9.1 of the *Regulation respecting the selection procedure for provincial judges*, which provides:

English version unavailable at this time. 9.1. L'avis ne peut prévoir l'exigence que les candidats à la fonction de juge aient la connaissance ou un niveau de connaissance spécifique d'une langue autre que la langue officielle pour le poste sauf si le ministre, après consultation du ministre de la Langue française, estime que, d'une part, l'exercice de cette fonction nécessite une telle connaissance et que, d'autre part, tous les moyens raisonnables ont été pris pour éviter d'imposer une telle connaissance.

74. Section 162.7 of Bill 96 amends section 25 of the *Regulation respecting the selection procedure for provincial judges*, as follows (amendments underlined):

English version unavailable at this time. 25. Pour évaluer la candidature d'un candidat, le comité tient compte des critères suivants:

1° les compétences du candidat, comprenant:

a) ses qualités personnelles et intellectuelles, son intégrité, ses connaissances, qui ne peuvent comprendre sa connaissance d'une langue autre que la langue officielle, sauf si cette exigence est prévue dans l'avis, et son expérience générale;

b) le degré de ses connaissances juridiques et son expérience dans les domaines du droit dans lesquels il serait appelé à exercer ses fonctions.

c) sa capacité de jugement, sa perspicacité, sa pondération, sa capacité d'établir des priorités et de rendre une décision dans un délai raisonnable ainsi que la qualité de son

expression dans la langue de la justice au Québec, le français;

2° la conception que le candidat se fait de la fonction de juge;

3° la motivation du candidat pour exercer cette fonction;

4° les expériences humaines, professionnelles, sociales et communautaires du candidat;

5° le degré de conscience du candidat à l'égard des réalités sociales;

6° la reconnaissance par la communauté juridique des qualités et des compétences du candidat.

75. By virtue of ss. 12 and 13 of the CFL, as enacted by s. 5 of Bill 96, the government is prohibited from requiring knowledge of English for judicial and other adjudicative appointments, unless the Minister of Justice considers it necessary and is satisfied that all reasonable means have been taken to avoid imposing such a requirement.

76. Section 88.1 of the CJA, as enacted by s. 158.2 of Bill 96, and corresponding amendments to the *Regulation respecting the selection procedure for provincial judges*, limit what the Minister of Justice can be required to consider when determining whether knowledge of a language other than French may be a requirement for a particular judicial or adjudicative appointment. The Minister of Justice may only be required to consider data on the number of English-speaking judges, and the number of hearings held in English pursuant to s. 530 of the *Criminal Code*.

77. Section 133 of the *Constitution Act, 1867* protects the right of all parties to judicial and quasi-judicial proceedings in Québec to use either English or French. It does not solely apply to proceedings under s. 530 of the *Criminal Code*.

78. The exercise of rights under s. 133 of the *Constitution Act, 1867* requires that litigants be understood by the decision-maker in the language of their choice, either English or French, without an interpreter.

79. Reliance on interpreters to enable litigants to be understood by the decision-maker in their language is inadequate to respect s. 133, notably in light of the delay and inaccuracies of simultaneous translation, and impracticable.

80. On December 8, 2021, in debates before the Commission on s. 13 of the CFL as enacted by s. 5 of Bill 96, Minister Jolin-Barrette acknowledged that in practice courts and administrative tribunals rely on bilingual decision-makers to function properly, rather than interpreters, as appears from the *Journal des débats de la Commission de la culture et de l'éducation* of December 9, 2021, 42nd Leg, 2nd Sess, vol 46, no 4, at page 128, **Exhibit P-1**:

M. Jolin-Barrette : Bien, la pratique fait en sorte que, les tribunaux, pour bien fonctionner, les tribunaux administratifs, notamment, ont des décideurs qui maîtrisent les deux langues pour justement pouvoir traiter les dossiers sans interprète notamment.

81. Sections 12 and 13 of the CFL (as enacted by s. 5 of Bill 96), s. 88.1 of the CJA (as enacted by s. 158.2 of Bill 96), and ss. 6, 9, 9.1 and 25 of the *Regulation respecting the selection procedure for provincial judges* (as amended by ss. 162.2, 162.5, 162.6 and 162.7 of Bill 96) purport to prevent the Minister of Justice from being required to consider s. 133 of the *Constitution Act, 1867*, and any information relevant to assessing whether knowledge of English should be required for the purposes of ensuring compliance with s. 133 of the *Constitution Act, 1867*, in determining the linguistic requirements for a judicial or adjudicative appointment.

82. For instance, s. 158.2 of Bill 96 prevents the Minister from being required to take into account the number of civil cases proceeding fully or partially in English pursuant to s. 133 of the *Constitution Act, 1867* in determining whether knowledge of English should be required for a judicial or adjudicative appointment.

83. Sections 12 and 13 of the CFL (as enacted by s. 5 of Bill 96), s. 88.1 of the CJA (as enacted by s. 158.2 of Bill 96), and ss. 6, 9, 9.1 and 25 of the *Regulation respecting the selection procedure for provincial judges* (as amended by ss. 162.2, 162.5, 162.6 and 162.7 of Bill 96) establish a selection process for judicial and adjudicative appointments that systemically excludes from consideration whether knowledge of English is needed to give effect to the constitutional rights of litigants under s. 133 of the *Constitution Act, 1867*.

84. Sections 12 and 13 of the CFL (as enacted by s. 5 of Bill 96), s. 88.1 of the CJA (as enacted by s. 158.2 of Bill 96), and ss. 6, 9, 9.1 and 25 of the *Regulation respecting the selection procedure for provincial judges* (as amended by ss. 162.2, 162.5, 162.6 and 162.7 of Bill 96) are incompatible with the equal status of English and French protected by s. 133 of the *Constitution Act, 1867*.

85. Sections 12 and 13 of the CFL (as enacted by s. 5 of Bill 96), s. 88.1 of the CJA (as enacted by s. 158.2 of Bill 96), and ss. 6, 9, 9.1 and 25 of the *Regulation respecting the selection procedure for provincial judges* (as amended by ss. 162.2, 162.5, 162.6 and 162.7 of Bill 96) will frustrate access to justice in English contrary to the purpose of s. 133.

V. BILL 96 CANNOT UNILATERALLY AMEND THE CONSTITUTION ACT, 1867, INCLUDING SECTION 133

86. Section 159 of Bill 96 purports to amend “the *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK); 1982 c 11 (UK)”:

159. The Constitution Act, 1867 (30 & 31 Victoria, c. 3 (U.K.); 1982, c. 11

159. La *Loi constitutionnelle de 1867* (30-31 Vict., ch. 3 (R.-U.); 1982, ch. 11

(U.K.) is amended by inserting the following after section 90:

“FUNDAMENTAL
CHARACTERISTICS OF QUEBEC

“90Q.1. Quebecers form a nation.

“90Q.2. French shall be the only official language of Quebec. It is also the common language of the Quebec nation.”

(R.-U.) est modifiée par l’insertion, après l’article 90, de ce qui suit :

«CARACTÉRISTIQUES
FONDAMENTALES DU QUÉBEC

«90Q.1. Les Québécoises et les Québécois forment une nation.

«90Q.2. Le français est la seule langue officielle du Québec. Il est aussi la langue commune de la nation québécoise. ».

87. Subsection 52 (3) of the *Constitution Act, 1982* provides that “[a]mendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada”.

88. Pursuant to Part V of the *Constitution Act, 1982*, the “Constitution of Canada” may be amended, depending on the nature of the amendment, by either (a) unanimous consent of Parliament and the legislatures of the provinces (s. 41), (b) resolutions of Parliament and the legislatures of at least 2/3 provinces that have in the aggregate at least 50% of the population of all provinces (s. 38), (c) resolutions of Parliament and some, but not all provinces (s. 43), or (d) unilateral amendment by Parliament.

89. The “Constitution of Canada” cannot be amended unilaterally by the legislature of a province by ordinary legislation. The legislature of a province may only amend unilaterally the “constitution of the province” (s. 45 of the *Constitution Act, 1982*).

90. Pursuant to s. 52(2) of the *Constitution Act, 1982*, the “Constitution of Canada” is expressly defined as including the *Constitution Act, 1867*. The *Constitution Act, 1867* as a whole is therefore part of the “Constitution of Canada”, not the constitution of the province.

91. Provincial laws enacted by the National Assembly of Québec cannot amend the *Constitution Act, 1867*.

92. Furthermore, the amendments proposed in s. 159 of Bill 96 are not amendments to the constitution of the province.

93. Section 159 of Bill 96 is *ultra vires* the National Assembly’s legislative power and is of no force or effect.

a) Section 159 of Bill 96 and the impugned provisions of the CFL, as amended by Bill 96, cannot have the effect of amending or modifying the interpretation of section 133 of the *Constitution Act, 1867*

94. Section 133 of the *Constitution Act, 1867* is part of the “Constitution of Canada” (s. 52(2) of the *Constitution Act, 1982*). It cannot be amended unilaterally by the province.

95. Further, as confirmed in *Blaikie No. 1*, the provincial aspect of s. 133 of the *Constitution Act, 1867* cannot be unilaterally amended by the province as though it were part of the constitution of the province, as it is indivisible from the federal aspect of s.133.

96. Since the National Assembly of Québec cannot unilaterally amend the Constitution of Canada, s. 159 of Bill 96 and the provisions of the CFL as amended by Bill 96 cannot be construed as amending or modifying section 133 of the *Constitution Act, 1867*.

VI. PROVISIONS OF BILL 96 AND THE CFL IMPOSING THE USE OF FRENCH IN ENGLISH LANGUAGE SCHOOL BOARDS IMPERMISSIBLY INFRINGE SECTION 23 OF THE CHARTER

a) Section 23 of the *Charter* grants rightsholders or their representatives the exclusive power to manage and control the use of language by and in minority language school boards

97. Section 23 of the *Charter* provides:

MINORITY LANGUAGE EDUCATIONAL RIGHTS

Language of instruction

23. (1) Citizens of Canada

(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

Continuity of language instruction

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have

DROITS À L'INSTRUCTION DANS LA LANGUE DE LA MINORITÉ

Langue d'instruction

23. (1) Les citoyens canadiens :

a) dont la première langue apprise et encore comprise est celle de la minorité francophone ou anglophone de la province où ils résident,

b) qui ont reçu leur instruction, au niveau primaire, en français ou en anglais au Canada et qui résident dans une province où la langue dans laquelle ils ont reçu cette instruction est celle de la minorité francophone ou anglophone de la province,

ont, dans l'un ou l'autre cas, le droit d'y faire instruire leurs enfants, aux niveaux primaire et secondaire, dans cette langue.

Continuité d'emploi de la langue d'instruction

(2) Les citoyens canadiens dont un enfant a reçu ou reçoit son instruction, au niveau primaire ou secondaire, en français ou en anglais au Canada ont le

the right to have all their children receive primary and secondary school instruction in the same language.

Application where numbers warrant

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

droit de faire instruire tous leurs enfants, aux niveaux primaire et secondaire, dans la langue de cette instruction.

Justification par le nombre

(3) Le droit reconnu aux citoyens canadiens par les paragraphes (1) et (2) de faire instruire leurs enfants, aux niveaux primaire et secondaire, dans la langue de la minorité francophone ou anglophone d'une province :

a) s'exerce partout dans la province où le nombre des enfants des citoyens qui ont ce droit est suffisant pour justifier à leur endroit la prestation, sur les fonds publics, de l'instruction dans la langue de la minorité;

b) comprend, lorsque le nombre de ces enfants le justifie, le droit de les faire instruire dans des établissements d'enseignement de la minorité linguistique financés sur les fonds publics.

98. The general purpose of s. 23 of the *Charter* is to protect and promote the linguistic minority in each province. It guarantees minority language communities, including the English-speaking community in Québec, a right of exclusive management and control over aspects of education that relate to language or culture (*Mahé v Alberta*, [1990] 1 SCR 342 at 371 (“*Mahé*”).

99. In *Mahé*, the Supreme Court of Canada recognized that “minority language representatives should have exclusive authority to make decisions relating to the minority language instruction and facilities, including:

- a) expenditures of funds planned for such instruction and facilities;
- b) appointment and direction of those responsible for the administration of such instruction and facilities;
- c) establishment of programs of instruction;
- d) recruitment and assignment of teachers and other personnel; and
- e) making of agreements for education and services for minority language pupils” (*Mahé* at 377).

100. The persons who exercise the power of management and control over minority language instruction and facilities are those identified by s. 23 of the *Charter* or such persons designated by them as their representatives (*Mahé* at 379).

101. The use of the language of the minority and other languages by and in minority language school boards and their schools go to the heart of the linguistic and cultural concerns protected by s. 23 of the *Charter*.

102. Section 23 of the *Charter* notably enables minority language communities to create and maintain an environment in which staff, students, families and members of the minority language community are immersed in the language of the minority, “right down to the posters on the wall” (*Reference re Public Schools Act (Man)*, s 79(3), (4) and (7), [1993] 1 SCR 839 at 854-855).

b) The language of internal communications and related documents

103. The CFL, as amended by Bill 96, requires that English language school boards use French, or both French and English together, in a wide range of internal written communications and documents, including in (i) internal written communications between more than two persons not connected to teaching, and (ii) written communications between the employer and staff members and various documents in the employment relationship.

104. English language school boards are bodies recognized under s. 29.1 of the CFL.

105. Section 26 of the CFL, as amended by s. 16 of Bill 96 and which enters into force one year after June 1, 2022, notably provides that bodies recognized under s. 29.1 may use French, or both French and English together, when writing in “their documents” and “internal communications” (emphasis underlined):

26. The bodies and institutions recognized under section 29.1 may use when writing both the official language and another language in their documents, the services they provide and the use of their technological means, their names, their internal communications and their communications with each other, as well as in the notices of meeting, agendas and minutes of their deliberative assemblies. They may also use that other language in their oral communications without having to use the official language at the same time, provided they remain able to comply with section 23.

26. Les organismes et les établissements reconnus en vertu de l'article 29.1 peuvent utiliser, lorsqu'ils écrivent, à la fois la langue officielle et une autre langue dans leurs documents, leur prestation de services et l'utilisation de leurs moyens technologiques, dans leur dénomination, leurs communications internes et leurs communications entre eux, de même que dans les avis de convocations, les ordres du jour et les procès-verbaux de leurs assemblées délibérantes. Ils peuvent également utiliser cette autre langue dans leurs communications orales sans avoir à utiliser en même temps la langue officielle, pour autant qu'ils demeurent en mesure de se conformer à l'article 23.

In the recognized bodies and institutions, two persons may use what language they choose in written communications to one another.

Au sein de ces organismes et établissements, deux personnes peuvent, dans leurs communications écrites entre elles, utiliser la langue de

However, a body or institution shall, at the request of a person required to consult such a communication in the course of his duties, prepare a French version of it. Moreover, persons may, within those bodies and institutions, use the language of their choice in oral communications with each other.

leur choix. Une version française de ces communications doit cependant être établie par l'organisme ou l'établissement à la demande de toute personne qui doit en prendre connaissance dans l'exercice de ses fonctions. De plus, des personnes peuvent, au sein de ces organismes et établissements, utiliser la langue de leur choix dans les communications orales entre elles.

106. Section 91 of the CFL, as amended by s. 66 of Bill 96, clarifies the requirements applicable where the CFL authorizes the drafting of texts or documents in both French and another language, as follows:

91. Where this Act authorizes the drafting of texts or documents both in French and in one or more other languages, the French version must be displayed at least as prominently as every other language.

91. Dans les cas où la présente loi autorise la rédaction de textes ou de documents à la fois en français et dans une ou plusieurs autres langues, le français doit figurer d'une façon au moins aussi évidente que toute autre langue.

Where, in accordance with the first paragraph, a text or document is drafted in French and in another language, the French version must be understandable without having to refer to a version in another language.

Lorsque, conformément au premier alinéa, un texte ou un document est rédigé en français et dans une autre langue, la version française doit pouvoir être comprise sans se reporter à une version dans une autre langue.

Where there is a discrepancy between the French version and a version in another language of such a text or document, the adhering party or the consumer, in the case of a contract of adhesion or a consumer contract, or, in any other case, the person who did not draft the text or document may invoke either version, according to his interests.

En cas de divergence entre la version française et celle dans une autre langue d'un tel texte ou d'un tel document, l'adhérent ou le consommateur, lorsqu'il s'agit d'un contrat d'adhésion ou d'un contrat de consommation, ou, dans les autres cas, la personne qui ne l'a pas rédigé, peut invoquer l'une ou l'autre des versions, selon ses intérêts.

107. Section 26 of the CFL, as amended by s. 16 of Bill 96, is subject to the exception provided at s. 28 of the CFL, as follows:

28. Notwithstanding sections 23 and 26, school bodies recognized under section 29.1 may use the language of instruction in their communications connected with teaching without having

28. Malgré les articles 23 et 26, les organismes scolaires reconnus en vertu de l'article 29.1 peuvent, dans leurs communications d'ordre pédagogique, utiliser la langue

to use the official language at the same time.

d'enseignement sans avoir à utiliser en même temps la langue officielle.

108. The effect of ss. 26, 28 and 91 of the CFL, as amended by Bill 96, is to require that English language school boards use French, or both French and English together, in all internal written communications involving more than two people and documents, that are not connected to teaching (“*d’ordre pédagogique*”).

109. Furthermore, s. 41 of the CFL, as amended by s. 29 of Bill 96, provides for the use of French, or both French and English together, in various communications and documents between the employer and staff, as follows:

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41. L’employeur doit respecter le droit du travailleur d’exercer ses activités en français; il est en conséquence notamment tenu :

1° de voir à ce que toute offre d’emploi, de mutation ou de promotion qu’il diffuse le soit en français;

2° de voir à ce que tout contrat individuel de travail qu’il conclut par écrit soit rédigé en français;

3° d’utiliser le français dans les communications écrites, même celles suivant la fin du lien d’emploi, qu’il adresse à son personnel, à une partie de celui-ci, à un travailleur en particulier ou à une association de travailleurs représentant son personnel ou une partie de celui-ci;

4° de voir à ce que les documents visés ci-dessous qu’il rend disponibles soient rédigés en français et, s’il les rend aussi disponibles dans une autre langue, à ce que leur version française soit accessible dans des conditions au moins aussi favorables:

a) les formulaires de demande d’emploi;

b) les documents ayant trait aux conditions de travail;

c) les documents de formation produits à l’intention de son personnel.

Malgré le paragraphe 2° du premier alinéa, les parties au contrat individuel de travail qui est un contrat d'adhésion peuvent être liées seulement par sa version dans une autre langue que le français si, après avoir pris connaissance de sa version française, telle est leur volonté expresse. Dans les autres cas, un contrat individuel de travail peut être rédigé exclusivement dans une autre langue que le français si telle est la volonté expresse des parties.

Malgré le paragraphe 3° du premier alinéa, l'employeur peut communiquer par écrit exclusivement dans une autre langue que le français avec un travailleur lorsque celui-ci lui en a fait la demande.

110. Section 41 of the CFL, as amended by s. 29 of Bill 96, must be read alongside s. 89 of the CFL, as amended by s. 64 of Bill 96, which provides:

89. Where this Act does not require the use of the official language exclusively, the official language and another language may be used together.

89. Dans les cas où la présente loi n'exige pas l'usage exclusif de la langue officielle, on peut continuer à employer à la fois la langue officielle et une autre langue.

Nothing in the first paragraph authorizes an agency of the civil administration to depart from the obligations incumbent on it under section 13.1.

Le premier alinéa n'a pas pour effet d'autoriser un organisme de l'Administration à déroger aux obligations qui lui incombent en vertu de l'article 13.1.

111. The effect of ss. 41 and 89 of the CFL, as amended by Bill 96, is to require that English language school boards use French, or both French and English together, with their staff, specifically in:

- a) offers of employment, promotion and transfer,
- b) individual employment contracts (except at the express wish of the parties),
- c) written communications with staff (except with a staff member that requests otherwise), and
- d) employment application forms, documents on conditions of employment, and training documents produced for the staff.

112. By imposing the use of French, or both French and English together, in internal written communications and documents, as well as written

communications between the employer and staff members and various documents in the employment relationship, ss. 26 and 41 of the CFL and the amendments thereto at ss. 16 and 29 of Bill 96 infringe the right to management and control over linguistic and cultural concerns under s. 23 of the *Charter*.

113. Furthermore, ss. 26 and 41 of the CFL and the amendments thereto at ss. 16 and 29 of Bill 96 create disincentives to using the language of the minority, English, within the very institutions intended to protect and promote its use under s. 23 of the *Charter* by imposing the burden of translation on the school board or staff members who wish to use English. These provisions thereby infringe s. 23 of the *Charter*.

c) The language of regulations and other documents of the council of commissioners

114. Section 8 of the CFL, as amended by s. 5 of Bill 96, provides:

8. Regulations and other similar acts to which section 133 of the Constitution Act, 1867 does not apply, such as municipal by-laws, shall be drawn up, adopted and published exclusively in French.

8. Les règlements et les autres actes de nature similaire auxquels ne s'applique pas l'article 133 de la Loi constitutionnelle de 1867, tels que les règlements municipaux, doivent être rédigés, adoptés et publiés exclusivement en français.

Bodies and institutions recognized under section 29.1 may draw up, adopt and publish those acts in both French and another language; in the case of a discrepancy, the French text of such an act shall prevail over the text in another language.

Les organismes et les établissements reconnus en vertu de l'article 29.1 peuvent rédiger, adopter et publier ces actes à la fois en français et dans une autre langue; en cas de divergence, le texte français d'un tel acte prévaut sur celui dans une autre langue.

115. Section 26 of the CFL, as amended by s. 16 of Bill 96 and reproduced above, provides that a body recognized under s. 29.1 may use French, or both French and another language, in its "documents", "internal written communications", and its "notices of meeting, agendas and minutes of their deliberative assemblies".

116. The effect of ss. 8 and 26, as amended by Bill 96, is to require that the councils of commissioners of English language school boards, which are the representatives designated by rightsholders under s. 23 of the *Charter* to exercise the right to management and control, use French, or both French and English together, in their internal written communications, notices of meetings, agendas and minutes of council meetings, and regulations or similar acts adopted by the council of commissioners.

117. For instance, s. 26 requires that written communications from the Chair to the commissioners be drafted in French, or in both French and English together.

118. The right to management and control under s. 23 of the *Charter* includes the exclusive authority to make decisions regarding the use of the language of the minority and other languages by the representatives designated by rightsholders to exercise s. 23 rights.

119. By requiring the use of French, or both French and English together, in the internal written communications, notices of meeting, agendas and minutes of council meetings, regulations or similar acts, and documents of the council of commissioners, ss. 8 and 26 of the CFL, as amended by Bill 96, infringe the right to management and control over linguistic and cultural concerns under s. 23 of the *Charter*.

120. The requirement to use French, or both French and English together, in the internal written communications, notices of meeting, agendas and minutes of council meetings, regulations or similar acts, and documents of the council of commissioners disincentivizes the use of English by the very persons designated by rightsholders to exercise their rights under s. 23 of the *Charter*, by imposing the burden of translation on the school board, infringing s. 23 of the *Charter*.

121. The requirement that the French version of regulations or similar acts adopted by the council of commissioners prevail in case of discrepancy disincentivizes the use of English, and infringes the right of management and control over linguistic and cultural concerns under s. 23 of the *Charter*.

d) The language of written communications, contracts and related documents with other recognized bodies, organisations, businesses, and members of the English-speaking community

122. Section 26 of the CFL, as amended by s. 16 of Bill 96 (and which enters into force one year after June 1, 2022) and reproduced above, provides that bodies and institutions recognized under s. 29.1 of the CFL may use French, or both French and English together, in their “communications with each other”.

123. Section 29.1 of the CFL provides:

29.1. English language school service centres⁴ and the centre de services scolaire du Littoral are recognized school bodies.

The Office shall recognize, at the request of the municipality, body or institution,

(1) a municipality of which more than half the residents have English as their mother tongue;

29.1. Les centres de services scolaire anglophones et le centre de services scolaire du Littoral sont des organismes scolaires reconnus.

L’Office doit reconnaître, à sa demande:

1° une municipalité, lorsque plus de la moitié des résidents de son territoire sont de langue maternelle anglaise;

⁴ Bill 40 amended this provision to replace “English language school boards” by “English language school service centres”, but Bill 40 has been stayed in its application to English language school boards since August 10, 2020.

(2) a body under the authority of one or more municipalities that participates in the administration of their territory, where each such municipality is a recognized municipality; or

2° un organisme relevant de l'autorité d'une ou de plusieurs municipalités et participant à l'administration de leur territoire, lorsque chacune de ces municipalités est déjà reconnue;

(3) a health and social services institution listed in the Schedule, where it provides services to persons who, in the majority, speak a language other than French.

3° un établissement de services de santé et de services sociaux visé à l'Annexe, lorsqu'il fournit ses services à des personnes en majorité d'une langue autre que le français.

The Government may, at the request of a body or institution that no longer satisfies the condition which enabled it to obtain the recognition of the Office, withdraw such recognition if it considers it appropriate in the circumstances and after having consulted the Office. Such a request shall be made to the Office, which shall transmit it to the Government with a copy of the record. The Government shall inform the Office and the body or institution of its decision.

Le gouvernement peut, sur demande de l'organisme ou de l'établissement qui ne satisfait plus à la condition qui lui a permis d'obtenir la reconnaissance de l'Office, retirer celle-ci s'il le juge approprié compte tenu des circonstances et après avoir consulté l'Office. Cette demande est faite auprès de l'Office qui la transmet au gouvernement avec copie du dossier. Ce dernier informe l'Office et l'organisme ou l'établissement de sa décision.

124. The effect of s. 26 and 29.1 of the CFL, as amended by Bill 96, is to require that English language school boards use French, or both French and English together, when communicating with other English language school boards, as well as other recognized bodies, such as municipalities and listed health and social services institutions that serve an English-speaking majority.

125. Section 16 of the CFL provides:

16. The civil administration shall use the official language in its written communications with other governments and with legal persons established in Québec.

16. Dans ses communications écrites avec les autres gouvernements et avec les personnes morales établies au Québec, l'Administration utilise la langue officielle.

126. Section 16.1 of the CFL, as enacted by s. 8 of Bill 96 and which comes into force one year after June 1, 2022, provides:

16.1. Section 16 applies to the civil administration's written communications with the operator of an enterprise as if the operator were a legal person and with the necessary modifications.

16.1. L'article 16 s'applique aux communications écrites de l'Administration avec l'exploitant d'une entreprise comme s'il s'agissait d'une personne morale et compte tenu des autres adaptations nécessaires.

127. Schedule I of the CFL, as amended by s. 119 of Bill 96, defines the “civil administration” so as to include “school bodies”, including “school service centres established under the *Education Act*”.

128. The effect of ss. 16, 16.1 and Schedule I of the CFL, as amended by Bill 96, read alongside s. 89 of the CFL, as amended by s. 64 of Bill 96 and reproduced above, is to require that English language school boards use French, or both French and English together, in their written communications with governments other than the Québec government, legal persons and the operators of an enterprise.

129. This notably includes written communications with:

- (a) the federal government, which is required under the *Constitution Act, 1982* to provide services in both English and French;
- (b) non-profit organisations and businesses of the English-speaking community, and
- (c) businesses that provide services to an English-speaking school board and its schools.

130. Sections 21, 21.1, 21.2, 21.3, 21.4 and 21.7 of the CFL, as amended by ss. 13 and 14 of Bill 96 and which come into force one year after June 1, 2022, provide:

21. Contracts entered into by the civil administration, including the related sub-contracts, shall be drawn up exclusively in the official language.

21. Les contrats conclus par l'Administration, y compris ceux qui s'y rattachent en sous-traitance, sont rédigés exclusivement dans la langue officielle.

Loan contracts may nevertheless be drawn up both in French and in another language. The same applies to financial instruments and contracts whose object is the management of financial risks, including currency exchange or interest rate exchange agreements, contracts for the purchase or sale of options, or futures contracts.

Les contrats d'emprunt peuvent néanmoins être rédigés à la fois en français et dans une autre langue. Il en est de même des instruments et des contrats financiers qui ont pour objet la gestion des risques financiers, notamment les conventions d'échange de devises ou de taux d'intérêt, les contrats prévoyant l'achat ou la vente d'une option et les contrats à terme.

21.1. The agreements listed below shall be drawn up in French; a version in another language may be attached to them:

21.1. Les ententes énumérées ci-dessous sont rédigées en français; une version dans une autre langue peut leur être jointe :

(1) a Canadian intergovernmental agreement within the meaning of section 3.6.2 of the Act respecting the

1° une entente intergouvernementale canadienne au sens de l'article 3.6.2 de la Loi sur le ministère du Conseil exécutif (chapitre M-30);

Ministère du Conseil exécutif (chapter M-30); or

(2) an international agreement within the meaning of the Act respecting the Ministère des Relations internationales (chapter M-25.1.1) or an agreement referred to in section 23 or 24 of that Act.

21.2. An agreement relating to Native affairs referred to in section 3.48 of the Act respecting the Ministère du Conseil exécutif (chapter M-30) shall be drawn up in French; a version in another language may be attached to it.

21.3. The provisions of section 21, 21.1 or 21.2 apply to the written documents listed below according to whether they relate to a contract referred to in section 21 or an agreement referred to in section 21.1 or 21.2:

(1) written documents sent to the civil administration to enter into a contract or agreement with it;

(2) written documents related to a contract or agreement to which the civil administration is a party; and

(3) written documents sent, under such a contract or agreement, by one of the parties to the contract or agreement to another.

Sections 16 and 16.1 do not apply to a communication that is also a written document referred to in this section.

21.4. A version in a language other than French may be attached to the contracts and other related written documents referred to respectively in sections 21 and 21.3

(1) where the civil administration enters into a contract in Québec with

2° une entente internationale au sens de la Loi sur le ministère des Relations internationales (chapitre M-25.1.1) ou une entente visée à l'article 23 ou à l'article 24 de cette loi.

21.2. Une entente en matière d'affaires autochtones visée à l'article 3.48 de la Loi sur le ministère du Conseil exécutif (chapitre M-30) est rédigée en français; une version dans une autre langue peut y être jointe.

21.3. Les dispositions de l'article 21, 21.1 ou 21.2 s'appliquent aux écrits énumérés ci-dessous selon qu'ils sont relatifs à un contrat visé à l'article 21 ou à une entente visée à l'article 21.1 ou 21.2 :

1° les écrits transmis à l'Administration pour conclure un contrat ou une entente avec elle;

2° les écrits qui se rattachent à un contrat ou à une entente auxquels est partie l'Administration;

3° les écrits transmis, en vertu d'un tel contrat ou d'une telle entente, par une partie à ce contrat ou à cette entente à une autre.

Les articles 16 et 16.1 ne s'appliquent pas à la communication qui est également un écrit visé au présent article.

21.4. Une version dans une autre langue que le français peut être jointe aux contrats et aux autres écrits qui leur sont relatifs visés respectivement aux articles 21 et 21.3 dans chacune des situations suivantes:

1° lorsque l'Administration contracte au Québec avec l'un des cocontractants suivants:

(a) a natural person not residing in Québec;

a) une personne physique qui ne réside pas au Québec;

(b) a legal person or an enterprise not required to be registered under the Act respecting the legal publicity of enterprises (chapter P-44.1) and whose head office is located in a State where French is not an official language;

b) une personne morale ou une entreprise qui n'est pas soumise à l'obligation d'immatriculation prévue par la Loi sur la publicité légale des entreprises (chapitre P-44.1) et dont le siège est situé dans un État où le français n'est pas une langue officielle;

(c) a person or body exempt from the application of this Act under section 95; or

c) une personne ou un organisme exempté de l'application de la présente loi en vertu de l'article 95;

(d) a legal person or an enterprise whose sole establishment is situated on a reserve, a settlement or lands referred to in section 97; and

d) une personne morale ou une entreprise dont le seul établissement est situé dans une réserve, dans un établissement ou sur des terres visés à l'article 97;

(2) in any other situation determined by government regulation.

2° dans toute autre situation prévue par règlement du gouvernement.

For the purposes of this Act, "State" has the meaning assigned by the first paragraph of article 3077 of the Civil Code.

Pour l'application de la présente loi, le mot « État » s'entend au sens qui lui est donné par le premier alinéa de l'article 3077 du Code civil.

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21.7. Un organisme de l'Administration est tenu de rendre disponible une version française de toute partie d'un contrat ou d'un écrit rédigé seulement dans une autre langue en vertu de l'article 21.5 ou 21.6 aux membres de son personnel dont les fonctions requièrent qu'ils prennent connaissance de cette partie d'un tel contrat ou d'un tel écrit.

Le premier alinéa ne s'applique pas aux membres du personnel de l'organisme qui participent à la négociation ou à la rédaction de ce contrat ou de ce document.

131. The effect of ss. 21, 21.1-21.4 and 21.7 of the CFL, as amended by Bill 96, is to require that English language school boards draw up contracts and agreements and related documents in French exclusively, or in some instances, in French with an English version attached. This requirement applies to

contracts, agreements and related documents with non-profit organizations, businesses and members of the English-speaking community.

132. Section 23 of the *Charter* has a collective aspect; its purpose is to protect and promote the vitality of the minority language community.

133. The right to management and control under s. 23 of the *Charter* includes the exclusive authority to make decisions regarding the use of the language of the minority and other languages by the school board, including decisions regarding the language of communications with the minority language community, including other minority language school boards, organisations, businesses and individual members of the minority language community.

134. The right to management and control under s. 23 of the *Charter* includes the exclusive authority to make decisions regarding the language of communications and agreements with the organisations, businesses and individuals that it chooses to collaborate with in the provision of minority language education.

135. By imposing the use of French, or both French and English together, in written communications with other recognized bodies, s. 26 of the CFL, as amended by s. 16 of Bill 96, infringes s. 23 of the *Charter*.

136. By imposing the use of French, or both French and English together, in written communications with governments other than the Québec government, legal persons and operators of an enterprise, ss. 16 and 16.1 of the CFL, as amended by s. 8 of Bill 96, infringe s. 23 of the *Charter*.

137. By imposing the use of French exclusively, or in some instances, the use of French or both French and English together, in contracts, agreements and related documents, ss. 21, 21.1 to 21.4 and 21.7 of the CFL, as amended by ss. 13 and 14 of Bill 96, infringe s. 23 of the *Charter*.

138. The requirement to use French exclusively denies minority language school boards the right to use the language of the minority and is incompatible with s. 23 of the *Charter*.

139. The requirement to use French, or both French and English together, disincentivizes the use of English in English language school boards' written communications, contracts and agreements with the organisations, businesses and individuals that collaborate with them in the provision of minority language education, including other members of the minority language community itself, and infringes s. 23 of the *Charter*.

e) The language of services

140. Section 26 of the CFL, as amended by s. 16 of Bill 96 (which enters into force one year after June 1, 2022) and is reproduced above, requires that an English language school board, "when writing", use French, or both French and English together, in "the services they provide".

141. Section 23 of the CFL provides:

23. The bodies and institutions recognized under section 29.1 must ensure that their services to the public are available in the official language.

23. Les organismes et les établissements reconnus en vertu de l'article 29.1 doivent assurer que leurs services au public sont disponibles dans la langue officielle.

They must draw up their notices, communications and printed matter intended for the public in the official language.

Ils doivent rédiger dans la langue officielle les avis, communications et imprimés destinés au public.

They must devise the necessary measures to make their services to the public available in the official language, and criteria and procedures for verifying knowledge of the official language for the purposes of application of this section. These measures, criteria and procedures are subject to approval by the Office.

Ils doivent élaborer les mesures nécessaires pour que leurs services au public soient disponibles dans la langue officielle ainsi que des critères et des modalités de vérification de la connaissance de la langue officielle aux fins de l'application du présent article. Ces mesures, critères et modalités sont soumis à l'approbation de l'Office.

142. Sections 23 and 26 are subject to s. 28 of the CFL, which provides that the language of instruction may be used exclusively in "communications connected with teaching" (*communications d'ordre pédagogique*).

143. The effect of ss. 23, 26 and 28 of the CFL, as amended by Bill 96, is to require that English language school boards use French, or both French and English together, in the provision of non-pedagogical services.

144. Section 21.11 of the CFL, as enacted by s. 14 of Bill 96, provides:

21.11. Where an agency of the civil administration obtains services from a legal person or an enterprise, it shall require that the services be rendered in French.

21.11. Lorsqu'un organisme de l'Administration obtient des services d'une personne morale ou d'une entreprise, il requiert qu'ils soient rendus en français.

Where the services thus obtained are intended for the public, the agency shall instead require the service provider to comply with the provisions of this Act that would be applicable to the agency if the latter had itself provided the services to the public.

Lorsque les services ainsi obtenus sont destinés au public, l'organisme doit plutôt requérir du prestataire de services qu'il se conforme aux dispositions de la présente loi qui seraient applicables à cet organisme s'il avait lui-même fourni ces services au public.

145. The effect of ss. 21.11, 26, 28 and 89 of the CFL, as amended by Bill 96, is to require that where an English language school board obtains non-pedagogical services from a third party, it must require that the services be rendered in French, or in both French and English together.

146. The provision of education requires far more than teaching; it requires that a variety of non-pedagogical services be offered, such as food and nutrition services, physical and mental health services (school nurse, psychological counselling, etc.), and various support services for special needs students that promote equal access to education for all students. The provision of minority language education requires that non-pedagogical services be provided in the language of the minority.

147. Minority language school boards and their schools also fulfill the purpose of s. 23 of the *Charter* by serving as community hubs, providing services in English to the minority language community, such as access to facilities for community activities and daycare services for the benefit of students, their families, and the minority language community.

148. The right to management and control under s. 23 of the *Charter* includes the exclusive authority to make decisions regarding the use of the language of the minority and other languages in the provision of non-pedagogical services, including where those services are provided by a third party.

149. By imposing the use of French, or both French and English together, in the provision of non-pedagogical services by an English language school board or by a legal person or enterprise providing services to an English language school board, ss. 21.11, 23 and 26 of the CFL, as amended by Bill 96, infringe the right to management and control over linguistic and cultural concerns under s. 23 of the *Charter*.

150. The requirement to use French, or both French and English together, disincentivizes the use of English in the provision of services to the students, families and members of the English-speaking community, infringing s. 23 of the *Charter*.

f) The language of signs and posters within an English language school board and its schools

151. Section 24 of the CFL provides:

24. The bodies and institutions recognized under of section 29.1 may erect signs and posters in both French and another language, the French text predominating.

24. Les organismes et les établissements reconnus en vertu de l'article 29.1 peuvent afficher à la fois en français et dans une autre langue avec prédominance du français.

152. To the extent that s. 24 of the CFL requires that English language school boards use French, or both French and English together with the French text predominating, in signs and posters within the school board and its schools, s. 24 of the CFL infringes the right to management and control over linguistic and cultural concerns in minority language instruction and facilities under s. 23 of the *Charter*.

g) Mechanisms to monitor, and interfere with, the use of French and English in English language school boards

153. Sections 128.6 to 134.6 of the CFL, as enacted by s. 73 of Bill 96, provide:

128.6. A body in the health and social services network or a school body shall, not later than 180 days after the beginning of its activities, send the Office an analysis of its language situation. The analysis shall focus on the compliance with the provisions of this Act of the use of French within the body and on the latter's capacity to meet the other obligations incumbent on it under those provisions.

[...]

128.7. The Office may analyze the language situation in a body referred to in section 128.6 if it considers that the latter is refusing or neglecting to do so.

The Office may then make any inspection or investigation necessary for that analysis.

Before carrying out such an analysis, the Office shall notify in writing a prior notice whose content is that of the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the body and grant it at least 15 days to submit observations.

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128.6. Un organisme du réseau de la santé et des services sociaux ou un organisme scolaire doit, au plus tard 180 jours après le début de ses activités, transmettre à l'Office une analyse de sa situation linguistique. Cette analyse porte sur la conformité avec les dispositions de la présente loi de l'utilisation du français au sein de l'organisme de même que sur la capacité de celui-ci de satisfaire aux autres obligations qui lui incombent en vertu de ces dispositions.

[...]

128.7. L'Office peut procéder à l'analyse de la situation linguistique d'un organisme visé à l'article 128.6 lorsqu'il estime que celui-ci refuse ou néglige d'y procéder.

L'Office peut alors effectuer toute inspection ou toute enquête nécessaire à cette analyse.

Avant de procéder à une telle analyse, l'Office doit notifier par écrit à l'organisme un préavis dont la teneur est celle du préavis prescrit par l'article 5 de la Loi sur la justice administrative (chapitre J-3) et lui accorder un délai d'au moins 15 jours pour présenter ses observations.

128.8. Lorsque l'Office estime, après examen de l'analyse de la situation linguistique d'un organisme visé à l'article 128.6, que l'utilisation du français au sein de cet organisme est conforme aux dispositions de la présente loi et qu'il satisfait aux autres obligations qui lui incombent en vertu de ces dispositions, l'Office lui délivre une attestation de conformité.

[...]

Lorsque l'Office est d'avis qu'il n'y a pas lieu de délivrer une attestation de conformité, il ordonne à l'organisme d'élaborer et de mettre en œuvre un programme de conformité; il lui transmet sans délai une copie de sa décision.

[...]

129. A compliance program shall set out the measures a body intends to implement in order for the use of French in the body to be in compliance with the provisions of this Act and to meet the other obligations incumbent on it under those provisions, in particular as concerns the following:

- (1) internal communications;
- (2) recruitment, hiring, transfer and promotion of staff;
- (3) documents and work tools;
- (4) terminology;
- (5) information technologies; and
- (6) oral and written communications with persons.

The program shall also specify the time within which the intended measures are to be implemented.

130. A body that develops a compliance program shall take into account the characteristics of the sector in which it carries on its activities and, if applicable, the recognition obtained under section 29.1.

131. A body that is required to develop a compliance program shall send it to the Office within three months after receiving a copy of the Office's or the Minister's decision.

132. The Office shall approve the compliance program sent to it in accordance with section 131 if of the

129. Un programme de conformité prévoit les mesures qu'un organisme entend mettre en œuvre afin que l'utilisation du français dans cet organisme soit conforme aux dispositions de la présente loi et pour satisfaire aux autres obligations qui lui incombent en vertu de ces dispositions, notamment en ce qui a trait aux sujets suivants:

- 1° les communications internes;
- 2° le recrutement, l'embauche, la mutation et la promotion du personnel;
- 3° les documents et les outils de travail;
- 4° la terminologie;
- 5° les technologies de l'information;
- 6° les communications orales et écrites avec les personnes.

Le programme précise, en outre, le délai dans lequel les mesures qu'il prévoit sont mises en œuvre.

130. L'organisme qui élabore un programme de conformité doit tenir compte des particularités du secteur dans lequel il exerce ses activités et, le cas échéant, de la reconnaissance obtenue en vertu de l'article 29.1.

131. L'organisme tenu d'élaborer un programme de conformité doit le transmettre à l'Office dans les trois mois suivant la réception de la copie de la décision de celui-ci ou du ministre.

132. L'Office approuve le programme de conformité qui lui a été transmis conformément à l'article 131, lorsqu'il

opinion that the program is in compliance with the provisions of this division; it shall then send a certificate of approval for the program to the body concerned.

133. Where the Office does not approve a compliance program, it may develop the program to be implemented by the body concerned under the supervision of the Office.

Before developing such a program, the Office shall notify in writing a prior notice whose content is that of the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) to the body and grant it at least 15 days to submit observations.

134. The body shall comply with the measures set out in the compliance program approved or developed by the Office; as long as the body complies with the program, it is deemed to be complying with the provisions of this Act with which the program must bring it into compliance.

134.1. A body that is required to implement a compliance program shall send a report to the Office every 12 months on its implementation.

134.2. The body shall disseminate among its staff the compliance program it must implement, as well as every report sent to the Office under section 134.1.

134.3. A body that does not expect to complete the implementation of a compliance program within the time specified in the program may request an extension from the Office.

The request must be sent to the Office not later than three months before the expiry of the time limit.

est d'avis que ce programme est conforme aux dispositions de la présente section; il transmet alors à l'organisme concerné une attestation d'approbation du programme.

133. Lorsque l'Office n'approuve pas un programme de conformité, il peut élaborer le programme que devra, sous sa surveillance, mettre en œuvre l'organisme concerné.

Avant d'élaborer un tel programme, l'Office doit notifier par écrit à l'organisme un préavis dont la teneur est celle du préavis prescrit par l'article 5 de la Loi sur la justice administrative (chapitre J-3) et lui accorder un délai d'au moins 15 jours pour présenter ses observations.

134. L'organisme doit se conformer aux mesures prévues par le programme de conformité approuvé ou élaboré par l'Office; tant qu'il s'y conforme, l'organisme est réputé se conformer aux dispositions de la présente loi auxquelles le programme doit l'amener à se conformer.

134.1. L'organisme tenu de mettre en œuvre un programme de conformité transmet à l'Office, tous les 12 mois, un rapport de cette mise en œuvre.

134.2. L'organisme diffuse auprès de son personnel le programme de conformité qu'il doit mettre en œuvre, de même que chaque rapport transmis à l'Office en vertu de l'article 134.1.

134.3. L'organisme qui prévoit ne pas avoir complété la mise en œuvre d'un programme de conformité dans le délai qui y est prévu peut en demander la prolongation à l'Office.

La demande doit être transmise à l'Office au plus tard trois mois avant l'expiration du délai.

English version unavailable at this time.

134.4. Lorsque l'Office est d'avis, à la suite de la mise en œuvre complète d'un programme de conformité par un organisme, que l'utilisation du français au sein de cet organisme est conforme aux dispositions de la présente loi et qu'il satisfait aux autres obligations qui lui incombent en vertu de ces dispositions, l'Office lui délivre une attestation de conformité.

[...]

134.5. An agency of the civil administration to which a certificate of compliance has been issued under the first paragraph of section 128.8 or 134.4 shall, every five years after its issue, submit a written report to the Office on the agency's compliance with the provisions of this Act and the measures it is implementing to comply with those provisions.

134.5. L'organisme de l'Administration auquel une attestation de conformité a été délivrée en vertu du premier alinéa de l'article 128.8 ou 134.4 doit, tous les cinq ans à compter de cette délivrance, faire rapport, par écrit, à l'Office de sa conformité avec les dispositions de la présente loi et des mesures qu'il met en place pour s'assurer du respect de ces dispositions.

The report must also include the matters referred to in the first paragraph of section 129.

Le rapport traite, en outre, des sujets visés au premier alinéa de l'article 129.

Where the Office has reasons to believe that such an agency is failing to comply with this Act, it may request it to submit such a report. The agency shall send the report to the Office within the time specified by the Office.

L'Office, lorsqu'il a des motifs de croire qu'un tel organisme fait défaut de se conformer à la présente loi, peut lui demander de faire un tel rapport. L'organisme doit, dans le délai fixé par l'Office, lui transmettre ce rapport.

English version unavailable at this time.

134.6. Lorsque l'Office estime, après examen du rapport prévu au premier alinéa de l'article 134.5 ou à l'occasion du traitement d'une plainte, que l'utilisation du français au sein de cet organisme d'un organisme de l'Administration auquel une attestation de conformité a été délivrée en vertu du premier alinéa de l'article 128.8 ou 134.4 n'est plus conforme aux dispositions de la présente loi ou qu'il ne satisfait plus aux autres obligations qui lui incombent en vertu de ces dispositions, l'Office peut suspendre l'attestation de conformité qu'il lui avait délivrée cette attestation en plus de lui

ordonner, en vertu de l'article 128.8, d'élaborer et de mettre en œuvre un programme de conformité.

L'Office peut également suspendre l'attestation de conformité lorsque l'organisme ne se conforme pas à une ordonnance rendue par le ministre en vertu de l'article 128.3 ou par l'Office en vertu de l'article 177.

Les autres dispositions de la présente section sont alors applicables, compte tenu des adaptations nécessaires.

154. The effect of ss. 128.6 to 134.6 of the CFL, as enacted by s. 73 of Bill 96, is notably to provide that:

- (a) English language school boards submit an analysis of their linguistic situation to the *Office québécois de la langue française* ("OQLF") (s. 128.6);
- (b) if an English language school board does not submit an analysis of its linguistic situation, the OQLF may conduct the analysis itself, and make any inspection or investigation necessary for that analysis (s. 128.7);
- (c) the OQLF provides a *certificate of compliance* if it determines that the English language school board is complying with the requirements of the CFL pertaining to the use of English and French (s. 128.8);
- (d) the OQLF orders the English language school board to develop and implement a *compliance program* if the OQLF is of the opinion that a certificate of compliance should not be issued, which compliance program must be submitted within 3 months (ss. 128.8, 131);
 - i. the compliance program must set out measures to meet the obligations regarding the use of French in the CFL, including measures regarding internal communications, recruitment, hiring, transfer and promotion of staff, documents and work tools, information technologies, and oral and written communication with persons (s. 129);
 - ii. the OQLF determines whether the compliance program complies with the CFL, failing which it may develop the compliance program itself which must be implemented by the English language school board (ss. 133, 134);
 - iii. an English language school board that is subject to a compliance program must provide a report every 12 months (s. 134.1);
 - iv. after the implementation of the compliance program, the OQLF issues a certificate of compliance if it considers that the use of

French by the English language school board is in compliance with the CFL (s.134.4);

- (e) an English language school board that holds a certificate of compliance must report to the OQLF every 5 years, or whenever the OQLF has reason to believe that the board is not complying with the CFL (s. 134.5); and
- (f) upon consideration of the report, the OQLF may decide to suspend the certificate of compliance and require the implementation of a compliance program (s. 134.6).

155. The right to management and control under s. 23 of the *Charter* includes the exclusive authority to make decisions pertaining to the use of the language of the minority and other languages by and in minority language school boards and schools.

156. By establishing a process enabling the OQLF, an institution of the majority mandated to protect and promote the use of the language of the *majority*, to monitor and make decisions regarding the use of the language of the minority and other languages in English language school boards, ss. 128.6 to 134.6 infringe s. 23 of the *Charter*.

157. Furthermore, to the extent that ss. 128.6 to 134.6, as enacted by s. 73 of Bill 96, mandate the OQLF to effectively enforce compliance with provisions of the CFL that impermissibly infringe s. 23 of the *Charter*, ss. 128.6 to 134.6 of the CFL infringe s. 23 of the *Charter*.

h) The infringements of s. 23 of the *Charter* are not justified under s. 1 of the *Charter*

158. The infringements of s. 23 of the *Charter* caused by ss. 8, 16, 16.1, 21, 21.1, 21.2, 21.3, 21.4, 21.7, 21.11, 23, 24, 26, 41 and 128.6 to 134.6 of the CFL, as amended by Bill 96, are not justified under s. 1 of the *Charter*.

159. The burden to demonstrate that a *Charter* infringement is justified under s. 1 falls on the Government.

i) Remedy

160. The Applicants request that the following provisions be declared of no force or effect to the extent of their inconsistency with s. 23 of the *Charter* pursuant to s. 52 of the *Constitution Act, 1982*, or in the alternative, that the same provisions be declared constitutionally inapplicable to English language school boards:

- a) s. 8 of the CFL and the amendments thereto at s. 5 of Bill 96;
- b) s. 16 of the CFL;
- c) s. 8 of Bill 96, enacting s. 16.1 of the CFL;
- d) s. 21 of the CFL and the amendments thereto at s. 13 of Bill 96;
- e) ss. 14 of Bill 96, enacting ss. 21.1, 21.2, 21.3, 21.4, 21.7 and 21.11;
- f) s. 23 of the CFL;

- g) s. 24 of the CFL;
- h) s. 26 of the CFL and the amendments thereto at s. 16 of Bill 96;
- i) s. 41 of the CFL and the amendments thereto at s. 29 of Bill 96;
- j) s. 73 of Bill 96, enacting ss. 128.6 to 134.6 of the CFL;

161. Sections 14, 17, 18, 18.1, 19 and 22 of the CFL, as amended by ss. 9, 10 and 11 of Bill 96, require that agencies of the civil administration use French *exclusively* in: (a) their names, (b) written communications between agencies of the civil administration, (c) oral and written internal communications, (d) oral and written communications between personnel members of an agency of the civil administration, (e) the notices of meeting, agendas and minutes of all deliberative assemblies and (f) signs and posters of an agency of the civil administration.

162. These provisions would apply to an English language school board but for ss. 24 and 26 of the CFL and the amendments thereto at s. 16 of Bill 96. In the event that ss. 24 and 26 of the CFL and the amendments thereto at s. 16 of Bill 96 are declared invalid on the basis of inconsistency with s. 23 of the *Charter*, the above-noted provisions requiring the exclusive use of French would necessarily also infringe s. 23 of the *Charter* if applied to English language school boards.

163. In order to avoid the application of these provisions to English language school boards as a result of declaring ss. 24 and 26 of the CFL, and the amendments thereto at s. 16 of Bill 96, invalid, the Applicants further request that the following provisions be declared of no force or effect to the extent of their inconsistency with s. 23 of the *Charter*, or in the alternative, that they be declared constitutionally inapplicable to English language school boards: ss. 14, 17, 18, 18.1, 19 and 22 of the CFL, as amended by ss. 9, 10 and 11 of Bill 96.

WHEREFORE, MAY IT PLEASE THE COURT TO:

GRANT the present application;

DECLARE that the following provisions of Bill 96 are incompatible with s. 133 of the *Constitution Act, 1867*, and are therefore of no force or effect pursuant to section 52 of the *Constitution Act, 1982*:

- a) s. 5 of Bill 96 in so far as it enacts ss. 7.1, 9-13 of the CFL;
- b) s. 116 of Bill 96, enacting s. 208.6 of the CFL;
- c) s. 158.2 of Bill 96, enacting s. 88.1 of the CJA;
- d) s. 162.2 of Bill 96, amending s. 6 of the *Regulation respecting the selection procedure for provincial judges*;
- e) s. 162.5 of Bill 96, amending s. 9 of the *Regulation respecting the selection procedure for provincial judges*;
- f) s. 162.6 of Bill 96 enacting s. 9.1 of the *Regulation respecting the selection procedure for provincial judges*; and
- g) s. 162.7 of Bill 96 amending s. 25 of the *Regulation respecting the selection procedure for provincial judges*;

DECLARE that s. 159 of Bill 96 is *ultra vires* the National Assembly of Québec, inconsistent with the Constitution of Canada, and is therefore of no force or effect pursuant to section 52 of the *Constitution Act, 1982*;

OR IN THE ALTERNATIVE, DECLARE that the National Assembly of Québec lacks the jurisdiction to unilaterally amend s. 133 of the *Constitution Act, 1867*;

OR IN THE ALTERNATIVE, DECLARE that the National Assembly cannot, by ordinary legislation, modify the interpretation of s. 133 of the *Constitution Act, 1867*;

DECLARE that the following provisions impermissibly infringe s. 23 of the *Charter*, and are therefore of no force or effect to the extent of the inconsistency pursuant to s. 52 of the *Constitution Act, 1982*:

- a) s. 8 of the CFL and the amendments thereto at s. 5 of Bill 96;
- b) s. 16 of the CFL;
- c) s. 8 of Bill 96, enacting s. 16.1 of the CFL;
- d) s. 21 of the CFL and the amendments thereto at s. 13 of Bill 96;
- e) s. 14 of Bill 96, enacting ss. 21.1, 21.2, 21.3, 21.4, 21.7 and 21.11 of the CFL;
- f) s. 23 of the CFL;
- g) s. 24 of the CFL;
- h) s. 26 of the CFL and the amendments thereto at s. 16 of Bill 96;
- i) s. 41 of the CFL and the amendments thereto at s. 29 of Bill 96;
and
- j) s. 73 of Bill 96, enacting ss. 128.6 to 134.6 of the CFL;

and in the event that s. 26 of the CFL and/or the amendments thereto at s. 16 of Bill 96 are declared of no force or effect:

- k) s. 14 of the CFL;
- l) s. 17 of the CFL;
- m) s. 18 of the CFL, as amended by s. 9 of Bill 96;
- n) s. 18.1 of the CFL, as enacted by s. 10 of Bill 96;
- o) s. 19 of the CFL, as amended by s. 11 of Bill 96; and
- p) s. 22 of the CFL.

IN THE ALTERNATIVE, DECLARE that the following provisions impermissibly infringe s. 23 of the *Charter*, and are therefore constitutionally inapplicable to English language school boards to the extent of the inconsistency pursuant to s. 52 of the *Constitution Act, 1982*:

- a) s. 8 of the CFL and the amendments thereto at s. 5 of Bill 96;
- b) s. 16 of the CFL;
- c) s. 8 of Bill 96, enacting s. 16.1 of the CFL;
- d) s. 21 of the CFL and the amendments thereto at s. 13 of Bill 96;

- e) s. 14 of Bill 96, enacting ss. 21.1, 21.2, 21.3, 21.4, 21.7 and 21.11 of the CFL;
- f) s. 23 of the CFL;
- g) s. 24 of the CFL;
- h) s. 26 of the CFL and the amendments thereto at s. 16 of Bill 96;
- i) s. 41 of the CFL and the amendments thereto at s. 29 of Bill 96;
and
- j) s. 73 of Bill 96, enacting ss. 128.6 to 134.6 of the CFL;

and in the event that s. 26 of the CFL and/or the amendments thereto at s. 16 of Bill 96 are declared inapplicable:

- k) s. 14 of the CFL;
- l) s. 17 of the CFL;
- m) s. 18 of the CFL, as amended by s. 9 of Bill 96;
- n) s. 18.1 of the CFL, as enacted by s. 10 of Bill 96;
- o) s. 19 of the CFL, as amended by s. 11 of Bill 96; and
- p) s. 22 of the CFL.

THE WHOLE with costs.

Montréal, this 1st day of June 2022

(s) *Power Law*

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SUMMONS
(articles 145 and following C.C.P.)

Filing of a judicial application

Take notice that the plaintiff has filed this originating application in the office of the Superior Court of Quebec in the judicial district of Montreal.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1, Notre-Dame Street East, Montreal within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgment may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the originating application, the plaintiff intends to use the following exhibits:

P-1: *Journal des débats de la Commission de la culture et de l'éducation* of December 9, 2021, 42nd Leg, 2nd Sess, vol 46, no 4.

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

01 JUN 2022

SUPERIOR COURT (Civil Division)	
PROVINCE OF QUÉBEC DISTRICT OF MONTRÉAL	
NO :	500-17-121195-229
GIUSEPPE ORTONA and ENGLISH-MONTREAL SCHOOL BOARD	Applicants
PROCUREUR GÉNÉRAL DU QUÉBEC	Respondent
APPLICATION FOR JUDICIAL REVIEW AND DECLARATORY JUDGMENT, NOTICE OF CONSTITUTIONAL QUESTION (articles 76, 142 and 529 CCP)	
ORIGINAL	
Bj0922	
Me Mark Power Me Perri Ravon Me Audrey Mayrand Me Juliette Vani Me Giacomo Zucchi gzucchi@powerlaw.ca	
POWER LAW	
JURISTES POWER LAW	
465 St-Jean Street, #800 Montreal Quebec H2Y 2R6 Tel./Fax. : 514-819-6607 www.powerlaw.ca	

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SUPERIOR COURT

(Civil Division)

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

NO :

500-17-121195-229

GIUSEPPE ORTONA

and

ENGLISH-MONTREAL SCHOOL BOARD

Applicants

v.

PROCUREUR GÉNÉRAL DU QUÉBEC

Respondent

**APPLICATION FOR JUDICIAL REVIEW AND
DECLARATORY JUDGMENT, NOTICE OF
CONSTITUTIONAL QUESTION**
(articles 76, 142 and 529 CCP)

COPY

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