

CANADA

SUPERIOR COURT

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
N° :

**ENGLISH MONTREAL SCHOOL BOARD**, domiciled at 6000 Fielding Avenue, in the city and district of Montreal, Province of Quebec, H3X 1T4

and

**PATRICIA R. LATTANZIO**, having an office at 6187 Jarry Street East, in the city and district of Montreal, Province of Quebec, H1P 1W1

Applicants

v.

**PROCUREURE GÉNÉRALE DU QUÉBEC**, having a place of business at 1 Notre-Dame Street East, suite 8.01, in the city and district of Montreal, Province of Quebec, H2Y 1B6

Respondent

and

**COMMISSION SCOLAIRE POINTE-DE-L'ÎLE**, domiciled at 550, 53rd Avenue, in the city and district of Montreal, Province of Quebec, H1A 2T7

**OFFICIER DE LA PUBLICITÉ FONCIÈRE DE LA CIRCONSCRIPTION DE MONTRÉAL**, situated at 2050, de Bleury Street, R.C. 10, in the city and district of Montreal, Province of Quebec, H3A 2J5

Mises-en-cause

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**APPLICATION FOR JUDICIAL REVIEW,  
INTERLOCUTORY STAY AND PROVISIONAL STAY  
(articles 529 and 530 CCP)**

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

**I. INTRODUCTION**

1. First, this is an application for judicial review seeking to quash Order-in-Council 670-2019 and Order-in-Council 671-2019, both dated June 26, 2019 (“Orders-in-Council”), which order the transfer of property lots 1 122 133 and 1 002 921 and the buildings thereupon, belonging to the English Montreal School Board (“EMSB”) and which currently house General Vanier Elementary School (“General Vanier”) and John Paul I Junior High School (“John Paul I”) at the heart of the English-speaking community of Saint-Leonard in Montreal, to the Commission scolaire Pointe-de-l’Île (“CSPI”), effective July 1, 2019. Pursuant to s. 477.1.5 of the *Act*, the transfer of property produces its effects when the notice stating the facts that establish the transfer and containing a description of the immovable concerned is given to the registrar.

2. The grounds for the application for judicial review are that the Orders-in-Council violate section 23 of the *Canadian Charter of Rights and Freedoms*, being Part I of *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11 (“*Charter*”). In deciding to close General Vanier Elementary School and John Paul I Junior High School, the government failed to properly consult the English-speaking community, failed to consider the English-speaking community’s exclusive right to management and control of its educational facilities and show proper deference to its proposals, and failed to take into account the remedial purposes of s. 23.

3. Second, the Applicants seek an interlocutory stay of the Order-in-Council pending the determination of the case on its merits, in light of the serious question to be decided regarding the infringement of s. 23 of the *Charter*, the serious, if not irreparable, harm caused by the closure of two minority language schools in the same community, and the alternative options offered to provide space to the CSPI for the 2019-2020 school year, which support a finding that the balance of convenience favours the Applicants.

4. Third, the Applicants seek a provisional stay of the Orders-in-Council for 10 days pending the determination of the application for an interlocutory stay, in light of the urgent need to prevent the title of the two properties from being registered and the EMSB from being obliged to vacate the buildings.

## **II. THE APPLICANTS**

### **A. EMSB**

5. The EMSB is an English-language school board established in 1998 pursuant to s. 111 of the *Education Act*, CQLR c I-13.3 (“the Act”).
6. The EMSB’s territory encompasses the municipalities of Montreal-West, Hampstead, Côte-Saint-Luc, Mount-Royal, Westmount and Montreal-East, as well as the following boroughs of the City of Montreal: Ahuntsic-Cartierville, Outremont, Villeray-St-Michel-Parc-Extension, Le Plateau Mont-Royal, Ville-Marie, Rosemont-La Petite-Patrie, Mercier-Hochelaga-Maisonneuve, Saint-Leonard, Anjou, Montreal North, Rivière-des-Prairies-Pointe-aux-Trembles, Côte-des-Neiges-Notre-Dame-de-Grâce, Saint-Laurent, and Le Sud-Ouest.
7. With a youth and adult sector population of approximately 42,000 students in 75 schools and centres, the EMSB is the largest English-language school board in Quebec.
8. English-language schools in Quebec are community hubs for the minority linguistic 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).
9. The EMSB is administered by a Council of Commissioners (“EMSB Council”) 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 *Act*.
10. Pursuant to s. 23 of the *Charter*, citizens of Canada who have (1) received their primary school instruction in Canada in English or (2) of whom any child has received or is receiving primary or secondary school instruction in English in Canada, have the right to have all their children receive primary and secondary school instruction in English in Quebec.
11. As elected representatives of citizens who have the right to have their children receive instruction in English in the EMSB’s territory, the EMSB Council exercises their right to management and control under s. 23 of the *Charter*.

### **B. The Applicant Patricia Lattanzio**

12. Ms. Lattanzio resides in Saint-Leonard.
13. Ms. Lattanzio received her primary instruction in English at Honoré-Mercier Elementary School, in Saint-Leonard.
14. As a Canadian citizen who received her primary instruction in English in Canada, Ms. Lattanzio has the constitutional right under s. 23 of the *Charter* to send her children to English-language schools in Quebec.
15. Ms. Lattanzio holds a certificate of eligibility for English-language education under s. 73 of the *Charter of the French Language*, CQLR c C-11.

16. Ms. Lattanzio's three children also attended Honoré-Mercier Elementary School in Saint-Leonard.

17. In 2014, Ms. Lattanzio was elected Commissioner on the EMSB Council representing Saint-Leonard (Ward 8), where John Paul I and General Vanier are located.

### **III. THE FACTS**

#### **C. The Targeted Schools**

##### **A. John Paul I Junior High School**

18. John Paul I Junior High School, located at 8455 Pré-Laurin Street in Saint-Leonard, has operated as a junior high school at the heart of the English-speaking community in Saint-Leonard for at least 18 years.

19. John Paul I is the only EMSB school reserved for junior high school students in the East End.

20. The school building was built in 1977 as appears from the deed of establishment dated July 1, 2018, **Exhibit P-1**.

21. The school building is in excellent condition. The library was recently renovated, classrooms were repainted just last year, and no renovations are planned by EMSB.

##### **B. General Vanier Elementary School**

22. General Vanier Elementary School, located at 4555 Buies Street in Saint-Leonard, has operated as an elementary school at the heart of the English-speaking community in Saint-Leonard since the EMSB was established.

23. The school building was built in 1965, as appears from the deed of establishment dated July 1, 2018, **Exhibit P-2**.

24. The building is in excellent condition. The school yard and parking lot were entirely refurbished two years ago for several hundreds of thousands of dollars. A minor repair to the roof of the building will take place this summer.

#### **D. The Events Prior to the Orders-in-Council**

##### **a) Preliminary Discussions on the CSPI's Needs for Additional Classroom Space in December 2018 and January 2019**

25. On December 14, 2018, Ms. Claudia Landry, Political Advisor for the office of the Minister of Education and Higher Education of Quebec ("the Minister"), contacted Ms. Angela Mancini, Chair of the EMSB, and Mr. Miville Boudreault, Chairman of the CSPI, to determine their availability to discuss classroom sharing and the transfer of immovables, as appears from a copy of the email, **Exhibit P-3**.

26. On December 21, 2018, a conference call took place during which Ms. Landry, Ms. Julie Lussier, Director of the office of the Minister, and Ms. Christine

Mitton, Director of Communications of the office of the Minister, advised Ms. Ann Marie Matheson, Director General of the EMSB, and Ms. Evelyne Alfonsi, Deputy Director General of the EMSB, Mr. Benoît Duhême, Deputy Director General of the EMSB, that the Minister wanted the EMSB to collaborate with the CSPI to help find a solution to its space needs for the 2019-2020 school year. The EMSB agreed to meet with the CSPI to explore options.

27. On January 22, 2019, Mr. Antoine El Khoury, Director General of the CSPI, advised Ms. Matheson and Mr. Duhême that the CSPI allegedly needed around 150 more classrooms for the 2019-2020 school year, that the CSPI was quite desperate and that it would take anything that the EMSB could offer. Ms. Matheson and Mr. El Khoury agreed that any cohabitation arrangement required at least 8 classrooms per building.

### **C. The EMSB's Evaluation of its Options and First Proposal to the CSPI in February 2019**

28. Between January 22, 2019 and February 4, 2019, the EMSB's Long Range Planning Committee ("LRPC"), an administrative subcommittee tasked with the development and review of the EMSB's three-year plan regarding allocation of its immovables and educational programs, prepared for a meeting to be held with the EMSB Council on February 5, 2019 to discuss options to provide space for the CSPI.

29. On February 4, 2019, the LRPC shared three documents with the EMSB Council for the purposes of the meeting to be held on February 5, 2019.

30. A first document shared on February 4, 2019 was a memorandum from Ms. Matheson to the EMSB Council, dated February 4, 2019, providing a list of scenarios that included cohabitation, leasing space, transferring buildings and transferring land, as appears from the memorandum, **Exhibit P-4**.

31. This memo also laid out the guiding principles applied by the LRPC in assessing options to provide space to the CSPI, as follows:

- 1) As few disruptions to the EMSB system as possible – especially in youth*
- 2) Ensure the viability and continuation of academic programs such as IB and Sport Etude / Concentration*
- 3) Ensure that every area / borough maintains at least one EMSB youth school*
- 4) Adult Education can be easily offered in another building or sector*
- 5) Combining two EMSB schools into one building to help fill it up and avoid future requests to share space*
- 6) Concentrate co-habitation in EMSB buildings where there are a significant number of classes available rather than co-habitation in many schools.*

32. A second document shared on February 4, 2019 was a table prepared on or about February 3, 2019 by Mr. Francesco Crocco, EMSB analyst, summarizing enrolment numbers and capacity of all EMSB schools on CSPI territory, as appears from the table, **Exhibit P-5**.

33. A third document shared on February 4, 2019 was prepared on or about February 3, 2019 by Mr. Francesco Crocco providing a detailed analysis of enrolment numbers per cycle, enrolment projections per cycle, building capacity, maps and photographs of each EMSB building on CSPI territory, as appears from the document, **Exhibit P-6**.

34. On February 5, 2019, the EMSB Council met with the LRPC and mandated the director general of the EMSB to offer the following options to the CSPI ("the EMSB's Proposal"):

- (a) Cohabitation in the building located at 10 921 Gariepy Avenue ("Gariepy building"), by offering three floors to the CSPI, currently occupied by the EMSB's Galileo Adult Education Centre ("Galileo"), amounting to 57 classrooms;
- (b) Transfer of the former school located at 12755 16<sup>th</sup> Avenue, Rivière-des-Prairies, amounting to 10 (later revised to 11) classrooms as of the summer 2019, in addition to the option of adding mobile classrooms on the site;
- (c) Transfer of the vacant lot next to the CSPI's Marc Laflamme School, where the CSPI could place mobile classrooms and eventually build a school; and
- (d) Rental of the former school located at 8735 Henri-Julien Avenue, amounting to 15 (later revised to 21) classrooms as of the summer 2019.

35. The EMSB's Proposal took into account the minimum consultation period required for closing elementary schools and high schools ("youth sector schools") under s. 212 of the Act, as well as the needs of EMSB's students and the potential impacts of youth sector school transfers on the vitality of the English-speaking communities in Saint-Leonard and Montreal North.

#### **D. Agreement Reached Between the EMSB and CSPI with the Minister's Approval in February 2019**

36. On February 7, 2019, Ms. Matheson and Mr. Duhême presented the EMSB's Proposal to Mr. El Khoury and Mr. Martin Duquette, Deputy Director General of the CSPI, who indicated that they would welcome whatever the EMSB could contribute.

37. On February 7, 2019, Ms. Matheson and Mr. Duhême contacted Ms. Landry to advise her of the EMSB's Proposal. At that time, Ms. Landry asked about adding other youth sector schools to the offer, but Ms. Matheson and Mr. Duhême advised that they did not have the mandate from the EMSB Council to do so and that the EMSB would not be in a position to legally transfer youth

sector schools due to the minimum consultation periods required by s. 212 of the Act and the EMSB's Policy DG-18 - Maintenance and Closure of Schools/Centres, as appears from the policy, **Exhibit P-7**.

38. On February 26, 2019, Mr. El Khoury advised Mr. Duhême by phone that he had obtained the Minister's approval to "go ahead" ("aller de l'avant") with the EMSB's proposal.

**E. Letter from the Minister Dated March 15, 2019 Raising the Potential Transfer of Youth Sector Schools**

39. On March 15, 2019, Ms. Mancini received a letter from Jean-François Roberge, Minister of Education and Higher Education, as appears from the letter, **Exhibit P-8**.

40. In his letter, the Minister stated that the CSPI expressed a need for additional space, notably due to the impacts of the government's new policy establishing kindergarten programs for 4 year-olds, and proposed that the EMSB consider the following options:

- (a) transferring a portion of the land and sharing space at Dalkeith Elementary School in Anjou;
- (b) transferring the building or sharing space at Gerald McShane Elementary School ("Gerald McShane"), Our Lady of Pompei Elementary School, Honoré-Mercier Elementary School, Pierre-de-Coubertin Elementary School, John Paul I Junior High School, Laurier-Macdonald High School in Saint-Leonard and Montreal North; and
- (c) sharing space at Lester B. Pearson High School in Montreal North.

41. The letter made no reference to the EMSB's Proposal.

42. The letter provided no indication that the Minister was taking into account the EMSB's right to management and control pursuant to s. 23 of the *Charter* or the impact of school closures on the vitality of the English-speaking community in Montreal North or Saint-Leonard.

43. The letter requested that the EMSB provide its comments as to its contents within 10 days.

44. On March 18, 2019, a meeting took place between Ms. Mancini, Mr. Giuseppe Ortona, Vice-chair of the EMSB, M. Matheson and M. Duhême on behalf of EMSB, and M. Boudreault, Marie Carmel Michel, Vice-chair of CSPI, Mr. El Khoury and Mr. Duquette on behalf of CSPI.

45. At this meeting, CSPI representatives confirmed that the Minister had given them approval to go forward with EMSB's Proposal ("aller de l'avant"), and that the EMSB's Proposal would allow them to function for 2019-2020, although more space would be needed in coming years.

46. At this meeting, Mr. El Khoury mentioned the possibility of transferring the Gariepy building to the CSPI and leasing the basement to EMSB for the Rosemount Technology Centre.

47. On March 26, 2019, a letter from Ms. Mancini was sent to Mr. Steven Colpitts, Associate Deputy Minister of Education and Higher Education, detailing the EMSB Proposal and advising that at this stage in the school year, the EMSB Council could not commit to transferring its youth sector schools for the summer of 2019.

48. On April 10, 2019, the EMSB Council adopted a resolution launching consultations tied to the EMSB's Proposal, as appears from the copy of Resolution #19-04-10-3.1, **Exhibit P-9**.

**F. After asking the EMSB and the CSPI to cooperate, the Minister Publicly Objects to the Galileo Relocation in April 2019, thereby undermining the negotiations**

49. On or about April 12<sup>th</sup>, 2019, following negative media attention regarding the possible relocation of special needs adults of the Social Integration Services Program ("SIS") and Social and Vocational Integration Services Program ("SVIS") at Galileo, the Minister strongly condemned the relocation of Galileo in the media, as appears from the news articles produced *en liasse* as **Exhibit P-10**. He did not consult the EMSB prior to making these statements in order to understand the EMSB's reasons for its proposal.

50. Between approximately April 12<sup>th</sup>, 2019 and April 18<sup>th</sup>, 2019, during a call between Ms. Landry, Ms. Matheson and M. Duhême, Ms. Matheson emphasized that the Minister should have consulted the EMSB about the possible Galileo relocation instead of immediately reacting in the media, and that the EMSB did not feel supported by the Ministry, despite Ms. Landry's commitment in December 2018 that the Ministry was looking for "win-win" solutions.

51. On April 18, 2019, a conference call took place with the Minister, Ms. Landry, Ms. Lussier for the Ministry, Ms. Mancini, Mr. Ortona, Ms. Matheson and Mr. Duhême for the EMSB, and Mr. Boudreault, Ms. Michel and Mr. El Khoury for the CSPI, during which the Minister stated that he did not want the EMSB to relocate special needs students from Galileo, and requested that the EMSB examine other scenarios including the transfer of youth sector schools. M. Boudreault expressed that the CSPI was suffering the repercussions of the negative media attention surrounding the possible relocation of Galileo and that it feared it would not be welcome in the Gariepy building.

52. During this call, which the Minister began late, Ms. Matheson asked whether the Minister was interested in hearing about the reasoning behind and the benefits of the Galileo transfer and the Minister answered to go quickly ("Faites ça vite"). Ms. Matheson was rushed to explain the various advantages of the EMSB's Proposal, including improved services and space for SIS and SVIS students such as access to a culinary programme and a practicum restaurant.

53. Mr. Ortona also reminded the Minister that the EMSB could not legally transfer youth sector schools given the consultation period required under the Act.



54. During this call, the Minister stated that the EMSB could move its students out of youth sector schools, and conduct consultations after the students were moved.

55. The Minister provided no indication that he was taking into account the EMSB's right to management and control pursuant to s. 23 of the *Charter*, or the impacts of his decision on the vitality of the English-speaking communities in Montreal North and Saint-Leonard.

56. The Minister put an end to the call, requesting that an action plan be presented to him by May 1, 2019.

57. On April 24, 2019, the Minister sent a letter to Ms. Mancini and Mr. Boudreault acknowledging the agreement between the two boards, but advising that given the concerns raised regarding the relocation of the 140 SIS and SVIS students, the proposal needed to be revisited, as appears from the letter, **Exhibit P-11**.

58. In this letter, the Minister asked that the EMSB and CSPI consider the following options:

- (a) transferring a portion of the land and sharing space at Dalkeith Elementary School in Anjou;
- (b) transferring the building or sharing space at Gerald McShane, Our Lady of Pompei Elementary School, Honoré-Mercier Elementary School, Pierre-de-Coubertin Elementary School, John Paul I Junior High School, Laurier-Macdonald High School in Saint-Leonard and Montreal North;
- (c) sharing space at Lester B. Pearson High School in Montreal North; and
- (d) any other proposal for the territory.

59. The letter provided no indication that the Minister was taking into account the EMSB's right to management and control pursuant to s. 23 of the *Charter* or the impacts of school closures on the vitality of the English-speaking communities in Montreal North and Saint-Leonard.

60. The Minister asked that the EMSB and the CSPI send him a new agreement by May 1, 2019.

61. On April 25, 2019, on a conference call between Ms. Mancini, Mr. Ortona, Mr. Matheson, Mr. Duhême, Mr. Boudreault and Mr. Duquette, Mr. Boudreault indicated that the CSPI no longer wished to cohabite at Galileo due to the negative media coverage and suggested that the EMSB transfer one school to the CSPI by September 2019, and conduct consultations to transfer another school by the 2020-2021 school year.

62. On May 1, 2019, Ms. Mancini sent a letter to the Minister advising that the EMSB Council had met on April 30, 2019 to discuss the options outlined in his letter of April 24, 2019, but that the EMSB Council had not retained any other option than the proposal of April 10, 2019, and that the EMSB and CSPI would

not be in a position to put forward a joint proposal, as appears from the letter, **Exhibit P-12**.

63. On May 2, 2019, the Minister and Ms. Marwah Rizqy, Liberal Opposition Education Critic, held a press release where the Minister once again condemned the EMSB's proposal to relocate Galileo students, as appears from the article of May 2, 2019 in the Montreal Gazette produced as **Exhibit P-13**.

64. On May 3, 2019, a conference call took place with Ms. Mancini, Mr. Ortona, Ms. Matheson and Mr. Duhême on behalf of EMSB, Mr. Boudreault and Mr. El Khoury on behalf of the CSPI, as well as the Minister and Ms. Landry and Ms. Lussier from the Minister's office. During this call, the CSPI reiterated that it no longer wished to cohabite at Galileo.

65. During this call, EMSB representatives mentioned that they were considering launching a consultation process under s. 212 of the Act, and the Minister replied that the EMSB should have done so two years earlier, although the Minister had only mandated the EMSB to be part of the solution to any of the CSPI's space issues in December 2018.

#### **G. The Minister's Letter of May 9, 2019 Threatening to Invoke s. 477.1.1 of the Act to Transfer Three EMSB Youth Sector Schools**

66. On May 9, 2019, Ms. Mancini received a letter from the Minister dated May 8, 2019 which, as appears from the letter, **Exhibit P-14**, stated that:

- (a) while the EMSB's Proposal appeared to satisfy some of the CSPI's needs, it was insufficient; and
- (b) the Minister was contemplating invoking s. 477.1.1 of the Act to order the transfer of Gerald McShane, General Vanier and John Paul I to the CSPI.

67. The Minister requested that the EMSB provide observations by Sunday, June 9, 2019 regarding the proposed transfer order, and particularly with respect to: (1) students with special needs, (2) considerations regarding siblings, and (3) considerations regarding transitions from elementary to high school.

68. The letter provided no justification for the Minister's view that EMSB's Proposal was insufficient, nor any indication that the Minister had taken into account the EMSB's right to management and control pursuant to s. 23 of the *Charter* or the impacts of his decision on the vitality of the English-speaking communities in Montreal North and Saint Leonard.

#### **H. Public Consultations and Resolutions Regarding the February 2019 Proposal**

69. On May 16, 2019, the EMSB held a consultation hearing at which members of the community presented briefs and expressed their opinions regarding the proposed relocation of students attending Galileo.

70. On May 21, 2019, the EMSB held a special board meeting at which the EMSB Council adopted four resolutions, approving the following solutions to the CSPI's space needs:

- (a) Cohabitation in the Gariepy building (57 classrooms) by relocating the Galileo Programs to St. Pius X Career Centre and the John F. Kennedy Adult Education Centre, as appears from the resolution #19-05-21-3.1, **Exhibit P-15**;
- (b) Transfer of the former school located at 12755 16<sup>th</sup> Avenue, Rivière-des-Prairies (11 classrooms, plus mobile classrooms), as appears from the resolution #19-05-21-3.2, **Exhibit P-16**;
- (c) Transfer of the vacant land adjacent to the CSPI's Marc Laflamme School, as appears from the resolution #19-05-21-3.4, **Exhibit P-17**;
- (d) Temporary lease of the former school located at 8735 Henri Julien Avenue, Montreal (21 classrooms), as appears from the resolution #19-05-21-3.3, **Exhibit P-18**;

**I. EMSB Attempts to Negotiate a Solution Involving Cohabitation Agreements with the CSPI, but the Minister's threat to use s. 477.1.1 removed the CSPI's incentive to negotiate**

71. At two meetings, one on May 31, 2019, and one on June 4, 2019, the EMSB tried to find a solution with the CSPI. It was apparent however that, as the Minister had threatened to transfer three EMSB youth sector schools to the CSPI, the CSPI no longer had an incentive to negotiate with the EMSB.

72. On May 31, 2019, a meeting took place between Ms. Mancini and Ms. Matheson for the EMSB, M. Boudreault and M. El Khoury for the CSPI, and Ms. Landry and M. Eric Jabbari, Political Advisor, for the Office of the Minister, at which the following statements were made:

- (e) Ms. Mancini tried to convince M. Boudreault of the benefits of cohabitation and various scenarios of cohabitation were offered including cohabitation at Gerald McShane Elementary School (8 classes), General Vanier Elementary School (8 classes) and John Paul I Junior High School (8 classes);
- (f) M. Boudreault rejected these offers, advising that cohabitation would be too complicated;
- (g) CSPI representatives also refused to use the former school located on Henri-Julien Avenue as it was not located in Saint-Leonard, even though M. El Khoury noted that the three schools that the Minister proposed to transfer would not given them enough space;

73. On June 4, 2019, a meeting took place between Mr. Boudreault and Mr. El Khoury for the CSPI, Ms. Mancini and Ms. Matheson for the EMSB, and Mr. Jabbari, from the Prime Minister's office, and Ms. Landry for the office of the Minister, during which:

- (a) Mr. Boudreault indicated that following Mr. El Khoury's visit of the Gariepy building, the CSPI was prepared to accept the transfer of that building to the CSPI and that the CSPI would agree to lease a portion of it to the EMSB for the Rosemount Technology Centre;
- (b) Mr. Boudreault indicated that the CSPI would not require the transfer of Gerald McShane;
- (c) The EMSB added cohabitation for up to 16 classrooms at Laurier Macdonald High School to its offer, which Mr. Boudreault refused;
- (d) Mr. Boudreault mentioned that the CSPI could not consider exchanging the Jean-Grou High School building for the EMSB's larger Lester B. Pearson High School building, as Jean-Grou High School was its only high school in Rivière-des-Prairies, but that if ministerial approval was granted to build a new high school in Rivières-des-Prairies it would consider exchanging the new construction for the Lester B. Pearson High School building; and
- (e) When asked whether the Minister's only concern with the Gariepy building was the relocation of SIS and SVIS students, Ms. Landry was unclear and referred the EMSB representatives to the Minister's letter of April 24, 2019 letter, which states his concerns regarding the relocation of SIS and SVIS students.

**J. The EMSB's Letter of Sunday June 9, 2019 in Response to the Minister's May 9, 2019 Letter**

74. On Sunday June 9, 2019, a 16-page letter from Ms. Mancini was sent to the Minister providing a detailed account of the events since the first contact from the Minister's office regarding classroom sharing and school transfers on December 14, 2018, as appears from the letter and its 16 appendices, **Exhibit P-19**. The letter confirmed the EMSB's Proposal, as adopted by the resolutions of May 21, 2019.

75. In support of this proposal, the letter emphasized that:

- (a) as the CSPI itself recognized, this proposal would meet the CSPI's needs for the 2019-2020 year;
- (b) this proposal would provide up to 89 classrooms to the CSPI, whereas the Minister's plan to transfer three youth sector schools would only provide 64 classrooms;
- (c) that the consultation period required by s. 212 of the Act for youth sector schools was necessary to properly assess the impacts of transferring a community school on the vitality of the English-speaking community;
- (d) that the EMSB was considering launching a consultation under s. 212 of the Act to provide for the CSPI's medium and long-term needs; and

(e) that relocating the SIS and SVIS students of Galileo to the St. Pius Career Centre would be of significant benefit to those students.

76. With respect to the potential transfer of John Paul I, General Vanier, and Gerald McShane under s. 477.1.1 of the Act, the EMSB noted that it was difficult to assess the impacts on special needs students, siblings and the transition from elementary to high school in the time provided, but nonetheless noted that:

- (a) these three schools house about 136 special needs students, a comparable number to the students that attend the SIS and SVIS programs at Galileo; and
- (b) these transfers might require that the EMSB create a pre-K to grade 11 (secondary 5) school which could have a negative impact on the quality of the educational experience.

**K. Barely 24 Hours after Receiving EMSB's 16-page Letter, the Minister Announced his Intention to Commence the Process to Transfer the Three Schools Pursuant to s. 477.1.1 of the Act, Doing so in the Media and Without Advising the EMSB**

77. On the morning of Tuesday June 11, 2019, barely 24 hours after receiving the EMSB's Sunday June 9, 2019 letter, the Minister stated in an interview on French radio station 98.5 that he would launch the process immediately to transfer schools to the CSPI by Order-in-Council.

78. Despite the fact that it was the Minister who directly undermined the negotiations between the EMSB and the CSPI, first by publicly opposing the Galileo relocation and then by threatening to invoke s. 477.1.1, in his radio interview, the Minister stated that he was launching the process because there had been no agreement between the EMSB and the CSPI.

79. In that interview, the Minister noted that the process to adopt the Order-in-Council might take about 10 days, and that in the meantime, he was open to hearing other solutions, but that he could not see how transferring schools could be avoided at this point:

*Bien, d'abord, je suis très déçu. J'espérais vraiment que la Commission scolaire English-Montréal et la Pointe-de-l'Île s'entendent au moins pour un petit peu plus de cohabitation à très court terme. [...] Je vais enclencher, aujourd'hui, le procédé pour qu'il ait un transfert d'école. Ça doit passer par un décret au Conseil des ministres. Si dans l'intervalle, entre aujourd'hui et puis le Conseil des ministres, on me propose une alternative qui est viable, bien comme on me dit que je suis toujours « parlable ».*

80. Prior to this radio announcement, the EMSB had received no communications from the Minister's office on the matter.

81. Still on June 11, 2019, the Minister stated in an interview on CTV that the EMSB could transfer students from its youth sector schools to other schools and

conduct consultations after the fact, which would have placed the EMSB directly in contravention of s. 212 of the Act:

*In fact, it would be possible for the English Montreal School Board to rent the school and to start consultation for 18 months, but during the consultation, they could rent the school to CSPI. It's a possibility.*

**L. The Ministry Gives the EMSB Less Than 24 Hours to Provide Additional Financial Information and Threatens to Provide No Indemnity for a Transfer**

82. At or around 2 p.m. on June 11, 2019, Ms. Matheson received an email from Mr. Colpitts indicating that the Ministry of Education and Higher Education ("Ministry") had taken note of the proposals contained in the letter of June 9, 2019, that it was assessing each scenario, and that it needed some additional information, as appears from the email, **Exhibit P-20**.

83. More specifically, Mr. Colpitts requested information regarding the financial needs of the EMSB in the event that the three youth sector schools were transferred and requested an answer by 9am the next day, failing which the Ministry would assume that no indemnity was required.

84. On the morning of June 12, 2019, before 9am, Ms. Matheson sent an email to Mr. Colpitts noting the EMSB's disappointment about having heard through the media that the Minister intended to launch the process to transfer the three youth sector schools, reiterating the EMSB's proposal from the June 9, 2019 letter, indicating the requested indemnities for transferring each school, and advising that other funds would be requested under measure 20190 but that it was not possible to estimate them at this time, as appears from the email, **Exhibit P-21**.

85. Around noon on June 12, 2019, Mr. Colpitts sent an email to Ms. Matheson advising that, in light of s. 477.1.2 of the Act, the Minister was required to estimate the costs of the transfer, and that if the EMSB was able to provide additional information by 3:30pm that day, it should do so, as appears from the email, **Exhibit P-22**.

**M. Discussions Between the Ministry, CSPI and EMSB Between June 17, 2019 and June 19, 2019**

86. On June 17, 2019, Mr. Eric Bergeron, Assistant Deputy Minister in charge of Policy and Labour Relations, and Mr. Eric Vignola, Director of Policy and School Governance at Ministry met with Ms. Matheson and Mr. Duhême.

87. During this meeting, Mr. Bergeron advised that he had met for about 5 hours with the CSPI representatives the previous week, and that he had been mandated to meet with EMSB representatives by Ms. Sylvie Barcelo, Deputy Minister of Education and Higher Education, in order to facilitate an administrative agreement. Mr. Bergeron expressly stated that he did not have a mandate from the Minister to meet with EMSB.

88. In reviewing the EMSB's proposal from June 9, 2019 and other options, Mr. Bergeron asked whether John Paul I could be transferred after a public consultation, and Ms. Matheson indicated that this may be unlikely. She explained that, even if a building or two were ceded after a public consultation, John Paul I was at the heart of the English-speaking community in Saint-Leonard and it was unlikely that the community would choose to give it up.

89. During the meeting, Mr. Bergeron summarized the following elements, which could form a proposal that could be made to the CSPI:

(a) that the Gariepy building be transferred to the CSPI in three phases:

i. by 2019-2020: 40 classrooms would be made available to the CSPI in cohabitation by relocating the Academic and Core English Programs, and the CSPI would rent the premises under a long-term lease to facilitate financing pending the transfer of the property;

ii. by 2020-2021: 57 classrooms are made available to the CSPI in cohabitation by relocating the SIS and SVIS students to the St-Pius X Career Centre;

iii. by approximately 2022-2023: the building is fully transferred to the CSPI and the Rosemount Technology Centre is relocated;

(c) that the EMSB launch consultations for cohabitation in either Lester B. Pearson High School or Laurier-Macdonald High School to offer space for CSPI high school students for the 2019-2020 school year, with the possibility of eventually transferring Lester B. Pearson High School to the CSPI in exchange for a new building to be built in Rivière-des-Prairies;

(d) that the EMSB offer cohabitation at Gerald McShane (8 classes) and General Vanier (8 classes) for the 2019-2020 school year;

(e) that the EMSB launch a consultation pursuant to s. 212 of the Act ("Major School Change") that would include a possible transfer of General Vanier to the CSPI for 2020-2021; and

(f) that the Minister issue a directive regarding the conditions for cohabitation in EMSB schools by the CSPI.

90. After summarizing the elements of a possible proposal, Mr. Bergeron and Mr. Vignola left to make some calls, and upon their return to the meeting room, advised Ms. Matheson and Mr. Duhême that Mr. El Khoury had advised them that he did not have the mandate to accept this proposal, and particularly, to accept a proposal for cohabitation instead of the transfer of the schools.

91. On June 19, 2019, Mr. Bergeron held a meeting with Ms. Matheson and Mr. El Khoury which he described as a final attempt to reach an agreement. Mr. Bergeron explained his June 17, 2019 proposal, and Mr. El Khoury advised that the Council of Commissioners of the CSPI was unlikely to agree because it considered that cohabitation in English-language schools was unsuitable for francisation purposes and that the transfer of Gerald McShane, General Vanier and John Paul I had already been decided.

92. Once again, it was apparent that the main obstacle to reaching a negotiated agreement with the CSPI was the Minister's threat to force the transfer of three youth sector schools – a threat that was seen as a promise by the CSPI.

**N. The EMSB Adopts a Resolution on June 20, 2019 to Make a New Proposal to the Minister that Responds to his Concerns**

93. On June 20, 2019, the EMSB Council adopted a resolution adjusting its prior proposal, as appears from the resolution #19-06-20-3, **Exhibit P-23**.

94. The adjusted proposal outlined in resolution #19-06-20-3 ("EMSB Adjusted Proposal") not only accepts all the recommendations made by Mr. Bergeron at the June 17 and 19 meetings, but is directly responsive to the Minister's concerns.

95. In response to the Minister's concerns regarding the relocation of SIS and SVIS students, the resolution proposes to transfer the Gariepy building in three phases such that the SIS and SVIS students would remain in the building until the 2020-2021 school year and the entire building would be transferred to the CSPI by approximately 2022, in order to facilitate a progressive transfer of the special needs students.

96. In response to the Minister's concerns regarding access to space for secondary school students in 2019-2020, the resolution proposed to launch a 30-day consultation on June 26, 2019 for cohabitation at Lester B. Pearson High School (up to 15 classes) and in a separate wing of the Laurier Macdonald High School (9 classes).

97. In response to the Minister's concerns regarding medium and long-term needs for the CSPI, the resolution proposed to launch a Major School Change consultation on June 26, 2019 that would consider, among other options, the transfer of John Paul I, Gerald McShane and General Vanier, and the transfer of the Lester B. Pearson High School to a new and appropriately sized school building.

98. The EMSB Adjusted Proposal would provide the CSPI with up to 112 classrooms for the 2019-2020 school year, as well as medium and long-term solutions.

99. On June 21, 2019, a copy of the French version of Resolution #19-06-20-3 was sent to the Minister by Ms. Nathalie Lauzière, Secretary General of the EMSB, as appears from the email and its attachments, **Exhibit P-24**.

100. On June 26, 2019, the EMSB adopted Resolution # 19-06-26-6 launching a Major School Change consultation to be concluded in January 2020, as well as 30-day consultations regarding cohabitation at General Vanier (8 classrooms), Gerald McShane (8 classrooms), Laurier Macdonald High School (9 to 15 classrooms) and Lester B. Pearson High School (up to 15 classrooms), as appears from the resolution produced as **Exhibit P-25**.



#### IV. THE DECISION

101. On Thursday June 27, 2019 at 3:15 pm, Ms. Matheson received an email from Ms. Stephanie Vachon, Secretary General for the office of the Deputy Minister, advising that the Minister requested that Ms. Matheson transmit the attached letter, which was addressed to all the parents of students attending EMSB schools, as appears from the email, **Exhibit P-26**, and the attached letter, **Exhibit P-27**.

102. In this letter to parents, the Minister indicated that:

- (a) the current situation left the Minister with “no other choice but to transfer General Vanier School and John Paul I to the CSPI this summer” (“La situation actuelle ne nous laissait pas d’autre choix que de transférer les écoles General Vanier et John Paul I à la CSPI, cet été.”);
- (b) Gerald McShane would not be transferred as it was the only elementary school in Montreal North;
- (c) The Minister was pleased that the EMSB was launching a consultation process which he hoped would provide solutions to prevent another “crisis” of this kind.

103. Shortly after receiving this communication, Ms. Matheson received a call from Mr. Colpitts, who advised her that the Minister’s instructions were to send this letter directly to the parents without first advising the EMSB Council, and that the Orders-in-Council for both transfers would be sent to the EMSB thereafter. Ms. Matheson responded that she could not bypass the EMSB Council. Mr. Colpitts called back shortly thereafter and it was agreed that she would advise Ms. Mancini of the decision prior to sending the letter to the parents.

104. On June 27, 2019 at 4:03 pm, Ms. Matheson received an email from Mr. Colpitts attaching a covering letter and two Orders-in-Council, as appears from the email and cover letter, **Exhibit P-28**, the Order-in-Council 670-2019, **Exhibit P-29**, and Order-in-Council 671-2019, **Exhibit P-30**.

105. By Order-in-Council 670-2019 dated June 26, 2019, the government ordered the transfer of the building occupied by General Vanier to the CSPI effective July 1, 2019. The Order-in-Council briefly refers to lack of space at the CSPI, the fact that 30 days were given to provide written observations, and that the government considered that the transfer would be in the “public interest”. The Order-in-Council does not refer to section 23 of the *Charter* or any s. 23 considerations.

106. By Order-in-Council 671-2019 dated June 26, 2019, the government ordered the transfer of the building occupied by John Paul I to the CSPI effective July 1, 2019. The Order-in-Council briefly refers to lack of space at the CSPI, the fact that 30 days were given to provide written observations, and that the government considered that the transfer would be in the “public interest”. The Order-in-Council does not refer to section 23 of the *Charter* or any s. 23 considerations.

107. At 4:31pm on June 27, 2019, Ms. Matheson received an email from Mr. Colpitts forwarding a directive issued by the Minister to the CSPI pursuant to s. 459.6 of the Act (“the Minister’s Directive”), as appears from the email and directive, **Exhibit P-31**.

108. The Minister’s Directive orders the CSPI to “implement the means at its disposal” (“mettre en oeuvre les moyens dont elle dispose”) to resolve the urgent situation caused by the lack of space, and directs in particular that the CSPI:

- (a) consider the lease, in whole or in part, of immovables that are offered by another school board;
- (b) inform the Minister of offers that are made to it and where applicable, expose the reasons for the CSPI’s refusal; and
- (c) ensure that educational services are organized on a priority basis for the 2019-2020 school year in such leased premises.

## **V. STANDARD OF REVIEW**

109. The administrative decision at issue, namely the two Orders-in-Council, engage the procedural guarantees of s. 23 of the *Charter*. Requirements of procedural fairness are typically reviewed on the standard of correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79). Correctness is the proper standard of review of whether the Orders-in-Council violate s. 23 of the *Charter*.

110. In the alternative, this Court should apply the reasonableness standard to the question of whether the Orders-in-Council strike a proportionate balance between the statutory objectives and the *Charter* protections at issue (*Doré v Barreau du Québec*, 2012 SCC 12 at para 57).

## **VI. THE ORDERS-IN-COUNCIL ARE INVALID AND SHOULD BE QUASHED**

### **A. The Orders-in-Council Infringe s. 23 of the *Charter***

111. Section 23 of the *Charter* grants minority language representatives in Quebec the exclusive authority to make decisions relating to the minority language instruction and facilities (*Mahé v Alberta*, [1990] 1 SCR 342).

112. The ultimate goal of s. 23 of the *Charter* is to protect and promote minority language communities in each province. In *Arsenault-Cameron*, the Supreme Court held that “the school is the single most important institution for the survival of the official language minority” (*Arsenault-Cameron v Prince Edward Island*, 2000 SCC 1 at para 29). English-language schools in Quebec are “locations where the minority community can meet and facilities which they can use to express their culture” (*Mahé v Alberta*, [1990] 1 SCR 342 at 363).

113. While the Education Minister has broad authority over education and a legitimate interest in the allocation of education facilities, his discretion is limited by three factors (*Arsenault-Cameron v Prince Edward Island*, 2000 SCC 1 at para 44):

- (a) The remedial aspect of s. 23;
- (b) The specific needs of the minority language community. This requires the Minister to meaningfully consult the minority language community in order to determine what its needs are (*Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para 20); and
- (c) The exclusive right of representatives of the minority to the management of minority language instruction and facilities. This requires the Minister to show proper deference towards the decisions and proposals of the minority language community (*New Brunswick (Minister of Education and Early Childhood Development) v Henrie et al*, 2018 CanLII 130954 (NBCA) at para 53).

114. These three requirements must be met by the Minister in order for his decision to recommend the closure of a minority language school pursuant to s 477.1.1 of the *Act* – and the issuing Orders-in-Council – to be consistent with s. 23 of the *Charter*.

115. In the instant case, the facts indicate that the three requirements were not met.

116. **Regarding requirement (a)**, in all the correspondence received from the Minister leading up to the Orders-in-Council and in the phone conferences with the Minister of April 18 and May 3, there is no indication that the Minister took into account the impacts of the closure on the vitality of the English-speaking communities of Saint-Leonard and Montreal North.

117. Although the EMSB specifically stressed that John Paul I was at the heart of the English-speaking community in Saint-Leonard and that, given its role in the community, it was unlikely that the community would accept that this school be the one chosen for transfer in the context of a Major School Change consultation, the Minister nonetheless chose to transfer this school without addressing these concerns.

118. **Regarding requirement (b)**, the Minister did not meaningfully consult with the EMSB to determine the specific needs of the English-speaking community.

119. Notably, in his letter of March 15, 2019, the Minister did not acknowledge or provide any feedback regarding the EMSB's Proposal, which the Minister had been informed of by the EMSB and the CSPI and which the CSPI had acknowledged would satisfy its immediate needs. Instead, in the March 15 letter, the Minister gave the EMSB 10 days to provide submissions regarding transferring or sharing several youth sector schools. Given the EMSB's role as representatives of a minority language community and its policies on consultation, this rapid deadline was not designed to obtain real input from the community.

120. As stated by the Minister on April 18, 2019 and on June 11, 2019, the Minister's only response to the EMSB's concerns about not having adequate time to consult the community regarding a youth sector school closure pursuant to s. 212 of the *Act* was that the EMSB should move students out of youth sector

schools and only thereafter conduct consultations regarding the transfer of the buildings. This demonstrates that the Minister was not seeking to obtain real input from the minority language community and understand its specific needs.

121. Although the Minister requested, in his letter dated May 8, 2019, that the EMSB provide written submissions on his proposal to invoke s. 477.1.1 to transfer Gerald McShane, General Vanier and John Paul I within 30 days, the Minister announced in the media barely 24 hours after the EMSB provided lengthy submissions (16 pages and 16 appendices) that he intended to move forward with the school transfers. This demonstrates that the Minister was not seeking to obtain real input from the minority language community and understand its specific needs, and that he indeed had not considered nor assessed EMSB's concerns and proposals.

122. Although Ministry officials met with the EMSB on June 17, 2019 and June 19, 2019 to review the EMSB's Proposal, this occurred after the Minister had stated his intention to launch the process to transfer the schools. These officials expressly stated that they did not have a mandate from the Minister.

123. While the Minister repeated that he was open to changing his mind if the EMSB and the CSPI reached an agreement, it was apparent that as soon as the Minister started pressuring the EMSB into transferring youth sector schools, and particularly after the Minister threatened to use s. 477.1.1, the CSPI had no incentive to negotiate with the EMSB, such that the Minister could not reasonably expect such negotiations to be fruitful so long as he maintained his threat to transfer three youth sector schools pursuant to s. 477.1.1.

124. Indeed, the CSPI was initially amenable to accepting any space offered by the EMSB, including the Gariepy building and the school on Henri-Julien Avenue, and began refusing offers for space only after the Minister intervened to insist that the EMSB consider youth sector school transfers, particularly after the May 8, 2019 letter.

125. In fact, the Director General of the CSPI explicitly stated on June 19, 2019 that he could not bring the proposals discussed at the meeting to the Council of Commissioners of the CSPI because it was of the view that the transfer of the three schools had already been decided, such that it would not consider any other proposals.

126. Further, the Minister's office sought additional information regarding indemnities from the EMSB on June 11, 2019, providing less than 24 hours to respond, while threatening to not provide any indemnity at all, reflecting a basic lack of regard for the EMSB and its communities in the consultation process.

127. **Regarding requirement (c)**, the Minister showed no deference to the decisions made by the EMSB in the exercise of the right to management and control.

128. Indeed, although the EMSB and the CSPI had reached an agreement by February 2019, the Minister rejected the proposal in April 2019 after negative media coverage regarding the relocation of special needs students. The Minister

provided no response to the EMSB's explanations about the benefits of the relocation for its special needs students, merely stating in his May 8, 2019 letter that the proposal with respect to Galileo was "insufficient".

129. The EMSB's exclusive power of management and control applies to all of its students, including its special needs students.

130. The Minister also showed no deference to the EMSB's position regarding the importance of conducting a proper s. 212 consultation for transferring youth sector schools, suggesting instead that the EMSB relocate its students and conduct consultations afterwards, which would violate the consultation requirements of the Act and the EMSB's obligations towards the minority language community.

131. The lack of deference to the EMSB's Proposal and Adjusted Proposal is particularly problematic when one considers that the EMSB offered a total of 112 classrooms to the CSPI, compared to the 38 classrooms transferred by the Orders-in-Council.

132. In the face of a proposal that would provide at least as much space, if not more, to the CSPI for the 2019-2020 school year, as well as medium and long-term options, the Minister should have deferred to the EMSB's decision in the exercise of its right to management and control.

133. The Minister waited until June 27, 2019, after the Orders-In-Council were issued, to use his power under 459.6 of the Act to adopt a directive forcing the CSPI to consider offers of cohabitation and leasing options from other school boards. The EMSB had been making cohabitation offers and proposing leasing options to the CSPI for months, but the CSPI had little incentive to negotiate with the EMSB, and little to no incentive after the Minister threatened to transfer three youth sector schools. The Minister did not use his power under 459.6 of the Act in the months of negotiations, instead waiting until after his decision was made, thereby not showing deference to proposals made by the EMSB, nor encouraging agreements between the two school boards.

134. As such, the decision-making process and the Orders-in-Council infringe section 23 of the Charter.

**B. The Orders-in-Council Do Not Reflect a Proportionate Balancing of the Statutory Objectives and Charter Protections at Play**

135. In assessing the constitutionality of government action, the Court must consider "whether, in assessing the impact of the relevant Charter protection and given the nature of the decision and the statutory and factual contexts, the decision reflects a proportionate balancing of the Charter protections at play" (*Doré v Barreau du Québec*, 2012 SCC 12 at para 57).

136. The *Doré* analysis takes into account factors that are similar to those under s. 1 of the Charter. The Court must consider "how substantial the limitation on the Charter protection was compared to the benefits to the furtherance of the statutory objectives in this context" and whether there were other reasonable possibilities that would give effect to Charter protections more fully in light of

those objectives (*Trinity Western University v Law Society of Upper Canada*, 2018 SCC 33 at paras 36-37).

137. With respect to the procedural requirements of s. 23 of the *Charter*, the *Doré* proportionality analysis should be conducted on a standard of correctness, without deference to the decision-maker.

138. In the alternative, if the standard of review is reasonableness, the application of this standard in the context of the *Charter* is nonetheless a robust standard. "The reasonableness analysis is one that centres on proportionality, that is, on ensuring that the decision interferes with the relevant *Charter* guarantee no more than is necessary given the statutory objectives. If the decision is disproportionately impairing of the guarantee, it is unreasonable." (*Doré v Barreau du Québec*, 2012 SCC 12 at para 7)

139. The statutory objectives of s. 477.1.1 are "to foster effective and efficient management of the immovables belonging to school boards" and to promote the "public interest".

140. While it appears that the CSPI needs some additional space for the 2019-2020 year, this situation does not justify the substantial procedural defects in the Minister's approach leading up to the Orders-in-Council.

141. First, there is no justification for the Minister not addressing, in all his correspondence to the EMSB leading up to the Orders-in-Council and in the phone conferences of April 18 and May 3, considerations related to the remedial character of s. 23 or the EMSB's power of management and control.

142. Second, there is no reason why the Minister could not have engaged in meaningful consultation regarding the English-speaking community's specific needs as early as December 2018, by providing sufficient time for meaningful input throughout the process, providing adequate and responsive feedback regarding EMSB's proposals, and being demonstrably prepared to adjust proposals in response to the EMSB's concerns.

143. Third, the CSPI's space needs do not justify the lack of deference to the EMSB's exercise of the right to management and control, particularly given that the EMSB's Adjusted Proposal would provide at least as much space to the CSPI for the 2019-2020 school year as the Orders-in-Council, and when the Minister failed to take reasonable, less intrusive measures to encourage an agreement, such as using his power under s. 459.6 of the *Act* to direct the CSPI to accept reasonable offers to lease space, prior to recommending the transfer of the two schools under 477.1.1.

144. As a reminder, the EMSB's Adjusted Proposal consists of: cohabitation at the Gariépy building (40 classrooms), lease of the school on Henri-Julien Avenue (21 classrooms), transfer of a vacant school in Rivière-des-Prairies (11 classrooms, plus mobile classrooms), transfer of land adjacent to Marc Laflamme School (mobile classrooms), cohabitation at General Vanier (8 classrooms), cohabitation at Gerald McShane (8 classrooms), cohabitation at Laurier

Macdonald High School (9 classrooms), and cohabitation at Lester B. Pearson High School (up to 15 classrooms), for a total of 112 classrooms.

145. As such, the urgency of the CSPI's space needs cannot justify the decision in light of the alternative measures proposed by the EMSB which respect the English-speaking community's right to management and control of its educational facilities under s. 23 of the *Charter*.

146. Finally, the Minister himself recognized in his letter of March 15, 2019 that some of the shortage of pupil space at the CSPI is caused by the establishment of the new kindergarten program for four-year-olds. To some degree, the CSPI's shortage of space is of the Minister's own doing.

147. The decision-making process and the Orders-in-Council are accordingly both incorrect and unreasonable, as they do not respect the procedural requirements of s. 23 of the *Charter* and do not strike a proportionate balance between the statutory objectives and the impacts on s. 23 rights.

## **VII. INTERLOCUTORY STAY OF ENFORCEMENT PENDING A DETERMINATION ON THE MERITS**

148. The test for issuing a stay order under article 530 CCP is the same as for an interlocutory injunction under article 511 CCP (*Neumann c Collège des médecins du Québec*, 2017 QCCS 1871 at paras 13-14).

149. The applicants must demonstrate (1) an appearance of right, (2) serious or irreparable harm, and (3) that the balance of convenience favors granting the stay (*Groupe CRH Canada inc c Beauregard*, 2018 QCCA 1063).

### **A. Appearance of Right**

150. To demonstrate an appearance of right, the applicants must show that there is a serious question to be decided (*Groupe CRH Canada inc c Beauregard*, 2018 QCCA 1063 at para 28).

151. The test for the appearance of right criteria is a low one: once the judge is satisfied that the application is neither vexatious, nor frivolous, the analysis should then turn to the second and third criteria for a stay (*Groupe CRH Canada inc c Beauregard*, 2018 QCCA 1063 at para 28).

152. As demonstrated above, there is a serious question to be tried as to whether the decisions contained in the Orders-in-Council interfere with s. 23 of the *Charter* no more than is necessary given the statutory objectives of s. 477.1.1 of the *Act*.

### **B. Serious or Irreparable Harm**

153. As explained recently by the Quebec Court of Appeal in *Groupe CRH Canada inc c Beauregard*, 2018 QCCA 1063, the prejudice need not be irreparable to justify granting a stay; the stay may be granted to prevent serious harm or to "avoid creating a factual or legal situation that would render the judgment on the merits ineffective" (art. 511 of the CCP).

154. Pursuant to the Orders-in-Council, the deeds of establishment of General Vanier and John Paul I will become void on June 30, 2019 and it is ordered that the properties be transferred effective July 1, 2019 to the CSPI, three days after the EMSB was made aware of the Orders-in-Council. Pursuant to s. 477.1.5 of the *Act*, the transfer of property will produce its effects when the registrar is given a notice stating the facts that establish the transfer and containing a description of the immovables concerned.

155. In the absence of a stay, the EMSB will be required to vacate and close two schools in the English-speaking community in Saint-Leonard, in time for the CSPI to move in for the 2019-2020 school year.

156. The role of English-language schools in Quebec is much broader than simply ensuring academic success or instruction in English; the schools are, for the minority community, true community centres that ensure the transmission and preservation of the culture and heritage of the community and help them flourish (*Solski (Tutor of) v Quebec (Attorney General)*, 2005 SCC 14 at para 3).

157. The loss – even temporary – of these community centres for parents and students, whose school communities will be dislocated and redistributed among other schools pending the determination on the merits, cannot be restored.

158. Two school closures in the same community operated in violation of s. 23 constitutes serious or irreparable harm to the English-speaking community of Saint-Leonard.

159. Without a stay order, a judgment on the merits cannot effectively restore the Applicants to their position before the issuance of the Orders-in-Council.

### **C. Balance of Convenience**

160. While appreciating the CSPI's need for space, the EMSB has offered substantial alternatives that provide as much, if not more, space for the 2019-2020 school year than the schools targeted by the Orders-in-Council.

161. The CSPI's interest in choosing its preferred classrooms from among the EMSB's buildings is neither a statutory nor a constitutional right, and it cannot outweigh the importance of respecting the English-speaking community's constitutional rights pursuant to s. 23 of the *Charter*.

162. In light of the alternatives offered by the EMSB that would provide as much, if not more, space for the CSPI, and the serious if not irreparable harm that would be caused by the closure of two schools in the English-speaking community in violation of its constitutional rights under s. 23, the balance of convenience favors granting a stay.

## **VIII. PROVISIONAL STAY PENDING A DETERMINATION OF THE APPLICATION FOR AN INTERLOCUTORY STAY**

163. By analogy to article 510 of the CCP, a provisional stay may be granted in an urgent case, for a maximum of 10 days.



164. Pursuant to the Orders-in-Council, the deeds of establishment of General Vanier and John Paul I become void on June 30, 2019 and it is ordered that the properties be transferred to the CSPI effective July 1, 2019, three days after the EMSB was notified of the decisions. Pursuant to s. 477.1.5 of the Act, the transfer of property will produce its effects when the registrar is given a notice stating the facts that establish the transfer and containing a description of the immovable concerned.

165. It is therefore urgent that an order be issued to stay the application of the Orders-in-Council for the next 10 days to prevent the title to the property from being registered in the CSPI's name and to prevent the EMSB from being required to vacate the buildings, while most staff is absent, pending the determination of an interlocutory stay.

166. In any event, Mr. El-Khoury and Ms. Matheson agreed that a transition period is necessary; they agreed to meet during the week of July 1 to organize such a transition.

167. The two buildings are in excellent condition and do not require renovations to accommodate the CSPI, such that immediate occupation by the CSPI is not necessary to preserve the CSPI's interest in accommodating its students during the 2019-2020 school year.

**WHEREFORE, MAY IT PLEASE THE COURT TO:**

**GRANT** the present Application;

**STAY** the application of Order-in-Council 670-2019 and Order-in-Council 671-2019 on a provisional basis for 10 days;

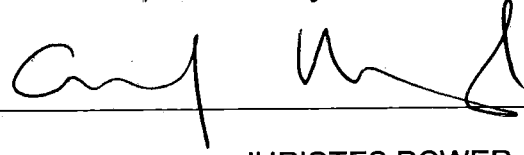
**ORDER** an extension of the stay of the application of Order-in-Council 670-2019 and Order-in-Council 671-2019 until a decision is rendered on an interlocutory stay;

**STAY** the application of Order-in-Council 670-2019 and Order-in-Council 671-2019 pending the determination of the application for judicial review on the merits;

**DECLARE** Order-in-Council 670-2019 and Order-in-Council 671-2019 invalid;

**THE WHOLE** with costs.

Montreal, this 30<sup>th</sup> day of June 2019

A handwritten signature in black ink, appearing to read 'Audrey Mayrand', is written over a horizontal line.

JURISTES POWER  
Me Mark Power  
Me Perri Ravon  
Me Giacomo Zucchi  
Me Audrey Mayrand

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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 judgement 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:** Deed of establishment of July 1, 2018 for John Paul I Junior High School
- P-2:** Deed of establishment of July 1, 2018 for General Vanier Elementary School
- P-3:** Email of December 14, 2018 from Ms. Claudia Landry to Ms. Ann Marie Matheson and Mr. Antoine El Khoury
- P-4:** Memorandum of February 4, 2019 from Ms. Matheson to the EMSB Council
- P-5:** Table of February 3, 2019 summarizing enrolment numbers and capacity of EMSB schools on CSPI territory
- P-6:** Document of February 3, 2019 providing analysis of enrolment numbers, enrolment projections, building capacity, maps and photographs of EMSB schools on CSPI territory
- P-7:** EMSB Policy DG-18 on the Maintenance or Closure of Schools/Centres
- P-8:** Letter of March 15, 2019 from Minister Roberge to Ms. Angela Mancini

- P-9:** EMSB Council Resolution # 19-04-10-3.1 of April 10, 2019
- P-10:** News Coverage of April 12 – 15, 2019
- P-11:** Letter of April 24, 2019 from Minister Roberge to Ms. Mancini and Mr. Boudreault
- P-12:** Letter of May 1, 2019 from Ms. Mancini to Minister Roberge
- P-13:** News Article of May 2, 2019 on press release by the Minister and Ms. Rizqy
- P-14:** Letter of May 8, 2019 from Minister Roberge to Ms. Mancini
- P-15:** EMSB Council Resolution # 19-05-21-3.1 of May 21, 2019 regarding Galileo Adult Education Centre
- P-16:** EMSB Council Resolution # 19-05-21-3.2 of May 21, 2019 regarding 12755, 16<sup>th</sup> Avenue, Rivière-des-Prairies
- P-17:** EMSB Council Resolution # 19-05-21-3.4 of May 21, 2019 regarding the transfer of vacant land adjacent to Marc Laflamme School
- P-18:** EMSB Council Resolution # 19-05-21-3.3 of May 21, 2019 regarding the temporary lease of the former school at 8735 Henri Julien Avenue
- P-19:** Letter of June 9, 2019 from Ms. Mancini to Minister Roberge
- P-20:** Email of June 11, 2019 from Mr. Colpitts to Ms. Matheson
- P-21:** Email of June 12, 2019 from Ms. Matheson to Mr. Colpitts
- P-22:** Email of June 12, 2019 from Mr. Colpitts to Ms. Matheson
- P-23:** EMSB Council Resolution # 19-06-20-3 of June 20, 2019
- P-24:** Email of June 21, 2019 from Ms. Lauzière to Minister Roberge with attachment
- P-25:** EMSB Council Resolution # 19-06-26-6 of June 26, 2019
- P-26:** Email of June 27, 2019 from Ms. Vachon to Ms. Matheson
- P-27:** Letter of June 27, 2019 from Minister Roberge to parents of students in EMSB schools
- P-28:** Email and cover letter of June 27, 2019 from Mr. Colpitts to Ms. Matheson
- P-29:** Order-in-Council 670-2019 of June 26, 2019
- P-30:** Order-in-Council 671-2019 of June 26, 2019
- P-31:** Email of June 27, 2019 from Mr. Colpitts to Ms. Matheson and attached Directive

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.

CANADA

SUPERIOR COURT

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
N° :

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**ENGLISH MONTREAL SCHOOL BOARD**, domiciled at 6000 Fielding Avenue, Montreal, QC H3X 1T4

and

**PATRICIA R. LATTANZIO**, having an office at 6187 Jarry Street East, in the city and district Montreal, Province of Quebec, H1P 1W1

Applicants

v.

**PROCUREURE GÉNÉRALE DU QUÉBEC**, having a place of business at 1 Notre-Dame Street East, suite 8.01, in the city and district of Montreal, Province of Quebec, H2Y 1B6

Respondent

**COMMISSION SCOLAIRE POINTE-DE-L'ÎLE**, domiciled at 550, 53rd Avenue, in the city and district of Montreal, Province of Quebec, H1A 2T7

**OFFICIER DE LA PUBLICITÉ FONCIÈRE DE LA CIRCONSCRIPTION DE MONTRÉAL**, situated at 2050, de Bleury Street, R.C. 10, in the city and district of Montreal, Province of Quebec, H3A 2J5

Mises-en-cause

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**NOTICE OF PRESENTATION**

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To: **PROCUREURE GÉNÉRALE DU QUÉBEC**  
1 Notre-Dame Street East, suite 8.01  
Montreal (Quebec) H2Y 1B6

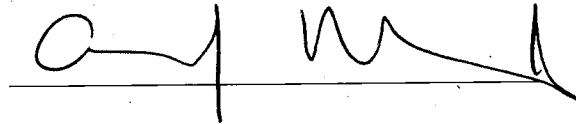
**COMMISSION SCOLAIRE POINTE-DE-L'ÎLE**  
550, 53rd Avenue  
Montreal (Quebec) H1A 2T7

**OFFICIER DE LA PUBLICITÉ FONCIÈRE DE LA CIRCONSCRIPTION  
DE MONTRÉAL**  
2050, de Bleury Street, R.C. 10,  
Montreal (Quebec) H3A 2J5

**TAKE NOTICE** that the Application for a Provisional Stay will be presented for adjudication before one of the Honourable Judges of the Superior Court of Québec, sitting in chambers in and for the District of Montréal, on July 2<sup>nd</sup>, 2019 at 9:00, or so soon thereafter as counsel may be heard, in 2.13 of the Montreal Courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec.

**GOVERN YOURSELF ACCORDINGLY.**

Montreal, this 30<sup>th</sup> day of June 2019



**JURISTES POWER**  
Me Mark Power  
Me Perri Ravon  
Me Giacomo Zucchi  
Me Audrey Mayrand

500, Place d'Armes, Suite 1800  
Montréal (Québec) H2Y 2W2  
Tel./Fax: 514-612-8505  
amayrand@powerlaw.ca



**SUPERIOR COURT**

(Civil Division)

**PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**NO :**

**ENGLISH-MONTREAL SCHOOL BOARD  
PATRICIA R. LATTANZIO**

Applicants

**v**

**PROCUREURE GÉNÉRALE DU QUÉBEC**  
Respondent

and

**COMMISSION SCOLAIRE DE LA POINTE  
DE L'ÎLE**  
Mis-en-cause

**APPLICATION FOR JUDICIAL REVIEW,  
INTERLOCUTORY STAY AND PROVISIONAL  
STAY (art. 529 and 530 CCP)**

**ORIGINAL**

**Me Mark Power**

**Me Audrey Mayrand**

**Me Perri Ravon**

**Me Giacomo Zucchi**

[amayrand@juristespower.ca](mailto:amayrand@juristespower.ca)

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