

C A N A D A

SUPERIOR COURT

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PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
N°: 500-17-121195-229

**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

Applicants

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

and

**OFFICE QUÉBÉCOIS DE LA LANGUE FRANÇAISE**, having a place of business at 800, rue du Square-Victoria, 31e étage, bureau 3100, in the city and district of Montréal, Province of Québec, H3C 1B6

Respondents

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**SECOND AMENDED APPLICATION FOR JUDICIAL REVIEW AND DECLARATORY JUDGMENT, NOTICE OF CONSTITUTIONAL QUESTION AND APPLICATION FOR A STAY**

**(November 8, 2023)**

**(articles 49, 76, 142, 510, 511 (...) 529, 530 and 661 CCP)**

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**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 119 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. 165 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. 172, 175, 176 and 177 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 166 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.
- 13.1 As a preliminary point to the issues pertaining to s. 23 of the *Charter*, recent events have cast doubt on the applicability of various provisions of the CFL and Bill 96 to English language school boards. Bill 96 amended the CFL to define the term “agencies of the civil administration” to include only “school service centres”, not “school boards”. While the Superior Court had issued a stay in 2020 of Bill 40 preventing English language school boards from becoming service centres,<sup>1</sup> it was contemplated that this situation could change after the release of the trial judgment on Bill 40. However, since the release of the final judgment in August 2023, no provisions of Bill 40 have come into force in the English sector. Accordingly, the general provisions of the CFL applicable to “agencies of the civil administration”, notably ss. 16, 16.1, 21, 21.3, 21.7, 21.11 of

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<sup>1</sup> *Quebec English School Boards Association c Procureur général du Québec*, [2020 QCCS 2444](#), aff'd *Attorney General of Quebec v Quebec English School Board Association*, [2020 QCCA 1171](#); *Quebec English School Boards Association c Procureur général du Québec*, [2023 QCCS 2965](#).

the CFL as amended by Bill 96 and Bill 104, are currently inapplicable to English language school boards.

13.2 To the extent that they apply to English language school boards, ss. 16, 16.1, 21, 21.3 (...) 21.7, as amended by ss. 8, 13, 14 and s. 1 of Bill 104, *An Act to amend the Charter of the French Language*, LQ 2002, c 28 (“Bill 104”), notably require that English language school boards, including the EMSB, use French exclusively in their written communications, contracts and agreements with organisations and businesses of the English-speaking community, other governments, and organisations and businesses that work with, or provide services to, the English language school board. Section 21.11 as enacted by s. 14 of Bill 96 requires that legal persons or enterprises that render services to an English language school board render those services in French. These provisions infringe the right to management and control (...) of English language school boards.

14. Sections 26 and 41 of the CFL, as amended by s. 16 and 29 of Bill 96, require that English language school boards, (...) 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”, (...) (c) written communications between the employer and staff members and various documents in the employment relationship, as well as in the EMSB’s “use of technological means”, such as social media. These provisions infringe the right to management and control of (...) 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 commissioners as well as notices of meeting, agendas and minutes of deliberative assemblies, including council meetings. These provisions infringe the right to management and control of English language school boards (...).

16. Section (...) 26, as amended by (...) s. 16 of Bill 96 notably requires 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 (...). These provisions infringe the right to management and control (...) of English language school boards.

17. Sections (...) 23 and 26 of the CFL, as amended by (...) s. 16 of Bill 96, require that English language school boards, including the EMSB, (...) use French, or both French and English together, in the provision of non-pedagogical services. These provisions infringe the right to management and control (...) of 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 of English language school boards (...).

19. Sections 128.6 to 134.6 of the CFL, as enacted by s. 75 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 (...) of 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. 116 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. 119 of Bill 96 (which enters into force three months after June 1, 2022);
  - vi. s. 88.1 of the CJA, as enacted by s. 165 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. 172, 175, 176 and 177 of Bill 96 respectively (which enter into force on June 1, 2022); and

- (a.1) to declare that s. 133 protects the right to be understood in English or French by a judge or member of an agency of the civil administration that exercises an adjudicative function, without an interpreter;
- b) to have s. 166 of Bill 96 declared *ultra vires* the National Assembly of Québec;
- (b.1) to declare that English language school boards are not “agencies of the civil administration” within the meaning of the CFL and that the provisions applicable to agencies of the civil administration accordingly do not apply to English language school boards, including in particular the following provisions:
- i. s. 16 of the CFL and the amendments thereto at s. 1 of Bill 104 (which entered into force on June 1, 2023);
  - ii. s. 16.1 of the CFL, as enacted by s. 8 of Bill 96 (which enters into force one year after June 1, 2022);
  - iii. 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);
  - iv. ss. 21.3, 21.7 and 21.11, as enacted by s. 14 of Bill 96 (which enters into force one year after June 1, 2022).
- 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. to the extent that it applies to English language school boards, s. 14 of the CFL;
  - iii. to the extent that they apply to English language school boards, s. 16 of the CFL and the amendments thereto at s. 1 of Bill 104 (which entered into force on June 1, 2023);
  - iv. to the extent that it applies to English language school boards, 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. to the extent that it applies to English language school boards, s. 17 of the CFL;
  - vi. to the extent that it applies to English language school boards, s. 18 of the CFL, as amended by s. 9 of Bill 96 (which enters into force one year after June 1, 2022);
  - vii. to the extent that it applies to English language school boards, 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. to the extent that it applies to English language school boards, s. 19 of the CFL, as amended by s. 11 of Bill 96 (which enters into force one year after June 1, 2022);
  - ix. to the extent that it applies to English language school boards, 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. to the extent that they apply to English language school boards, ss. (...) 21.3, (...) 21.7 and 21.11, as enacted by s. 14 of Bill 96 (which enters into force one year after June 1, 2022);
- xi. to the extent that it applies to English language school boards, 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. paragraph 1 of s. 128.6, s. 127, paragraphs 1, 3 and 5 of s. 128.8, s. 129 to 134.3, paragraph 1 of s. 134.4 and s. 134.5 to (...)134.6 of the CFL, as enacted by s. (...) 75 of Bill 96 (which enters into force on June 1, 2022(...)).

21.1 Further, the Applicants seek a stay of the following provisions pending the outcome of the litigation:

- a) s. 23 of the CFL;
- b) s. 24 of the CFL;
- c) s. 26 of the CFL and the amendments thereto at s. 16 of Bill 96 which entered into force on June 1, 2023; and
- d) Subparagraph (4)(c) of paragraph 1 of s. 41 of the CFL and the amendments thereto at s. 29 of Bill 96 which entered into force on June 1, 2022.

21.2 To the extent that they apply to English-language school boards, the Applicants further seek a stay of the following provisions pending the outcome of the litigation:

- a) s. 16 of the CFL and the amendments thereto at s. 1 of Bill 104;
- b) s. 16.1 of the CFL, as enacted by s. 8 of Bill 96;
- c) s. 17 of the CFL,
- d) s. 18 of the CFL as amended by s. 9 of Bill 96,
- e) s. 18.1 of the CFL as enacted by s. 10 of Bill;
- f) s. 19 as amended by s. 11 of Bill 96;
- g) s. 21 of the CFL and the amendments thereto at s. 13 of Bill 96;
- h) ss. 21.3, 21.7 and 21.11, as enacted by s. 14 of Bill 96; and
- i) s. 22 of the CFL.

## 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 30,000 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 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.<sup>2</sup> The council of commissioners is composed of

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<sup>2</sup> *Quebec English School Boards Association c Procureur général du Québec*, 2020 QCCS 2444, aff’d *Attorney General of Quebec v Quebec English School Board Association*, 2020 QCCA 1171; *Quebec English School Boards Association c Procureur général du Québec*, 2023 QCCS 2965 at paras 438-446; *Regulation respecting the application of provisions of the Act to amend*



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)).

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).

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mainly the *Education Act* with regard to school organization and governance to *English-language school service centres*, O.C. 1077-2021, 4 August 2021, GOQ II (August 11, 2021), vol 153, no 32, at 3370, s 4. (...) *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.

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

CHAPITRE III

LA LANGUE DE LA LÉGISLATION  
ET DE LA JUSTICE

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

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

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

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

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

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

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.

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. 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.

13. The judgments rendered in Québec by the courts and by bodies discharging judicial or quasi-judicial

13. Les jugements rendus au Québec par les tribunaux et les organismes exerçant des fonctions

<p>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.</p>	<p>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.</p>
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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:

<p>40. The preamble of every statute shall form part thereof, and assist in explaining its purport and object.</p>	<p>40. Le préambule d'une loi en fait partie et sert à en expliquer l'objet et la portée.</p>
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<p>In case of doubt, the construction placed on any Act shall be such as not to impinge on the status of the French language.</p>	<p>Les lois doivent s'interpréter, en cas de doute, de manière à ne pas restreindre le statut du français.</p>
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<p>40.1. In case of discrepancy between the French text and English text, the French text prevails.</p>	<p>40.1. En cas de divergence entre les textes français et anglais de l'article 40, le texte français prévaut.</p>
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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 administration bound to bear the cost of operating such court or body.

### 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 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.
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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:

9. A French translation certified by a certified translator shall be attached to any pleading drawn up in English that emanates from a legal person.	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.
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The legal person shall bear the translation costs.	La personne morale assume les frais de la traduction.
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54. Section 119 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:

208.6. A pleading to which, in contravention of section 9, no translation certified by a certified translator is attached cannot be filed at a court office or at the secretariat of an agency of the civil administration that exercises an adjudicative function or within which a person appointed by the Government or by a minister exercises such a function.	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.
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The court clerk or the secretary shall notify the legal person concerned without delay of the reason for which the pleading cannot be filed.	Le greffier ou le secrétaire avise sans délai la personne morale concernée du motif pour lequel l'acte de procédure ne peut être déposé.
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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 119 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 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.

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. 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 119 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:

10. A French version shall be attached immediately and without delay to any judgment rendered in writing in English by a court of justice where the judgment terminates a proceeding or is of public interest.	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.
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Any other judgment rendered in writing in English shall be translated into French at the request of any person; a judgment rendered in writing in French shall be translated into English at the request of a party.	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.
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The costs for a translation made under this section are borne by the government department or the body that makes it or bears the costs necessary for the exercise of the functions of the court that rendered the judgment.	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.
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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	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
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exercising such a function within such an agency. 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:

<p>12. A person to be appointed to the office of judge shall not be required to have knowledge or a specific level of knowledge of a language other than the official language unless the Minister of Justice, after consultation with the Minister of the French Language, considers that the exercise of that office requires such knowledge and that all reasonable means have been taken to avoid imposing such a requirement.</p>	<p>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.</p>
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<p>13. A person to be appointed by the Government or by a minister to exercise an adjudicative function within an agency of the civil administration shall not be required to have knowledge or a specific level of knowledge of a language other than the official language unless the minister responsible for the administration of the Act constituting the agency, after consultation with the Minister of the French Language, considers that the exercise of that</p>	<p>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,</p>
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function requires such knowledge and that all reasonable means have been taken to avoid imposing such a requirement.

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.

Likewise, such a requirement shall not be imposed on a person to be appointed by the National Assembly to exercise such a function within the Commission d'accès à l'information or the Commission de la fonction publique unless the French Language Commissioner considers that the exercise of that function requires such knowledge and that all reasonable means have been taken to avoid imposing such a requirement.

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

88.1. The Minister of Justice shall not require any criterion in addition to those determined under subparagraph 4 of the first paragraph of section 88, in connection with the knowledge or specific level of knowledge of a language other than the official language of candidates for the office of judge, unless, pursuant to section 12 of the Charter of the French Language (chapter C-11), the Minister considers, after consultation with the Minister of the French Language, that the exercise of that office requires such knowledge and that all reasonable means have been taken to avoid imposing such a criterion.

88.1. Le ministre de la Justice ne peut exiger un critère additionnel à ceux déterminés en vertu du paragraphe 4<sup>o</sup> 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.

In his assessment, the Minister shall not be required to take into consideration data other than that relating to the number of judges who have knowledge of a language other than the official language and to the

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

number of hearings held under section 530 of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46) in such a language. 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 172 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 italicized):

6. The secretariat files on the website of the Ministère de la Justice an annual report on the work of the selection committees. The report contains an analysis of the appointments for judicial office considering the representation of men and women and that of cultural communities. 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.

*In the report, the secretariat also include, for each district or court, where applicable, the data relating to the number of judges who have knowledge of a language other than the official language and to the number of hearings held under section 530 of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46) in such a language.* *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.*

The secretary sends a copy of the report to the Minister of Justice. Le secrétaire transmet une copie de ce rapport au ministre de la Justice.

72. Section 175 of Bill 96 amends s. 9 of the *Regulation respecting the selection procedure for provincial judges* as follows (amendments italicized):

9. The notice includes the following information: 9. L'avis comprend les renseignements suivants:

(1) the legal conditions of eligibility for judicial office; 1° les conditions légales d'admissibilité à la fonction de juge;

(2) the court and the division, if applicable, where an office is vacant; 2° la cour et la chambre, le cas échéant, où il y a un poste à pourvoir;

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| (3) the place where the judge's residence will be established, if applicable;   | 3° le lieu où la résidence du juge sera fixée, le cas échéant;   |
| (4) the requirement that interested persons submit their application to the secretariat for the selection of candidates for judicial office on the form appearing in Schedule A and provide the documents required in support of their application; | 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) the selection criteria provided for in section 25 used to assess the application of every candidate met by a selection committee;   | 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;   |
| <i>(5.1) the criterion required by the Minister of Justice under section 88.1 of the Courts of Justice Act (chapter T-16), if applicable;</i>   | <i>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;</i>   |
| (6) the address of the secretariat; and   | 6° l'adresse du secrétariat;   |
| (7) the final date for submitting application.  | 7° la date limite pour soumettre sa candidature.   |

73. Section 176 of Bill 96 enacts section 9.1 of the *Regulation respecting the selection procedure for provincial judges*, which provides:

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| 9.1. The notice must not include the requirement that candidates for the office of judge have knowledge or a specific level of knowledge of a language other than the official language to obtain the position, unless the Minister, after consultation with the Minister of the French Language, considers that such knowledge is necessary for the exercise of that office and that all reasonable means have been taken to avoid imposing such knowledge. | 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. |
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74. Section 177 of Bill 96 amends section 25 of the *Regulation respecting the selection procedure for provincial judges*, as follows (amendments italicized):

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| 25. To assess the application of a candidate, the committee considers the following criteria: | 25. Pour évaluer la candidature d'un candidat, le comité tient compte des critères suivants: |
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| <p>(1) the candidate's competencies, including:</p> <p>(a) personal and intellectual qualities, integrity, knowledge, <i>except knowledge of a language other than the official language unless that requirement is included in the notice</i>, and general experience.</p> <p>(b) extent of knowledge of the law and experience in the area of law in which the judicial duties will be performed; and</p> <p>(c) capacity for judgment, insight, level-headedness, ability to set priorities and to render decision within a reasonable time, and quality of expression <i>in French, the language of the courts in Québec</i>;</p> <p>(2) the candidate's conception of the judicial office;</p> <p>(3) the candidate's motivation for the judicial office;</p> <p>(4) the candidate's human, professional, social and community experience;</p> <p>(5) the candidate's level of awareness with respect to social realities; and</p> <p>(6) recognition by the legal community of the candidate's qualities and competencies.</p> | <p>1° les compétences du candidat, comprenant:</p> <p>a) ses qualités personnelles et intellectuelles, son intégrité, ses connaissances, <i>qui ne peuvent comprendre sa connaissance d'une langue autre que la langue officielle, sauf si cette exigence est prévue dans l'avis</i>, et son expérience générale;</p> <p>b) le degré de ses connaissances juridiques et son expérience dans les domaines du droit dans lesquels il serait appelé à exercer ses fonctions;</p> <p>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 <i>dans la langue de la justice au Québec, le français</i>;</p> <p>2° la conception que le candidat se fait de la fonction de juge;</p> <p>3° la motivation du candidat pour exercer cette fonction;</p> <p>4° les expériences humaines, professionnelles, sociales et communautaires du candidat;</p> <p>5° le degré de conscience du candidat à l'égard des réalités sociales;</p> <p>6° la reconnaissance par la communauté juridique des qualités et des compétences du candidat.</p> |
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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. 165 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 interpretation, 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, 42<sup>nd</sup> Leg, 2<sup>nd</sup> Sess, vol 46, no 4, at page 128, **Exhibit EMSB-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. 165 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. 172, 175, 176 and 177 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. 165 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. 165 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. 172, 175, 176 and 177 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. 165 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. 172, 175, 176 and 177 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. 165 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. 172, 175, 176 and 177 of Bill 96) will frustrate access to justice in English contrary to the purpose of s. 133.

85.1 A declaration of rights to confirm the right to be understood in English or French without an interpreter in the courts of Québec will resolve a genuine problem within the meaning of art. 142 of the C.p.c. in light of the controversy regarding the scope of s. 133 of the *Constitution Act, 1867*.

85.2 In the alternative to a declaration of invalidity of ss. 12 and 13 of the CFL (as enacted by s. 5 of Bill 96), s.88.1 of the CJA (as enacted by s. 165 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. 172, 175, 176 and 177 of Bill 96), the applicants seek:

- a) a declaration of invalidity of paragraph 2 of s. 88.1 of the CJA (as enacted by s. 165 of Bill 96) and
- b) a declaration that the power under ss. 12 and 13 of the CFL (as enacted by s. 5 of Bill 96) and s. 88.1 of the CJA (as enacted by s. 165 of Bill 96) to determine whether the exercise of a judicial or adjudicative office requires knowledge, or a certain level of knowledge, of English and whether all reasonable means have been taken to avoid imposing such a requirement must take into account the rights under s. 133 of the *Constitution Act, 1982* and data regarding the use of English in all matters in the courts and agencies of the civil administration exercising adjudicative functions in Québec.

85.3 A declaration of rights to clarify the constitutional parameters within which the Minister of Justice's power to limit the appointment of judges with knowledge of English can be exercised will resolve a genuine problem within the meaning of art. 142 of the C.p.c. in light of the controversy regarding the scope of s. 133 of the *Constitution Act, 1867*.

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

86. Section 166 of Bill 96 purports to amend “the *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK); 1982 c 11 (UK)”:

166. The Constitution Act, 1867 (30 & 31 Victoria, c. 3 (U.K.); 1982, c. 11 (U.K.)) is amended by inserting the following after section 90:

166. La Loi constitutionnelle de 1867 (30-31 Vict., ch. 3 (R.-U.); 1982, ch. 11 (R.-U.)) est modifiée par l'insertion, après l'article 90, de ce qui suit :

"FUNDAMENTAL  
CHARACTERISTICS OF QUEBEC

« CARACTÉRISTIQUES  
FONDAMENTALES DU QUÉBEC

"90Q.1. Quebecers form a nation.

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

"90Q.2. French shall be the only official language of Quebec. It is also the common language of the Quebec 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. 166 of Bill 96 are not amendments to the constitution of the province.

93. Section 166 of Bill 96 is *ultra vires* the National Assembly's legislative power and is of no force or effect.

**a) Section 166 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. 166 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 EXCLUSIVE USE OF FRENCH TO “AGENCIES OF THE CIVIL ADMINISTRATION” DO NOT APPLY TO ENGLISH LANGUAGE SCHOOL BOARDS**

96.1 Bill 96 amended the CFL to define the term “agencies of the civil administration” to include only “school service centres”, not “school boards”. English language school boards never became “school service centres” even after the judgment on the merits in Bill 40 rendered in August 2023. As such, the general provisions of the CFL applicable to “agencies of the civil administration”, notably ss. 16, 16.1, 21, 21.3, 21.7, 21.11 of the CFL as amended by Bill 96 and Bill 104, are inapplicable to English language school boards.

### **a) Recent developments in the Bill 40 case resulted in English language school boards not having become “school service centres”**

96.2 On February 8, 2020, the National Assembly enacted Bill 40, *An Act to amend mainly the Education Act with regard to school organization and governance*, SQ 2020, c 1 (“Bill 40”) which would have transformed English-language school boards into “English-language school service centres”. Bill 40 would have replaced the council of commissioners with a “board of directors” whose composition and powers were substantially altered.<sup>3</sup>

96.3 On May 15, 2020, the Quebec English School Boards Association (“QESBA”), the Lester B. Pearson School Board and Adam Gordon challenged the constitutional validity of various provisions of Bill 40 on the basis of their incompatibility with s. 23 of the *Charter*, and sought a stay of Bill 40 to prevent their entry into force prior to the next general school election. They were joined by all other English-language school boards, including the EMSB.

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<sup>3</sup> *Quebec English School Boards Association c Procureur général du Québec*, 2023 QCCS 2965 at paras 308-309; *Attorney General of Quebec v Quebec English School Board Association*, 2020 QCCA 1171 at para 50.

96.4 On August 10, 2020, the Superior Court of Québec ordered a stay of the application of Bill 40 in its entirety to English-language school boards, a decision confirmed on September 17, 2020 by the Court of Appeal.<sup>4</sup>

96.5 On August 4, 2021, while the matter was under reserve, the government enacted the *Regulation respecting the application of provisions of the Act to amend mainly the Education Act with regard to school organization and governance to English-language school service centres* (“*Regulation re application of Bill 40 to English language school boards*”), which provided that the provisions of Bill 40 only “come into force on the date or dates to be set by the Government insofar as they concern an English-language school service centre”.<sup>5</sup>

96.6 On June 1, 2022, Bill 96 received royal assent and the EMSB initiated this challenge to the constitutional validity of various provisions of Bill 96 and the CFL. At the time, it was uncertain whether English language school boards might become “school service centres” after the release of the judgment on the merits in the Bill 40 case.

96.7 On August 2, 2023, the Superior Court of Québec rendered its decision on the merits declaring nearly all of the challenged provisions invalid on the basis of their incompatibility with s. 23 of the *Charter*.<sup>6</sup> On September 8, 2023, the Government appealed. To date, the Government has not brought any provisions of Bill 40 into force in the English sector by way of the *Regulation re application of Bill 40 to English language school boards*.

96.8 Accordingly, Bill 40 never came into force in the English sector. English-language school boards have remained in place. “English-language school service centres” do not exist.

**b) Provisions of Bill 96 and the CFL applicable to school service centres do not apply to English language school boards**

96.9 The provisions of Bill 96 and the CFL applicable to “agencies of the civil administration” do not apply to English language school boards. English language school boards are not “agencies of the civil administration” within the meaning of the CFL, because they are not school service centres.

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<sup>4</sup> *Quebec English School Boards Association c Procureur général du Québec*, [2020 QCCS 2444](#), aff'd *Attorney General of Quebec v Quebec English School Board Association*, [2020 QCCA 1171](#).

<sup>5</sup> Except for certain transitional provisions (ss 314 to 334), which have effect since 8 February 2020: *Regulation respecting the application of provisions of the Act to amend mainly the Education Act with regard to school organization and governance to English-language school service centres*, O.C. 1077-2021, 4 August 2021, GOQ II (August 11, 2021), vol 153, no 32, at 3370, s 4.

<sup>6</sup> *Quebec English School Boards Association c Procureur général du Québec*, [2023 QCCS 2965](#) at paras 308-309.

96.10 Prior to Bill 40, the term “agencies of the civil administration” in the CFL was defined to include “school boards”.<sup>7</sup> As of June 15, 2020,<sup>8</sup> s. 309 (7) of Bill 40 amended this definition by inserting the term “school service centres” before the term “school boards”, as follows (amendments italicized):

SCHEDULE

A. The civil administration

[...]

3. The municipal and school bodies:

[...]

(c) the school bodies:

*The school service centres, the school boards and the Comité de gestion de la taxe scolaire de l’île de Montréal.*

Annexe

A. L’Administration

[...]

3. Les organismes municipaux et scolaires:

[...]

c) les organismes scolaires:

*Les centres de services scolaires, les commissions scolaires et le Comité de gestion de la taxe scolaire de l’île de Montréal.*

96.11 As such, prior to Bill 96, the term “agencies of the civil administration” in the CFL included English-language school boards, even after the enactment of Bill 40.

96.12 As of June 1, 2022, s.122 of Bill 96 amended the Schedule to the CFL, replacing it entirely with a new Schedule I which defined “agencies of the civil administration” to only include the following school bodies:

SCHEDULE I

A. The civil administration

The following are agencies of the civil administration:

[...]

(4) school bodies:

(a) school service centres established under the *Education Act* (chapter I-13.3):

(b) the Comité de gestion de la taxe scolaire de l’île de Montréal established under that Act; and

ANNEXE I

A) L’Administration

Sont des organismes de l’Administration :

[...]

4° les organismes scolaires:

a) les centres de services scolaires institués en vertu de la *Loi sur l’instruction publique* (chapitre I-13.3);

b) le Comité de gestion de la taxe scolaire de l’île de Montréal institué en vertu de cette loi;

<sup>7</sup> Section 3(c) to the Schedule to the CFL, as it read prior to June 15, 2020.

<sup>8</sup> Section 309 is among the provisions which “come into force on 15 June 2020 insofar as they concern a French-language school service centre and on 5 November 2020 insofar as they concern an English-language school service centre”: Bill 40, s 335 (1).

(c) the Centre de services scolaire du Littoral established by the Act respecting the Commission scolaire du Littoral (1966-1967, chapter 125); c) le Centre de services scolaire du Littoral constitué par la Loi sur la Commission scolaire du Littoral (1966-1967, chapitre 125);

96.13 As of June 1, 2022, by removing the reference to school boards in the definition of “agencies of the civil administration”, the provisions of the CFL and amendments introduced by Bill 96 that apply to “agencies of the civil administration”, no longer apply to English-language school boards.

96.14 In particular, the following provisions whose constitutional validity is at issue in this Application, and which would otherwise require the exclusive use of French, do not currently apply to English-language school boards because they are not school service centres and have been accordingly excluded from the definition of “agencies of the civil administration”:

- a) ss. 16 of the CFL and the amendments thereto at s. 1 of Bill 104,
- b) s. 16.1 as enacted by s. 8 of Bill 96,
- c) s. 21 of the CFL and the amendments thereto at s. 13 of Bill 96, and
- d) ss. 21.3, 21.7 and 21.11 as enacted by s. 14 of Bill 96.

96.15 For the same reasons, the provisions of the *Regulation respecting the language of the civil administration* which are enacted pursuant to the regulatory powers provided for at s. 16 as amended by s. 1 of Bill 104, and at ss. 21.4 and 21.5 of the CFL as enacted by Bill 96, do not apply to English-language school boards.

96.16 However, the draft *Regulation respecting the language of the civil administration* published on March 1, 2023 included provisions providing for certain narrow exceptions to the rules applicable to “agencies of the civil administration” specifically for “a school body recognized under section 29.1”, as appears from the draft *Regulation respecting the language of the civil administration* attached as **Exhibit EMSB-2**. This revealed the government’s view that the above-noted provisions apply to English-language school boards.

96.17 On April 14, 2023, amidst the uncertainty prevailing while awaiting a decision on the merits on Bill 40, the EMSB wrote to the government requesting that English-language school boards be granted a broad exemption from the requirements of ss. 16, 16.1, 21 and 21.1 and following of the CFL, as appears from the letter of April 14, 2023 attached as **Exhibit EMSB-3**. The government did not respond to this request. The *Regulation respecting the language of the civil administration* as adopted still contains the provisions revealing the government’s view that the rules applicable to “agencies of the civil administration” apply to English language school boards.

96.18 This is in contrast with the government’s approach regarding the *Regulation respecting certain conditions of employment of senior executives of school service centres and of the Comité de gestion de la taxe scolaire de l’île de Montréal* and the *Regulation respecting certain conditions of employment of*

senior staff of school service centres and of the Comité de gestion de la taxe scolaire de l'île de Montréal enacted pursuant to s. 451 of the Education Act. These regulations would have been amended by s. 312 of Bill 40 to replace all references to "school boards" with "school service centres" were it not for the stay of Bill 40 and the Regulation re application of Bill 40 to English language school boards. The government appears to recognize the distinction in terminology in this case, since the consolidated versions of these two regulations published by the Ministry of Education on its website define the term "school service centre" to refer to "a school service centre or an English language school board" ("un centre de services scolaire ou une commission scolaire anglophone"), as appears from the Document consolidé concernant certaines conditions de travail des cadres des centres de services scolaires et du Comité de gestion de la taxe scolaire<sup>9</sup> attached as Exhibit EMSB-4 and the Document consolidé concernant certaines conditions de travail des hors-cadre des centres de services scolaires et du Comité de gestion de la taxe scolaire et de l'île de Montréal<sup>10</sup> attached as Exhibit EMSB-5.

96.19 The Applicants accordingly seek a declaration that English-language school boards are not "agencies of the civil administration" within the meaning of the CFL, such that the following provisions of the CFL and regulatory provisions enacted pursuant to them – amongst others – are inapplicable to English-language school boards: s. 16 [Bill 104, s 1], s 16.1 [Bill 96, s 8], and ss 21.3, 21.7 and 21.11 [s 14 of Bill 96].

96.20 In the alternative, if the Court were to conclude that those provisions do apply to English-language school boards, the Applicants seek a declaration of invalidity of those same provisions on the basis of their incompatibility with s. 23 of the Charter, for the reasons explained below.

## **VII. 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**

**DROITS À L'INSTRUCTION DANS  
LA LANGUE DE LA MINORITÉ**

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<sup>9</sup> Quebec, Ministry of Education, *Document consolidé concernant certaines conditions de travail des cadres des centres de services scolaires et du comité de gestion de la taxe scolaire de l'île de Montréal* (Quebec: Ministry of Education, March 2023), online (pdf): <[education.gouv.qc.ca](http://education.gouv.qc.ca)>.

<sup>10</sup> Quebec, Ministry of Education, *Document consolidé concernant certaines conditions de travail des hors-cadre des centres de services scolaires et du comité de gestion de la taxe scolaire de l'île de Montréal* (Quebec: Ministry of Education, March 2023), online (pdf): <[education.gouv.qc.ca](http://education.gouv.qc.ca)>.

**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 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

**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 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) 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.

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 italicized):

*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. 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.

Au sein de ces organismes et établissements, deux personnes peuvent, dans leurs communications écrites entre elles, utiliser la langue de 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. 68 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 to use the official language at the same time.

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 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:

41. Every employer shall respect the worker's right to carry on his activities in French. Therefore, the employer is required, in particular,

(1) to see that any offer of employment, transfer or promotion the employer publishes is in French;

(2) to see that any individual employment contract the employer enters into in writing is drawn up in French;

(3) to use French in written communications, even those after termination of the employment relationship, with all or part of the staff, a worker in particular or an association of workers representing all or part of the staff; and

(4) to see that the documents below that the employer makes available are drawn up in French and, if also available in another language, see that the French version is available on terms that are at least as favourable:

(a) employment application forms;

(b) documents relating to conditions of employment; and

(c) training documents produced for the staff.

Despite subparagraph 2 of the first paragraph, the parties to an individual employment contract that is a contract of adhesion may be bound only by its version in a language other than French if, after examining its French version, such is their express wish. In the other cases, an individual employment contract may be drawn up

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

exclusively in a language other than French at the express wish of the parties. peut être rédigé exclusivement dans une autre langue que le français si telle est la volonté expresse des parties.

Despite subparagraph 3 of the first paragraph, the employer may communicate in writing with a worker exclusively in a language other than French if the latter has so requested. 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. 66 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 of English language school boards (...) 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 deliberative assemblies, including 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.
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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.
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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

deliberative assemblies (including 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 of English language school boards (...) 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 deliberative assemblies (including 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 of English language school boards (...) 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**

121.1 Recent amendments to the CFL introduced by Bill 96 and by the entry into force, over 20 years later, of s.1 of Bill 104, require the use of French exclusively. To the extent that they apply to English language school boards, they **prohibit English language school boards from using English** in their written communications, contracts and related documents with **key institutions of the English-speaking community**. Section 26 of the CFL, as amended by s. 16 of Bill 96, further requires that English language school boards **use French**, or both French and English, in their communications **with each other**. These provisions infringe s. 23 of the *Charter*.

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 centres <sup>11</sup> and the centre de services scolaire du Littoral are recognized school bodies.	29.1. Les centres de services scolaire anglophones <sup>11</sup> et le centre de services scolaire du Littoral sont des organismes scolaires reconnus.
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The Office shall recognize, at the request of the municipality, body or institution,	L'Office doit reconnaître, à sa demande:
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<sup>11</sup> 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.

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|---|---|
| <p>(1) a municipality of which more than half the residents have English as their mother tongue;</p>  | <p>1° une municipalité, lorsque plus de la moitié des résidents de son territoire sont de langue maternelle anglaise;</p>   |
| <p>(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</p> | <p>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;</p> |
| <p>(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.</p>                   | <p>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.</p>          |

<p>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.</p>	<p>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.</p>
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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 as it read prior to June 1, 2023 provides:

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|--|---|
| <p>16. The civil administration shall use the official language in its written communications with other governments and with legal persons established in Québec.</p> | <p>16. Dans ses communications écrites avec les autres gouvernements et avec les personnes morales établies au Québec, l'Administration utilise la langue officielle.</p> |
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125.1 Section 16 of the CFL was amended by s. 1 of Bill 104, *An Act to amend the Charter of the French Language*, SQ 2002, c 28 (“Bill 104”), as follows (amendments italicized):

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

*The Government may, however, determine by regulation the cases, conditions or circumstances in which another language may be used in addition to the official language.*

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

*Toutefois, le gouvernement peut déterminer, par règlement, les cas, les conditions ou les circonstances où une autre langue peut être utilisée en plus de la langue officielle.*

125.2 Section 1 of Bill 104 was not proclaimed into force in 2002 (s. 53 of Bill 104). On May 1, 2021, Order-in-Council 654-2021 fixed the date of entry into force of this amendment to May 5, 2022 (Gaz Q II, vol 153, no 20, 2361). Its entry into force was postponed by Order-in-Council 724-2022 to June 20, 2022 (Gaz Q II, vol 154, no 19, 2515), and again by Order-in-Council 1123-2022 to June 1, 2023 (Gaz Q II, vol 154, no 26, 3565). As such, the amendments to s. 16 of the CFL enacted in 2002 came into force on June 1, 2023.

125.3 The EMSB became aware of these orders-in-council in March 2023, upon receiving a copy of the draft *Regulation respecting the language of the civil administration*, which refers to paragraph 2 of s. 16 of the CFL as enacted by Bill 104 (**Exhibit EMSB-2**).

125.4 There was no consultation of English language school boards regarding the government's decision to bring into force, over 20 years later, provisions of Bill 104 requiring that English language school boards use French exclusively.

125.5 The government failed to take into account the needs and concerns of the minority language community in adopting the orders-in-council proclaiming in force s. 1 of Bill 104.<sup>12</sup>

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

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<sup>12</sup> *Quebec English School Boards Association c Procureur général du Québec*, [2023 QCCS 2965](#) at paras 324-326.

compte tenu des autres adaptations nécessaires.

127. Schedule I of the CFL, as amended by s. 122 of Bill 96, defines the “civil administration” so as to include “school bodies”, including “school service centres established under the *Education Act*”.

128. To the extent that they apply to English-language school boards, the effect of ss. 16, 16.1 and Schedule I of the CFL, as amended by Bill 96 and Bill 104, read alongside s. 89 of the CFL, as amended by s. 66 of Bill 96 and reproduced above, is to require that English language school boards use French exclusively (...) 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.

129.1 While the second paragraph of section 16 (as amended by Bill 96 and Bill 104) allows the government to adopt regulations derogating from the rule of exclusive use of French, it does not allow the government to adopt regulations enabling the exclusive use of a language other than French.

129.2 On March 16, 2023, the EMSB became aware of the publication of the draft *Regulation respecting the language of the civil administration* published in the *Gazette officielle du Québec* on March 1, 2023.

129.3 On April 14, 2023, within the timeline for public comments on the draft *Regulation respecting the language of the civil administration*, the EMSB wrote to the Minister to request that the regulation exempt English language school boards from using French exclusively in their written communications with organisations and in contracts and related documents (**Exhibit EMSB-3**). The government did not respond to this letter.

129.4 The government failed to take into account the needs and concerns of the minority language community in adopting the *Regulation respecting the language of the civil administration*.

129.5 On May 10, 2023, the government adopted the *Regulation respecting the language of the civil administration*, CQLR c C-11, r 8.1 which notably provides for certain situations where agencies of the civil administration may use another language in addition to French pursuant to s. 16, paragraph 2 of the CFL.

129.6 With respect to communications with other governments, s. 1 of the *Regulation respecting the language of the civil administration* provides:



1. In a written communication with another government that does not have French as an official language, an agency of the civil administration may attach to the French version of the communication a version drawn up in another language.

A school body recognized under section 29.1 of the Charter of the French Language (chapter C-11) may do so when communicating with another government having in particular English as the official language.

1. Dans une communication écrite avec un autre gouvernement n'ayant pas comme langue officielle le français, un organisme de l'Administration peut joindre à la version française de cette communication une version rédigée dans une autre langue.

Toutefois, l'organisme scolaire reconnu en vertu de l'article 29.1 de la Charte de la langue française (chapitre C-11) peut le faire lorsqu'il communique avec un autre gouvernement ayant notamment l'anglais comme langue officielle.

129.7 To the extent that they apply to English-language school boards, the effect of s. 16 of the CFL, as amended by Bill 104, and s. 1 of the *Regulation respecting the language of the civil administration*, is to require that English language school boards attach a French version to communications in English with the federal government and with other governments that do not have French as their official language.

129.8 With respect to communications with legal persons established in Québec, the *Regulation respecting the language of the civil administration* provides:

2. In a written communication with a legal person established in Québec, an agency of the civil administration may use another language in addition to the official language where the communication is

(1) addressed only to the head office or an establishment of the legal person, where the head office or establishment is outside Québec;

(2) addressed to a legal person exempted from the application of the Charter of the French language (chapter C-11) under section 95 of the Charter;

(3) addressed to an establishment of a legal person constituted and administered exclusively for the purpose of offering services in a

2. Dans une communication écrite avec une personne morale établie au Québec, un organisme de l'Administration peut utiliser une autre langue en plus de la langue officielle lorsque la communication est:

1° adressée uniquement au siège ou à un établissement de la personne morale, lorsque ce siège ou cet établissement est à l'extérieur du Québec;

2° adressée à une personne morale exemptée de l'application de la Charte de la langue française (chapitre C-11) en vertu de l'article 95 de celle-ci;

3° adressée à un établissement d'une personne morale formée et administrée exclusivement dans le but d'offrir des services dans une

reserve, in an establishment or on the lands referred to in section 97 of the Charter of the French language or to a person referred to in that section;

(4) necessary for implementing measures for cooperation between a competent authority in Québec and that of another State, including the drafting of documents necessary for the application, in Québec, of standards to be harmonized with those of such other State;

(5) sent by an agency of the civil administration assisting the Minister responsible for ensuring that the concerns of the English-speaking community of Québec are taken into consideration in the performance of that responsibility and the other language is English;

(6) sent by an agency of the civil administration acting as the legal representative of a natural person with whom it has the option to communicate in another language;

(7) sent by a school body recognized under section 29.1 of the Charter of the French Language to a legal person that provides educational services in English; or

(8) necessary to ensure that a communication written only in the official language does not compromise the carrying out of the mission of the agency of the civil administration and the agency has taken all reasonable means to communicate only in the official language.

The first paragraph applies to a written communication of an agency

réserve, dans un établissement ou sur des terres visés à l'article 97 de la Charte de la langue française ou à une personne visée à cet article;

4° nécessaire à la mise en œuvre de mesures visant la coopération entre une autorité compétente du Québec et celle d'un autre État, y compris la rédaction de documents nécessaires à l'application au Québec de normes visant à être harmonisées avec celles d'un tel autre État;

5° transmise par l'organisme de l'Administration qui assiste le ministre responsable d'assurer la prise en compte des préoccupations de la communauté québécoise d'expression anglaise dans l'exercice de cette responsabilité et que cette autre langue est l'anglais;

6° transmise par un organisme de l'Administration agissant à titre de représentant légal d'une personne physique avec qui il a la faculté de communiquer dans une autre langue;

7° transmise par un organisme scolaire reconnu en vertu de l'article 29.1 de la Charte de la langue française à une personne morale qui offre des services pédagogiques en anglais;

8° nécessaire pour éviter qu'une communication rédigée uniquement dans la langue officielle compromette l'accomplissement de la mission de l'organisme de l'Administration et que ce dernier a pris tous les moyens raisonnables pour communiquer uniquement dans la langue officielle.

Le premier alinéa s'applique à une communication écrite d'un

of the civil administration with the operator of an enterprise as if the operator were a legal person and with the necessary modifications.

organisme 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.

129.9 Pursuant to s. 19 of the *Regulation respecting the language of the civil administration*, subparagraph 8 of the first paragraph of section 2 of that regulation will cease to have effect on June 1, 2025.

129.10 To the extent that they apply to English-language school boards, the effect of s. 16 of the CFL, as amended by Bill 104, and s. 2 of the *Regulation respecting the language of the civil administration*, is to require that English language school boards join a French version to all written communications with a legal person that provides educational services in English, and to draft written communications with other legal persons and operators of an enterprise in the English-speaking community in French only.

130. Sections 21, (...) 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~~ and 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.

(...)

(...)

21.3. 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:

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

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

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

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

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

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.

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

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

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

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

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.

21.7. An agency of the civil administration is required to make available a French version of any part of a contract or written document drawn up only in another language under section 21.5 or 21.6 to the members of its personnel whose functions require them to examine that part of such a contract or written document. 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.

The first paragraph does not apply to members of the agency's personnel who participate in the negotiation or drawing up of such a contract or document. 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.

130.1 Pursuant to s. 21.5 of the CFL, the government may adopt regulations providing certain cases in which a contract may be drawn up only in a language other than French. The *Regulation respecting the language of the civil administration* provides that:

5. A contract may be drawn up only in a language other than French in the following cases and on the following conditions: 5. Un contrat peut être rédigé seulement dans une autre langue que le français dans les cas et les conditions suivants:

(1) where it is entered into with a person or enterprise that carries on the activities of a clearing house and whose object is financial market transactions; 1° lorsqu'il est conclu avec une personne ou une entreprise qui exerce les activités d'une chambre de compensation et qu'il a pour objet la réalisation d'opérations sur les marchés financiers;

(2) where it is entered into on a platform that makes it possible to trade in a derivative, a security or other movable property, provided, in the latter case, that the contract is not a consumer contract, and whose 2° lorsqu'il est conclu sur une plateforme permettant de négocier un instrument dérivé, une valeur mobilière ou un autre bien meuble, pourvu en ce dernier cas, qu'il ne s'agisse pas d'un contrat de

object is the management of financial risks or transactions related to the field of electricity.

consommation, et qu'il a pour objet la gestion de risques financiers ou des transactions liées au domaine de l'électricité.

130.2 Pursuant to s. 21.4 of the CFL, the government may adopt regulations determining cases in which a version in a language other than French may be attached to a contract and other related written documents. The *Regulation respecting the language of the civil administration* notably provides that:

4. A version in a language other than French may be attached to contracts and other contract-related written documents referred to respectively in sections 21 and 21.3 of the Charter of the French language (chapter C-11) in each of the following situations:

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 de la Charte de la langue française (chapitre C-11) dans chacune des situations suivantes:

[...]

[...]

(9) where a school body recognized under section 29.1 of the Charter of the French language enters into a contract with a legal person or an enterprise in the English educational network and the object of the contract is services on student school success, the development of educational resources, the offer of training for school personnel or tutoring to students;

9° lorsqu'un organisme scolaire reconnu en vertu de l'article 29.1 de la Charte de la langue française contracte avec une personne morale ou une entreprise œuvrant dans le réseau éducatif anglophone et que le contrat a pour objet des services portant sur la réussite scolaire des élèves, le développement de ressources pédagogiques, l'offre de formation du personnel scolaire ou le tutorat aux élèves;

(10) where school bodies recognized under section 29.1 of the Charter of the French language enter into a contract with each other;

10° lorsque des organismes scolaires reconnus en vertu de l'article 29.1 de la Charte de la langue française contractent entre eux;

(11) where a school body recognized under section 29.1 of the Charter of the French language enters into a contract with a legal person that provides educational services in English;

11° lorsqu'un organisme scolaire reconnu en vertu de l'article 29.1 de la Charte de la langue française contracte avec une personne morale qui offre des services pédagogiques en anglais;

[...]

[...]

131. To the extent that they apply to English-language school boards, the effect of ss. 21, 21.3, (...) and 21.7 of the CFL, as amended by Bill 96, and s. 4-5 of the

Regulation respecting the language of the civil administration, 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. To the extent that they apply to English-language school boards, by imposing the use of French only, 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 and s. 1 of Bill 104, infringe s. 23 of the *Charter*.

137. To the extent that they apply to English-language school boards, 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, 21.3, (...) and 21.7 of the CFL, as amended by ss. 13 and 14 of Bill 96, infringe s. 23 of the *Charter*.

138. To the extent that it applies to English-language school boards, 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.
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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.
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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.
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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.
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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	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
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applicable to the agency if the latter had itself provided the services to the public. seraient applicables à cet organisme s'il avait lui-même fourni ces services au public.

145. The effect of ss. 21.11 (to the extent that it applies to English-language school boards), 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 (to the extent that it applies to English language school boards), 23 and 26 of the CFL, as amended by Bill 96, infringe the right to management and control of English language school boards (...) 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 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, le texte français prédominant.
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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 of English language school boards (...) 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. 75 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.

128.8. Where the Office considers, after examining the analysis of the

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

language situation in a body referred to in section 128.6, that the use of French within the body is in compliance with the dispositions of this Act and that the body is meeting the other obligations incumbent to it under those provisions, the Office shall issue a certificate of compliance to the body.

[...]

Where the Office is of the opinion that a certificate of compliance should not be issued, it shall order the body to develop and implement a compliance program and shall send, without delay, a copy of its decision to the body.

[...]

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.

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. 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. 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.

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. 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.

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

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

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.

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.

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

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. 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.

134.2. 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. 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.

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.

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

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

134.4. Where the Office is of the opinion, after the complete implementation of a compliance program, that the use of French within the body is in compliance with the provision of this Act and that the body meets the other obligations incumbent on it under those provisions, the Office shall issue a certificate of compliance to the body.

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.

134.6. Where the Office considers, after examining the report provided for in the first paragraph of section 134.5 or when processing a complaint, that the use of French within 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 is no longer in compliance with the provisions of this Act or that the agency no longer meets the other obligations incumbent on it under those provisions, the Office may suspend the certificate in addition to ordering the agency, under section 128.8, to develop and implement a compliance program.

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 (...) 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 (...) 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.

The office may also suspend the certificate of compliance if the agency fails to comply with an order issued by the Minister under section 128.3 or by the Office under section 177.

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.

The other provisions of this division are then applicable, with the necessary modifications.

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. 75 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, paragraph 1 of s. 128.6,

s. 127, paragraphs 1, 3 and 5 of s. 128.8, s. 129 to 134.3, paragraph 1 of s. 134.4 and s. 134.5 to (...) 134.6 of the CFL infringe s. 23 of the *Charter*.

157. Furthermore, to the extent that ss. 128.6 to 134.6, as enacted by s. 75 of Bill 96, mandate the OQFL to effectively enforce compliance with provisions of the CFL that impermissibly infringe s. 23 of the *Charter*, paragraph 1 of s. 128.6, s. 127, paragraphs 1, 3 and 5 of s. 128.8, s. 129 to 134.3, paragraph 1 of s. 134.4 and s. 134.5 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, (...) 21.3, (...) 21.7, 21.11, 23, 24, 26, 41, paragraph 1 of s. 128.6, s. 127, paragraphs 1, 3 and 5 of s. 128.8, s. 129 to 134.3, paragraph 1 of s. 134.4 and s. 134.5 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) to the extent that it applies to English-language school boards, s. 16 of the CFL, and the amendments thereto at s. 1 of Bill 104;
- c) to the extent that it applies to English-language school boards, s. 8 of Bill 96, enacting s. 16.1 of the CFL;
- d) to the extent that it applies to English-language school boards, s. 21 of the CFL and the amendments thereto at s. 13 of Bill 96;
- e) to the extent that it applies to English-language school boards, ss. 14 of Bill 96, enacting ss. (...) 21.3, (...) 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. 75 of Bill 96, enacting paragraph 1 of s. 128.6, s. 127, paragraphs 1, 3 and 5 of s. 128.8, s. 129 to 134.3, paragraph 1 of s. 134.4 and s. 134.5 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. Unless the Court finds that English language school boards are not “agencies of the civil administration”, 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.

### **VIII. PROVISIONAL EXECUTION**

164. In all but exceptionally rare cases, the rule of law and constitutional supremacy require that declarations of invalidity and declarations of constitutional rights have immediate effect.

165. To the extent that the effects of a declaration of invalidity or a declaration of rights may be characterized as the “execution” of a judgment within the meaning of art. 355 of the CCP, the continued application of unconstitutional legislation and non-compliance with declarations of constitutional rights constitute serious or irreparable harms justifying the provisional execution of such declarations pursuant to art. 661 of the CCP.

### **IX. STAY OF PROVISIONS PENDING A DECISION ON THE MERITS**

166. The Applicants seek an interlocutory injunction for a stay pursuant to articles 49 and/or 510 of the CCP, or in the alternative a stay pursuant to articles 49 and/or 530 of the CCP, of the following provisions pending a decision on the merits of this application, which require that English language school boards use French, or both French and English together, **internally and amongst one another**, including in:

- a) their internal written communications, their documents, the provision of services (in writing), their use of technological means, notices of meeting, agenda and minutes, and written communications with each

other (s. 26 of the CFL and the amendments thereto at s. 16 of Bill 96 which entered into force on June 1, 2023, s. 23 of the CFL, and the corresponding provisions applicable to all agencies of the civil administration that would otherwise apply to English language school boards and which require the exclusive use of French, specifically s. 17 of the CFL, s. 18 of the CFL as amended by s. 9 of Bill 96, s. 18.1 of the CFL as enacted by s. 10 of Bill and s. 19 as amended by s. 11 of Bill 96);

- b) training documents for staff (subparagraph (4)(c) of paragraph 1 of s. 41 of the CFL and the amendments thereto at s. 29 of Bill 96 which entered into force on June 1, 2022);
- c) internal signage (s. 24 of the CFL, and the corresponding provision applicable to all agencies of the civil administration that would otherwise apply to English language school boards and which generally requires the exclusive use of French, s. 22 of the CFL).

167. The Applicants seek to have set down for hearing at the same time as their application for a stay of the above-noted provisions the part of this application seeking a declaration that English language school boards are not “agencies of the civil administration” and that the provisions requiring the exclusive use of French in the following contexts do not apply to them (paragraphs 96.1 to 96.20):

- a) in their written communications with legal persons established in Quebec (s. 16 of the CFL and the amendments thereto at s. 1 of Bill 104, and s. 16.1 of the CFL, as enacted by s. 8 of Bill 96); and
- b) in their contracts and related documents (s. 21 of the CFL and the amendments thereto at s. 13 of Bill 96, ss. 21.3, 21.7 and 21.11, as enacted by s. 14 of Bill 96).

168. The question as to whether English language school boards are “agencies of the civil administration” within the meaning of Schedule I to the CFL is a pure question of law. If this question is determined at a preliminary stage and the provisions listed at paragraph 167 do not apply to English-language school boards, the serious or irreparable harm associated with their implementation will not materialize and there is no need for a stay of these provisions.

169. **In the alternative** to this question being set down for hearing at the same time as the stay, or in the event that the Court were to conclude that English language school boards are “agencies of the civil administration” such that s. 16 [Bill 104, s 1], s 16.1 [Bill 96, s 8], and ss 21.3, 21.7 and 21.11 [s 14 of Bill 96] apply to English language school boards, the Applicants seek an interlocutory injunction for a stay pursuant to articles 49 and/or 510 of the CCP, or in the alternative a stay pursuant to articles 49 and/or 530 of the CCP, of those same provisions pending a decision on the merits of this application.

170. An interlocutory injunction staying the effect of these provisions remains in force despite an appeal pursuant to art 514 of the CCP. In the event that the

Court issues a stay pursuant to articles 530 and/or 49 of the CCP, the applicants further seek the provisional execution of the stay notwithstanding appeal pursuant to article 661 of the CCP.

171. In order to obtain a stay pending a determination on the merits, the applicants must demonstrate (a) an appearance of right, (b) serious or irreparable harm, and (c) that the balance of convenience favors granting the stay.<sup>13</sup>

**a) Appearance of Right**

172. To demonstrate an appearance of right, applicants must show that there is a serious question to be decided. The appearance of right criteria is a low threshold: the judge must be satisfied that the application is neither vexatious nor frivolous.<sup>14</sup>

173. There is a serious question to be tried as to whether s. 16 of the CFL [s. 1 of Bill 104], s. 16.1 of the CFL [s. 8 of Bill 96], s. 21 of the CFL [s. 13 of Bill 96], and ss. 21.3 and 21.7 [s. 14 of Bill 96] infringe s. 23 of the *Charter* by requiring that **English** language school boards use **French exclusively** in written communications and contracts with **key institutions** of the English-speaking community in Québec. There is also a serious question to be tried as to whether ss. 21.11 of the CFL [s. 14 of Bill 96], 23, 24, 26 [s.16 of Bill 96] and 41 [s. 29 of Bill 96] of the CFL infringe s. 23 by requiring that **English** language school boards use **French internally and amongst one another**. These provisions impose the use of the majority language on minority language school boards and within the minority language community itself.

174. The use of language by a minority language school board goes to the heart of the right to management and control over language and culture protected by s. 23 of the *Charter*. The very purpose of management and control under s. 23 is to “guarantee that the specific needs of the minority language community are the first consideration in any given decision affecting language and cultural concerns”.<sup>15</sup> Recently, the Supreme Court held that by “excluding s. 23 from the scope of the notwithstanding clause, the framers of the Charter sought to prevent the majority from being able to shirk its constitutional obligations and thus avert a return to the time when the minority was unable to develop in its own language and culture”.<sup>16</sup>

**b) Serious or Irreparable Harm**

**(i) Harm caused by prohibiting the use of English in communications with key institutions of the English-speaking community**

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<sup>13</sup> *Groupe CRH Canada inc c Beaugard*, 2018 QCCA 1063; *Attorney General of Quebec v Quebec English School Board Association*, 2020 QCCA 1171 at para 10.

<sup>14</sup> *Groupe CRH Canada inc c Beaugard*, 2018 QCCA 1063 at para 28.

<sup>15</sup> *Arsenault-Cameron v Prince Edward Island*, 2000 SCC 1 at para 45, citing *Mahé v Alberta*, [1990] 1 SCR 342 at 371-372.

<sup>16</sup> *Conseil scolaire francophone de la Colombie-Britannique v British Columbia*, 2020 SCC 13 at para 149.

175. Amendments to the CFL that came into force on June 1, 2023 would require English language school boards to communicate with **key institutions** of the English-speaking community **in French exclusively**. Use of English is **prohibited**. The implementation of such provisions would cause serious or irreparable harm to the minority language community.

176. Section 16 of the CFL [s. 1 of Bill 104], s. 16.1 of the CFL [s. 8 of Bill 96], s. 21 of the CFL [s. 13 of Bill 96], and ss. 21.3 and 21.7 of the CFL [s. 14 of Bill 96] prohibit the use of English in written communications with legal persons established in Québec and operators of an enterprise, including in situations where such organisations are part of the English-speaking community.

177. The EMSB writes in English when communicating with members and institutions of the English-speaking community. This is because English language school boards are themselves part of the English-speaking community and play a vital role in promoting the vitality of the English-speaking community.<sup>17</sup>

178. The requirement to use French exclusively in communications with other members and institutions of the English-speaking community causes irreparable harm to English language school boards' identity, philosophy and culture as English-language school boards and to their connection to the English-speaking communities they are intended to serve.<sup>18</sup>

179. As the Supreme Court emphasized in *Mahé*: "Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them".<sup>19</sup>

180. The harm to the English-speaking community caused by prohibiting the use of its own language when communicating with the very institutions intended to protect the vitality of the English-speaking community cannot be compensated or reversed.

181. On March 1, 2023, the government published the draft *Regulation respecting the language of the civil administration*. On April 14, 2023, the EMSB wrote to the Minister to request that the regulation exempt English language school boards from using French exclusively in their written communications with organisations and in contracts and related documents (**Exhibit EMSB-3**). The government did not respond to this letter.

182. The narrow exceptions to the requirement to use French exclusively in written communications, contracts and related documents in the *Regulation respecting the language of the civil administration* adopted on May 10, 2023 and which entered into force on June 1, 2023 do not capture the broad range of

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<sup>17</sup> *Arsenault-Cameron v Prince Edward Island*, 2000 SCC 1 at paras 27, 62; CSFCB at paras 3, 15, 86; *Mahé v Alberta*, [1990] 1 SCR 342 at 362-363.

<sup>18</sup> *Whitcourt Roman Catholic Separate School District No. 94 v. Alberta*, 1995 ABCA 260 at para 29, cited in *Attorney General of Quebec v Quebec English School Board Association*, 2020 QCCA 1171 at para 52.

<sup>19</sup> *Mahé v Alberta*, [1990] 1 SCR 342 at 362.

situations in which the EMSB interacts with organisations of the English-speaking community, serving a vital community role.

(ii) **Harm caused by requiring the use of French in internal communications within an English language school board, and with other English language school boards and with community organizations**

183. The implementation of the requirement to use French in most written internal communications of an English language school board, including in internal written communications between more than two people, documents, services, the use of technological means, notices of meeting, agendas and minutes, training documents and internal signage, as well written communications between English language school boards, will cause serious or irreparable harm.

184. Prior to the enactment of Bill 96, ss. 23, 24, 26, 28 and 41 of the CFL were never applied by the EMSB in a manner that would require French (or simultaneous use of French and English) in most of the EMSB's internal communications and internal signage, nor was it enforced in such a way by the government or the OQLF.

185. English is the main language used at EMSB among staff and with parents, both orally and in writing. It is the main language used in internal documents. It is the main language used on schools' social media. It is the main language used in training documents for principals. It is the main language used on screens and signs within English schools displaying daily news. It is the main language used in written services provided by professionals in schools, such as psychologists. It is the main language used between English language school boards and with bilingual municipalities. It is the main language used in internal notices of meetings and agendas with the Board and notices of meetings, agendas and minutes of school governing boards. While EMSB makes many efforts to promote the French language and offers rich programming in French in its schools (discussed below at para 203), the linguistic culture at EMSB is primarily an English culture.

186. Communications in French are not discouraged and are not uncommon, particularly amongst francophone staff members. However, staff members that use English are not expected to translate their work into French unless particular circumstances so require.

187. Until recently, the EMSB's approach as described in paragraphs 184-186 was never questioned by the government or the *Office québécois de la langue française* ("OQLF"), nor raised in any complaints.

188. The EMSB received complaints regarding the language of internal communications for the first time in August and September 2023. On September 29, 2023, the OQLF communicated to the EMSB an interpretation of the exception for "communications connected teaching" at s. 28 of the CFL that is extremely narrow and that would effectively require that **most internal written**

communications at the EMSB be conducted in French, as appears from the email of September 29, 2023 from a francization advisor for the OQLF, attached as **Exhibit EMSB-6**.

189. On November 7, 2023, at its regularly scheduled meeting, the EMSB Council of Commissioners was apprised of recent complaints received regarding the language of internal communications, as well as the position of the OQLF described at **Exhibit EMSB-6**. At the November 7 meeting, the EMSB Council of Commissioners adopted a Resolution in favour of applying for a stay of certain provisions of Bill 96 and the CFL. A copy of the Resolution is attached as **Exhibit EMSB-7**.

190. The implementation of s. 21.11, 23, 24, 26 and 28 of the CFL and the amendments thereto at s. 16 of Bill 96, as interpreted by the OQLF, would **fundamentally alter the linguistic culture at the EMSB**, which constitutes serious or irreparable harm.<sup>20</sup>

191. For staff members who have the level of written French and translation skills required, regularly producing written communications, documents, training documents, notices of meeting, agendas and minutes, internal signage, offering services and using technological means in French **in addition to English** will take valuable time and resources away from their responsibilities, **detracting from the needs and priorities of English language school boards**. This constitutes serious or irreparable harm.

192. The very purpose of management and control under s. 23 is to “guarantee that the specific needs of the minority language community are the first consideration in any given decision affecting language and cultural concerns”.<sup>21</sup> Moreover, “courts have, on several occasions, accepted the fact that a potential infringement of s. 23 of the *Canadian Charter* could constitute irreparable harm, at least to those students receiving an education during the proceedings”.<sup>22</sup>

193. Moreover, many staff members, while functionally bilingual, **do not** have the level of French required, nor the translation skills, to regularly produce their written communications, documents, services, notices of meeting, agendas and minutes, training documents and internal signage, in French in addition to English in the course of their duties. The implementation of ss. 21.11 [s. 14 of Bill 96], 23, 24, 26 [s. 16 of Bill 96] and 41 [s. 29 of Bill 96] of the CFL would require fundamental changes to the manner in which the EMSB operates, including for instance alterations to its hiring practices to prioritize candidates with the capacity to produce their work in French despite this being otherwise unnecessary for the exercise of their functions, and hiring additional staff in the context of a staffing

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<sup>20</sup> *Whitecourt Roman Catholic Separate School District No. 94 v. Alberta*, 1995 ABCA 260 at para 29, cited in *Attorney General of Quebec v Quebec English School Board Association*, 2020 QCCA 1171 at para 52.

<sup>21</sup> *Arsenault-Cameron v Prince Edward Island*, 2000 SCC 1 at para 45, citing *Mahé v Alberta*, [1990] 1 SCR 342 at 371-372.

<sup>22</sup> *Attorney General of Quebec v Quebec English School Board Association*, 2020 QCCA 1171 at para 54.

shortage to compensate for the increase in employees' workload associated with producing their work in both languages. **Long-term alterations to EMSB's staffing composition**, in a manner inconsistent with and prejudicial to the linguistic community's actual needs and priorities, constitutes irreparable harm.

194. In the event that this Court grants a stay of s. 24 and 26 of the CFL, unless this Court declares that the general provisions applicable to agencies of the civil administration do not apply to English language school boards, it would also be necessary to order a stay of the following general provisions applicable to agencies of the civil administration that require the exclusive use of French to avoid their application to English language school boards if s. 24 and s. 26 of the CFL are stayed: s. 18 of the CFL as amended by s. 9 of Bill 96, s. 18.1 of the CFL as enacted by s. 10 of Bill, s. 19 as amended by s. 11 of Bill 96 and s. 22 of the CFL.

195. Further, the fact that regulatory exceptions for written communications and contracts with a legal person providing "educational services" were created in the *Regulation respecting the language of the civil administration* in June 2023 call into question the application of the exception for communications "connected to teaching" (s. 28) to such communications and contracts, which enabled the use of English only in communications with legal persons involved in educational services in English.

196. Now, the regulatory exceptions for "educational services" in the *Regulation respecting the language of the civil administration* clearly **require the use of French** in addition to English in written communications and contracts between EMSB and **community partners who provide educational services** to students.

197. For the same reasons as developed at paras 190-193 above, implementation of ss. 16 of the CFL [s. 1 of Bill 104], s. 21 of the CFL [s. 13 of Bill 96], and ss. 21.3 and 21.7 of the CFL [s. 14 of Bill 96] by requiring the use of French, would cause irreparable harm to the English-speaking community pending a decision on the merits.

### **c) Balance of convenience**

198. The serious or irreparable harm to the EMSB and the English-speaking community that would result from the implementation of the above-noted provisions outweighs the presumed public interest in the implementation of legislation.

199. First, the stay sought is limited in scope and would **apply only to English language school boards**, leaving intact the effects of Bill 96 and Bill 104 for the vast majority of Quebecers. Enrolment in English language school boards represents 8.9% of enrolment in all public schools in Québec, as appears from extracts of the Databank of Official Statistics on Québec attached as **Exhibit EMSB-8**. In *PGQ c Quebec English School Board Association*, the Court of Appeal found that the balance of convenience favoured granting a stay to English language school boards on the basis that the stay would only affect 7.5% of the

population, based on the percentage of Québec residents whose mother tongue was English, as appears from the Excerpts of the 2016 census from Statistics Canada attached as **Exhibit EMSB-9**:

[61] Therefore, there is no question here of preventing the government from implementing the legislative reforms for which it was elected and depriving the population of its benefits, as the AGQ argues, but rather of specifically weighing the effects of this reform on the constitutional rights of the official linguistic minority representing approximately 7.5% of the population according to the evidence in the record.<sup>23</sup>

[61] Il ne s'agit donc pas ici d'empêcher le gouvernement de mettre en œuvre les réformes législatives pour lesquelles il a été élu et de priver la population de ses bienfaits, comme le fait valoir le PGQ, mais plutôt de pondérer ponctuellement les effets de cette réforme sur les droits constitutionnels de la minorité linguistique officielle représentant environ 7,5 % de la population selon la preuve au dossier<sup>23</sup>.

200. Unlike Bill 40, which only dealt with the public education sector (primary and secondary), the provisions that EMSB is seeking to stay apply much more broadly, for example, to municipalities and health and social services institutions recognized under s. 29.1 of the CFL, and in the case of some provisions, to all agencies of the civil administration. In reality, the proportion of Quebecers that would be affected by the stay is therefore much lower than 7.5% in the present case, further strengthening the EMSB's argument on the balance of convenience.

201. Second, the fact that the EMSB is itself an elected public institution weighs in the public interest analysis at the balance of convenience stage. The government "does not have a monopoly on the public interest"<sup>24</sup> and here EMSB is representing the particular interests of s. 23 rightsholders. As the Court of Appeal underscored in *PGQ c Quebec English School Board Association*, the "significant collective aspect" of s. 23 is an important factor that impacts the balance of convenience stage.<sup>25</sup>

202. Third, the remedial purpose of s. 23 and the fact that the rights guaranteed by s. 23 are "particularly susceptible to being weakened by subtle legislative erosion" is a relevant consideration at the balance of convenience stage that weighs in favour of granting the stay.<sup>26</sup> The risk that the cultural and linguistic identity of English-language school boards could be fundamentally altered by the

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<sup>23</sup> *Attorney General of Quebec v Quebec English School Board Association*, [2020 QCCA 1171](#) at para 61.

<sup>24</sup> *Attorney General of Quebec v Quebec English School Board Association*, [2020 QCCA 1171](#) at para 59, citing *RJR MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 343.

<sup>25</sup> *Attorney General of Quebec v Quebec English School Board Association*, [2020 QCCA 1171](#) at para 59.

<sup>26</sup> *Attorney General of Quebec v Quebec English School Board Association*, [2020 QCCA 1171](#) at para 63.



challenged Bill 96 and CFL provisions until a judgment on the merits is rendered is not one that our constitutional framework can tolerate.

203. Finally, EMSB makes significant efforts to promote the French language and offers rich programming in French in its schools. Most EMSB elementary schools offer French immersion or bilingual programs. Many initiatives take place at EMSB to promote French and French québécois culture. EMSB is a partner in the promotion of French in the province, rather than an obstacle. The balance of convenience, even when taking into account the government's objective of promoting and protecting the French language through Bill 96, favours granting a stay.

**d) Provisional execution of stay pending appeal**

204. In the event that this Court orders a stay pursuant to articles 530 and/or 49 of the CCP (rather than an interlocutory injunction for a stay), the Applicants seek an order for provisional execution of the stay pursuant to section 661 of the CCP, to avoid the serious or irreparable harm outlined above that would occur in the event of an appeal.

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

205. **GRANT** the present application;

206. **DECLARE** that English language school boards are not “agencies of the civil administration” within the meaning of the CFL, such that the provisions of the CFL that apply to such agencies do not apply to English language school boards, including:

- a) s. 16 of the CFL and the amendments thereto at s. 1 of Bill 104;
- b) s. 16.1 of the CFL, as enacted by s. 8 of Bill 96;
- c) s. 21 of the CFL and the amendments thereto at s. 13 of Bill 96;
- d) ss. 21.3, 21.7 and 21.11, as enacted by s. 14 of Bill 96;

207. **STAY** the application of the following provisions for English language school boards, or in the alternative, for the EMSB, until a judgment on the merits is rendered:

- a) s. 23 of the CFL;
- b) s. 24 of the CFL;
- c) s. 26 of the CFL and the amendments thereto at s. 16 of Bill 96 which entered into force on June 1, 2023; and
- d) Subparagraph (4)(c) of paragraph 1 of s. 41 of the CFL and the amendments thereto at s. 29 of Bill 96 which entered into force on June 1, 2022.

208. **In the alternative** to paragraph 207, **ENJOIN** the OQLF from enforcing the interpretation of s. 28 of the CFL provided at **Exhibit EMSB-6** pending a determination on the merits;

209. **SET** the date of the hearing on the declaration at paragraph 206 and the stay application at paragraph 207 at the same time;

210. **In the alternative** to paragraph 209, or in the event that the Court were to **determine** that English language school boards are “agencies of the civil administration”, **STAY** the application of the following provisions for English language school boards, or in the alternative, for the EMSB, until a judgment on the merits is rendered:

- a) s. 16 of the CFL and the amendments thereto at s. 1 of Bill 104;
- b) s. 16.1 of the CFL, as enacted by s. 8 of Bill 96;
- c) s. 21 of the CFL and the amendments thereto at s. 13 of Bill 96;
- d) ss. 21.3, 21.7 and 21.11, as enacted by s. 14 of Bill 96;

211. **If the Court grants a stay of s. 24 and/or s. 26 of the CFL and the amendments thereto, and the Court determines that English language school boards are “agencies of the civil administration”, STAY** the following provisions:

- a) s. 17 of the CFL;
- b) s. 18 of the CFL as amended by s. 9 of Bill 96;
- c) s. 18.1 of the CFL as enacted by s. 10 of Bill;
- d) s. 19 as amended by s. 11 of Bill 96; and/or
- e) s. 22 of the CFL;

212. **ORDER** the provisional execution of the stay pending appeal of such order;

213. **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. 119 of Bill 96, enacting s. 208.6 of the CFL;
- c) s. 165 of Bill 96, enacting s. 88.1 of the CJA;
- d) s. 172 of Bill 96, amending s. 6 of the *Regulation respecting the selection procedure for provincial judges*;
- e) s. 175 of Bill 96, amending s. 9 of the *Regulation respecting the selection procedure for provincial judges*;
- f) s. 176 of Bill 96 enacting s. 9.1 of the *Regulation respecting the selection procedure for provincial judges*; and
- g) s. 177 of Bill 96 amending s. 25 of the *Regulation respecting the selection procedure for provincial judges*;

214. **DECLARE** that s. 133 protects the right to be understood in English or French by a judge or member of an agency of the civil administration that exercises an adjudicative function, without an interpreter;

215. **IN THE ALTERNATIVE** to a declaration of invalidity of s. 5 of Bill 96 in so far as it enacts ss. 12-13 of the CFL, s.165 of Bill 96 enacting s. 88.1 of the CJA, and ss. 172, 175, 176 and 177 of Bill 96 [ss. 6, 9, 9.1 and 25 of the *Regulation respecting the selection procedure for provincial judges*]:

- a) **DECLARE** that s. 165 of Bill 96, enacting paragraph 2 of s. 88.1 of the CJA is 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*; and
- b) **DECLARE** that in exercising their power under ss. 12 and 13 of the CFL (as enacted by s. 5 of Bill 96) and s. 88.1 of the CJA (as enacted by s. 165 of Bill 96) to determine whether a judge or member of agency of the civil administration exercising adjudicative functions shall be required to have knowledge or a certain level of knowledge of English and whether all reasonable means have been taken to avoid imposing such a requirement, the Minister of Justice must take into account the rights under s. 133 of the *Constitution Act, 1982* and data regarding the use of English in all matters in the courts and agencies of the civil administration exercising adjudicative functions in Québec;

216. **DECLARE** that s. 166 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*;

217. (...) **IN THE ALTERNATIVE** to a declaration of invalidity of s. 166 of Bill 96:

- a) (...) **DECLARE** that the National Assembly of Québec lacks the jurisdiction to unilaterally amend s. 133 of the *Constitution Act, 1867*;
- b) **OR IN THE FURTHER ALTERNATIVE, DECLARE** that the National Assembly cannot, by ordinary legislation, modify the interpretation of s. 133 of the *Constitution Act, 1867*;

218. **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, as amended by Bill 104;
- 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. (...) 21.3, (...) 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. 75 of Bill 96, enacting paragraph 1 of s. 128.6, s. 127, paragraphs 1, 3 and 5 of s. 128.8, s. 129 to 134.3, paragraph 1 of s. 134.4 and s. 134.5 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.

219. **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, as amended by Bill 104;
- 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. (...) 21.3, (...) 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. 75 of Bill 96, enacting paragraph 1 of s. 128.6, s. 127, paragraphs 1, 3 and 5 of s. 128.8, s. 129 to 134.3, paragraph 1 of s. 134.4 and s. 134.5 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.

220. **DECLARE** that the government failed to take into account the needs and concerns of the English-speaking community in proclaiming into force s. 1 of Bill 104 and adopting the *Regulation respecting the language of the civil administration*;

221. **DECLARE** that the declarations sought have immediate effect notwithstanding appeal;

222. **IN THE ALTERNATIVE, ORDER** the provisional execution of the declarations sought.

223. **THE WHOLE** with costs.

Montréal, this 8<sup>th</sup> day of November  
2023

(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:

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

**EMSB-2 :** *Draft Regulation respecting the language of the civil administration*, published on March 1, 2023 in GOQ II, vol 155, no 9 at 262-266 (English version) and 517-521 (French version)

**EMSB-3:** Letter of April 14, 2023 from J. Ortona, Chair of the EMSB to J.-F. Roberge, Minister of the French Language

**EMSB-4:** Excerpt from the *Document consolidé concernant certaines conditions de travail des cadres des centres de services scolaires et du Comité de gestion de la taxe scolaire*, March 2023

**EMSB-5 :** Excerpt from the *Document consolidé concernant certaines conditions de travail des hors-cadre des centres de services scolaires et du Comité de gestion de la taxe scolaire et de l'île de Montréal*, March 2023

**EMSB-6 :** Email of September 29, 2023 from M. Cloutier-Lapointe, Francization Advisor at the OQLF to N. Lauzière, Secretary General and Director of Archives and Translation Services of the EMSB

**EMSB-7:** Resolution No. 23-11-07-12 adopted by the EMSB Council on November 7, 2023

**EMSB-8:** Extracts of the Databank of Official Statistics on Québec, « Effectif scolaire de l'éducation préscolaire et de l'enseignement primaire et secondaire au réseau d'enseignement public, par Centre de services scolaire et Commission scolaire, selon diverses variables, années scolaires 2012-2013 à 2021-2022, Québec »

**EMSB-9 :** Excerpts of the 2016 census from Statistics Canada

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.



**SUPERIOR COURT**  
(Civil Division)  
**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**

**NOS: 500-17-121195-229,  
500-17-121419-223, 500-17-122176-228**

**GIUSEPPE ORTONA et al**

Applicants

v

**PROCUREUR GÉNÉRAL DU QUÉBEC**

and

**OFFICE QUÉBÉCOIS DE LA LANGUE FRANÇAISE**

Respondents

**DOUG MITCHELL et al**

Applicants

v

**PROCUREUR GÉNÉRAL DU QUÉBEC**

Respondent

**BARREAU DU QUÉBEC**

Intervener

**CARL M. RAVINSKY et al**

Applicants

v

**PROCUREUR GÉNÉRAL DU QUÉBEC**

Respondent

**SECOND AMENDED APPLICATION FOR JUDICIAL  
REVIEW AND DECLARATORY JUDGMENT,  
NOTICE OF CONSTITUTIONAL QUESTION AND  
APPLICATION FOR A STAY (November 8, 2023)  
(arts. 49, 76, 142, 510, 511, 529, 530 and 661 CCP)**

**ORIGINAL**

BJ0922

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