

COURT FILE NUMBER: 166-2000-CA

COURT OF APPEAL OF NEW BRUNSWICK

BETWEEN:

MARIO CHARLEBOIS

APPELLANT (Applicant)

- and -

**JOHN R. MOWATT AND THE CITY OF
MONCTON**

RESPONDENTS
(Respondents)

- and -

**THE PROVINCE OF NEW BRUNSWICK,
L'ASSOCIATION DES JURISTES
D'EXPRESSION FRANÇAISE DU NOUVEAU-
BRUNSWICK, LA SOCIÉTÉ DES ACADIENS ET
DES ACADIENNES DU NOUVEAU-
BRUNSWICK and THE COMMISSIONER OF
OFFICIAL LANGUAGES**

INTERVENERS

**SUBMISSION OF THE INTERVENER
THE COMMISSIONER OF OFFICIAL LANGUAGES**

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PART II - STATEMENT OF FACTS

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1. The Commissioner of Official Languages does not intend to intervene on the statement of facts of the appellant or that of the respondents in this case.
2. For the purposes of her intervention, only the following facts are relevant: the serving on the appellant of the building inspector's order in English only and the City of Moncton' adoption of municipal by-laws in English only.
3. To facilitate the understanding of the litigation, suffice it to say that the City of Moncton building inspector, Mr. John R. Mowat, pursuant to the powers conferred on him by the *Community Planning Act*, R.S.N.B. 1973, c. C-12 (hereinafter the "*Community Planning Act*") served an order in English only on the appellant.
4. The order alleges various violations of the National Building Code of Canada (hereinafter the "Code") and consequently, a contravention of municipal by-law Z-4 of the City of Moncton. It should be noted that the City adopted the Code as an integral part of by-law Z-4. It is also ordered that the appellant rectify these various violations or restore his property to its initial condition within forty-five days. In the event of failure to execute this order within the prescribed deadline, the appellant is advised that municipal by-law Z-4 will have to be applied (appeal book at p. 31).
5. Secondly, it should be noted that the municipal by-laws of the City

PART II - STATEMENT OF FACTS

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of Moncton, such as by-law Z-4, are adopted in English only. Certain by-laws are translated, but do not constitute official versions (affidavit of Mario Charlebois, appeal book at p. 27 and affidavit of John R. Mowat, appeal book at p. 33).

6. The trial judge decided that, although municipalities are governed by the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* constituting Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11 (hereinafter the “*Charter*”), they have no constitutional obligation under subsection 18(2) to adopt their municipal by-laws in both official languages. The judge did not rule on the issue of the language of the building inspector’s order. The appellant is contesting this decision and raises various grounds of appeal.

PART III - ISSUES TO BE ARGUED

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7. For the purposes of this intervention, the issues which will be argued by the Commissioner of Official Languages are the following:
 - a) The scope of sections 16(2), 16.1 and 20(2) of the *Charter* with respect to the government authorities in question.
 - b) The nature and scope of the language rights set out in sections 16(2) and 16.1 of the *Charter* and the obligation of the City of Moncton with regard to the adoption of its municipal by-laws.
 - c) The nature and scope of the language rights set out in subsection 20(2) of the *Charter* and the obligation of the City of Moncton with respect to the order issued by the building inspector.

A) The scope of sections 16(2), 16.1 and 20(2) of the *Charter* with respect to the government authorities in question.

i) Rules of interpretation in language matters

1. First of all, it should be noted that Canada's constitutional framework rests on four guiding principles: federalism, democracy, constitutionalism and the primacy of law, and the protection of minorities.¹ The Supreme Court of Canada, stating that these unwritten principles were firmly rooted in Canadian constitutional tradition, said the following as to their scope:

Underlying constitutional principles may in certain circumstances give rise to substantive legal obligations (have "full legal force", as we described it in the *Partition Reference, supra*, at p. 845), which constitute substantive limitations upon government action. These principles may give rise to very abstract and general obligations, or they may be more specific and precise in nature. The principles are not merely descriptive, but are also invested with a powerful normative force, and are binding upon both courts and governments.² (Underlining ours)

2. It should be noted that recent judgments of the Supreme Court of

¹ *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, 247-248

² *Id.*, 249

Canada on language rights³ have stated that there is no distinction between the various types of rights in this regard (legislative, judicial, educational, etc.), and that they must, in all cases, be interpreted liberally and generously, thereby excluding the restrictive interpretation advocated by the *Société des acadiens* decision.⁴ The *Beaulac* ruling states that:

Language rights must in all cases be interpreted purposively, in a manner **consistent with the preservation and development of official language communities in Canada.**⁵ (Bold face ours)

3. It follows that language rights must be interpreted as a tool essential to the preservation of official language communities.

4. The *Charter* must also be read as a whole. In view of the purpose

³ *R. v. Beaulac*, [1999] 1 S.C.R. 768
Arsenault-Cameron v. P. E. I., [2000] 1 S.C.R. 3

⁴ *Société des Acadiens v. Association of Parents*, [1986] 1 S.C.R. 549

⁵ *R. v. Beaulac*, *ibid.*, note 3, 791

of language rights and their remedial character,⁶ sections 16 to 23 cannot be interpreted in an isolated manner, as constituting a watertight compartment, without considering the general provisions of the *Charter*, such as section 32. As Madam Justice L'Heureux-Dubé wrote on behalf of the Court:

This Court has repeatedly stressed that it is inappropriate to rely solely on a strictly grammatical analysis, particularly with respect to the interpretation of legislation which is constitutional or quasi-constitutional in nature: *Gould v. Yukon Order of Pioneers*, [1996] 1 S.C.R. 571; *Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd.*, *supra*.

The courts are increasingly recognizing that all statutes, whether or not they are constitutional in nature, must be interpreted contextually. (...)

Thus, as this Court stated in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21-23, it is appropriate to consider the legislative context. According to Côté, *supra*, at pp. 355-56, the context of a law includes the other provisions of the law, related statutes, the objective of both the law and the specific provision, as well as the circumstances which led to the drafting of the text.⁷ (Underlining ours)

5. It is against this background that the *Charter* must be interpreted. It is also against this background that it must be determined

⁶ *Re: Public Schools Act (Manitoba)* ;1993; 1 S.C.R. 839
Mahé v. Alberta, ;1990; 1 S.C.R. 342
R. v. Beaulac, *supra*, note 3
Arsenault-Cameron, *supra*, note 3

⁷ *Québec (Commission des droits de la personne et des droits de la jeunesse v. City of Montréal (City))* ;2000; 1 S.C.R. 665, 684-685

whether the constitutional linguistic obligations set out in the *Charter* also apply to the City of Moncton.

ii) Applicability of sections 16(2), 16.1 and 20(2) of the Charter to the City of Moncton

1. Sections 16(2), 16.1 and 20(2) of the *Charter*, which specify constitutional obligations, use different terms, such as “institutions of the government,” “government of New Brunswick,” “any office of an institution of the government of New Brunswick,” etc.
2. The fact that the formulation used by the drafters of the *Charter* may be different is not in itself decisive as to the intention of these drafters to limit the application of these provisions to just one part of the government administration. The Supreme Court of Canada, examining a similar argument with respect to sections 5, 17, 18 and 33, has written as follows:

This lack of perfectly consistent usage is not surprising given the nature of these documents and particularly their attempt to set out in relatively few words concepts which are historically charged with meaning. It also underlines the point that, in interpreting these provisions, very careful attention must be paid to the contextual and purposive considerations outlined earlier in these reasons.⁸

3. Then, the Right Honourable Mr. Justice Lamer, then Chief Justice, added:

⁸ *N.B. Broadcasting Co. v. Nova Scotia*, [1993] 1 S.C.R. 319, 362

Sections 5, 17 and 18 are found in areas of the *Charter* which are excluded from the override provisions of s. 33 of the *Charter*. This suggests that they are in a different category than the rights contained in ss. 2 and 7 through 15, and may explain, if not entirely excuse, the inconsistency in the use of language between these sections and other places in the *Charter* and the *Constitution Act* generally.⁹

4. As the Right Honourable Mr. Justice Lamer pointed out, language rights have special importance because the governments of Canada and the provinces cannot derogate from them by using the notwithstanding clause in section 33 of the *Charter*.

⁹ *Id.*, 363

5. In view of the objectives sought by sections 16(2), 16.1 and 20(2) of the *Charter*, i.e., substantive equality of the two official languages and the two official language communities, of the principle of the protection of linguistic minorities and of the remedial character of these provisions, we submit that they must necessarily apply to government administration in a broad and liberal sense which includes municipalities. Only a broad and generous interpretation permits the attainment of the objective of language rights. Such scope permits advancement toward the equality of status of the two official languages and of the two official language communities in New Brunswick.

6. To interpret language rights in the manner suggested by the respondent and the Province of New Brunswick would allow the province, through its institution, to evade the constitutional obligations that it itself decided to entrench in the Canadian Constitution. In this regard, the Supreme Court of Canada wrote as follows in the Eldridge case:

The Application of the Charter to the Medical Services Commission and Hospitals

Having identified the sources of the alleged s. 15(1) violations, it remains to be considered whether the *Charter* actually applies to them. At first blush, this may seem to be a curious question. As I have discussed, it is a basic principle of constitutional theory that since legislatures may not enact laws that infringe the *Charter*, they cannot authorize or empower another person or entity to do so; *Slaight, supra*.¹⁰

¹⁰ *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, 654

7. Moreover, in the present case, the rules on community planning are applied by the City of Moncton. The City applies the *Community Planning Act* on its territory, while the province applies the same *Act* in rural communities. Further, under section 3 of the *Community Planning Act*, the Minister of Environment and Local Government, who is responsible for the application of the said *Act*, may delegate his administrative powers. Accordingly, the province has delegated its powers with respect to community planning on its territory to the City of Moncton.

8. The interpretation that we submit with respect to sections 16, 16.1 and 20 is, moreover, consistent with that which the Supreme Court of Canada gave to section 32, which sets out the general frame of application of the *Charter* and, more specifically, of the application of the *Charter* to municipalities.¹¹

¹¹ *Godbout v. Longueuil (City)* (1997), 3 S.C.R. 844

PART IV - LAW AND ARGUMENT

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21. In short, we submit that the City of Moncton is governed by sections 16(2), 16.1 and 20(2), considering the following three elements:

- a) the purpose of these provisions, which rests on the principle of protection of minorities and that of the equality of the two official languages and, in New Brunswick, of the two official language communities;
- b) the remedial character of these provisions; and
- c) the fundamental principle of constitutional law whereby governments may not be authorized to evade their constitutional obligations by delegating some of their jurisdiction—legislative or regulatory—or certain administrative powers to public authorities such as municipalities.

B) The nature and scope of the language rights set out in sections 16(2) and 16.1 of the *Charter* and the obligation of the City of Moncton with regard to the adoption of its municipal by-laws.

i) Language rights set out in sections 16 and 16.1 of the Charter

- 1. Subsection 16(1) officially recognizes the principle of the equality of Canada's two official languages, while subsection 16(2) recognizes the same principle for New Brunswick. This principle must guide the interpretation of the other provisions of the *Charter* respecting the official languages and must aim at substantive equality.

2. The corollary to the principle of equality is that it imposes constitutional obligations on Parliament, the legislatures, the governments of Canada and New Brunswick and their respective institutions to implement this substantive equality. These provisions are not merely declaratory provisions, but rather have a binding effect that imposes positive obligations on the State.
3. As for subsection 16(3) of the *Charter*, it formalizes the principle of advancement to the equality of status and use of both official languages. In our view, the principle of advancement of equality also creates positive obligations for Parliament and the legislatures, including that of New Brunswick. To claim that this subsection is without binding effect and constitutes only a political commitment would result in an interpretation contrary to the objective intended by the first two subsections of this section, namely, the objective of the substantive equality of English and French.
4. The principle of advancement was entrenched in the Canadian Constitution in the form of a commitment by Parliament and the legislatures. This commitment must involve gradual and progressive action by Parliament and the legislatures, action that cannot weaken or decrease.¹² In other words, by entrenching this commitment of advancement to equality of the two official languages, Parliament and the provincial legislatures agreed, in 1982, to take positive and concrete legislative or administrative

¹² *Jones v. Attorney General of New Brunswick* [1975] 2 S.C.R. 182

measures to achieve the substantive equality of English and French. Madam Justice Wilson, in a minority opinion, wrote the following in this regard:

Subsection (3) of s. 16 makes it clear, however, that these consequences represent the goal rather than the present reality; they are something that has to be “advanced” by Parliament and the legislatures. This would seem to be in the spirit of *Jones v. Attorney General of New Brunswick*, [1975] 2 S.C.R. 182, namely that legislatures cannot derogate from already declared rights but they may add to them. Provided their legislation “advances” the cause of equality of status of the two official languages it will survive judicial scrutiny; otherwise not. I do not believe, however, that any falling short of the goal at any given point of time necessarily gives a right to relief. I agree with those who see a principle of growth or development in s. 16, a progression towards an ultimate goal. Accordingly the question, in my view, will always be --where are we currently on the road to bilingualism and is the impugned conduct in keeping with that stage of development? If it is, then even if it does not represent full equality of status and equal rights of usage, it will not be contrary to the spirit of s. 16.¹³ (Underlining ours)

5. We wish to point out that Mr. Justice Bastarache, writing on behalf of the majority in *Beaulac*, which dismisses the restrictive majority interpretation of the *Société des Acadiens* decision, agrees with Madam Justice Wilson regarding the interpretation to be given to section 16(3) of the *Charter*. He stated:

Where institutional bilingualism in the courts is provided for, it refers to equal access to services of equal quality for members of both official language communities in Canada. Parliament and the provincial legislatures were well aware of this when they reacted to the trilogy (*House of*

¹³ *Société des Acadiens v. Association of Parents*, *supra*, note 4, 619

Commons Debates, vol. IX, 1st sess., 33rd Parl., May 6, 1986, at p. 12999) and accepted that the 1988 provisions would be promulgated through transitional mechanisms and accompanied by financial assistance directed at providing the required institutional services.

When s. 530 was promulgated in British Columbia, on January 1, 1990, the scope of the language rights of the accused was not meant to be determined restrictively. The amendments were remedial (see *Interpretation Act*, R.S.C., 1985, c. I-21, s. 12), and meant to form part of the unfinished edifice of fundamental language rights (*House of Commons Debates*, vol. XIV, 2nd sess., 33rd Parl., July 7, 1988, at p. 17220).¹⁴ (Underlining ours)

6. Somewhat further on, he added:

The idea that s. 16(3) of the *Charter*, which has formalized the notion of advancement of the objective of equality of the official languages of Canada in the *Jones* case, *supra*, limits the scope of s. 16(1) must also be rejected. This subsection affirms the substantive equality of those constitutional language rights that are in existence at a given time.¹⁵ (Underlining ours)

7. The intervener submits that the province and the municipality, as applicable, should take concrete measures to gradually advance toward substantive equality of the two official languages of New Brunswick, pursuant to section 16 of the *Charter*.
8. The binding nature of section 16 is strengthened by section 16.1. It must be borne in mind that this provision was added in 1993, eleven years after the adoption of the *Charter*. The province had at

¹⁴ *R. v. Beaulac*, *supra*, note 3, 789-790

¹⁵ *Id.*, 791

that time clearly decided to add a new dimension to language rights. It had also decided to take another step with regard to its constitutional commitment to bring about the equality of English and French. It must be acknowledged that New Brunswick chose to entrench the principle of linguistic duality in the Canadian Constitution by recognizing the equality of the two official language communities and not solely the equality of the two official languages.

9. We note specifically that section 16.1 entrenches in the Canadian Constitution the preamble and principles set out in the *Act Recognizing the Equality of the Two Official Linguistic*

Communities in New Brunswick, L.N.B. 1981, Chap. O-1.1, which was assented to in 1981. Several paragraphs of the preamble deserve to be noted. They read as follows:

WHEREAS the Legislative Assembly of New Brunswick acknowledges the existence of two official linguistic communities within New Brunswick whose values and heritages emanate from and are expressed through the two official languages of New Brunswick; and

(...)

WHEREAS the Legislative Assembly of New Brunswick seeks to enhance the capacity of each official linguistic community to enjoy and safeguard its heritage for succeeding generations; and

(...)

AND WHEREAS the Legislative Assembly of New Brunswick desires to enshrine in its laws a declaration of

principles relating to this equality of status and these equal rights and privileges which shall provide a framework for action on the part of public institutions and an example to private institutions.

10. We submit that, in 1993, the Government of New Brunswick had clearly deemed that statutory protection was not sufficient and that it was necessary to grant constitutional protection to its two official language communities. We believe that the courts should bear in mind this specific historical context when they are called upon to interpret language rights in New Brunswick.

ii) Implementation of the constitutional obligations of the City of Moncton under sections 16 and 16.1 of the Charter

11. In view of the positive obligations set out in sections 16 and 16.1 of the *Charter*, of the linguistic duality of New Brunswick entrenched in 1993 in section 16.1 of the Constitution, and of the time that has elapsed since adoption of the *Charter*, the intervener submits that the Court should determine whether the current situation in Moncton whereby the French-speaking community has access only to an unofficial French version of certain municipal by-laws “is appropriate at this particular time,” at this stage of the City of Moncton’s advancement toward the equality of English and French and the equality of its two official language communities.
12. While the choice of methods of implementing this substantive equality is a matter for the legislative authority and the political process, the fact remains that the courts and governments are bound by Canada’s constitutional order and specifically, in the

present case, by the protection of minorities. As stated above with respect to the guiding principles of the constitutional order:

The principles are not merely descriptive, but are also invested with a powerful normative force, and are binding upon both courts and governments.¹⁶

13. In short, we respectfully submit that the Court must ensure that the measures taken by the City of Moncton and the government of New Brunswick to advance the equality of status, rights and privileges afforded to the two official language communities are sufficient in their respective advancement toward substantive equality of English and French.
14. With regard to the City of Moncton, we respectfully submit that the practice of translating certain municipal by-laws adopted in English only does not constitute an adequate measure at this stage of the City's advancement toward substantive equality of the two official languages. Even in the absence of statutory obligations in this regard, the City of Moncton must take positive and concrete measures to promote the preservation and vitality of its two official language communities.
15. With regard to the New Brunswick government, we respectfully submit that the measures taken to ensure the equality of the two official languages and the equality of the two official language communities in the municipal sphere, which amount to section 11

¹⁶ *Reference Re Secession of Quebec*, *supra*, note 1, 249

of *The Official Languages Act of New Brunswick*, R.S.N.-B. 1973, Chap. O-1 (hereinafter the “*OLANB*”), are not, in our opinion, sufficient at this stage of the province’s advancement toward substantive equality of English and French and substantive equality of the two official language communities. Regarding municipal matters, section 11 of the *OLANB* provides only as follows:

The council of any municipality may declare by resolution that either or both official language may be used with regard to any matter or in any proceeding of such council.

C) The nature and scope of the language rights set out in subsection 20(2) of the *Charter* and the obligation of the City of Moncton with respect to the order issued by the building inspector.

i) Language rights set out in section 20 of the Charter

16. Subsection 20(2) of the *Charter* deals with communications with the public and the provision of services in New Brunswick. This section seeks to ensure equal access to public services of equal quality¹⁷ which are in keeping with the cultural and linguistic identity of the individual.

17. Two preliminary comments should be made with regard to this provision. First, the provision grants language rights to members of the public in New Brunswick when they communicate with or

¹⁷ *R. v. Beaulac, supra*, note 3, 789

receive services from “any office of an institution of the legislature or government” (Underlining ours). Subsection (2) is worded much more generously than the first subsection, which is concerned with the “head or central office of an institution of the Parliament or government of Canada” (Underlining ours).

18. Second, it must also be noted that, unlike subsection (1), subsection (2) is not, in any way, limited by the concepts of “significant demand” or “nature of the office” found in the first subsection.

1. It is therefore incontestable that the drafters of the *Charter*, carrying out the will of the New Brunswick legislature, chose to grant more language rights to members of the public in New Brunswick than to members of the Canadian public with respect to communications and the provision of services. Moreover, Madame Justice Wilson confirmed this in the following words:

The obvious intention of the framers of the *Charter* to constitutionalize linguistic duality in New Brunswick is evident in ss. 16(2), 18(2) and 20(2) as well as s. 19(2). Section 20(2), when compared with s. 20(1), may be seen as indicating greater expectations for achieving the goal of bilingualism in the public service of New Brunswick than has been achieved in the federal public service generally.¹⁸

2. In short, the very wording of the text of subsection 20(2) of the *Charter* dictates a liberal interpretation “consistent with the preservation and development of official language

18 *Société des Acadiens v. Association of Parents*, *supra*, note 4, 640-641

communities.”¹⁹

3. In view of the very broad terms used in subsection 20(2) to describe the obligations of institutions of the government with regard to their communications with the public and the provision of services to it, we believe that this provision is also applicable to the administrative aspects of any judicial or quasi-judicial proceedings. Accordingly, the public authorities involved in such proceedings would be required to communicate with the member of the public in question in his preferred official language or, if this preference is not known, in both official languages.

4. The corollary to this language right therefore takes the form of a positive constitutional obligation for the province and, by delegation, for the municipality to communicate or provide its services in the official language chosen by the recipient/beneficiary, or in both official languages if this choice is unknown. Subsection 20(2) of the *Charter*, recognizing the equality of the two official languages and the two official language communities of the province, introduced the concept of institutional bilingualism in the New Brunswick public service. In this regard, Mr. Justice Bastarache wrote the following:

This principle of substantive equality has meaning. It provides in particular that language rights that are institutionally based require government action for their implementation and therefore create obligations for the State (...). It also means that the exercise of language rights

¹⁹ *R. v. Beaulac*, *supra*, note 3, 791

must not be considered exceptional, or as something in the nature of a request for an accommodation.²⁰

5. Somewhat further on he added:

(...) because the existence of language rights requires that the government comply with the provisions of the Act by maintaining a proper institutional infrastructure and providing services in both official languages on a equal basis.²¹

ii) Implementation of the constitutional obligation of the City of Moncton under section 20 of the Charter

6. In the case at hand, we believe that the order issued by the building inspector is of the nature of a formal demand. Moreover, a review of the various laws of New Brunswick that could be applicable in this context leads to such a conclusion. An examination of the *Community Planning Act*, the *Rules of Procedure, Regulations of New Brunswick 82-73 (Judicature Act R.S.N.-B. 1973, Chap. J-2)* and the *Provincial Offences Procedure Act*, L.N.B. 1987, Chap. P-22.1 (hereinafter the “*POPA*”) suffices to convince us of this point.
7. By virtue of these legislative texts, it can easily be concluded that the building inspector’s order is not a “pleading or process” within the meaning of subsection 19(2) of the *Charter* because it is not a “document emanating from the Court or issued under its

²⁰ *Ibid.*, 791

²¹ *Ibid.*, 799

name or under its authority.”²² Subsection 93(1) of the *Community Planning Act* indicates rather that the order is delivered on behalf of the municipal council, or of the Provincial Planning Director in the case of rural communities.

8. Moreover, subsection 93(4) of the *Community Planning Act* provides for the possibility of civil proceedings against the owner of a property who has not complied with the order for the purpose of recovering the funds spent to implement the measures mentioned in the order. Such proceedings are initiated by means of an action.
9. In addition, we wish to point out that any civil proceeding is initiated by a Notice of Action or Application in New Brunswick.
10. Moreover, if the City chose to proceed by way of criminal proceedings, it would have to initiate them by filing an information or a ticket, pursuant to the *POPA*.
11. Consequently, in civil or criminal proceedings, the issuance of the order, which is intended as a formal demand in itself, is a preliminary and administrative step in the civil or criminal proceeding that may follow, if the offender fails to comply with it. In these circumstances, we submit that the order constitutes a communication by an office of an institution of the government to a

²² *MacDonald v. City of Montreal*, [1986] 1 S.C.R. 460, 484 and 514
Bilodeau v. Attorney General of Manitoba, [1986] 1 S.C.R. 449 has the same impact.

member of the public and not an originating process or, more generally, a “pleading or process.”

12. In short, we respectfully submit that, to meet its constitutional obligations, the City of Moncton should ensure that it has an institutional infrastructure that enables it to provide services of equal quality to its two official language communities. In this instance, the building inspector, acting on behalf of the City of Moncton, had to issue the order in the official language preferred by the appellant, or, if this preference was not known, in both official languages, pursuant to subsection 20(2) of the *Charter*.

PART V - ORDER SOUGHT

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13. The Commissioner of Official Languages asks this Honourable Court to issue the following declarations:
- a) that sections 16, 16.1 and 20 of the *Charter* are binding on the City of Moncton;
 - b) that sections 16, 16.1 and 20 of the *Charter* impose on the City of Moncton the obligation to adopt its municipal by-laws in both official languages and that the English and French versions of these by-laws have equal force of law and have the same value;
 - c) that the City of Moncton has to abide by Subsection 20(2) of the *Charter* when offering services to the public or in all communications with the public, including any order issued by its building inspectors pursuant to the *Community Planning Act*, which must communicate in the official language of the citizen's choice or in both official languages if the choice of the citizen is not known.

Respectfully submitted, this 18th day of December, 2000.

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SCHEDULE A - AUTHORITIES

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Reference re Secession of Quebec, ¿1998¿ 2 S.C.R. 217

R. v. Beaulac, ¿1999¿ 1 S.C.R. 768

Arsenault-Cameron v. P.E.I., ¿2000¿ 1 S.C.R.. 3

Société des Acadiens v. Association of Parents, ¿1986¿ 1 S.C.R. 549

Re: Public Schools Act (Manitoba) ¿1993¿ 1 S.C.R. 839

Mahé v. Alberta, ¿1990¿ 1 S.C.R. 342

Quebec (Commission des droits de la personne et des droits de la jeunesse v. City of Montreal), ¿2000¿ 1 S.C.R. 665

N.B. Broadcasting Co. v. N.S., ¿1993¿ 1 S.C.R. 319

Eldridge v. British Columbia (Attorney General), ¿1997¿ 3 S.C.R. 624

Godbout v. Longueuil (City) ¿1997¿ 3 S.C.R. 844

Jones v. Attorney General of New Brunswick ¿1975¿ 2 S.C.R. 182

MacDonald v. City of Montreal, ¿1986¿ 1 S.C.R. 460

Bilodeau v. Attorney General of Manitoba, ¿1986¿ 1 S.C.R. 449

**Schedule B
Constitution Act, 1982 (79)**

Enacted as Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11, which came into force on April 17, 1982

PART I

Canadian charter of rights and freedoms

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

2. Everyone has the following fundamental freedoms:

- a) freedom of conscience and religion;
- b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- c) freedom of peaceful assembly; and
- d) freedom of association.

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs of a general election of its members.

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

5. There shall be a sitting of Parliament and of each legislature at least once every twelve months

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

a) to move to and take up residence in any province; and

b) to pursue the gaining of a livelihood in any province.

(3) The rights specified in subsection (2) are subject to

a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

8. Everyone has the right to be secure against unreasonable search or seizure.

9. Everyone has the right not to be arbitrarily detained or imprisoned.

10. Everyone has the right on arrest or detention

a) to be informed promptly of the reasons therefor;

b) to retain and instruct counsel without delay and to be informed of that

right; and

c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

11. Any person charged with an offence has the right

a) to be informed without unreasonable delay of the specific offence;

b) to be tried within a reasonable time;

c) not to be compelled to be a witness in proceedings against that person in respect of the offence;

d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

e) not to be denied reasonable bail without just cause;

f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that

witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

16.1. (1) The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

(2) The role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) is affirmed.

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

(2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

a) there is a significant demand for communications with and services from that office in such language; or

b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

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.

(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.

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

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

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

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied

any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

- a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.(93)

30. A reference in this Charter to a Province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

31. Nothing in this Charter extends the legislative powers of any body or authority.

32. (1)This Charter applies

a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

34. This Part may be cited as the *Canadian Charter of Rights and Freedoms*.

**CHAPTER C-12
Community Planning Act**

INTERPRETATION

1 In this Act

"Minister" means the Minister of the Environment and Local Government and includes anyone designated by the Minister to act on the Minister's behalf;

ADMINISTRATION

3 The Minister shall administer this Act and, except with respect to a power mentioned in section 5, 77 or 91, may delegate his administrative powers and designate a person to act on his behalf in the enforcement of this Act or a regulation hereunder. 1972, c.7, s.3.

ENFORCEMENT

93(1) Where a development is undertaken in contravention of this Act, a by-law or regulation hereunder or terms and conditions imposed pursuant thereto, the Director or council, as the case may be, or a person duly authorized by the Director or council, may order

- (a) cessation of the development,
- (b) alteration of such development so as to remove the contravention,

or

- (c) the doing of anything required to restore the land, building or

structure to its condition immediately prior to the undertaking of such development.

93(2) Subject to subsection (6), an order under subsection (1) shall

- (a)* be in writing and signed by the person making it,
- (b)* be served on the owner of the land, building or structure in respect of which the order is issued by personal delivery to him or by depositing the order in the mails in a prepaid registered envelope addressed to the owner at his last known address,
- (c)* state the grounds for requiring the action specified in the order, and
- (d)* state that the action specified in the order is to be taken within the period stated therein, such period being, in cases mentioned in paragraphs (1)(b) and (c) not less than fourteen days and not more than two months from the day the order is served or mailed.

93(3) The owner of property who is ordered to take action under this section shall comply with such order at his own expense.

93(4) Where an owner of property fails to comply with an order under this section, the Director or council, as the case may be, may cause the ordered action to be undertaken and may recover the costs thereof from such owner in an action in any court of competent jurisdiction.

93(5) The costs incurred by the Director or council under subsection (4) shall constitute a lien on the property concerned until recovered from the owner.

93(6) An order under this section requiring the cessation of a development may also be served by personal delivery to the person in charge of carrying out the development, or by depositing the order in the mails in a prepaid registered envelope addressed to such person at his last known address, and such person shall cease carrying out the development within the period stated in the order.

93(7) The service of an order by mail as provided for in subsections (2) and (6) is deemed to be complete upon the expiration of four days after the deposit thereof in the mails. 1972, c.7, s.93; 1977, c.10, s.35.