

CANADA

SUPERIOR COURT

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-05-062138-001  
No: 500-05-062072-002  
No: 500-05-062742-018  
No: 500-05-062737-018  
No: 500-05-062138-001  
No: 500-05-062747-017  
No: 500-05-064239-013

VILLE DE WESTMOUNT ET AL.  
VILLE DE BAIE D'URFÉ ET AL.  
VILLE D'ANJOU ET AL.  
TOWN OF HAMPSTEAD ET AL.  
VILLE DE SAINT-LAURENT ET AL.  
CITÉ DE CÔTE SAINT-LUC ET AL.  
VILLE DE L'ANCIENNE-LORETTE ET AL.

Plaintiffs

v.

THE ATTORNEY GENERAL OF QUEBEC  
ET AL.

Defendants

and

THE ATTORNEY GENERAL OF  
CANADA ET AL.

Mis en cause

and

THE COMMISSIONER OF OFFICIAL  
LANGUAGES

Intervenor

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**MEMORANDUM OF ARGUMENT  
OF  
THE COMMISSIONER OF OFFICIAL LANGUAGES**

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**INTRODUCTION**

1. While the instant proceedings concern the validity of certain provisions in both Bills 170 and 171, this intervention by the Commissioner of Official Languages (the “Commissioner”) is limited to contesting the constitutional validity of section 6 of Bill 171, which altered the

threshold criteria to be met by any municipality or borough in order to obtain bilingual recognition in the future;

Bill 170, An Act to reform the municipal territorial organization of the metropolitan regions of Montréal, Québec and Outaouais (S.Q. 2000, c. 56)

Bill 171, An Act to amend the Charter of the French Language (S.Q. 2000, c. 57)

2. The City of Westmount has argued, *inter alia*, that certain provisions of Bill 171 contravene the rights guaranteed by section 16(3) of the *Charter of Rights and Freedoms* (the “Charter”);
3. In reply, the Attorney General of Quebec has argued, *inter alia*, that:
  - the *Charter* neither modifies nor adds to the linguistic guarantees contained in the *Constitution Act, 1867*;
  - section 16 of the *Charter* does not apply to public administration in the province of Quebec; and
  - in any event section 16(3) of the *Charter* does not create any linguistic right or rights;
4. In the view of the Commissioner, the position advocated by the Attorney General of Quebec with respect to the interpretation and application of section 16(3) is not only wrong, but if it were to be adopted by this Court, such precedent could lead to an erosion of minority language rights across Canada;
5. The essence of the Commissioner’s intervention in the proceedings in this Court is as follows:
  - to demonstrate that section 16(3) of the *Charter* confirms the constitutional commitment of our federal and provincial governments to encourage the advancement of the equality of status or use of English and French;
  - to demonstrate that there flows from section 16(3) a constitutional obligation on the part of our federal and provincial governments to respect and protect the minority official language communities that prohibits them from diminishing the rights resulting from such advancement and protection;
  - to demonstrate that the amendment to the *Charter of the French Language* effected by section 6 of Bill 171 diminishes the rights of the minority English-speaking community in the province of Quebec in contravention of section 16(3) of the *Charter*;
6. The Commissioner nonetheless emphasizes that she does not in any way question the principles underlying the *Charter of the French Language*, or the efforts of the Quebec National Assembly to promote the advancement and the development of the French language in the

province of Quebec, and in that respect endorses the finding of the Supreme Court of Canada in the *Ford* decision that:

“... the aim of the language policy underlying the *Charter of the French Language* was a serious and legitimate one. [The evidence indicates] the concern about the survival of the French language and the perceived need for an adequate legislative response to the problem. Moreover, [the evidence indicates] a rational connection between protecting the French language and assuring that the reality of Quebec society is communicated through the “*visage linguistique*”.

*Ford v. Quebec (A.G.)*, [1988] 2 S.C.R. 712 at pp. 778-79

## ARGUMENT

7. Pursuant to section 29.1 of the *Charter of the French Language*, a municipality or a borough may apply to the Office de la langue française for a bilingual recognition provided that it meets the threshold criteria set out in that section.

### *Consequences of a Bilingual Recognition*

8. As a general rule, the *Charter of the French Language* says that a municipality or borough’s language of work must be French and that all internal communications may only be in French. However, if a municipality or borough has been recognized as bilingual pursuant to section 29.1, then:
  - English-speaking residents have a right to obtain services in English (section 23);
  - employees may work in English, and conduct internal communications in English (section 26);
  - their names may be in English and French (section 26); and
  - signs and posters may be in both English and French (section 24);

### *The Threshold for Bilingual Recognition*

9. Prior to the amendment introduced by section 6 of Bill 171, section 29.1 of the *Charter of the French Language* provided *inter alia*:

“The Office [de la langue française] shall... recognize, at their request, the municipal or school bodies... that provide services to persons who, in the majority, speak a language other than French”;

10. Subsequent to the amendment introduced by section 6 of Bill 171, section 29.1 of the *Charter of the French Language* provides *inter alia*:

“The Office [de la langue française] shall recognize, at the request of the municipality, body or institution,

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

11. Before the Bill 171 amendments, bilingual recognition of a municipality pursuant to section 29.1 required a majority of residents speaking a language other than French. After the amendments, bilingual recognition requires a majority of residents that have English as their mother-tongue.

12. This interpretation of section 29.1 as it stood prior to the Bill 171 amendment was decided by this Court in 1990. The *Office de la Langue Française* had revoked the bilingual recognition of the City of Rosemere on the grounds that, by 1988, the majority of the residents did not have English as their mother tongue. Mr. Justice Reeves concluded that the *Office* was incorrect in its interpretation of section 29.1 and held that the correct approach was to consider entitlement to bilingual status according to language *spoken*;

*Alliance for Language Communities in Québec v A.G. Québec*, [1990] R.J.Q. 2622 (“the *Rosemere* case”)

13. Had the *Rosemere* case been argued under section 29.1 of the *Charter of the French Language* as amended by section 6 of Bill 171, the outcome would have been the opposite. The Commissioner therefore submits that it is evident that Bill 171's amendment to the *Charter of the French Language* has considerably restricted the availability of bilingual recognition;

### ***Section 16(3) of the Charter***

14. Section 16(3) of the *Charter* states:

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

15. The Commissioner submits that section 16(3) is built upon three fundamental principles:
- the principle of substantive equality;
  - the principle of advancement of equality of English and French; and
  - the unwritten principle of protection of and respect for linguistic minority communities;
- R. v. Beaulac*, [1999] 1 S.C.R. 768 at para. 24
- Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 at para. 52
16. The Supreme Court has recently and explicitly stated that, notwithstanding the origins of certain language rights in historical political compromise, language rights must in all cases be given a broad and purposive interpretation:
- R. v. Beaulac*, [1999] 1 S.C.R. 768 at para. 25
- See also: *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3; and *Mahé v. Alberta*, [1990] 1 S.C.R. 342
17. Any argument that language rights guarantees and protections are exhaustively and definitively covered by the written text of the Constitution alone must be discarded in light of the evolution of human rights and language rights law before our courts;
- Cf. Re Provincial Court Judges*, [1997] 3 S.C.R. 3 at para. 89
18. Our courts are assisted in pinpointing the objects or purposes of constitutional provisions, and in identifying the legal obligations that flow therefrom, including the principle of the protection of minorities, by referring to certain unwritten constitutional principles:
- “The principles assist in the interpretation of the text and the delineation of spheres of jurisdiction, the scope of rights and obligations and the role of our political institutions.”
- Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 at para. 52.
19. It is submitted that section 16(3)’s principles of substantive equality and advancement entail obligations of respect and protection. It follows that any measure that reduces existing language rights protection is a retreat from the principle of advancement and thereby contrary to section 16(3) of the *Charter*;

**CONCLUSION**

20. The Commissioner submits that section 6 of Bill 171 has made the threshold criteria for obtaining a bilingual recognition significantly more stringent. This results in a roll-back of the language rights that were available to the minority English-speaking community in the province of Quebec pursuant to section 29.1 prior to its amendment;
21. The Commissioner submits that this roll-back or reduction in minority language rights is markedly inconsistent with the principle of advancement entrenched by section 16(3) of the *Charter* and with the resulting obligation not to diminish existing minority language rights;
22. In conclusion, the Commissioner submits that this Court should declare that section 6 of Bill 171 is contrary to section 16(3) of the *Canadian Charter of Rights and Freedoms* and consequently invalid;

THE WHOLE RESPECTFULLY SUBMITTED.

Montreal, this 22<sup>nd</sup> day of May 2001

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IRVING, MITCHELL & ASSOCIATES  
Attorneys for the Commissioner of Official Languages

Montreal, this 22<sup>nd</sup> day of May 2001

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Me Laura C. Snowball  
Counsel for the Commissioner of Official Languages