

SCC Court File No.:

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUEBEC)**

B E T W E E N:

**156158 CANADA INC., MUNDI CANADA INC, SERVICE DE RÉPARATION DE
CONTENEURS ET D'UNITÉS FRIGORIFIQUES DU CANADA LTÉE, ALLAN
ANAWATI, ANALYSE NIRA INC., 176410 CANADA INC., SHERIL-LIN INC.,
STANLEY AND MURIEL REID, LES INDUSTRIES GARANTIES LTÉE, SCOTT
LEMAY**

**APPLICANTS
(Appellants)**

A N D

THE ATTORNEY GENERAL OF QUEBEC

**RESPONDENT
(Respondent)**

AND BETWEEN

3831426 CANADA INC.

**APPLICANT
(Appellant)**

A N D

**DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS, THE ATTORNEY
GENERAL OF QUEBEC**

**RESPONDENTS
(Respondents)**

**APPLICATION FOR LEAVE TO APPEAL
VOLUME I of III (Tabs 1 – 3)
(156158 CANADA INC. ET AL., APPLICANTS)
(Pursuant to Section 40 of the Supreme Court Act, R.S.C. 1985, c. S-26)**

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PART I – OVERVIEW & STATEMENT OF FACTS

A. Overview

1. Quebec’s language laws provide that business owners may advertise in several languages including English as long as the French language information is “markedly predominant” over all other languages combined or at least equal. This case is about the constitutionality of those laws.

2. The Applicants were charged with offences under Chapter VII of the *Charter of the French Language*¹ (“CFL”) entitled “The language of commerce and business” resulting in a trial grouping together 84 cases. During trial, the Attorney General of Quebec withdrew the charges in 53 cases. In the 31 remaining cases, the trial judge dismissed the Applicants’ common law arguments and constitutional arguments and found them guilty.

3. Eleven Appellants in 13 cases continue to challenge the decisions below. The issue in this appeal, broadly stated, is whether the charging provisions infringe the right to freedom of expression, the right to equality, which includes the right not to be discriminated against on the basis of language, the right to liberty under the Canadian *Charter of Rights and Freedoms*², and the Quebec *Charter of Human Rights and Freedoms*³ and the right of enjoyment of private property under the Quebec *Charter*.

4. The CFL became law in 1977 after the passing of Bill 101 and has been amended more than six times since 1977. Despite the controversies generated by this law, it has received limited judicial attention and the Court of Appeal below relied on three decisions to dismiss the case:

- *Ford v. Quebec (Attorney General)*;⁴
- *Devine v. Quebec (Attorney General)*;⁵ and
- *Entreprises W.F.H. Ltée c. Québec (Procureure générale)*⁶ which relies on the guidelines stated in an *obiter dictum* in *Ford*.

¹ *Charter of the French Language*, R.S.Q. c. C-11.

² *Charter of Rights and Freedoms*, Schedule B to the Canada Act 1982 (UK), 1982, c 11.

³ *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12.

⁴ *Ford v. Quebec (Attorney General)* [1988] 2 S.C.R. 712

⁵ *Devine v. Quebec (Attorney General)* [1988] 2 S.C.R. 790

⁶ *Entreprises W.F.H. Ltée c. Québec (Procureure générale)*, [2001] R.J.Q. 2557 (C.A.)

5. Much has changed since *Ford* and *Devine* and yet, as is seen in the present case, courts continue to rely on an undocumented “vulnerability” of the French language to justify the infringement of *Charter* rights by language laws.

6. This Honourable Court has considered this sentimental “vulnerability” argument in two more recent decisions in the context of s. 23 of the CFL and minority language instruction:

- *Solski (Tutor of) v. Quebec (Attorney General)*⁷
- *Nguyen v. Quebec (Education, Recreation and Sports)*.⁸

7. In both cases, the evidence of the alleged vulnerability of the French language did not prevent this Court from finding that the impugned provisions were constitutionally suspect, giving rise to the remedy of “reading down” in *Solski* and a declaration of invalidity in *Nguyen*. Is it the case that the situation of the French language can be viewed differently depending on the nature of the right involved, or is it simply a matter of fact that can be demonstrated by concrete evidence?

8. As in *Solski* and *Nguyen*, the Applicants in the present case have filed abundant statistical and demographic evidence. Following the principles laid down by this Court in *Canada (Attorney General) v. Bedford*⁹ and *Carter v. Canada (Attorney General)*¹⁰, the Applicants have met the burden of showing 1) a new legal issue or 2) a change in the circumstances or evidence that “fundamentally shifts the parameters of the debate”. Accordingly, this case raises an issue of public importance and provides an ideal record for the consideration of fundamental constitutional issues.

9. Furthermore, as the manner in which businesses advertise to customers continues to evolve and geographical barriers disappear, only more questions will be raised as to what constitutes a violation of freedom of expression and the right to equality and liberty. For example, the Court of Appeal below confirmed that web sites are subject to the same requirements as any other commercial publications paving the way for a significant burden on small business owners.

⁷ *Solski (Tutor of) v. Quebec (Attorney General)*, [2005] 1 S.C.R. 201

⁸ *Nguyen v. Quebec (Education, Recreation and Sports)*, [2009] 3 S.C.R. 208

⁹ *Canada (Attorney General) v. Bedford*, [2013] 3 S.C.R. 1101, at paras. 42-44.

¹⁰ *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331, at para. 44.

B. The Facts

10. There are four categories of cases depending on the object and nature of the charge:
- 1) Outside signs in English and French as regards the imposition of the markedly predominant use of French under s. 58 CFL.¹¹
 - 2) Inside signs as regards s. 58 CFL.¹²
 - 3) Packaging in English as regards the imposition of the joint use of French under s. 51 CFL.¹³
 - 4) Web sites in English as regards the imposition of the joint use of French under s. 52 CFL.¹⁴
11. The current version of s. 58 CFL makes no distinction between outside and inside signs:
- 58.** Public signs and posters and commercial advertising must be in French. They may also be both in French and in another language provided that French is markedly predominant. However, the Government may determine, by regulation, the places, cases, conditions or circumstances where public signs and posters and commercial advertising must be in French only, where French need not be predominant or where such signs, posters and advertising may be in another language only.
12. In the application of s. 58 CFL by the competent authorities, namely the Office québécois de la langue française, the Directeur des poursuites criminelles et pénales and the Attorney General of Quebec, a sign in English (or another language) only gives rise to the charge of “*a fait de l’affichage public et la publicité commerciale dans une langue autre que le français*” pursuant to the first paragraph and a sign in equal French and English (or another language) gives rise to the charge of “*a fait de l’affichage public et la publicité à la fois en français et dans une autre langue alors que le français n’y figure pas de façon nettement prédominante*” pursuant to the second paragraph.

¹¹ S.C.M. #500-36-007519-153 – 156158 Canada Inc.; S.C.M. #500-36-007741-153 – Mundi Canada Inc.; S.C.M. #500-36-007745-154 – 176410 Canada Inc.; S.C.M. #500-36-007748-158 – Les Industries Garanties Ltée

¹² S.C.M. #500-36-007739-157 – 156158 Canada Inc.; S.C.M. #500-36-007740-155 – Mundi Canada Inc.

¹³ S.C.M. #500-36-007744-157 – Analyse Nira Inc.

¹⁴ S.C.M. #500-36-007742-151 – Service de réparation de conteneurs et d’unités frigorifiques du Canada Ltée; S.C.M. #500-36-007743-159 – Allan Anawati; S.C.M. #500-36-007746-152 – Sheril-Lin Inc.; S.C.M. #500-36-007747-150 – Stanley and Muriel Reid; S.C.M. #500-36-007749-156 – Scott Lemay; S.C.M. #500-36-007750-154 – 3831426 Canada Inc.

C. The proceedings before the Court of Quebec

13. The prosecutions were instituted by the filing of Statements of Offence (*Constats d'infraction*). The Appellants' constitutional arguments were set out in the Amended and Particularized Notice of Intent to Raise Constitutional Issues.¹⁵

14. The trial before took place over a seven (7) day period involving eighty-four (84) cases.

15. On the first day of the trial, the Attorney General of Quebec withdrew the charges in fifty-two (52) cases and withdrew another one during the trial, for a total of fifty-three (53) cases, including several involving francophones.

16. By judgment dated January 28, 2015, Justice Mascia dismissed the Appellants' common-law defences and dismissed their arguments that the charging provisions were unconstitutional, found them guilty of the offences as charged and imposed the minimum fine and minimum costs¹⁶.

D. The appeal before the Superior Court

17. Eleven (11) Appellants in thirteen (13) cases appealed from the judgment of Justice Mascia¹⁷. By judgment dated April 12, 2016, Justice Roy dismissed the appeal.¹⁸

E. The appeal before the Court of Appeal

18. The same eleven (11) Appellants in thirteen (13) cases sought leave to appeal.¹⁹ By judgment dated June 3, 2016, leave to appeal was granted²⁰.

19. By judgment dated December 20, 2018, the Court of Appeal (reasons by Mark Shrager, J.A., Nicole Duval Hesler, C.J.Q., and Geneviève Marcotte, J.A., concurring) dismissed the appeal²¹.

¹⁵ Amended and Particularized Notice of Intent to Raise Constitutional Issues, dated January 27, 2014. [Tab 4A]

¹⁶ Judgment of the Court of Quebec dated January 28, 2015. [Tab 2A]

¹⁷ Notice of Appeal, dated February 7, 2015. [Tab 4B]

¹⁸ Judgment of the Superior Court, dated April 12, 2016 [Tab 2B]

¹⁹ Amended Notice for Leave to Appeal, dated May 30, 2016 [Tab 4C]

²⁰ Judgment of the Honourable Justice Marie-Josée Hogue, J.C.A., dated June 3, 2016. [Tab 2C]

²¹ Judgment of Court of Appeal Below [Tab 2D]

PART II – STATEMENT OF ISSUES

20. This leave application raises the following issues of public importance.

ISSUE 1: Are the issues raised by the Applicants questions of law alone, in terms of s. 291 C.C.P.?

ISSUE 2: Do the limitations set out in ss. 51, 52 and 58 C.F.L. constitute unjustified infringements of the right to freedom of expression guaranteed by s. 2(b) of the *Canadian Charter* and s. 3 of the *Quebec Charter*?

ISSUE 3: Do the limitations set out in ss. 51, 52 and 58 C.F.L. constitute unjustified infringements of the right to equality guaranteed by s. 15 of the *Canadian Charter* and s. 10 of the *Quebec Charter*?

ISSUE 4: Do the limitations set out in ss. 51, 52 and 58 C.F.L. constitute unjustified infringements of the right to liberty guaranteed by s. 7 of the *Canadian Charter* and s. 1 of the *Quebec Charter*?

ISSUE 5: Do the limitations set out in ss. 51, 52 and 58 C.F.L. constitute unjustified infringements of the right to peaceful enjoyment of private property guaranteed by s. 6 of the *Quebec Charter*?

ISSUE 6: What role does the right to liberty and the right to the peaceful enjoyment of private property have as interpretative aids in the analysis of whether other rights have been infringed, such as the right to freedom of expression and the right to equality?

PART III – STATEMENT OF ARGUMENT

ISSUE 1: Are the issues raised by the Applicants questions of law alone, in terms of s. 291 C.C.P.?

21. At paras. 75 to 88, the Court of Appeal addressed the issue of whether the vulnerability of the French language was a question of law alone and concluded that it was not and that absent a palpable and overriding error, the assessment of the trial judge was entitled to appellate deference.²²

22. The Applicants submit that in concluding that the evidence adduced at trial on the vulnerability of the French language justified the infringement of *Charter* rights, the trial judge committed a palpable and over-riding error.

23. Firstly, the trial judge simply ignored the argument expressly pleaded by the Applicants on the meaning of the phrase “the vulnerability of the French language”.

²² Judgment of Court of Appeal Below at paras. 75-88 [**Tab 2D**]

24. In *Ford v. Quebec (Attorney General)*, the Supreme Court characterized what it meant by the word “vulnerability”:

72. . . .This “*visage linguistique*” reinforced the concern among francophones that English was gaining in importance, that the French language was threatened and that it would ultimately disappear. . . .

73. The section 1 and s. 9.1 materials establish that the aim of the language policy underlying the *Charter of the French Language* was a serious and legitimate one. They indicate the concern about the survival of the French language and the perceived need for an adequate legislative response to the problem. . (Emphasis added)²³

25. In *Solski (Tutor of) v. Quebec (Attorney General)*, the Court repeated this characterization:

9. Finally, the anxiety of a significant segment of Quebec Francophones about the future of their language was a known fact, if only because of the upheavals it had caused in Canadian politics, and even more so in Quebec politics. This Court in fact acknowledged the existence of this fear among Quebec Francophones that their mother tongue would disappear when, in a case involving the legislation regarding the language of signs, it analysed, under s. 1 of the *Canadian Charter*, the evidence submitted by the parties to demonstrate that the legislation had a serious and legitimate purpose (*Ford*, at p. 778). (Emphasis added)²⁴

26. It is clear that the vulnerability contemplated by the Court in *Ford* and subsequently reiterated, was a situation of serious precarity as matter of fact. Mere sentiment, however widely held, cannot justify the infringement of *Charter* rights.

27. Second, the trial judge simply ignored the argument expressly pleaded by the Applicants on the evolution of the jurisprudence relating to the vulnerability of the French language.

28. There have been two cases since *Ford* in 1988 in which the Attorney General of Quebec invoked the vulnerability of the French language as the sole justification for the infringement of *Charter* rights. Both involved s. 23 and the right to minority language instruction: *Solski* and *Nguyen v. Quebec (Education, Recreation and Sports)*²⁵.

²³ *Ford v. Quebec (Attorney General)* [1988] 2 S.C.R. 712, at paras. 72, 73

²⁴ *Solski (Tutor of) v. Quebec (Attorney General)* [2005] 1 S.C.R. 201, at para. 9

²⁵ *Nguyen v. Quebec (Education, Recreation and Sports)*, [2009] 3 S.C.R. 208

29. Abundant statistical and demographic evidence was filed by the parties, almost identical to the evidence adduced in this case, except for expertise.

30. In both cases, the evidence of the alleged vulnerability of the French language did not prevent this Court from finding that the impugned provisions were constitutionally suspect, giving rise to the remedy of “reading down” in *Solski* and a declaration of invalidity in *Nguyen*.

31. The situation of the French language is a matter of fact that should not be viewed differently depending on the nature of the right involved, such that these cases should be interpreted as attenuating the finding of vulnerability in *Ford*.

32. Lastly, the evidence adduced at trial amply demonstrated that there is only one long-standing trend (*tendance lourde*) that is unfavourable to the French language in Quebec and that is the decline in the relative weight (percentage) of the French-speaking population on the island of Montreal.²⁶

33. All other trends, the relative weight of the French-speaking population in all other areas, including Quebec as a whole, the absolute numbers of the French-speaking population in all areas, birth and death rates, migration and immigration, and linguistic transfers, are either stable or favourable to the French language.²⁷

34. None of the courts below addressed this argument, although it was expressly pleaded. Rather, they recited demographic considerations relating to the four factors a) to d) considered in *Ford*.

35. In these circumstances, it is simply not possible to conclude that the French language is so vulnerable that its survival is at stake, that it is on the verge of disappearing and that this justifies the infringement of *Charter* rights.

36. The Applicants submit that the relevant geographical unit of analysis for the purposes of the saving provisions is Quebec.

²⁶ Termote, Exhibit PGQ-1, Tableau 10 [Tab 4D]

²⁷ *Les langues du Canada, Recensement 1996*, Exhibit D-10, Table A.1 [Tab 4E]; *Languages in Canada: 1996 Census*, Exhibit D-11, Table A.1 [Tab 4F]; *Recensement de 2001: série « analyses »*, Exhibit D-12, Tables [Tab 4G]; *2001 Census: analysis series*, Exhibit D-13, Tables [Tab 4H]

37. The charging provisions of the CFL being challenged under the *Charters* have no application or effect beyond the territory of Quebec. The messages sent by the “*visage linguistique*” of Quebec, however laudable they may be, are not perceived by anyone outside its borders. Thus, it is the situation of the French language in Quebec that is relevant in the context of an analysis under the saving provisions.

38. Such considerations as the global phenomenon of Anglicization, the demographic situation of the French-speaking population in the rest of Canada and the fact that the French-speaking population of Quebec is 2% of the population of North America are part of the overall context and no doubt contribute to a sentiment of linguistic insecurity, however, they are simply not relevant in the context of an analysis under the saving provisions.

39. In these circumstances, the Applicants submit that they have met whatever burden they may have, depending on the context, to show that the French language is not vulnerable in Quebec in any meaningful sense of the word.

40. In concluding to the contrary, the trial judge committed a palpable and over-riding error, thereby qualifying the issue of vulnerability as a question of law alone in the sense of Article 291 C.C.P.

ISSUE 2: Do the limitations set out in ss. 51, 52 and 58 C.F.L. constitute unjustified infringements of the right to freedom of expression guaranteed by s. 2(b) of the *Canadian Charter* and s. 3 of the *Quebec Charter*?

41. In the context of a provision imposing the markedly predominant display of French, the Applicants invoked the *obiter dictum* in *Ford*, when interpreted as a whole, including the use of the disjunctive, to the effect that both the equal display of French and the markedly predominant display of French would satisfy the requirements of the saving provisions.

42. By their nature, *obiter dicta* are messages to the legislator as to how a future law should be drafted and to the courts as to how a future case challenging the law should be decided.

43. While acknowledging that the *obiter dictum* in *Ford* left the legislator the choice between two constitutionally valid options, the Court of Appeal concluded that “[I]t was not for the courts

to now question that choice.”²⁸ and “[I]t is not for this Court to review the legislator’s choice in the present circumstances.”²⁹

44. With all due respect, this conclusion is an abdication of the duty of the courts to entertain the evidence made and the arguments advanced in the future case on their own merits.

45. In the context of a provision imposing the equal display of French, the Applicants sought to depart from the finding in *Devine* that such a provision was acceptable under the saving provisions.

46. In accordance with principles laid down by this Court in *Canada (Attorney General) v. Bedford*,³⁰ and *Carter v. Canada (Attorney General)*,³¹ the Applicants had the burden to show 1) a new legal issue or 2) a change in the circumstances or evidence that “fundamentally shifts the parameters of the debate”.³²

47. In the courts below, the Applicants invoked 1) the evolution in the jurisprudence of this Court on the subject of the vulnerability of the French language (discussed, *supra*), 2) a credible assessment of the situation of the French language to the effect that it was not vulnerable in any meaningful sense of the word (discussed, *supra*), 3) the evolution of the “*visage linguistique*” of Quebec and 4) a new argument based on a proposed definition of the “*visage linguistique*”, namely, outside signs visible from a public thoroughfare.

48. At trial, the Applicants introduced evidence relating to the evolution of the “*visage linguistique*” of Quebec in the form of studies prepared by agencies of the Quebec government with the statutory duty to monitor and report on the situation of the French language: Commission de protection de la langue française, Conseil de la langue française, Office de la langue française, Secrétariat à la politique linguistique. They constitute the best available evidence on the “*visage linguistique*” of Quebec.³³

²⁸ Judgment of Court of Appeal Below at para. 105 [Tab 2D]

²⁹ Judgment of Court of Appeal Below at para. 111 [Tab 2D]

³⁰ *Canada (Attorney General) v. Bedford*, [2013] 3 S.C.R. 1101

³¹ *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331

³² *Bedford supra*, at paras. 42-44; *Carter supra*, at para. 44

³³ *Le visage français du Québec, Enquête sur l’affichage*, Conseil de la langue française, Jacques Maurais et Philippe Plamondon, Septembre 1986, Exhibit D-2 [Tab 4I]; *L’évolution de la*

49. The studies show that the concern about the “*visage linguistique*” relates to the Montreal area, where communities that speak languages other than French are located. The first study³⁴ looked at all of Quebec. All subsequent studies concentrated on the island of Montreal exclusively. There are no studies whatsoever after 2001.

50. The reasonable conclusion to be drawn from the fact that there are no studies after 2001 is that there had been such a massive transformation of the “*visage linguistique*” of Quebec that the subject was no longer of official concern to the competent authorities.

51. No one can seriously deny that the “*visage linguistique*” of the rest of Quebec accurately reflects the demography of the area and sends a message to all concerned that this area is overwhelmingly French-speaking.

52. However, the current regime of marked predominance of French on outside signs does not operate to maintain a “*visage linguistique*” of the Montreal area that accurately reflects the demography of the area. Rather the current regime acts as a mask to disguise the reality that exists on the ground. Montreal is a multi-lingual metropolis and the rules governing the “*visage linguistique*” should allow that reality to be reflected, not covered up.

53. In *Ford*, the Supreme Court did not provide a precise definition of what it meant by the notion of the “*visage linguistique*”. However, it attached great importance to the message sent to the population, francophones, anglophones and allophones, by the “*visage linguistique*”, and the issue of whether or not it was reflective of Quebec’s demography.

situation de l’affichage à Montréal, 1995 et 1996, Conseil de la langue française, 1997, Exhibit D-3 [Tab 4J]; *Évolution de la situation de l’affichage à Montréal de 1995 à 1997*, Commission de protection de la langue française, Conseil de la langue française, Office de la langue française, Secrétariat à la politique linguistique, 9 décembre 1997, Exhibit D-4 [Tab 4K]; *La langue de l’affichage à Montréal de 1997 à 1999*, Conseil de la langue française, Office de la langue française, Commission de protection de la langue française, Secrétariat à la politique linguistique, 8 novembre 2000, Exhibit D-5 [Tab 4L]; *L’affichage comme enjeu de l’aménagement linguistique*, Conseil de la langue française, Memoire présenté à la Commission des États généraux sur la situation et l’avenir de la langue française au Québec, Pierre Bouchard et Jacques Maurais, 23 février 2001, Exhibit D-6 [Tab 4M]

³⁴ *Le visage français du Québec, Enquête sur l’affichage*, Conseil de la langue française, Jacques Maurais et Philippe Plamondon, Septembre 1986, Exhibit D-2 [Tab 4I]

54. The judgment of the Supreme Court in *Ford* ought not to be interpreted as contemplating a “*visage linguistique*” that would be permanently non-reflective of Quebec’s demography. On the contrary, *Ford* should properly be interpreted as contemplating a moment when the “*visage linguistique*” would be reflective enough to prefer a joint-use provision over a markedly predominant use provision as regards outside signs. This would hold true even if the vulnerability of the French language was assumed.

55. As *Ford* dealt with outside signs, with the exception of one inside sign in the case of La Chaussure Brown’s Inc., it is reasonable to conclude that the Court’s analysis of the “*visage linguistique*” was limited to the message sent by outside signs.

56. It was the existence of this one inside sign which led the Court of Appeal³⁵ and the Superior Court³⁶ to conclude that the Supreme Court did not limit the concept of “*visage linguistique*” to outside signs. The Applicants submit that this conclusion is unreasonable having regard to the Court’s analysis when considered as a whole and the fact that the phrase itself contains an inherent reference to outside signs.

57. It is important to note that in his recitation of the facts in *Ford*, the Superior Court in *Québec (Procureure générale) c. Entreprises W.F.H. Ltée*³⁷ (upheld in *Entreprises W.F.H. Ltée c. Québec (Procureure générale)*³⁸) referred only to the exterior signs in the case of La Chaussure Brown’s Inc. and made no reference to any inside signs.³⁹ Clearly for him, *Ford* dealt with outside signs and the message sent by outside signs.

58. In *Devine v. Quebec (Attorney General)*, the Supreme Court took its analysis in *Ford*, applied it to documents that patently do not form part of the “*visage linguistique*” and concluded that a joint-use provision satisfied the requirements of the saving provisions.⁴⁰

³⁵ Judgment of Court of Appeal Below at para. 114 [Tab 2D]

³⁶ Judgment of the Superior Court, dated April 12, 2016 at para. 52 [Tab 2B]

³⁷ *Québec (Procureure générale) c. Entreprises W.F.H. Ltée*, [2000] R.J.Q. 1222

³⁸ *Entreprises W.F.H. Ltée c. Québec (Procureure générale)*, [2001] R.J.Q. 2557

³⁹ [2000] R.J.Q. 1222 at para. 36

⁴⁰ *Devine v. Quebec (Attorney General)* [1988] 2 S.C.R. 790, at paras. 24-27

59. This transposition of considerations concerning outside signs to signs and documents inside a business creates a sort of ambiguity and inconsistency that compels the formulation of a definition of the “*visage linguistique*.”

60. The argument that the Applicants raise herein regarding the conclusions to be drawn from the proper definition of the “*visage linguistique*” is entirely new and meets the threshold in *Bedford* and *Carter*, allowing for a departure from the finding in *Devine* that a joint-use provision satisfies the requirements of the saving provisions.

61. No attempt was made by the courts below in this case or the courts in *Entreprises W.F.H.* to define what is meant by the phrase “*visage linguistique*”.

62. The Applicants submit that the appropriate definition of the phrase “*visage linguistique*” is “those outside signs visible from a public thoroughfare”. Inside signs, packaging, catalogues, Web sites, etc., are not visible from a public thoroughfare and therefore, do not form part of the “*visage linguistique*”

63. This definition of the “*visage linguistique*” is reflected in the studies filed as Exhibits D-2 to D-6.⁴¹ All of the studies assume that only signs outside a business form part of the “*visage linguistique*”, whereas inside signs do not. Only outside signs were counted. Inside signs were not.

64. The distinction between outside/inside and public/private was first reflected in legislation immediately after and in response to the judgments of the Supreme Court in December 1988

⁴¹ *Le visage français du Québec, Enquête sur l’affichage*, Conseil de la langue française, Jacques Maurais et Philippe Plamondon, Septembre 1986, Exhibit D-2 [Tab 4I]; *L’évolution de la situation de l’affichage à Montréal, 1995 et 1996*, Conseil de la langue française, 1997, Exhibit D-3 [Tab 4J]; *Évolution de la situation de l’affichage à Montréal de 1995 à 1997*, Commission de protection de la langue française, Conseil de la langue française, Office de la langue française, Secrétariat à la politique linguistique, 9 décembre 1997, Exhibit D-4 [Tab 4K]; *La langue de l’affichage à Montréal de 1997 à 1999*, Conseil de la langue française, Office de la langue française, Commission de protection de la langue française, Secrétariat à la politique linguistique, 8 novembre 2000, Exhibit D-5 [Tab 4L]; *L’affichage comme enjeu de l’aménagement linguistique*, Conseil de la langue française, Memoire présenté à la Commission des États généraux sur la situation et l’avenir de la langue française au Québec, Pierre Bouchard et Jacques Maurais, 23 février 2001, Exhibit D-6 [Tab 4M]

when the National Assembly adopted *Bill 178*⁴² with a notwithstanding clause to continue the imposition of the exclusive use of French on outside signs, but allowing for its markedly predominant use inside a business.

65. The distinction between outside and inside is also reflected in ss. 15 and 16 of the *Regulation respecting the language of commerce and business*.⁴³

66. Once this definition of the “*visage linguistique*” is adopted, the imposition of the use of French inside a business cannot be justified for considerations relating to the “*visage linguistique*”.

67. The same reasoning applies to packaging. Packaging inside a business is not part of the “*visage linguistique*” and therefore, the imposition of French on packaging under s. 51 CFL cannot be justified for considerations relating to the “*visage linguistique*”.

68. The same reasoning applies to Web sites. The content of a Web site does not form part of the “*visage linguistique*” and therefore, the imposition of French on Web sites under s. 52 CFL cannot be justified for considerations relating to the “*visage linguistique*”.

69. There is an additional consideration regarding Web sites arising from the nature of the medium. The Applicants submit that the nature of the Internet is such that limitations on the freedom to express oneself using that medium should only be interfered with in the rarest of circumstances.

70. Assuming that the Applicants are correct in their interpretation of the *obiter dictum* in *Ford* and the application of the principle of *stare decisis*, they submit that the burden of proof under the saving provisions differs depending on the context.

71. In the context of a provision imposing the markedly predominant use of French on outside signs, there is no reversal of the burden of proof. The Attorney General of Quebec has the burden on a balance of probabilities to justify the choice between the imposition of the markedly predominant use of French and the imposition of its joint use.

⁴² *Bill 178 S.Q.*1988, c. 54 s. 1

⁴³ *Regulation respecting the language of commerce and business*, chapter C-11, r. 9 ss. 15, 16

72. In the context of a provision imposing the joint use of French on inside signs, packaging and Web sites, the Applicants admittedly have the burden on a balance of probabilities to show that the imposition of the joint use of French is not justified under the saving provisions. The Applicants submit that this burden is amply satisfied by the evolution of the jurisprudence and the evidence and their new argument based on the conclusions to be drawn from the proper definition of the phrase “*visage linguistique*”.

ISSUE 3: Do the limitations set out in ss. 51, 52 and 58 C.F.L. constitute unjustified infringements of the right to equality guaranteed by s. 15 of the *Canadian Charter* and s. 10 of the *Quebec Charter*?

73. The equality guarantees under s. 15 of the *Canadian Charter* and s. 10 of the *Quebec Charter* provide for different regimes of protection against discrimination, but achieve the same result. It is difficult to imagine a situation which resulted in the infringement of one and not the other. For this reason and for the purposes of brevity, the Applicants will not proceed to a separate analysis under s. 10 of the *Quebec Charter*.

74. The trial judge conducted an extensive analysis of the equality guarantee under s. 15 of the *Canadian Charter*. He found that the “prejudice-stereotype” analysis was appropriate and that the impugned provisions do not perpetuate prejudice or stereotyping. He concluded that the challenge based on an infringement of s. 15 must fail.⁴⁴

75. The issue as to whether the requirement of the marked predominance of French constitutes an infringement of s. 15 was addressed by the Supreme Court in *Devine*, not directly, but by necessary implication. In the context of deciding whether a joint use provision infringed s. 15, the Court concluded that it did, but that the infringement was “at most, a minimal impairment of equality rights.”

76. The Court then went on to state that “[A]lthough, as the appellant contended, the requirement of joint use of French might create an additional burden for non-francophone merchants and shopkeepers, there is nothing which impairs their ability to use another language equally.”:⁴⁵

⁴⁴ Judgment of the Court of Quebec dated January 28, 2018. at paras. 215-282 [**Tab 2A**]

⁴⁵ [1988] 2 S.C.R. 790 at para. 31

77. Clearly, the requirement of the marked predominance of French does not allow for the equal use of other languages and is therefore an infringement of s. 15. Whether the infringement can be justified under s. 1 is a separate issue. The Applicants invoke the *stare decisis* of *Devine* in this regard.

78. To arrive at this conclusion, the Court did not proceed to any detailed analysis of the kind conducted by the trial judge. The Applicants submit that such an analysis is not necessary in circumstances where the infringement is *prima facie*. The requirement of the marked predominance of French necessarily imposes the marked inferiority of all other languages. There is no avoiding this conclusion based on the plain meaning of the words “markedly predominant” in s. 58 CFL.

79. To assert that this imposition of marked inferiority does not on its face infringe the right of every individual to equality before and under the law and the right to the equal protection and equal benefit of the law without discrimination based on language is simply untenable. Yet, that is exactly the conclusion of the courts below and the courts in *Entreprises W.F.H.*

80. Whatever the purpose of the requirement of the marked predominance of French, the effect of the imposition is to diminish English. To pretend otherwise simply ignores the obvious. Every sign displaying the marked predominance of French is a graphic representation of inequality and differential treatment.

81. To invoke the objective or purpose of the provision to minimize its admittedly differential effects is to make a category mistake of gigantic proportions. At the stage of determining an infringement, it is the effect of the provision that must be examined. The objective of the provision is relevant after an infringement has been determined in the context of an analysis under the saving provisions.

82. Although the Applicants do not agree with his conclusions, the trial judge did an excellent job of tracing the evolution of the jurisprudence on s. 15.⁴⁶

⁴⁶ See *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143; *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497; *R. v. Kapp*, [2008] 2 S.C.R. 483; *Withler v. Canada (Attorney General)*, [2011] 1 SCR 396; *Quebec (Attorney General) v. A*, [2013] 1 SCR 61; Judgment of the Court of Quebec dated January 28, 2018, at paras. 251-282 [**Tab 2A**]

83. Space considerations do not allow for a detailed examination of each step of the evolution, such as the introduction of the notion of human dignity in *Law* and its subsequent marginalization. As already mentioned, the trial judge produced the relevant extracts.

84. The Applicants intend to cut to the chase and in particular, address the conclusions of the trial judge that the “prejudice-stereotype” analysis was appropriate and that the impugned provisions did not perpetuate prejudice or stereotyping.

85. The Applicants submit that prejudice and stereotype are merely two indicia of discrimination that may help determine whether a distinction infringes s. 15, but are not discrete elements that a claimant has to prove.

86. As Justice Abella explained in *Quebec (Attorney General) v. A* :

327. We must be careful not to treat *Kapp* and *Withler* as establishing an additional requirement on s. 15 claimants to prove that a distinction will perpetuate prejudicial or stereotypical attitudes towards them. Such an approach improperly focuses attention on whether a discriminatory *attitude* exists, not a discriminatory impact, contrary to *Andrews*, *Kapp* and *Withler*.⁴⁷

87. What then is the impact of the requirement of the joint use of French? The Applicants submit that while the infringement is not *prima facie*, it is nonetheless obvious. The imposition of joint use restricts the right of those Applicants that are members of the English-speaking community of Quebec to express themselves in their own language on the same basis as the French-speaking community in Quebec or the rest of the Canadian population or any other relevant comparable group.

88. The requirement imposes an economic burden, as well as a psychological burden as a result of being the only group in the entire country to be treated in this way. The resulting infringement would not be justified under the saving provisions for the same reasons that the infringement of the right to freedom of expression is not justified.

⁴⁷ *Quebec (Attorney General) v. A*, [2013] 1 SCR 61 at para. 327

ISSUE 4: Do the limitations set out in ss. 51, 52 and 58 C.F.L. constitute unjustified infringements of the right to liberty guaranteed by s. 7 of the *Canadian Charter* and s. 1 of the *Quebec Charter*?

89. The content of the right to liberty in s. 7 of the *Canadian Charter* and s. 1 of the *Quebec Charter* is the same, except that s. 1 of the *Quebec Charter* is not subject to the exception “in accordance with the principles of fundamental justice” found in s. 7 of the *Canadian Charter*. The imposition of the joint use or markedly predominant use of French in the impugned provisions infringes the right to liberty in s. 7 of the *Canadian Charter* and s. 1 of the *Quebec Charter*, which includes the right to conduct business in the language of one’s choice:

Such a choice is within the narrow sphere of personal autonomy wherein individuals may make private choices free from state interference. The autonomy protected by s. 7 encompasses those matters that can be properly characterized as fundamentally or inherently personal such that they implicate basic choices going to the core of what it means to enjoy individual dignity and independence.⁴⁸

“Liberty” is engaged where state compulsions or prohibitions affect important and fundamental life choices. The s. 7 liberty interest protects an individual’s personal autonomy. In our free and democratic society, individuals are entitled to make decisions of fundamental importance free from state interference.⁴⁹

90. The trial judge found that the decision to conduct business in the language of one’s choice could not be qualified as inherently or fundamentally personal and dismissed the liberty arguments accordingly.⁵⁰

91. None of the cases referred to by the trial judge have anything to do with language and they can all be distinguished on that basis. It is the fact that language is an essential part of the decision that renders it inherently and fundamentally personal. In *Ford*:

40. . . . Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is, . . . , a means by which a people may express its cultural identity. It is also the means by which the individual expresses his or her personal identity and sense of individuality. . . .⁵¹

⁴⁸ *Godbout v. Longueuil (City)* [1997] 3 S.C.R. 844, para. 66

⁴⁹ *Blencoe v. B.C. (Human Rights Commission)* [2000] 2 S.C.R. 307, para. 49

⁵⁰ Judgment of the Court of Quebec dated January 28, 2018. at paras. 283-288 [**Tab 2A**]

⁵¹ *Ford supra*, at para. 40

92. The Applicants have no quarrel with the finding of the trial judge that the liberty interest in s. 7 is not synonymous with the absence of restraint.⁵² However, they point out where the restraint is based on language, given that language is at the core of human identity, the restraint interferes with the sphere of personal autonomy protected by the liberty interest in s. 7.

ISSUE 5: Do the limitations set out in ss. 51, 52 and 58 C.F.L. constitute unjustified infringements of the right to peaceful enjoyment of private property guaranteed by s. 6 of the *Quebec Charter*?

93. The Applicants submit that the imposition of the joint use or markedly predominant use of French in the impugned provisions infringes the right to the peaceful enjoyment of private property in s. 6 of the *Quebec Charter*, to the extent that they use their private property to express themselves.

94. At paras. 128 and 129, the Court of Appeal found that the CFL did not affect the right to the peaceful enjoyment of the Applicants' property and even if it did, the protection is limited by the last proposition "except to the extent provided by law".⁵³

95. The Applicants submit that the right is infringed to the extent that they use their private property to express themselves and the words "except to the extent provided by law" do not operate to remove the infringement, otherwise the provision would be meaningless.

ISSUE 6: What role does the right to liberty and the right to the peaceful enjoyment of private property have as interpretative aids in the analysis of whether other rights have been infringed, such as the right to freedom of expression and the right to equality?

96. On numerous occasions, the Supreme Court has confirmed the principle that the *Charter* must be interpreted as a whole. The rights guaranteed under the *Charter* are not separate and distinct from one another.

97. Justice Bellavance gave two examples, among many, in his judgment in *Entreprises W.F.H.*

214 Dans *Oakes* précité, le juge en chef Dickson s'exprimait comme suit:

⁵² Judgment of the Court of Quebec dated January 28, 2018. at para. 284 [Tab 2A]

⁵³ Judgment of Court of Appeal Below at paras. 128, 129 [Tab 2D]

En conséquence, tout examen fondé sur l'article premier doit partir de l'idée que la restriction attaquée porte atteinte à des droits et libertés garantis par la Constitution - des droits et des libertés qui font partie de la loi suprême du Canada. Comme le fait remarquer le juge Wilson dans l'arrêt Singh c. Ministre de l'Emploi et de l'Immigration ; “. . .il est important de se rappeler que les tribunaux effectuent cette enquête tout en veillant au respect des droits et libertés énoncés dans les autres articles de la Charte. (je souligne)

215 Dans *R. c. Lyons* [1987] 2 R.C.S. 309, le juge La Forest, à la page 326:

Avant de se lancer dans une étude approfondie des questions en litige, il peut être utile de souligner que la présente affaire illustre un point assez évident, savoir que les droits et libertés garantis par la Charte ne sont pas séparés et distincts les uns des autres. (je souligne)⁵⁴

98. The Applicants submit that the right to liberty and in particular, the notion of a sphere of personal autonomy, and the right to the peaceful enjoyment of private property, bolster the argument they make above regarding the implications of the distinction between outside/inside and public/private. At paragraphs 121 and 126, the Court of Appeal acknowledged that the Applicants raised this argument, but does not address it.⁵⁵

Conclusion

99. The present case provides an ideal opportunity to reconsider this Honourable Courts 1988 decisions in *Ford* and *Devine* regarding Quebec’s language laws. The Applicants, on the basis of significant expert evidence including statistical and demographic evidence, have proven that the French language in Quebec is no longer in jeopardy.

100. Since the “vulnerability” of the French language was the primary reason for justifying the infringement of *Charter* rights by language laws, the impugned provisions are constitutionally suspect. In light of *Bedford* and *Carter* and the need to be responsive to a changing social context, it is now the time to revisit the precedents relied upon by the Court of Appeal.

101. In *Ford* this Honourable Court presented a disjunctive choice: favour the joint display of French, or the predominant display of French. The question raised by this application for leave to appeal is whether the predominant display of French continues to be necessary – particularly in Montreal. Ignoring modern social realities, the decisions below impose predominant display

⁵⁴ [2000] R.J.Q. 1222, at paras. 214, 215

⁵⁵ Judgment of Court of Appeal Below at paras. 121, 126 [Tab 2D]

under circumstances in which the “*visage linguistique*” does not require and should not require departure from joint display.

102. Part of the problem stems from the absence of clear guidance from this Honourable Court as to what is meant by “*visage linguistique*”. What are the parameters of this concept? Answering this and other fundamental questions will assist future Courts and the Legislature come to a stable resolution of this ongoing problem.

103. As confirmed by the Court of Appeal, web sites (and presumably all forms of social media) are subject to the same requirements as other traditional commercial advertising and publications. The internet was in its infancy at the time of the precedents relied upon by the courts below and social media was non-existent.

104. These technological advancements coupled with the Applicants’ evidence as to the admitted progress of the French language in recent decades is sufficient to satisfy the requirement of a change in circumstances or evidence that fundamentally shifts the parameters of the debate.

105. The 84 cases that were considered at first instance in this proceeding are simply the tip of the iceberg and only a small indication of the burdens these language laws impose on business owners. Clarifying the law now will avoid further litigation and bring certainty to issues that are of public importance to all (whether in person or online) considered to be conducting or promoting business in the territory of Quebec.

PARTS IV and V – SUBMISSIONS ON COSTS and ORDER REQUESTED

106. The Applicants respectfully request that leave to appeal be granted, with costs in the cause.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of February, 2018.


Charles O'Brien
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PART VI – TABLE OF AUTHORITIES

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PART VII – STATUTORY PROVISIONS

Charter of the French Language, R.S.Q. c. C-11, ss. 51, 52, 58, 89, 205

51. Every inscription on a product, on its container or on its wrapping, or on a document or object supplied with it, including the directions for use and the warranty certificates, must be drafted in French. This rule applies also to menus and wine lists.

The French inscription may be accompanied with a translation or translations, but no inscription in another language may be given greater prominence than that in French.

52. Catalogues, brochures, folders, commercial directories and any similar publications must be drawn up in French.

58. Public signs and posters and commercial advertising must be in French.

They may also be both in French and in another language provided that French is markedly predominant.

However, the Government may determine, by regulation, the places, cases, conditions or circumstances where public signs and posters and commercial advertising must be in French only, where French need not be predominant or where such signs, posters and advertising may be in another language only.

59. Section 58 does not apply to advertising carried in news media that publish in a language other than French, or to messages of a religious, political, ideological or humanitarian nature if not for a profit motive.

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

205. Every person who contravenes a provision of this Act or the regulations adopted by the Government thereunder commits an offence and is liable

(a) to a fine of \$600 to \$6,000 in the case of a

51. Toute inscription sur un produit, sur son contenant ou sur son emballage, sur un document ou objet accompagnant ce produit, y compris le mode d'emploi et les certificats de garantie, doit être rédigée en français. Cette règle s'applique également aux menus et aux cartes des vins.

Le texte français peut être assorti d'une ou plusieurs traductions, mais aucune inscription rédigée dans une autre langue ne doit l'emporter sur celle qui est rédigée en français.

52. Les catalogues, les brochures, les dépliants, les annuaires commerciaux et toute autre publication de même nature doivent être rédigés en français.

58. L'affichage public et la publicité commerciale doivent se faire en français.

Ils peuvent également être faits à la fois en français et dans une autre langue pourvu que le français y figure de façon nettement prédominante.

Toutefois, le gouvernement peut déterminer, par règlement, les lieux, les cas, les conditions ou les circonstances où l'affichage public et la publicité commerciale doivent se faire uniquement en français ou peuvent se faire sans prédominance du français ou uniquement dans une autre langue.

59. L'article 58 ne s'applique pas à la publicité véhiculée par des organes d'information diffusant dans une langue autre que le français, ni aux messages de type religieux, politique, idéologique ou humanitaire pourvu qu'ils ne soient pas à but lucratif.

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.

205. Quiconque contrevient à une disposition

natural person;

(b) to a fine of \$1,500 to \$20,000 in the case of a legal person.

The fines are doubled for a subsequent offence.

In determining the amount of a fine, the judge takes into account, among other things, the revenues and other benefits the offender derived from the offence and any damages and socio-economic consequences that resulted from the offence.

Moreover, if a person is convicted of an offence under this Act, a judge may, on an application made by the prosecutor and submitted with the statement of offence, impose on the offender, in addition to any other penalty, a further fine equal to the financial gain the offender realized or derived from the offence, even if the maximum fine has also been imposed.

de la présente loi ou des règlements adoptés par le gouvernement en vertu de celle-ci commet une infraction et est passible

a) dans le cas d'une personne physique, d'une amende d'au moins 600 \$ et d'au plus 6 000 \$;

b) dans le cas d'une personne morale, d'une amende d'au moins 1 500 \$ et d'au plus 20 000 \$.

En cas de récidive, les amendes applicables sont portées au double.

Dans la détermination du montant de l'amende, le juge tient compte notamment des revenus et des autres avantages que le contrevenant a retirés de la perpétration de l'infraction ainsi que du préjudice et des conséquences socioéconomiques qui en résultent.

De plus, lorsqu'une personne est déclarée coupable d'une infraction à une disposition de la présente loi, un juge peut, sur demande du poursuivant jointe au constat d'infraction, en plus d'imposer toute autre peine, imposer une amende additionnelle d'un montant équivalant au montant de l'avantage pécuniaire que la personne a acquis ou retiré de la perpétration de l'infraction, et ce, même si l'amende maximale lui a été imposée.

Bill 178, An Act to amend the Charter of the French Language, S.Q.1988, c. 54, s.1

1. Section 58 of the Charter of the French language (R.S.Q., chapter C-11) is replaced by the following sections:

"58. Public signs and posters and commercial advertising, outside or intended for the public outside, shall be solely in French.

Similarly, public signs and posters and commercial advertising shall be solely in French

(1) inside commercial centres and their access ways, except inside the establishments located there;

(2) inside any public means of transport and its

access ways;

(3) inside the establishments of business firms contemplated in section 136;

(4) inside the establishments of business firms employing fewer than fifty but more than five persons, where such firms share, with two or more other business firms, the use of a trademark, a firm name or an appellation by which they are known to the public.

The Government may, however, by regulation, prescribe the terms and conditions according to which public signs and posters and public advertising may be both in French and in another language, under the conditions set forth in the second paragraph of section 58.1, inside the establishments of business firms contemplated in subparagraphs 3 and 4 of the second paragraph.

The Government may, in such regulation, establish categories of business firms, prescribe terms and conditions which vary according to the category and reinforce the conditions set forth in the second paragraph of section 58.1.

"58.1 Inside establishments, public signs and posters and commercial advertising shall be in French.

They may also be both in French and in another language, provided they are intended only for the public inside the establishments and that French is markedly predominant.

"58.2 Public signs and posters and commercial advertising may be both in French and in another language or solely in another language in the cases and under the conditions or circumstances prescribed by regulation of the Office de la langue française."

Regulation respecting the language of commerce and business,
c. C-11, r. 9, ss. 15 and 16

15. A firm's commercial advertising, displayed on billboards, on signs or posters or on any other medium having an area of 16 m² or more and visible from any public highway within the meaning of section 4 of the Highway Safety

15. La publicité commerciale d'une entreprise, présentée sur des panneaux-réclame, sur des affiches ou sur tout autre support d'une superficie de 16 m² ou plus et visible de tout chemin public, au sens de l'article 4 du Code

Code (chapter C-24.2), must be exclusively in French unless the advertising is displayed on the very premises of an establishment of the firm.

16. A firm's commercial advertising on or in any public means of transportation and on or in the accesses thereto, including bus shelters, must be exclusively in French.

de la sécurité routière (chapitre C-24.2), doit être faite uniquement en français à moins que cette publicité ne soit située sur les lieux mêmes des établissements de cette entreprise.

16. La publicité commerciale d'une entreprise doit être faite uniquement en français sur ou dans tout moyen de transport public et ses accès, y compris les abribus.

Regulation defining the scope of the expression "markedly predominant" for the purposes of the Charter of the French language c. C-11, r. 11, ss. 1 - 4

1. In signs and posters of the civil administration, public signs and posters and posted commercial advertising that are both in French and in another language, French is markedly predominant where the text in French has a much greater visual impact than the text in the other language.

In assessing the visual impact, a family name, a place name, a trade mark or other terms in a language other than French are not considered where their presence is specifically allowed under an exception provided for in the Charter of the French language (chapter C-11) or its regulations.

2. Where texts both in French and in another language appear on the same sign or poster, the text in French is deemed to have a much greater visual impact if the following conditions are met:

- (1) the space allotted to the text in French is at least twice as large as the space allotted to the text in the other language;
- (2) the characters used in the text in French are at least twice as large as those used in the text in the other language; and
- (3) the other characteristics of the sign or poster do not have the effect of reducing the visual impact of the text in French.

3. Where texts both in French and in another language appear on separate signs or posters of the same size, the text in French is deemed to have a much greater visual impact if the following conditions are met:

1. Dans l'affichage de l'Administration et dans l'affichage public et la publicité commerciale affichée faits à la fois en français et dans une autre langue, le français figure de façon nettement prédominante lorsque le texte rédigé en français a un impact visuel beaucoup plus important que le texte rédigé dans l'autre langue.

Dans l'appréciation de l'impact visuel, il est fait abstraction d'un patronyme, d'un toponyme, d'une marque de commerce ou d'autres termes dans une langue autre que le français lorsque leur présence est spécifiquement permise dans le cadre d'une exception prévue par la Charte de la langue française (chapitre C-11) ou par sa réglementation.

2. Lorsque les textes rédigés à la fois en français et dans une autre langue sont sur une même affiche, le texte rédigé en français est réputé avoir un impact visuel beaucoup plus important si les conditions suivantes sont réunies:

- 1° l'espace consacré au texte rédigé en français est au moins 2 fois plus grand que celui consacré au texte rédigé dans l'autre langue;
- 2° les caractères utilisés dans le texte rédigé en français sont au moins 2 fois plus grands que ceux utilisés dans le texte rédigé dans l'autre langue;
- 3° les autres caractéristiques de cet affichage n'ont pas pour effet de réduire l'impact visuel

- (1) the signs and posters bearing the text in French are at least twice as numerous as those bearing the text in the other language;
- (2) the characters used in the text in French are at least as large as those used in the text in the other language; and
- (3) the other characteristics of the signs or posters do not have the effect of reducing the visual impact of the text in French.
- 4.** Where texts both in French and in another language appear on separate signs or posters of a different size, the text in French is deemed to have a much greater visual impact if the following conditions are met:
- (1) the signs and posters bearing the text in French are at least as numerous as those bearing the text in the other language;
- (2) the signs or posters bearing the text in French are at least twice as large as those bearing the text in the other language;
- (3) the characters used in the text in French are at least twice as large as those used in the text in the other language; and
- (4) the other characteristics of the signs or posters do not have the effect of reducing the visual impact of the text in French.

du texte rédigé en français.

- 3.** Lorsque les textes rédigés à la fois en français et dans une autre langue sont sur des affiches distinctes et de même dimension, le texte rédigé en français est réputé avoir un impact visuel beaucoup plus important si les conditions suivantes sont réunies:
- 1° les affiches sur lesquelles figure le texte rédigé en français sont au moins 2 fois plus nombreuses que celles sur lesquelles figure le texte rédigé dans l'autre langue;
- 2° les caractères utilisés dans le texte rédigé en français sont au moins aussi grands que ceux utilisés dans le texte rédigé dans l'autre langue;
- 3° les autres caractéristiques de cet affichage n'ont pas pour effet de réduire l'impact visuel du texte rédigé en français.
- 4.** Lorsque les textes rédigés à la fois en français et dans une autre langue sont sur des affiches distinctes de dimensions différentes, le texte rédigé en français est réputé avoir un impact visuel beaucoup plus important si les conditions suivantes sont réunies:
- 1° les affiches sur lesquelles figure le texte rédigé en français sont au moins aussi nombreuses que celles sur lesquelles figure le texte rédigé dans l'autre langue;
- 2° les affiches sur lesquelles figure le texte rédigé en français sont au moins 2 fois plus grandes que celles sur lesquelles figure le texte rédigé dans l'autre langue;
- 3° les caractères utilisés dans le texte rédigé en français sont au moins 2 fois plus grands que ceux utilisés dans le texte rédigé dans l'autre langue;
- 4° les autres caractéristiques de cet affichage n'ont pas pour effet de réduire l'impact visuel du texte rédigé en français.

Charter of Rights and Freedoms, Schedule B to the Canada Act 1982 (UK), 1982, c 11.
ss. 1, 2, 15

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

1. La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient

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.

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.

raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

2. Chacun a les libertés fondamentales suivantes :

- a) liberté de conscience et de religion;
- b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
- c) liberté de réunion pacifique;
- d) liberté d'association.

15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.

Charter of Human Rights and Freedoms, R.S.Q., c. C-12, ss. 1, 3, 6, 9.1, 10

1. Every human being has a right to life, and to personal security, inviolability and freedom.

3. Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association.

6. Every person has a right to the peaceful enjoyment and free disposition of his property, except to the extent provided by law.

9.1. In exercising his fundamental freedoms and rights, a person shall maintain a proper regard for democratic values, public order and the general well-being of the citizens of Québec.

In this respect, the scope of the freedoms and

1. Tout être humain a droit à la vie, ainsi qu'à la sûreté, à l'intégrité et à la liberté de sa personne.

3. Toute personne est titulaire des libertés fondamentales telles la liberté de conscience, la liberté de religion, la liberté d'opinion, la liberté d'expression, la liberté de réunion pacifique et la liberté d'association.

6. Toute personne a droit à la jouissance paisible et à la libre disposition de ses biens, sauf dans la mesure prévue par la loi.

9.1. Les libertés et droits fondamentaux s'exercent dans le respect des valeurs démocratiques, de l'ordre public et du bien-être général des citoyens du Québec.

La loi peut, à cet égard, en fixer la portée et en

rights, and limits to their exercise, may be fixed by law.

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

aménager l'exercice.

10. Toute personne a droit à la reconnaissance et à l'exercice, en pleine égalité, des droits et libertés de la personne, sans distinction, exclusion ou préférence fondée sur la race, la couleur, le sexe, l'identité ou l'expression de genre, la grossesse, l'orientation sexuelle, l'état civil, l'âge sauf dans la mesure prévue par la loi, la religion, les convictions politiques, la langue, l'origine ethnique ou nationale, la condition sociale, le handicap ou l'utilisation d'un moyen pour pallier ce handicap.

Il y a discrimination lorsqu'une telle distinction, exclusion ou préférence a pour effet de détruire ou de compromettre ce droit.