IN THE SUPREME COURT OF CANADA

(On appeal from the Quebec Court of Appeal)

BETWEEN: THE ATTORNEY GENERAL OF QUEBEC,

APPELLANT

AND: LA CHAUSSURE BROWN'S INC., VALERIE FORD, McKENNA INC., NETTOYEUR ET TAILLEUR MASSON INC., and LA COMPAGNIE DE FROMAGE NATIONALE LTÉE.,

RESPONDENTS

AND: THE ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL OF ONTARIO, THE ATTORNEY GENERAL OF NEW BRUNSWICK,

INTERVENERS

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RESPONDENTS' FACTUM

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PART I

THE FACTS

A) INTRODUCTION

1. The Appellant's recitation of the facts is accurate but incomplete.

B) EVENTS GIVING RISE TO THE RESPONDENTS' MOTION FOR DECLARATORY JUDGMENT

2. The Respondents McKenna Inc. and Nettoyeur et Tailleur Masson Inc. were summoned to appear before a Provincial Magistrate to answer to a charge of having allegedly violated sections 58 and 205 of the Charter of the French Language ("Bill 101") for having used public signs which were both in the French language and the English language.

See: Case, pp. 23 and 25 (summonses)
Case, pp. 36 and 35 (photographs of signs)

3. The Respondents La Chaussure Brown's Inc. and Valerie Ford were sent demand letters by the Commission de surveillance de la langue française calling upon them to conform with section 58 of Bill 101 as a result of their having used public signs which were both in the French language and the English language.

See: Case, pp. 29 and 31 (demand letters)
Case, pp. 33 and 34 (photographs of signs)

4. The Respondent La Compagnie de Fromage Nationale Ltée was sent a demand letter by the Commission de surveillance de la langue française calling upon it to conform with sections 58 and 69 of Bill 101 as a result of it having used a

public sign and a corporate name which was both in the French language and the English language.

See: Case, p. 27 (demand letter)
Case, p. 37 (photograph of sign)

C) THE JUDGMENTS IN THE COURTS BELOW

5. In the judgment of the Superior Court, rendered on December 28, 1984, Boudreault, J. held that:

a) Section 214 of Bill 101 by which the National Assembly enacted a global notwithstanding clause to exempt Bill 101 from the application of sections 2 and 7 to 15 of the Canadian Charter of Rights and Freedoms ("Canadian Charter") was valid and precluded him from granting the relief claimed under section 2(b) of the Canadian Charter;

b) Section 58 of Bill 101 was subject to the provisions of the Quebec Charter of Human Rights and Freedoms ("Quebec Charter") as of February 1, 1984, and was inoperative and of no force or effect as being inconsistent with section 3 of the Quebec Charter to the extent that it required the exclusive use of the French language;

c) Section 58 of Bill 101 was not saved by the application of section 9.1 of the Quebec Charter;

d) Section 69 of Bill 101 was not subject to section 3 of the Quebec Charter until the earlier of January 1, 1986 or a proclamation of the Government, and therefore the relief claimed could not be granted;

e) Section 69 of Bill 101 was not discriminatory contrary to section 10 of the Quebec Charter, which was applicable in the circumstances.

6. In the Court of Appeal, the principal reasons for judgment were written by Bisson, J.A. and it was held that:

a) Section 214 of Bill 101 and section 52 of An Act to amend the Charter of the French Language, S.Q. 1983, c. 56 were invalid exercises of the power conferred by section 33(1) of the Constitution Act, 1982, and therefore were inoperative and of no force or effect such that section 2(b) of the Canadian Charter applied to sections 58 and 69 of Bill 101;

b) Sections 58 and 69 of Bill 101 were inconsistent with section 2(b) of the Canadian Charter and section 3 of the Quebec Charter to the extent that they required the exclusive use of the French language and were inoperative and of no force or effect to that extent;

c) Sections 58 and 69 of Bill 101 were not saved by the application of section 1 of the Canadian Charter or section 9.1 of the Quebec Charter;

d) Sections 58 and 69 of Bill 101 were not discriminatory contrary to section 10 of the Quebec Charter;

e) Boudreault, J. had erred in holding that section 3 of the Quebec Charter applied to section 58 of Bill 101 as of February 1, 1984 instead of the earlier of January 1, 1986 or a proclamation by the Government.

PART II

POINTS IN ISSUE

7. The constitutional questions set by Lamer, J. and the answers thereto proposed by the Respondents are as follows:

1. Are section 214 of the Charter of the French Language, R.S.Q. 1977, c. C-11, as enacted by S.Q. 1982, c. 21, s. 1 and section 52 of An Act to amend the Charter of the French Language, S.Q. 1983, c. 56, inconsistent with section 33(1) of the Constitution Act, 1982 and therefore inoperative and of no force or effect under section 52(1) of the Act?

Answer: Yes, but in any event, the effect of section 214 of the Charter of the French Language expired on April 17, 1987 and the effect, if any, of section 52 of An Act to amend the Charter of the French Language will expire at the latest on February 1, 1989 such that answers should be given to questions 2 and 3 which follow.

2. If the answer to question 1 is affirmative, to the extent that they require the exclusive use of the French language, are sections 58 and 69, and sections 205 to 208 to the extent they apply thereto, of the Charter of the French Language, R.S.Q. 1977, c. C-11, as amended by S.Q. 1983, c. 56, inconsistent with the guarantee of freedom of expression under section 2(b) of the Canadian Charter of Rights and Freedoms?

Answer: Yes.

3. If the answer to question 2 is affirmative in whole or in part, are sections 58 and 69, and sections 205 to 208 to the extent they apply thereto, of the Charter of the French Language, R.S.Q. 1977, c. C-11, as amended by S.Q. 1983, c. 56, justified by the application of section 1 of the Canadian Charter of Rights and Freedoms and therefore not inconsistent with the Constitution Act, 1982?

Answer: No.

8. In addition to the constitutional questions, there are three additional questions which arise under the Quebec Charter, and such questions with the proposed answers thereto are as follows:

1. To the extent that they require the exclusive use of the French language, do sections 58 and 69, and sections 205 to 208 to the extent they apply thereto, of the Charter of the French Language, R.S.Q. 1977, c. C-11, as amended by S.Q. 1983, c. 56, derogate from:

a) the guarantee of freedom of expression under section 3 of the Quebec Charter of Human Rights and Freedoms, R.S.Q. 1977, c. C-12?

b) the guarantee of freedom from discrimination by reason of language under section 10 of the Quebec Charter of Human Rights and Freedoms, R.S.Q. 1977, c. C-12?

Answer: Yes.

2. If the answer to question 1 is affirmative in whole or in part, are sections 58 and 69, and sections 205 to 208 to the extent they apply thereto, of the Charter of the French Language, R.S.Q. 1977, c. C-11, as amended by S.Q. 1983, c. 56, justified by the application of section 9.1 of the Quebec Charter of Human Rights and Freedoms, R.S.Q. 1977, c. C-12, and therefore not inconsistent with the said charter?

Answer: No.

3. If the answer to question 2 is negative, is section 58 of the Charter of the French Language, R.S.Q. 1977, c. C-11, as amended by S.Q. 1983, c. 56, inoperative and of no force or effect under section 52 of the Quebec Charter of Human Rights and Freedoms, R.S.Q. 1977, c. C-12, as of February 1, 1984 or as of January 1, 1986 under section 34 of An Act to amend the Charter of Human Rights and Freedoms, S.Q. 1982, c. 61?

Answer: February 1, 1984.

PART III

ARGUMENT

FIRST SUBMISSION

SECTION 214 OF THE CHARTER OF THE FRENCH LANGUAGE AND SECTION 52 OF AN ACT TO AMEND THE CHARTER OF THE FRENCH LANGUAGE ARE INVALID EXERCISES BY THE NATIONAL ASSEMBLY OF THE POWER CONFERRED UPON IT BY SECTION 33(1) OF THE CONSTITUTION ACT, 1982 AND ARE INOPERATIVE AND OF NO FORCE OR EFFECT.

A) INTRODUCTION

9. The Canadian Charter fundamentally altered the relationship of state to individual in this country. The powers of Parliament, provincial legislatures and federal and provincial governments became subject to the limitation imposed by the guarantee in the Canadian Charter of the rights and freedoms protected therein.

10. Until April 17, 1982, subject to certain limitations inherent in the preamble of the British North America Act, the principle of parliamentary supremacy assured the validity of any laws enacted by Parliament and provincial legislatures within their respective spheres, whatever impact those laws might have had on the rights of those affected by them. As of that date, this ceased to be the case in Canada. Henceforth those laws could be tested against the rights guaranteed by the Canadian Charter. Offensive legislation, until then unassailable because of the principle of parliamentary supremacy, could be declared inoperative by the courts, as guardians of the Constitution, if they determined that it failed to meet the test embodied in the Canadian Charter.

11. The principle of parliamentary supremacy, while not eradicated, was assigned a very different and less prominent role in the new scheme resulting from the Constitution Act, 1982. It is true that section 33 of the Canadian Charter does preserve the principle of parliamentary supremacy within the new scheme. It is equally true, however, that the notion of parliamentary supremacy is basically inconsistent with the Canadian Charter's fundamental premise that the powers of the state are limited by the existence of certain individual rights and freedoms. It is the latter concept that defines a society in which the rights of the individual are constitutionally protected from abuse by governments and legislative majorities. This is the philosophy underlying the Canadian Charter.

See: Re Manitoba Language Rights [1985] 1 S.C.R. 721, at p. 745

12. It is submitted that the approach taken by the Appellant in his Factum fails to recognize the significance of the changes made to the Canadian constitutional system by the adoption of the Canadian Charter in 1982. More specifically, it fails to recognize the extent to which the principle of parliamentary supremacy has been diminished by that of the primacy of rights and freedoms entrenched in the Constitution.

B) THE JUDGMENT IN ALLIANCE DES PROFESSEURS

13. At page 10 (para. 18) of his Factum, the Appellant expresses astonishment at "certain positions taken" by Jacques, J.A. in Alliance des professeurs de Montréal v. Procureur Général du Québec, [1985] C.A. 376 ("Alliance des

professeurs"). What appears to have provoked this astonishment is the opinion of Jacques, J.A. that with the Canadian Charter, based as it is on the principle of protecting fundamental rights, legislative supremacy is now the exception rather than the rule (p. 378); the affirmation, based on this premise, that the override power contained in section 33 must be exercised within the framework of the fundamental principles that define a free and democratic society (pp. 380 & 381); and his conclusion that the override power may not be used in an "absolute manner" such that a legislature wishing to exercise it must relate the legislation protected by the derogation to the specific rights being overridden (pp. 381 & 382).

14. Respondents submit that the analysis of Jacques, J.A. and his colleagues Mayrand, Kaufman and Vallerand, JJ.A. in Alliance des professeurs is well founded and entirely consistent with the language and spirit of the Canadian Charter in general and section 33 in particular. Moreover it reflects the spirit and principles underlying the decisions of this Court regarding the Charter.

See: Hunter v. Southam Inc. [1984] 2 S.C.R. 145, at p. 155, per Dickson, J. (as he then was)

The Queen v. Big M Drug Mart [1985] 1 S.C.R. 295, at p. 344, per Dickson, J. (as he then was)

Re Public Service Employee Relations Act [1987] 1 S.C.R. 313, at pp. 393 & 394, per McIntyre, J.

15. The reasoning of the Court of Appeal starts from the recognition that the Canadian Charter, forming part of the fundamental law of the land, is designed - as is the United States Bill of Rights - to protect individual citizens against certain decisions that the majority might impose in

violation of their rights. It must be applied therefore in a manner that favours the protection of those fundamental rights and freedoms it guarantees.

16. The language of section 33 itself indicates that any declaration of derogation or override must indicate the right that it seeks to override or derogate from. This is seen by contrasting the language used in section 33 where it refers to the legislation to be sheltered with that used when referring to the right(s) derogated from. Section 33(1) provides that "the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter".

17. Section 33(2) provides that "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."

18. In the French version of section 33(1) the corresponding terms are "une loi ... celle-ci ou une de ses dispositions" and "une disposition donnée de l'article 2 ou des articles 7 à 15 de la présente Charte".

19. The French version of section 33(2) provides that "La loi ou la disposition qui fait l'objet d'une déclaration conforme au présent article et en vigueur a l'effet qu'elle aurait sauf la disposition en cause de la charte".

20. This distinction is not an exercise in capricious or unnecessary formalism but has an important "raison d'être" within the Canadian Charter (p. 380).

21. Any attempt to enact legislation that derogates from and overrides any provisions of the Canadian Charter must be effected within the framework of the fundamental rules governing a free and democratic society. It must be done within the context of a free and enlightened debate as to the merits of enacting the overriding legislation. For an enlightened debate to take place the members of the legislature and public must know which right(s) or freedom(s) the government seeks to override with the proposed legislation.

See: Jacques, J.A., at p. 382:

> "Ce libre débat du citoyen sur l'action législative et gouvernementale ne peut s'exercer que si l'information nécessaire a été clairement fournie. Dans l'espèce il s'agit, d'une part, d'indiquer le droit précis opposable à la législature dont on veut priver le citoyen dans le cas d'une législation particulière; et, d'autre part, de démontrer un rapport entre l'un et l'autre."

22. The need for citizens to know which rights the government proposes to derogate from is all the more important since use of the override power has the effect of depriving them of their recourse to the Courts under section 24 of the Canadian Charter. In such case the only recourse of those opposed to the derogation is political and it is essential that the legislation proposing the derogation identify the specific rights to be overriden. Although the Courts have no authority to interfere with a derogation once it has been validly made, section 33 at least preserves for the judiciary the role of verifying that the population was informed in advance of the specific right(s) or freedom(s) to be overridden by the proposed enactment (p. 382).

23. Section 33 of the Canadian Charter is more rigorous than the override provision of the Canadian Bill of Rights

(R.S.C. 1970, Appendix III, Tab 9). Section 2 of the latter provides that "every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied..." It does not require that the right or rights to be derogated from be specifically identified. The same is true of the Quebec Charter, which has similar language.

24. The more rigorous requirement of section 33 of the Canadian Charter exists for the reasons indicated above, and as expressed by Mayrand, J.A. at p. 383:

> "Le surcroît d'exigence de l'article 33 a sa raison d'être. Mentionner dans la clause non obstante les dispositions de l'article auxquelles on entend déroger, c'est mettre en lumière les droits et libertés qu'on entend soustraire à la protection de la charte canadienne. On favorise ainsi un examen éclairé et sérieux de la dérogation proposée."

25. Mayrand, J.A., further underlines the importance of this requirement, at p. 383:

> "Le respect de cette condition de forme est d'autant plus important que le pouvoir de dérogation reconnu à l'article 33 de la charte canadienne n'est soumis à aucune règle de fond. Le parlement du Canada et la législature provinciale, quand ils s'en prévalent, retrouvent, dans les sujets mentionnés, leur souveraineté d'avant l'adoption de la charte canadienne. Leurs lois échappent alors au contrôle judiciaire...
>
> Tout au plus, les Tribunaux peuvent être appelés à vérifier si le pouvoir de dérogation a été exercé conformément aux exigences de l'article 33."

26. For these reasons, the Court of Appeal concluded that the global override declaration in An Act Respecting the Constitution Act, 1982, S.Q. 1982, c. 21, ("Bill 62") as

well as identical individual override declarations in 49 subsequent enactments, were ultra vires and null because they did not meet the requirements of section 33(1) of the Canadian Charter.

C) CONCLUSION

27. Sections 1 to 3 of Bill 62 are a perversion of the Canadian Charter. It could never have been contemplated that section 33(1) would permit either Parliament or a provincial legislature to exempt - globally and in one fell swoop - all of its existing statutes from the rights protected in the Canadian Charter.

28. The individual override of section 52 of An Act to Amend the Charter of the French Language, S.Q. 1983, c. 56 also fails to meet the requirements of section 33(1) for the reasons set out in Alliance des professeurs and summarized above. It does not conform to the requirements of section 33(1) in that it does not identify the specific right(s) and freedom(s) to be overridden.

29. When the Constitution Act, 1982 came into force, the Government of Quebec, alone of all the provinces, had not agreed to its terms. Section 1 of Bill 62, by which section 214 of Bill 101 was enacted, and all of the parallel provisions routinely added to all Quebec statutes enacted between June 23, 1982 and June 20, 1985 (save for appropriation bills), must be seen as part of a political response designed to thwart the implementation in Quebec of the Canadian Charter, and not as an exercise in good faith of the power of derogation, just as the Government of Quebec resisted the application of section 23 of the Canadian Charter.

See: Re Objection to a Resolution to Amend the Constitution [1982] 2 S.C.R. 793, at pp. 795-799

Attorney General of Quebec v. Q.A.P.S.B. [1984] 2 S.C.R. 66

30. How else can one explain the global derogation in statutes in which no freedoms are even remotely impaired, including, by way of illustration, statutes designed to enhance freedoms?

See: Section 32, An Act to amend the Charter of Human Rights and Freedoms, S.Q. 1982, c. 61 (Tab 6)

31. In three statutes adopted in 1986, the Quebec National Assembly demonstrated how section 33 may be legally applied, identifying in the legislation the specific rights to be overridden.

See: Section 62, S.Q. 1986, c. 44 (Tab 13)
Section 16, S.Q. 1986, c. 54 (Tab 14)
Sections 10 to 12, S.Q. 1986, c. 101 (Tab 15)

32. The true meaning of the Canadian Charter may in a sense be determined by the manner in which this Court interprets the power of derogation contained in section 33. To accede to the argument that the Canadian Charter may be so casually overridden by any legislative majority in this country would subvert the primacy of the fundamental rights guaranteed therein. Such an approach would reverse the direction taken by this Court that has made the Canadian Charter the vigorous instrument it is in a free and democratic society.

SECOND SUBMISSION

SECTIONS 58 AND 69, AND SECTIONS 205 TO 208 TO THE EXTENT THEY APPLY THERETO, OF THE CHARTER OF THE FRENCH LANGUAGE, ARE INCONSISTENT WITH SECTION 2(b) OF THE CANADIAN CHARTER AND SECTION 3 OF THE QUEBEC CHARTER TO THE EXTENT THAT THEY REQUIRE THE EXCLUSIVE USE OF THE FRENCH LANGUAGE AND ARE ACCORDINGLY INOPERATIVE AND OF NO FORCE OR EFFECT TO THAT EXTENT.

A) NATURE OF FREEDOM OF EXPRESSION

33. Whether considered in relation to the Canadian Charter or the Quebec Charter, the same fundamental freedom - freedom of expression - is guaranteed to Quebecers and to all Canadians in the same terms. There is no reason to believe that the context of this freedom should vary from one Charter to the other, a view which is shared by the Appellant.

See: Reasons of Boudreault, J., Case, p. 50
Appellant's Factum, p. 17, para. 36

34. Freedom of expression, a fundamental right guaranteed in both the Canadian Charter and the Quebec Charter, should be interpreted in its fullest, deepest and most complete sense. Interpretations that are narrow and restrictive should be resisted as being inconsistent with the broad, generous and purposive approach to the Charter consistently adopted by this Court.

35. Language is a basic means of human expression and is intimately related to the identity of individuals. To prohibit the use of a language is necessarily to interfere with expression. The right to use a given language warrants at

least the same protection under section 2(b) of the Canadian Charter as secondary picketing.

See: R.W.D.S.U. v. Dolphin Delivery Ltd. [1986] 2 S.C.R. 573, at pp. 583-588, per McIntyre, J.

36. Communicating information and messages to others in one's own language - and, in a language understood by those for whom the information or messages are intended, is a natural and basic element of expression. The prohibition against such expression reflected in sections 58 and 69 of Bill 101, on pain of penalty (sections 205 to 208 of Bill 101), is a violation of this basic freedom.

37. In the Superior Court, Boudreault, J. cited several dictionaries as to the meaning of "expression", including Robert, where expression is defined as "l'action ou la manière de s'exprimer" ou "le fait d'exprimer par le langage".

See: Reasons of Boudreault, J., Case, pp. 45 & 46

38. The notion of freedom of expression - as spelled out in various international instruments - and as interpreted by courts in Canada and the United States, includes not only the right to communicate information or ideas but the right of the recipient to receive them as well.

See: Universal Declaration of Human Rights, Article 19, (Tab 16)

International Covenant on Civil and Political Rights, Article 19, (Tab 17)

Ontario Film and Video Appreciation Society v. Ontario Board of Censors (1983), 147 D.L.R. (3rd) 58, at p. 66 (affirmed by the Ontario Court of Appeal at (1984), 5 D.L.R. (4th) 766 n.

Virginia State Board of Pharmacy v. Virginia Citizen Consumer Council Inc., et al. 48 L. Ed. (2nd) 346, at p. 355 (Supreme Court of the United States)

39. In defending the position that freedom of expression does not include the freedom to express oneself in one's own language, the Appellant cites the reasoning of Dugas J., in the Devine case where, distinguishing between "the medium and the message", he expressed the view that prohibiting expression in a given language does not interfere with freedom of expression, because it is not the message or content that is prohibited, but merely the signs or signals through which the message is transmitted.

See: Devine et al. v. Procureur Général du Québec [1982] C.S. 355, at p. 375

40. It is difficult to treat language as nothing more than a code of signals in the context of a law based on the premise that the language of expression is central to the expression itself. Bill 101 proclaims in its preamble that:

> "Whereas the French language, the distinctive language of a people that is in the majority French-speaking, is the instrument by which that people has articulated its identity."

See: Reasons of Boudreault J., Case, p. 46

Beckton, The Canadian Charter of Rights and Freedoms - Commentary, ch. 5 at pp. 118-119

41. The fundamental nature of language as a means of human expression has been recognized emphatically by this Court, as well as by Bisson, J.A. in the Court of Appeal.

See: Re Manitoba Language Rights [1985] 1 S.C.R. 721, at p. 744

Reasons of Bisson, J.A., Case, p. 62

42. To use the distinction between "medium" and "message" to deny that a prohibition against the use of a language interferes with expression demeans both the importance of language and freedom of expression.

43. The Appellant cites in his Factum, at pages 23 and 24 (paras. 49 and 50), certain decisions of the European Commission on Human Rights, rendered in a social, historical and legal context different from our own. More relevant and to the point is the view expressed by the Quebec Human Rights Commission, which is created by statute and required to make an analysis of any Quebec statutes that may be inconsistent with the Quebec Charter.

See: Sections 57 and 67(d), Quebec Charter

44. In its brief to the Quebec National Assembly in 1983, the Commission, while admitting the distinction between medium and message, pointed out that in certain cases the former is so essential to the latter as to require protection as an integral part of free expression, and it concluded that section 58 of Bill 101 infringed the freedom of expression of non-Francophone merchants and consumers.

See: "La liberté d'expression et l'usage exclusif du français dans l'affichage public et la publicité commerciale (article 58 de la Charte de la langue française)" Mémoire de la Commission des droits de la personne à la Commission élue permanente des

communautés culturelles et de l'immigration, novembre 1983), at pp. 24, 31 and 32 (Tab 22).

45. The Appellant cites as well in his Factum, at page 24 (para. 51), the decision of the European Court of Human Rights, rendered in 1968, in the "Affaire relative à certains aspects du régime linguistique de l'enseignement en Belgique, 11 Annuaire de la convention européenne des droits de l'homme, 833." Apart from the fact that this decision was rendered in a completely different context from our own, it should be noted that the Court was dealing with the "right to education" (article 2 of the Protocol), the "right to respect for private and family life" (article 8 of the Convention) and article 14 of the Convention relating to discrimination. The decision clearly indicates, at pp. 856 and 857, that articles 9 and 10 of the Convention, dealing with freedom of thought and freedom of expression respectively, were not in issue before it.

46. The Respondents submit that sections 58 and 69 of Bill 101 constitute a denial of one of their fundamental freedoms - freedom of expression - by the legislative prohibition against the use of a particular language. What is in issue here is a breach of a fundamental freedom guaranteed by section 2(b) of the Canadian Charter and section 3 of the Quebec Charter, and not entrenched language rights in the nature of those guaranteed in section 133 of the Constitution Act, 1867 and section 19(2) of the Constitution Act, 1982.

47. The fact that language may be at the origin of a claim that a fundamental freedom has been infringed is no reason to accede to the view that the judicial interpretation of

the fundamental freedom should be similar to the interpretation of a language right resulting from a political compromise of the nature considered by this Court in Société des Acadiens v. Association of Parents [1986] 1 S.C.R. 549 and MacDonald v. City of Montreal [1986] 1 S.C.R. 460. Indeed, the majority expressly recognized in both cases that language could be a basis for the assertion of legal rights enshrined in sections 7 to 14 of the Canadian Charter.

See: Société des Acadiens v. Association of Parents [1986] 1 S.C.R. 549, at p. 577, per Beetz, J.

MacDonald v. City of Montreal [1986] 1 S.C.R. 460, at pp. 499-501, per Beetz, J.

48. It is submitted that the same holds true for the fundamental freedoms set out in section 2 of the Canadian Charter. In this respect it is clear that the right to freedom of religion under section 2(a) would be infringed if legislation were enacted prohibiting religious services from being conducted in a particular language.

49. Moreover, the fact that the framers of the Constitution Act, 1982 chose not to refer expressly to choice of language as a component of section 2(b) of the Canadian Charter is no reason not to affirm the judgments in the Courts below. The constitutional entrenchment of the rights set out in sections 16 to 22 and section 23 of the Canadian Charter cannot be taken to mean that the framers intended to exempt from scrutiny by this Court any language based infringement of a right or freedom guaranteed by the Canadian Charter.

See: The Queen v. Big M Drug Mart [1985] 1 S.C.R. 295, at pp. 343 & 344, per Dickson, C.J.

B) COMMERCIAL SPEECH

50. Respondents did not in the Courts below, nor do they in this Court, rest their case on the basis that freedom of expression includes "commercial speech". The right asserted by the Respondents is the right not to be prohibited from expressing oneself in one's own language. It is the freedom to communicate with others - and for others to receive communications - in their own language, which may be the only language understood. What is at issue here is language as a vital means of expression and communication. This subsumes the question of "commercial speech" as such.

51. The prohibitions contained in sections 58 and 69 of Bill 101 are not aimed at regulating business. They were not enacted in the interest of commerce, nor for the protection of consumers at large or a particular class of consumers. They are not directed at misleading, dangerous or offensive advertising. They are directed at the language in which public signs and corporate names may appear, and not at the substantive content of such public signs and corporate names.

52. As such, the Appellant's contention that the Respondents must show that "commercial speech" is protected by the Canadian Charter and the Quebec Charter is erroneous.

53. Nevertheless, to the extent it may be necessary, Respondents submit that this issue was properly resolved in the Superior Court and the Court of Appeal, as well as in the case dealing directly with commercial speech which is to be argued later in the week after the present appeal.

See: Reasons of Boudreault, J. Case, pp. 46-49

Reasons of Bisson, J.A., Case, pp. 63 & 64

Irwin Toy Ltd. v. Procureur Général du Québec [1986] R.J.Q. 2441

Re Klein and Law Society of Upper Canada (1985) 16 D.L.R. (4th) 489, pp. 499-501, per Henry, J. (dissenting)

54. Section 3 of the Quebec Charter and section 2(b) of the Canadian Charter guarantee freedom of expression as such and make no distinction between political and other forms of expression, whether literary, artistic, commercial or other.

55. Ideas and information are often communicated for economic reasons. This nonetheless constitutes expression and merits protection under both Charters.

See: R.W.D.S.U. v. Dolphin Delivery Ltd. [1986] 2 S.C.R. 573, per McIntyre, J., at pp. 583-588

56. Moreover, the communication of information in a commercial context is often of great importance to consumers. It is the less advantaged and the less educated members of the public who may be most adversely affected by restrictions upon information available to them - information that frequently involves products or services essential to their well-being. It is in recognition of the value of not suppressing the free flow of commercial information that the Supreme Court of the United States has held, since 1976, that commercial speech is entitled to First Amendment protection, albeit to a lesser degree than speech in the political domain.

See: Virginia State Board of Pharmacy et al. v. Virginia Citizens Consumers Council, Inc. et al. 48 L. Ed 2d 346 at pp. 356 & 357, and pp. 359 & 360

Central Hudson Gas & Electric Corporation v. Public Service Commission of New York 65 L. Ed 2d 341, at pp 348-350

Metromedia Inc. et al. v. City of San Diego et al. 69 L. Ed 2d 800, at p. 813

Zauderer v. Office of Disciplinary Counsel 85 L. Ed 2d 652, at pp. 663 & 664

Posadas de Puerto Rico Associates, Condado Holiday Inn v. Tourism Company of Puerto Rico 54 L.W. 4956 at pp. 4959 & 4960

C) CANADA'S TREATY OBLIGATIONS

57. Both the Canadian Charter and the Quebec Charter should be interpreted so as to be in conformity with Canada's international obligations.

See: Salomon v. Commissioners of Customs and Excise [1967] 2 Q.B. 116, at p. 141 and pp. 143 & 144

The Queen v. Videoflicks Ltd. et al. (1985), 48 O.R. (2d) 395, at p. 420

Re Public Service Employees Relations Act [1987] 1 S.C.R. 313, at pp. 348-350, per Dickson, C.J. (dissenting)

Reasons of Boudreault J., Case, pp. 44-45

58. Canada advised the Secretary General of the United Nations, on May 19, 1976 of its accession to the International Covenant on Civil and Political Rights, following the concurrence of the Government of Quebec, given pursuant to Order of the Lieutenant-Governor in Council No. 1438-76 of April 21, 1976.

See: Tabs 17, 18, 19, 20, 21

59. In acceding to the Covenant, Canada undertook "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

See: Article 2, sec. 1 (Tab 17)

60. Canada further undertook "to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant".

See: Article 2, sec. 2 (Tab 17)

61. Article 19 (2) provides that:

> "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

See: Tab 17 for the full text of article 19

D) SECTION 27 OF THE CANADIAN CHARTER

62. The values inherent in section 27 of the Canadian Charter also command attention, and, it is submitted, require this Court to give an interpretation to section 2(b) of the Canadian Charter which is consistent with those values. The multicultural heritage of Canadians cannot be

preserved or enhanced by the suppression in Quebec of the public use of languages other than French.

63. Moreover, the prohibition in Quebec of the public use of one of Canada's official languages is a denial of a recognized fundamental characteristic of Canada.

THIRD SUBMISSION

SECTIONS 58 AND 69, AND SECTIONS 205 TO 208 TO THE EXTENT THEY APPLY THERETO, OF THE CHARTER OF THE FRENCH LANGUAGE, ARE INCONSISTENT WITH SECTION 10 OF THE QUEBEC CHARTER TO THE EXTENT THAT THEY REQUIRE THE EXCLUSIVE USE OF THE FRENCH LANGUAGE AND ARE ACCORDINGLY OF NO FORCE OR EFFECT TO THAT EXTENT.

64. It was held both in first instance and appeal that sections 58 and 69 do not constitute discrimination based on language in violation of section 10 of the Quebec Charter because the prohibition against the use of languages other than French applies to everyone.

See: Reasons of Boudreault J., Case at p. 43

Reasons of Bisson, J.A., Case pp. 60 & 61

Devine v. Procureur Général du Québec [1987] R.J.Q. 50, at pp. 68 & 69

65. Section 10 of the Quebec Charter expressly prohibits discrimination based on language. The second paragraph provides that any distinction which has the effect of impairing the right to full and equal recognition of human rights and freedoms without distinction, exclusion or preference based on language constitutes discrimination.

66. The National Assembly of Quebec has clearly and expressly legislated the "effect test", thereby avoiding what has in other contexts given rise to judicial discussion regarding purpose or intent as opposed to effect.

See: The Queen v. Big M Drug Mart Ltd. [1985] 1 S.C.R. 295, at p. 331, per Dickson, J. (as he then was)

Ontario Human Rights Commission and O'Malley v. Simpson-Sears Limited [1985] 2 S.C.R. 536, at pp. 550 & 551, per McIntyre, J.

C.N.R. v. Bhinder and Canadian Human Rights Commission [1985] 2 S.C.R. 561, at pp. 589 - 591, per McIntyre, J.

67. Measures may be "fair in form but discriminatory in operation". Identical treatment does not necessarily mean equal treatment.

See: Griggs v. Duke Power Company 28 L. Ed 2d 158, at p. 164

68. Respondents submit that it is erroneous to hold that because sections 58 and 69 impose upon everyone the obligation to use French only, and prohibit everyone from using any language other than French, they treat everyone equally and do not constitute discrimination.

69. How can it be said that everyone is being treated equally when only Francophones are pemitted to use their own language on public signs and in corporate names?

70. How can a prohibition, on pain of penalty, against using a language, whether it be English (one of the two official languages of Canada) or any other language, not be considered discrimination, when it denies to people who may not understand French, information - including consumer information that may be important to them - which others have ready access to?

71. Is it not discrimination based on language not only to oblige all Francophones and non-Francophones to use the language of the former but also to subject them to penal sanctions if they accompany it with a language of the latter?

72. The fact that the prohibition applies to all constitutes "equal" treatment in appearance only. The "equality" of treatment is but superficial and artificial - it is not real.

73. A statute allowing only French language newspapers or magazines to be displayed by news vendors or other retailers, thus prohibiting the display of publications in other languages, would constitute discrimination based on language. The fact that such prohibition applied to all news vendors and retailers, Francophones and non-Francophones alike, would not alter its discriminatory nature.

74. Similarly, a legislative requirement that all persons practice a particular religion would be a violation of freedom of religion and discrimination based on religion. It would be no answer to say that there is no discrimination because the requirement extends without distinction to members and non-members of the particular religion.

See: Attorney General of Quebec v. Q.A P.S.B. [1984] 2 S.C.R. 66, at p. 88

75. Respondents submit that there is no difference in principle between the present case and the hypothetical examples set out in the preceding paragraphs which illustrate the inadequacy of basing the section 10 test simply on whether the measure in question applies to all.

76. Insofar as sections 58 and 69 of Bill 101 require the use of French only and prohibit the use of other languages, they embody a distinction, exclusion or preference, based on language, that has the effect of impairing the rights of non-Francophones. They constitute discrimination against

non-Francophones in violation of section 10 of the Quebec Charter.

77. In 1923, in Meyer v. Nebraska 262 U.S. 390, the Supreme Court of the United States considered the validity of a law enacted by the State of Nebraska that prohibited the teaching in the schools of any modern language other than English to any child who had not yet successfully passed the eighth grade. The purpose of the statute was to ensure that English become the mother tongue of all children growing up in Nebraska. In striking down the statute as a violation of the Fourteenth Amendment, the Court stated, at p. 401:

> "That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution - a desirable end cannot be promoted by prohibited means."

78. The legislation in Meyer v. Nebraska had a different purpose than the legislation in the present case. Nevertheless, the principles set out in the quoted passage, written in 1923, are still valid today, and should be applied by this Court to sections 58 and 69 of Bill 101.

FOURTH SUBMISSION

SECTIONS 58 AND 69, AND SECTIONS 205 TO 208 TO THE EXTENT THEY APPLY THERETO, OF THE CHARTER OF THE FRENCH LANGUAGE, ARE NOT JUSTIFIED BY THE APPLICATION OF SECTION 1 OF THE CANADIAN CHARTER OR SECTION 9.1 OF THE QUEBEC CHARTER.

A) THE JUDGMENTS IN COURTS BELOW

79. In the Superior Court, the Appellant made no attempt to justify the impugned provisions of Bill 101 on the basis of either section 1 of the Canadian Charter or section 9.1 of the Quebec Charter, and chose not to put any documentary or oral evidence before the Court.

See: Reasons of Boudreault, J., Case, p. 51

80. In the Court of Appeal, the Appellant attached to his Factum the numerous sociological, demographic and linguistic studies which are also referred to in his Factum in this Court in an attempt to discharge the onus on him. Respondents moved to strike these materials from the record as not being in compliance with Art. 507 of the Code of Civil Procedure and Art. 10 the Rules of Practice of the Court of Appeal. This motion was not adjudicated in view of the conclusions on the substantive issue reached by the Court of Appeal.

See: Reasons of Bisson, J.A., Case, p. 64

81. On the substantive issue, Bisson, J.A. held that the impugned provisions of Bill 101 could not be saved by the application of section 1 of the Canadian Charter or section

9.1 of the Quebec Charter, whether or not the materials referred to above were properly before the Court.

See: Reasons of Bisson, J.A., Case, pp. 64 to 66

B) SECTION 1 OF THE CANADIAN CHARTER

82. This branch of Respondents' submission proceeds on the premises enunciated by Dickson, C.J. that:

a) "... any section 1 inquiry must be premised on an understanding that the impugned limit violates constitutional rights and freedoms - rights and freedoms which are part of the supreme law of Canada";

b) in performing its duty under section 1, "the Court must be guided by the values and principles essential to a free and democratic society which I believe embody, to name but a few, respect for the inherent dignity of a human person, commitment to social justice and equality, accomodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society";

c) Charter rights and freedoms are not absolute and their exercise may be limited when it would be "inimical to the realization of collective goals of fundamental importance", but that the criteria set out in section 1, "impose a stringent standard of justification".

See: The Queen v. Oakes [1986] 1 S.C.R. 103, at pp. 135 and 136

83. The Respondents also do not dispute that "it is not the role of this Court to devise legislation that is constitutionally valid, or to pass on the validity of schemes which are not directly before it, or to consider what legislation might be the most desirable", but that the Court should not, "as a general rule, defer to legislative judgments when those judgments trench upon rights considered fundamental in a free and democratic society."

See: The Queen v. Edwards Books and Arts Limited [1986] 2 S.C.R. 713, at p. 783 per Dickson, C.J. and at p. 795 per La Forest, J.

(i) Negation of Rights

84. As the impugned provisions of Bill 101, by their terms, are inconsistent with the right to freedom of expression by requiring the compulsory use of one language and prohibiting the optional use of other languages, it is submitted that the Respondents' fundamental rights under section 2(b) of the Canadian Charter have been eliminated such that the Court is faced with a denial of rights as opposed to a limitation of rights.

See: The Queen v. Big M Drug Mart [1985] 1 S.C.R. 295, at pp. 336 and 347, per Dickson, J.

85. Section 1 of the Canadian Charter should only be available for the purposes of justification where rights and freedoms are limited, but not where they are denied.

86. This approach, which was adopted by Deschênes, C.J. in the Superior Court, and Monet and McCarthy, JJ.A. of the Court of Appeal in the "Canada Clause" case, should be applied here.

See: Q.A.P.S.B. v. Attorney General of Quebec [1982] C.S. 673, at pp. 689-693

Attorney General of Quebec v. Q.A.P.S.B. [1983] C.A. 77, at p. 78

87. While the judgment of this Court in the "Canada Clause" case adopted the approach of Beauregard, J.A. in the Court of Appeal in holding that one of the very purposes of section 23 of the Canadian Charter was addressed to the restrictions contained in Chapter VIII of Bill 101 such that

the latter had to yield to the former, the reasoning of the majority of the Court of Appeal and the Superior Court was not expressly or implicitely disavowed.

See: Attorney General of Quebec v. Q.A.P.S.B. [1984] 2 S.C.R. 66, at p. 78

The Queen v. Big M Drug Mart [1985] 1 S.C.R. 295, at pp. 332 and 333

(ii) Limitations of Rights

88. Alternatively, Respondents submit that even if section 1 of the Canadian Charter extends as well to a denial of rights, the Appellant has failed to satisfy the onus incumbent upon him, even if it is assumed that the materials referred to in Appellant's Factum have been properly entered into the record of this Court, as the conclusions which may be drawn from such materials are not, inter alia, "cogent and persuasive and make clear to the Court the consequences of imposing or not imposing the limit". In fact, the materials do not even address the issues which are before this Court.

See: The Queen v. Oakes [1986] 1 S.C.R. 103, at p. 138, per Dickson, C.J.

89. As far as the first criteria necessary to establish that a limit meets the requirements of section 1, there is no doubt that the protection of the French language in Quebec is both "pressing" and "substantial" so as to be sufficiently important to warrant section 1 consideration.

See: The Queen v. Oakes [1986] 1 S.C.R. 103, at pp. 138 and 139, per Dickson, C.J.

90. The Respondents use of the French language in the public signs which gave rise to this litigation is ample evidence

of their adherence to that proposition. The suppression of the optional, concurrent use of another language, however, has not been shown to be necessary to the protection of the French language in Quebec.

91. Where the Appellant fails is in the second branch of the section 1 inquiry, as the means chosen to achieve this objective, as reflected in sections 58 and 69 of Bill 101, are not proportional to the objective. None of the three important components of proportionality established by this Court have been satisfied.

See: The Queen v. Oakes [1986] 1 S.C.R. 103, at pp. 139 and 140, per Dickson, C.J.

92. The fact that this appeal presents legal issues which are also politically sensitive and controversial is no reason for this Court to abandon its duty as the guardian of the fundamental rights and freedoms enshrined in the Canadian constitution.

See: Re B.C. Motor Vehicle Act [1985] 2 S.C.R. 486, at pp. 496 & 497, per Lamer, J.

Re Manitoba Language Rights [1985] 1 S.C.R. 721, at pp. 744 & 745

Hunter v. Southam Inc. [1984] 2 S.C.R. 145, at p. 155, per Dickson, J. (as he then was)

C) SECTION 9.1 OF THE QUEBEC CHARTER

93. Although section 9.1 of the Quebec Charter has generally been applied as if it was a parallel provision to section 1 of the Canadian Charter, its meaning and application is far from clear.

94. Respondents submit that section 9.1 cannot mean that whenever legislation is enacted which has the effect of limiting the scope or exercise of the freedoms and rights provided for in sections 1 to 9 of the Quebec Charter, such an enactment has the effect of abrogating the freedom or right in question, especially since section 52 of the Quebec Charter gives to the legislature the right to provide in any act that it shall apply "despite the Charter".

See: Tremblay, Le principe d'égalité et les clauses anti-discriminatoires, (1984) 18 R.J.T., 329, at pp. 346 and 347

95. Whatever section 9.1 of the Quebec Charter may mean, Respondents submit that it should be interpreted in a manner consistent with the interpretation of section 1 of the Canadian Charter, and that the principles underlying the approach to section 1 should be applied.

See: Reasons of Boudreault, J., Case, pp. 50 & 51

Reasons of Bisson, J.A., Case, p. 64

Léger v. Ville de Montréal [1985] C.S. 460, at p. 464, per Tannenbaum, J.

96. Insofar as the Respondents contend that the impugned provisions of Bill 101 are discriminatory contrary to section 10 of the Quebec Charter, it is also submitted that section 9.1 does not extend thereto.

See: Morel, La Charte québécoise: un document unique dans l'histoire législative canadienne, (1987) 21 R.J.T. 1, at pp. 15 and 22-23

Morel, La coexistence des chartes canadienne et québécoise: problèmes d'interaction (1986) 17 R.D.U.S. 49, at pp. 70 & 81

FIFTH SUBMISSION

UNDER SECTION 52 OF THE QUEBEC CHARTER, SECTION 58 OF THE CHARTER OF THE FRENCH LANGUAGE IS INOPERATIVE AND OF NO FORCE OR EFFECT AS OF FEBRUARY 1, 1984.

97. When it was adopted on June 27, 1975, section 52 of the Quebec Charter provided that sections 9 to 38 thereof were to "prevail" over any provision of any subsequent act which might be inconsistent therewith unless such act expressly stated that it applied despite the Charter.

98. In 1982, the National Assembly adopted an Act to Amend the Charter of Human Rights and Freedoms, S.Q. 1982, c. 61 (Tab 6). Section 16 of that act "replaced" section 52 as referred to above by the following text:

> "52. No provision of any Act, even subsequent to the Charter, may derogate from sections 1 to 38, except so far as provided by those sections, unless such Act expressly states that it applies despite the Charter."

99. Pursuant to section 34 of the foregoing statute, section 16 thereof, by which section 52 of the Quebec Charter was "replaced", came into force on October 1, 1983 as a result of a proclamation by the Government.

100. In addition, section 34(2) provided that section 52 of the Quebec Charter quoted above, as proclaimed as of October 1, 1983, would have effect on the earlier of another proclamation of the Government or January 1, 1986 insofar as the precedence of sections 1 to 8 of the Quebec Charter over acts adopted between June 27, 1975 and October 1, 1983, as well as the precedence of sections 9 to 38 of the Quebec

Charter over acts which were adopted prior to the coming into force of the Quebec Charter on June 27, 1975.

101. Last, section 34(3) provided that the new section 52 would give precedence to sections 9 to 38 of the Quebec Charter over acts adopted subsequent to June 27, 1975.

102. On December 22, 1983, assent was given to An Act to Amend the Charter of the French Language, S.Q. 1983, c. 56 (Tab 2), and by section 12 thereof, section 58 of Bill 101 was "replaced" by a new text. The new text of section 58 of Bill 101 came into force by proclamation on February 1, 1984.

103. The issue raised by the amendments to section 52 of the Quebec Charter and section 58 of Bill 101 is whether section 3 of the Quebec Charter extended to section 58 of Bill 101 on February 1, 1984 in that the amendment to Bill 101 was an "act subsequent to" October 1, 1983.

104. In view of the conclusion reached by Bisson, J.A. on this issue and the arguments advanced on behalf of the Appellant, it is important to set out both the French and English texts of section 58 as they were prior to and after October 1, 1983.

ORIGINAL SECTION 58

Sous réserve des exceptions prévues par la loi ou par les règlements de l'Office de la langue française, l'affichage public et la publicité commerciale se font uniquement dans la langue officielle.	Except as may be provided under this act or the regulations of the Office de la langue française, signs and posters and commercial advertising shall be solely in the official language.

NEW SECTION 58

L'affichage public et la publicité commerciale se font font uniquement dans la langue officielle.	Public signs and posters and commercial advertising shall be solely in the official language.
Toutefois, dans les cas et suivant les conditions ou les circonstances prévus par règlement de l'Office de la langue française, l'affichage public et la publicité commerciale peuvent être faits à la fois en français et dans une autre langue.	Notwithstanding the foregoing, in the cases and under the conditions or circumstances prescribed by regulation of the Office de la langue française, public signs and posters and commercial advertising may be both in French and in another language or solely in another language.

105. It will be seen from the foregoing that the regulatory power contemplated in 1977 was rendered specific by the amendment, and the English language text in the new version was rendered consistent with the French language text by the insertion of "public" before "signs", which was not the case in the original version.

106. The legislative technique of "replacement" used in Quebec means that the text of an existing provision is repealed and is substituted by a different provision. The only effects of a "replaced" provision which survive replacement are those set out in section 13 of the Interpretation Act, R.S.Q. 1977, c. I-16 (Tab 10). Once the provision which is substituted for the replaced provision takes effect, as of the date of its coming into force, the substituted provision is deemed never to have existed, save only for those matters dealt with in section 13 of the Interpretation Act, none of which are applicable here.

107. It is submitted that it is to this extent only that section 13 of the Interpretation Act modifies the common law position as to the absolute and retroactive effect of a repeal (save as to matters passed and closed).

See: Driedger, The Construction of Statutes (2nd ed.) at pp. 224 and 225

108. Bisson, J.A. relied on an extract from Professor Côté's text Interprétation des lois (1982) which suggests that unless the substituted text is substantively different from the one it replaces, it should be interpreted as being a new formulation of pre-existing law. While this reasoning is undoubtly accurate insofar as the interpretation of "replaced" statutory provisions is concerned, it has no application to a provision such as section 34(1) of the Act to Amend the Charter of Human Rights and Freedoms (Tab 6) which is drafted in terms which refer to an act being chronologically subsequent to October 1, 1983 (being the date of the coming into force of section 34(1)), and not an act which is substantively "new law".

See: Reasons of Bisson, J.A., Case, p. 61

109. The reasoning of Bisson, J.A. ignores the text of section 34 of an Act to Amend the Charter of Human Rights and Freedoms (Tab 6). It would have been a simple task for the legislature, had it intended to employ the concept of a "new law" instead of one adopted after a particular date, to have used that expression ("new law") instead of one which embraces a concept of time, not substance.

110. It will also be seen by an analysis of the cases relied on by Prof. Côté in the extract quoted by Bisson, J.A. that none of them have anything to do with the interpretation of

a provision such as section 34 of An Act to Amend the Charter of Human Rights and Freedoms (Tab 6).

See: Trans Canada Insurance Company v. Winter [1935] S.C.R. 184

Re Green: Re Jamael [1936] 2 D.L.R. 153

Cité de Québec v. Bérubé [1949] B.R. 77

Campbell v. The Queen (1949) 95 C.C.C. 63

The Queen v. Crown Zellerbach Canada Limited (1954) 111 C.C.C. 54

The Queen v. Johnson (1977) 37 C.R. (N.S.) 234, conf. by [1978] 2 S.C.R. 391

111. In this respect, Boudreault, J. properly relied on the judgments in Cooperative Committee on Japanese Canadians v. Attorney General of Canada [1947] A.C. 87, at pp. 106 and 107 (P.C.) and Regina v. De Banou (1969) 3 C.C.C. 157, at pp. 162-164 (British Columbia Court of Appeal).

See: Reasons of Boudreault, J., Case, pp. 42 and 43

112. The reasoning of Boudreault, J. in this respect was adopted by Deslongchamps, J. in Cie d'ingénierie Brock Ltée v. Burns et al. [1986] R.J.Q. 182, at pp. 186 & 187, and is also consistent with the view expressed by Prof. Jacques Yvan Morin in an article published at (1987) 21 R.J.T. 25, at p. 37.

113. In any event, even if the new text of section 58 is compared to the prior text of section 58, it is submitted that there is a sufficiently substantive difference which meets the test of "new law".

PART IV

NATURE OF THE ORDER REQUESTED

114. Respondents request that the first two constitutional questions be answered in the affirmative, that the third constitutional question be answered in the negative, and that the appeal be dismissed with costs throughout.

THE WHOLE RESPECTFULLY SUBMITTED.

MONTREAL, this 16th day of October 1987.

Harvey Yarosky

Allan R. Hilton

Counsel for Respondents

TABLE OF AUTHORITIES

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13.	MacDonald v. City of Montreal [1986] 1 S.C.R. 460	19
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31.	Léger v. Ville de Montréal [1985] C.S. 460	34
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33.	Re Green: Re Jamael [1936] 2 D.L.R. 153	39
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38.	Cooperative Committee on Japanese Canadians v. Attorney General of Canada [1947] A.C. 87	39
39.	Regina v. De Banou (1969) 3 C.C.C. 157	39

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40.	Cie d'ingénierie Brock Ltée v. Burns et al. [1986] R.J.Q. 182	39
	B) Doctrine	
41.	Beckton, The Canadian Charter of Rights and Freedoms - Commentary, ch. 5	16
42.	Tremblay, Le principe d'égalité et les clauses anti-discriminatoires, (1984) 18 R.J.T., 329	34
43.	Morel, La Charte québéccise: un document unique dans l'histoire législative canadienne, (1987) 21 R.J.T. 1	34
44.	Morel, La coexistence des chartes canadienne et québécoise: problèmes d'interaction (1986) 17 R.D.U.S. 49	34
45.	Driedger, The Construction of Statutes (2nd ed.) at pp. 224 and 225	38
46.	Morin, La constitutionnalisation progressive de la Charte des droits et libertés de la personne (1987) 21 R.J.T. 25	39