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Committee on Culture and Education
General consultation and public hearings on Bill 14 : An Act to amend the Charter of the French language, the Charter of human rights and freedoms and other legislative provisions
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RE: An Act to amend the Charter of the French language, the Charter of human rights and freedoms and other legislative provisions

STRUCTURE AND SUMMARY

1. **Interpretive Framework for Language rights in Quebec and Canada – Institutional protection for minorities in Canada - Proposed changes in Bill 14 are unconstitutional**
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Using the interpretive framework holding the unwritten constitutional principle of respect for minorities from *Reference re. Succession of Quebec*, and the broad and purposive interpretive framework for language rights from *R. v. Beaulac*, combined with positive implementation of language rights of an institutional nature for linguistic minorities by governments from *Lalonde v. Ontario*, we intend to demonstrate that the modifications proposed by Bill 14 to the *Charter of the French Language*, which would

be prejudicial to the use or acquisition of an official language minority's freedom of linguistic expression (English) and would privilege the use of the French-language to the detriment of other languages, are manifestly unconstitutional. The proposed legislation runs contrary to unwritten constitutional principles of the Canadian constitution and recent case law outlining a broad, purposive interpretive framework for language rights and their positive implementation on an institutional level by governments in Canada.

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Interpretive Framework for Language rights in Quebec and Canada – Institutional protection for minorities in Canada - Proposed changes in Bill 14 are unconstitutional

Using the interpretive framework holding the unwritten constitutional principle of respect for minorities from *Reference re. Succession of Quebec*, and the broad and purposive interpretive framework for language rights from *R. v. Beaulac*, combined with positive implementation of language rights of an institutional nature for linguistic minorities by governments from *Lalonde v. Ontario*, we intend to demonstrate that the modifications proposed by Bill 14 to the *Charter of the French Language*, which would be prejudicial to the use or acquisition of an official language minority's freedom of linguistic expression (English) and would privilege the use of the French-language to the detriment of other languages, are manifestly unconstitutional. The proposed legislation runs contrary to unwritten constitutional principles of the Canadian constitution and recent case law outlining a broad, purposive interpretive framework for language rights and their positive implementation on an institutional level by governments in Canada.

Language rights in Canada have evolved over time as a result of interpretations by the Supreme Court of Canada. Language rights in Canada were initially accorded a purposive and liberal approach in early case law by the Supreme Court in *Jones v. Attorney General of New Brunswick*, [1975] 2 S.C.R. 182. As the *Beaulac* case succinctly summarizes,

"In 1975, when this Court confirmed that language guarantees in s. 133 of the *Constitution Act, 1867* were minimal provisions and did not preclude the extension of language rights by either the federal or the provincial legislatures (*Jones v. Attorney General of New Brunswick*, [1975] 2 S.C.R. 182, at pp.

192-93), a purposive and liberal approach to the interpretation of language rights was adopted. This approach was reaffirmed and expanded in *Attorney General of Quebec v. Blaikie*, [1979] 2 S.C.R. 101 (*Blaikie No. 1*), and *Attorney General of Quebec v. Blaikie*, [1981] 1 S.C.R. 312 (*Blaikie No. 2*). In *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721, the Court wrote, at p. 739:

> If more evidence of Parliament's intent is needed, it is necessary only to have regard to the purpose of both s. 23 of the *Manitoba Act, 1870* and s. 133 of the *Constitution Act, 1867*, which was to ensure full and equal access to the legislatures, the laws and the courts for Francophones and Anglophones alike."

The Supreme Court recognized that language rights, and language itself, plays an integral role in human dignity. In *Reference re Manitoba Language Rights*, at p. 744:

> "The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity. It is through language that we are able to form concepts; to structure and order the world around us. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect of one another, and thus to live in society."

However, the liberal trend to interpreting language rights in Canada was reversed by the Supreme Court in 1986. A trilogy of decisions regarding language rights reversed the broad and liberal framework for interpreting language rights by the Supreme Court. These cases were *MacDonald v. City of Montreal*, [1986] 1 S.C.R. 460, *Société des Acadiens du Nouveau-Brunswick Inc. v. Association of Parents for Fairness in Education*, [1986] 1 S.C.R. 549, and *Bilodeau v. Attorney General of Manitoba*, [1986] 1 S.C.R. 449. The Supreme Court held in *Société des Acadiens*, at p. 578, that language rights were the result of political and historical compromise, and thus were to be interpreted by courts more restrictively than other explicit legal or human rights. *R. v. Beaulac*, [1999] 1 S.C.R. 76, again summarizes succinctly the restrictive interpretive approach,

> " the majority of the Court held that s. 133 of the *Constitution Act, 1867* guarantees a limited and precise group of rights resulting from a political compromise, and that, contrary to legal rights incorporated in ss. 7 to 14 of the *Charter*, they should be interpreted with "restraint" (*Société des Acadiens du Nouveau-Brunswick*, at p. 580)."

Lalonde v. Commission de restructuration des services de santé, 2001 CanLII 21164 (ON CA) states, "it is now clear, however, that this narrow and restrictive approach has been abandoned and that language rights are to be treated as fundamental human rights and accorded a generous interpretation by the courts."

Indeed, the restrictive language rights trilogy was soon reversed by the Supreme Court. The Court reaffirmed the importance of language rights for official language communities across Canada. The infamous Ford signage case in *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712, at pp. 748-49, stated,

> "Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is, as the preamble of the *Charter of the French Language* itself indicates, 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."

While 1988 *Devine* and *Ford* cases decided that the official use and legal protection of the French language Quebec was justified, the Charter of the French Language could not justify prohibiting, or unfair restrictions, on other official languages.

As M.N.A. Clifford Lincoln said, when he resigned from the Quebec government's cabinet over use of the notwithstanding clause to subjugate linguistic rights and uphold language laws in the wake of the *Ford* judgment, "Rights are rights are rights... Rights are rights and will always be rights. There are no partial rights."

The broad and purposive approach to language rights was reinforced by the Supreme Court in subsequent decisions. *Reference re Manitoba Language Rights*, [1992] 1 S.C.R. 212 noted the cultural purpose of language guarantees.

In *Mahe v. Alberta*, [1990] 1 S.C.R. 342, the Court adopted a generous purposive approach to the interpretation of minority language education rights guaranteed by s. 23 of the *Charter*. Dickson C.J.C. at p. 362 again referred to the cultural importance of language:

> "[A]ny broad guarantee of language rights, especially in the context of education, cannot be separated from a concern for the culture associated with the language. Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them."

In *Reference re. Succession of Quebec* [1998], the Supreme Court pointed to the principles of "respect for minorities" and "protection for minorities" as unwritten constitutional principles which guide Canadian constitutionalism and law. The principle of respect for and protection of minorities was described at p. 262:

> "The concern of our courts and governments to protect minorities has been prominent in recent years, particularly following the enactment of the *Charter*. Undoubtedly, one of the key considerations motivating the enactment of the *Charter*, and the process of constitutional judicial review that it entails, is the protection of minorities. However, it should not be forgotten that the protection of minority rights had a long history before the enactment of the *Charter*. Indeed, the protection of minority rights was clearly an essential consideration in the design of our constitutional structure even at the time of Confederation. Although Canada's record of upholding the rights of minorities is not a spotless one, that goal is one towards which Canadians have been striving since Confederation, and the process has not been without successes. The

> principle of protecting minority rights continues to exercise influence in the operation and interpretation of our Constitution."

Lalonde also describes the effect of the unwritten principle of minority rights in interpreting the Constitution and explicit legal and human rights in Canada,

> "As the Supreme Court of Canada explained in the *Secession Reference* at p. 269, "There are linguistic and cultural minorities, including aboriginal peoples, unevenly distributed across the country who look to the Constitution of Canada for the protection of their rights." The principle of respect for and protection of minorities is a fundamental structural feature of the Canadian Constitution that both explains and transcends the minority rights that are specifically guaranteed in the constitutional text. This is an area where, as the Supreme Court of Canada explained in the *Secession Reference* at p. 292, "[a] superficial reading of selected provisions of the written constitutional enactment, without more, may be misleading." This structural feature of the Constitution is reflected not only in the specific guarantees in favour of minorities. It infuses the entire text and, as we have explained, plays a vital role in shaping the content and contours of the Constitution's other structural features: federalism, constitutionalism and the rule of law, and democracy.

The following passages from *Lalonde* describe the recent genesis of the purposive approach to language rights in recent case law, notably *R. v. Beaulac*. The Supreme Court articulated this progression in *Lalonde v. Commission de restructuration des services de santé*, 2001 CanLII 21164 (ON CA), at para.s 135-138,

> "the Chief Justice made reference at p. 363 to the importance of schools as institutions that function as "community centres where the promotion and preservation of minority language culture can occur". With reference to the strictures imposed by the narrow approach taken in *Société des Acadiens*, Dickson C.J.C. observed at p. 365: Both its genesis and its form are evidence of the unusual nature of s. 23. Section 23 confers upon a group a right which places positive obligations on government to alter or develop major institutional structures. Careful interpretation of such a section is wise: however, this does not mean that courts should not "breathe life" into the expressed purpose of the section, or avoid implementing the possibly novel remedies needed to achieve that purpose.
>
> More recently, in *R. v. Beaulac*, [1999] 1 S.C.R. 768 at 791-92, the Supreme Court flatly rejected the narrow approach of *Société des Acadiens* and held that a purposive and generous interpretation of language rights was called for: Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada.
>
> To the extent that *Société des Acadiens du Nouveau-Brunswick*, *supra*, at pp. 579-80, stands for a restrictive interpretation of language rights, it is to be rejected. The fear that a liberal interpretation of language rights will make provinces less willing to become involved in the

> geographical extension of those rights is inconsistent with the requirement that language rights be interpreted as a fundamental tool for the preservation and protection of official language communities where they do apply.
>
> We note that in *Beaulac*, the Court was interpreting language rights conferred by the provisions of the *Criminal Code*, and that the interpretive approach enunciated applies both to language rights conferred by ordinary legislation as well as to constitutional guarantees.
>
> In *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3, the Supreme Court reaffirmed the proposition advanced in *Mahe* that "language rights cannot be separated from a concern for the culture associated with the language". The Court also reaffirmed the proposition from *Beaulac* that language rights must be given a purposive interpretation, taking into account the historical and social context, past injustices, and the importance of the rights and institutions to the minority language community affected."

The significance of *Beaulac* is that language rights of an institutional nature can compel government action for their positive implementation. As re-iterated in *Charlebois v. Moncton (City)* (2001)[1], "*Beaulac* clearly establishes the principle that the standard of substantive equality means that language rights of an institutional nature require government action for their implementation and therefore create obligations for the State... this principle embodies a coercive power and imposes on governments a constitutional obligation to ensure that English and French have equality of status and equal rights and privileges."

Lalonde, better known as the Montfort hospital case, building on principles articulated in the Beaulac and Arsenault-Cameron cases, affirmed that in cases of language rights, unconstitutionality is based solely on the claim that government action violates the principle of minority rights. At par. 174 of *Lalonde*, the Court states, "fundamental constitutional values have normative legal force." *Lalonde* also ruled that neither, "s. 16(3) of the *Charter* (advancement of status or use of English and French) nor s. 15 (equality rights) applied to protect the status of Montfort as a francophone institution." The structural principle of respect for and protection of minorities is a bedrock principle of the Constitution and was ruled to bear directly on the interpretation of the *French Languages Services Act* of Ontario and on the legality of the directives affecting Montfort. In *Lalonde*, the Court noted that underlying constitutional principles may compel government actions,

> "One of the underlying purposes of the Act is to protect the minority francophone population in Ontario. Other underlying purposes include the advancement of the French language and the promotion of its equality with English. These purposes coincide with underlying unwritten principles of the Constitution of Canada. Underlying constitutional principles may in certain circumstances give rise to substantive legal obligations because of their powerful normative force. [Paragraphs 127 - 143]

[1] 242 N.B.R. (2d) 259, 2001 NBCA 117

The significance of the respect for minorities as articulated *Reference re. Succession of Quebec*, the broad and purposive interpretive framework for language rights from *R. v. Beaulac*, and positive implementation of language rights of an institutional nature for linguistic minorities by governments from *Lalonde v. Ontario* is that the modifications which would which would be prejudicial to the use or acquisition of an official language minority's freedom of linguistic expression (English) and would privilege the use of the French-language to the detriment of other languages would be rendered *ultra vires* of the legislature and thus unconstitutional.

The *Canadian Charter of Rights and Freedoms*, namely at sections 15 (equality rights), s.16 (language rights), and s.23 (education rights) could be used to defeat certain aspects of the proposed modifications in Bill 14. Additionally, s. 10 of the Charter of Human Rights and Freedoms could be used to contest the measures proposed in Bill 14. It remains to be seen whether the legislative provisions proposed in Bill 14 would withstand the Oakes (*R. v. Oakes*) test for impairment of rights based on whether there was un objectif sérieux pour porter atteinte à un droit garanti, «La partie qui défends l'atteinte doit prouver que les moyens choisis sont raisonnables et que leur justification peut se démontrer» (prépondérance des probabilités), doit être équitable et non arbitraires, être soigneusement conçues pour atteindre l'objectif en question et avoir un lien rationnel avec cet objectif, puis l'atteinte doit être le moins attentatoire que possible.

Changes to Municipal status in Quebec - Institutional protection for minorities in Canada - Proposed changes in Bill 14 are unconstitutional

Using the interpretive framework holding the unwritten constitutional principle of respect for minorities from *Reference re. Succession of Quebec*, and the broad and purposive interpretive framework for language rights from *R. v. Beaulac*, combined with positive implementation of language rights of an institutional nature for linguistic minorities by governments from *Lalonde v. Ontario*, I intend to demonstrate that the modifications proposed by Bill 14 to recognized municipalities in the *Charter of the French Language* are manifestly unconstitutional. The proposed legislation runs contrary to unwritten constitutional principles of the Canadian constitution and recent case law outlining a broad, purposive interpretive framework for language rights and their positive implementation on an institutional level by governments in Canada.

Effect of Proposed changes to Municipal status in Bill 14

The revocation of the narrow bilingual municipal status accorded in the *Charter of the French Language* was ruled upon in *Rosemère (Ville de) c. Office de la langue française)*, [1990] R.J.Q. 2622. The OLF could not use its' discretionary power to unilaterally revoke the s. 113 f) status (now s. 29.1) of the city of *Rosemère*.

The effect of the modifications to municipal status would be detrimental to the self-expression of the English-speaking community through their municipal institutions. Out of the

ninety currently recognized s. 29.1 recognized municipal institutions, forty-five of the municipalities no longer meet the criteria to attain, and with the proposed modifications - to retain, bilingual status. The 2011 census from Statistics Canada indicates that forty-four, half, of currently recognized institutions no longer have a majority of English mother-tongue residents. As well, certain regions off the island of Montreal would face drastic reductions in the number of recognized municipalities. In particular, out of the 18 Townships villages currently recognized as bilingual, fifteen of them would lose their bilingual status under the proposed changes.

Current extent of the rights accorded to recognized municipalities

The *Charter of the French Language* defines the extent and limits of the rights of recognized institutions. The rights to use another language besides French are limited to signage, the names of the body in question, their internal communications and in communicating with each other. These rights are enumerated at s. 24 and 26 of the current *Charter*,

> "24. The bodies and institutions recognized under of section 29.1 may erect signs and posters in both French and another language, the French text predominating."
>
> "26. The bodies and institutions recognized under section 29.1 may use both the official language and another language in their names, their internal communications and their communications with each other."

As well, at s. 23, municipal bodies recognized under 29.1 must ensure their services are available in French and all notices and communications available in the French language

> "23. The bodies and institutions recognized under section 29.1 must ensure that their services to the public are available in the official language.
>
> They must draw up their notices, communications and printed matter intended for the public in the official language."

Allowing English-speakers access to services in the language of their choice does not hinder access to French language services at the municipal level. Bill 14's changes have the sole effect of prohibiting Quebec's linguistic minority from attaining government services in their preferred language and from self-expression.

As the Supreme Court of Canada reasoned in the infamous 'Ford' signage case, "the requirement of the exclusive use of French… has the effect of impinging deferentially on different classes of persons according to their language of use. Francophones are permitted to express themselves in their language of use while Anglophones and other non-Francophones are prohibited from doing so."

Application of legal precedents to proposed modifications to s. 29.1 recognized municipalities

Municipalities are creatures of provincial governments, due to the Constitutional Act of 1867 at article 92 par. 8. In *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844 at par. 51, the Court of Appeal stated that municipalities and cities created by provinces exercise government functions attributed to them by the legislature or government and draw their powers from provincial laws. The *Westmount (Ville de) c. Quebec (P.G.)*, [2001] R.J.Q. 2520 and *Baie-d'Urfé (Ville de) c. Quebec (P.G.)*, [2001] R.J.Q. 1589 cases are critical to understanding the place of recognized municipalities in Quebec. In *Baie-d'Urfé (Ville de) c. Quebec (P.G.)*, [2001] R.J.Q. 1589 the Court ruled that, "la reconnaisance d'un status en vertu de l'article 29.1 de la Charte de la langue francaise ne confere pas le droit a des services bilingues. L'obligation de la ville ne va pas jusqu'a offrir l'equivalence des deux services et elle se limite a offrir la possibilite de les obtenir dans les deux langues." At para.s 184 – 187, the Court also rejected the Monfort precedent for the application to changes to municipal status in Quebec. The Court stated at para. 186 that the unwritten principle of protection for minorities could not trump the explicit right for provinces to determine their municipal structures, as defined by C.A. 1867 at para. 92(8). As well, it was noted that Monfort was an administrative decision and not a legislative decision by a provincial government. *Westmount (Ville de) c. Quebec (P.G.)*, [2001] R.J.Q. 2520 reiterated the same conclusions; that that the principle of protection for minorities cannot be construed as preserving municipal structures for minorities and that municipalities were creatures of the provincial government.

The *Baie-d'Urfé* and *Westmount* criteria are problematic for any challenge to the proposed changes in municipal status enumerated in Bill 14. The administrative vs. legislative nature and explicit constitutional jurisdiction of the changes is problematic in challenging Bill 14; however unwritten constitutional principles can still have normative legal force and effect. As noted in the first section of this brief, *Lalonde*, built on principles articulated in the *Beaulac* and *Arsenault-Cameron* cases, affirmed that in cases of language rights, unconstitutionality is based solely on the claim that government action violates the principle of minority rights. At par. 174 of *Lalonde*, the Court states, "fundamental constitutional values have normative legal force."

As well, the *Baie-d'Urfé* case rejected the notion that s. 29.1 recognized municipalities are institutions that serve the community. However, the Preamble of the Charter notes that the Charter will be implemented while being, "respectful of the institutions of the English-speaking community." Section 29.1 recognized bodies exist to provide services to non-French-speaking linguistic minorities in Quebec. Section 29.1(1) states that recognition will be accorded to, "a municipality of which more than half the residents have English as their mother tongue." Thus, the explicit goal of the exclusion to French unilingualism for municipalities is to serve the English-language minority in areas where their numbers are deemed sufficient enough to warrant their provision. Much like the Montfort hospital which was a public institution which served a minority official language community, the currently recognized municipalities in Quebec serve this legislative goal as well. Municipalities recognized under 29.1 are not required to offer

equivalent bilingual services, as indicated in *Baie-d'Urfé*. Yet, this does not detract from recognized municipalities offering designated services to an official-language minority.

The ability to immediately revoke the recognition of 45 of 90 municipalities would be a significant reduction of services to the English-speaking minority and would hinder their access to services in their choice at the municipal level.

Though it was not considered as critical to the protection of an official language minority in *Baie-d'Urfé*, the same criteria for the viability of an official language minority used in *Lalonde* would apply to the current legislative changes. English-speaking Quebecers currently suffer from a number of socio-economic weaknesses.

Socio-economic characteristics of Quebec English-speakers

(Statistics from - Floch, W., Pocock, J. (2008). The Socio-Economic Status of English-Speaking: Those who Left and Those who Stayed. In R.Y. Bourhis (Ed.) *The Vitality of the English-Speaking Communities of Quebec: From Community Decline to Revival*. Montreal, Quebec: CEETUM, Université de Montréal.)

The English-speaking community is a population in decline. Over 50 percent of English-speakers have left the province vs. a 96 percent retention rate for Francophones living in Quebec.[2] Only Francophones in Newfoundland have lower minority language groups retention rates. Mother-tongue English-speakers experienced a substantial demographic decline in the 1971-2001 period, experiencing a loss both in absolute numbers (from 788,800 in 1971 down to 591 365 in 2001) and as a proportion of the Quebec population (from 13.1% down to 8.3%).[3]

The nature of Anglophone out-migration over the past generation, which has contributed to a bimodal population profile of the Quebec Anglophone group which is over-represented at both the lower and upper ends of the socioeconomic spectrum. There growing under-class in the Anglophone population which is noticeably characterized by a sizable visible minority, immigrant group in urban settings. In rural settings this Anglophone underclass emerges as a somewhat marginalized, "left-behind" community.[4]

Three major observations emerge from an analysis of English-speaking populations around Quebec.[5]

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[2] Floch, W., Pocock, J. (2008). The Socio-Economic Status of English-Speaking: Those who Left and Those who Stayed. In R.Y. Bourhis (Ed.) *The Vitality of the English-Speaking Communities of Quebec: From Community Decline to Revival*. Montreal, Quebec: CEETUM, Université de Montréal, p. 50.
[3] Floch, W., Pocock, J. (2008). The Socio-Economic Status of English-Speaking: Those who Left and Those who Stayed. In R.Y. Bourhis (Ed.) *The Vitality of the English-Speaking Communities of Quebec: From Community Decline to Revival*. Montreal, Quebec: CEETUM, Université de Montréal.
[4] Floch, W., Pocock, J. (2008). The Socio-Economic Status of English-Speaking: Those who Left and Those who Stayed. In R.Y. Bourhis (Ed.) *The Vitality of the English-Speaking Communities of Quebec: From Community Decline to Revival*. Montreal, Quebec: CEETUM, Université de Montréal, p. 37.
[5] Floch, W., Pocock, J. (2008). The Socio-Economic Status of English-Speaking: Those who Left and Those who

The first observation is that English-speakers tend to be over-represented at both the upper and lower ends of the socioeconomic spectrum. This bi-modal or "missing middle" representation of the Quebec Anglophone population has great potential to explain its distinctive economic profile, and underlines the importance of qualifying any generalization of Anglophones as a privileged minority in Quebec.

The second observation is that the occupational status of the English-speaking minority appears to be declining across generations relative to their Francophone counterparts in the province.

Thirdly, the analysis demonstrates that there is an important regional dimension to socio-economic status, with greater vulnerabilities in the English-speaking minorities residing in the eastern and rural parts of the province.[6]

I would like to highlight one particular region, the historical Eastern Townships. The historical Eastern Townships stands to lose 15 of 18 bilingual municipalities. This will be detrimental to the structural and institutional support for the English-speaking community in the Eastern Townships. English-speaking Eastern Townshippers are a disprivileged community and would lose a critical institution which serves them in their language of choice. Much like the Franco-Ontarian community, the community would now lack an institution that had been fundamental to providing services in their mother-tongue.

The myth of the privileged Townshipper is laid bare by the harsh reality most English-speakers face. The English-speaking community is defined by a declining population, an aging population, and what is described as the "missing-middle" with English-speakers aged 15 to 44 who have, on average, lower levels of education, income and employment than their French-speaking counterparts. A majority of English-speaking women are out of the labour market. Youth stand to earn 4,000 dollars less a year than a francophone their age with the same education. Between 1971 and 2001, due to economic and political instability in Quebec, the number of English-speaking Townshippers dropped almost 30%. The proposed changes to municipal status will only compound these issues and penalize a population that requires assistance and understanding.

Conclusion

While the cases of *Baie-d'Urfé* and *Westmount* do complicate the application of the interpretive framework holding the unwritten constitutional principle of respect for minorities from *Reference re. Succession of Quebec*, and the broad and purposive interpretive framework for

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Stayed. In R.Y. Bourhis (Ed.) *The Vitality of the English-Speaking Communities of Quebec: From Community Decline to Revival*. Montreal, Quebec: CEETUM, Université de Montréal, p. 46.

[6] Floch, W., Pocock, J. (2008). The Socio-Economic Status of English-Speaking: Those who Left and Those who Stayed. In R.Y. Bourhis (Ed.) *The Vitality of the English-Speaking Communities of Quebec: From Community Decline to Revival*. Montreal, Quebec: CEETUM, Université de Montréal, p. 46.

language rights from *R. v. Beaulac*, combined with positive implementation of language rights of an institutional nature for linguistic minorities by governments from *Lalonde v. Ontario*, the proposed changes would be rendered unconstitutional because of their detrimental effect to the English-speaking community in Quebec.

Educational changes

The proposed modification that would eliminate the exclusion from application of s. 72 of the Charter of the French Language granted to the children of members of the Canadian armed forces who is assigned temporarily to the province of Quebec should not be included.

This would prove the victimize children of families in the armed forces who are often in harm's way. These children often endure stressful separation from family members serving overseas, and are relocated around the country with a high frequency and have to adapt to new school and social situations. Restricting the rights of parents to choose the language of instruction for their children would compound the issues confronting these children of military families, and potentially diminish their education and socialization at a critical time in their development by forcefully mandating the linguistic environment in which they are educated.

In *Mahe v. Alberta*, [1990] 1 S.C.R. 342, the Court adopted a generous purposive approach to the interpretation of minority language education rights guaranteed by s. 23 of the *Charter*. Dickson C.J.C. at p. 362 again referred to the cultural importance of language:

> "[A]ny broad guarantee of language rights, especially in the context of education, cannot be separated from a concern for the culture associated with the language. Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them."

As well, *Mahe* recognizes that schools provide important institutions for the entire community. This is the case in the Quebec City region, where the local schools help to anchor the local community. As *Mahe* notes,

> "minority schools themselves provide community centres where the promotion and preservation of minority language culture can occur; they provide needed locations where the minority community can meet and facilities which they can use to express their culture."

The proposed changes would continue to diminish the enrolment in English-language school in the province of Quebec, and call into question the viability of numerous smaller schools and schoolboards. Enrolment in English-language schools across the province dropped from 248,000 in 1971 prior to the adoption of "Bill 101", to only 108,000 in 2007.

Changes to Enterprises

The extension of the Charter of the French Language to enterprises employing between 26 and 49 individuals would prove to be detrimental to the economic potential and independence English-speaking community across Quebec. Small business ownership is integral to the economic success of English-speakers which are vastly underrepresented in the public sector, with English-speakers representing 0.7% of total employees of the Quebec public service.

Secondary and CEGEP entrance requirements and French-language leaving exams

The new secondary school and CEGEP entrance requirements and leaving exams would have a prejudicial effect on the English-speaking community. Sections 30 and 33 of Bill 14 pertain to these changes. In particular, these modifications should be opposed because of they would change the criteria for admissions to colleges from academic merit to language used, and they would potentially hinder otherwise academically successful individuals from graduating from their programs of study.

Firstly, the changes in Bill 14 to comprehension of French-language required at section 30, which modifies sections 88.0.1, 88.0.2, 88.0.3 and 88.0.4. of the *Charter of the French Language*, would have a prejudicial effect on non-Francophone individuals. This new article would require standard exit exams in the French language to graduate from the educational institution. This could be potentially harmful to unilingual Anglophones whose level or French is not fluent. While the understanding of French is a laudable goal for all students in Quebec, these requirements are detached from any explicit pedagogical goal and could hinder the academic development of academically successful students in programs where knowledge of the French-language is not explicitly required for success.

Secondly, a modification at section 33 of Bill 14 reads,

> "in the case of a college with a limited admissions capacity, the selection criteria and priorities that may be established to serve the English-speaking clientele for which the Government established the institution.""

This proposal would limit or favour individuals based on language for entrance into colleges. The emphasis on academic merit would be diminished for entrance into post-secondary institutions. While ostensibly favouring the English-speaking community, others would be excluded based on language. This modification could also have the effect of diminishing the access of non-Francophones to English-language CEGEPs. A hindrance, the actual exclusion of individuals based on language, and the perception that non-Anglophones are not welcomed into English-language educational institutions could threaten the enrolment of the aforementioned institutions and their future viability.

Charter of Human Rights and Freedoms preamble

The modifications proposed in Bill 14 at section 56 would be potentially detrimental to the basic human rights of linguistic minorities in the province of Quebec. The legislation would

propose the additions of, “Whereas French is the official language of Quebec and is a fundamental factor of its social cohesion;” and by insert the following paragraph after the fourth paragraph:

> “Whereas rights and freedoms must be exercised in keeping with public order, the general well-being and the values of Quebec society, including its attachment to democratic principles, the importance of its common language and the right to live and work in French;”

These modifications to the interpretive framework for the preamble of the Charter of Human Rights and Freedoms could have a potentially detrimental effect on the linguistic minorities in the province of Quebec. Les champs d’application de la *Charte* québécoise sont tres large et s’applique aux de droit prive et public. Ils régit les rapports de droit privé et les rapports de droit public. Les rapports de droit privé sont large, pour exemple: art. 55 en matières législatives du QC, donc le Code Civil du Quebec, préambule (5eme al. toute violation), art 12 pour les actes juridiques, art. 13 pour les clauses dans un acte juridique, art. 14 pour des bails d’habitation, art. 16 et 20 dans le domaine de l’emploi, et 20.1 pour l’assurances. Rapports de droits public la charte s’applique au gouvernement au sens large, de la législature au art 52, au Gouvernement aux art.s 54, et art. 56 par.3 qui inclut les règlements. Given the wide-ranging nature of the application of the Quebec Charter, and the new inclusion of an interpretive framework to further emphasize Quebec’s « common language » and the right to live and work in French, could have a detrimental effect on the basic rights of minorities in the province of Quebec. Given the broad and purposive interpretation of language rights in *Beaulac* and the quasi-constitutional nature of the Charter of human Rights and Freedoms, it is conceivable that the modifications to the preamble could have a wide application to human rights in the province of Quebec, and the favouritism of the French language could come to the potential detriment of minority groups.

Charter of the French Language preamble

The proposed modifications to the preamble of the Charter of the French Language, sections 1 and 2 of Bill 14, would alter the wording regarding linguistic minorties in the province of Quebec. This could potentially be detrimental to legal challenges in an international or domestic context by replacing, “the ethnic minorities” in the third paragraph by “cultural communities”. Cultural communities do not have rights under international law, while ethnic minorities do have legal recourse should governments discriminate against them.

Pearl Eliadis, McGill University law professor and member of the Law Faculty’s Centre for Human Rights and Legal Pluralism, argued in her The Gazette article, “Bill 14 chips away at English minority rights” on December 11, 2012 that the changes to cultural community from ethnic minority would be detrimental to minorities in Quebec. She reasons, ““cultural communities does not follow any accepted international usage, nor does it draw on human rights principles or norms. “Cultural communities” have no rights. Minorities do.”

Her article summarizes the problematic issue of the change from minority to community status for non-Francophones in Quebec,

> "The International Covenant on Civil and Political Rights, which Canada ratified in 1976, specifically prohibits discrimination on the grounds of language. It guarantees equality before the law and "equal and effective protection" against discrimination on the ground of language. Article 27 says that where such a linguistic minority exists, "persons belonging to such a minority shall not be denied the right, in community with the other members of the group, to enjoy their own culture … or to use their own language."
>
> Can an internal minority, or a minority within a minority, claim these rights?
>
> In 1990, the UN Human Rights Committee ... answered No in the context of an earlier legislative action to strengthen Bill 101. This was because the term "minorities" was taken to mean 'national minorities', so that English speakers in a majority English-speaking country could not claim minority status. Two decades later, however, things have changed and the definition of "minority" is more inclusive today. There is the real rub and the explanation for the frisson of fear that accompanies the word "minority."
>
> In 2010, the UN High Commissioner for Human Rights said: "It is now commonly accepted that recognition of minority status is not solely for the State to decide, but should be based on both objective and subjective criteria." The subjective criteria now include how minorities decide to identify and define themselves."

Thus international human rights law would, likely, recognizes the current wording of the preamble of the Charter of the French Language as according rights to linguistic and ethnic minorities inthe province of Quebec. The potential change would effectively eliminate an avenue of legal recourse for minorities in Quebec, should they feel their rights infringed upon.