

TABLE OF CONTENTS

	Page
PART I	OVERVIEW OF FACTS AND OF INTERVENER'S POSITION 1
PART II	LEGAL ISSUES FOCUSED ON BY INTERVENER..... 2
PART III	SUBMISSIONS 3
	a. Does the act violate section 23 of the Canadian Charter..... 3
	b. Are the infringements of Section 23 justified under Section 1 .. 3
PART IV & V	COSTS AND ORDERS SOUGHT..... 4
PART VI	SUBMISSIONS ON SEALING OR CONFIDENTIALITY ORDERS... 5
PART VII	ALPHABETICAL TABLE OF SOURCES 6

INTERVENER'S ARGUMENT

PART I – OVERVIEW OF FACTS AND OF INTERVENER'S POSITION

1. The *Canadian Charter of Rights and Freedoms*¹ safeguards the autonomy of official-language minority communities in every province and territory. This protection is robust and, by design, is insulated from the operation of the notwithstanding clause.
2. The Intervener, the *Quebec Community Groups Network* (who will henceforth be referred to as “**QCGN**” for the purposes of this Factum, despite having formally changed its name to *Talking. Advocating. Living in Quebec*, or *TALQ*), advocates for a broad and purposive interpretation of Section 23 of the *Charter* in favor of official-language minority communities across Canada.
3. The unique nature and history of Section 23 must guide this Court's interpretation of its purpose and application. Section 23 occupies a distinctive place within the *Charter*. Although it emerged from political compromise, that fact cannot and should not restrain its interpretation. Instead, it must be construed broadly to fulfill its purpose: preventing the erosion of both French and English-speaking minority communities and ensuring their vitality throughout Canada.
4. This Court should continue to interpret Section 23 generously and expansively, in a manner consistent with its purpose. This includes affirming the recognized right of minority-language communities to exclusive management and control over all aspects of education, encompassing both language and culture².
5. A breach of Section 23 cannot be justified where the state offers no justification. If the government fails to put forward arguments to support a limitation on Charter rights, the Court must conclude, as a matter of law, that the infringement is unjustified.

¹ *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [**Charter**].

² *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2020 SCC 13, Paras. 148, 149 [**CSFCB**].

6. If the breach of Section 23 is found to be unjustifiable, the impugned provision should be declared invalid and inoperative with respect to all teachers and school personnel. To confine the remedy by severing its effect only to those individuals directly entitled to Section 23 protection would be inconsistent with the application of the rules of severance.

PART II – ISSUES IN DISPUTE

7. The QCGN's submissions are limited to the question of Section 23 of the Charter. The issues identified are:
- a. Does the *Act respecting the Laicity of the State*³ (the “**Act**”) infringe Section 23?
 - b. Are the infringements of Section 23 justified under Section 1?

PART III – SUBMISSIONS

a. Does the Act violate Section 23 of the Charter?

8. Sections 16-23 of the *Charter* establish constitutional language rights. Section 16 declares that “English and French are the official languages of Canada”, while Sections 16 to 22 set out various rights to the use of English and French in the legislative, judicial, and executive branches. Section 23, often described as the “linchpin in this nation’s commitment to the values of bilingualism and biculturalism”⁴ establishes minority-language education rights and introduces the concept of a “linguistic minority population” within each province and territory.
9. These provisions are unique and arose from Canada’s particular social, demographic, and historical context⁵. The Supreme Court has consistently held that

³ CQLR c L-0.3.

⁴ *Mahé v. Alberta*, [1990] 1 SCR 342, P. 350 [**Mahé**].

⁵ *AG (Que.) v. Quebec Protestant School Boards*, [1984] 2 SCR 66, P. 74, 79 [**Quebec Protestant School Boards**]; *Nguyen v. Quebec (Education, Recreation and Sports)*, 2009 SCC 47 [**Nguyen**]; citing *Solski (Tutor of) v. Quebec (Attorney General)*, 2005 SCC 14, Para. 5 [**Solski**]; *Commission scolaire francophone*

the purpose of Section 23 is to protect and promote minority official-language communities in every province and territory: "Section 23 achieves its purpose by ensuring that the English community in Quebec and the French communities of the other provinces can flourish"⁶. Section 23 must be interpreted broadly to protect both English- and French-speaking minority communities.

10. Even if Section 23 arose from political compromise, it must be given a "generous and expansive interpretation" consistent with its purpose. Any narrow interpretation of language rights was rejected in *R. v. Beaulac*⁷.
11. At the core of the language provisions lies the protection of minority rights. As the Supreme Court emphasized in *Reference re Secession of Quebec*⁸:

80 However, we highlight that even though those provisions were the product of negotiation and political compromise, that does not render them unprincipled. Rather, such a concern reflects a broader principle related to the protection of minority rights. Undoubtedly, the three other constitutional principles inform the scope and operation of the specific provisions that protect the rights of minorities. We emphasize that the protection of minority rights is itself an independent principle underlying our constitutional order. The principle is clearly reflected in the Charter's provisions for the protection of minority rights. See, e.g., *Reference re Public Schools Act (Man.)*, s. 79(3), (4) and (7), [1993] 1 S.C.R. 839, and *Mahe v. Alberta*, [1990] 1 S.C.R. 342.

[our emphasis]

12. This Court should continue to articulate a broad purpose of Section 23 that explicitly recognizes both the English and French speaking minority communities. Language rights "must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official-language communities in Canada"⁹.
13. For example, in *Mahé*, this Court held that the general purpose of Section 23 "is to preserve and promote the two official languages of Canada, and their respective

des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment), 2023 SCC 31, Para. 4, 80 [**CSFTNO**].

⁶ *Gosselin (Tutor of) v. Quebec (Attorney General)*, 2005 SCC 15, Para. 29 [**Gosselin**]; *Quebec protestant school board*, P. 79; *Nguyen* citing *Solski*, Para. 14.

⁷ *R. v. Beaulac*, [1999] 1 SCR 768 [**Beaulac**], *Arsenault-Cameron v. Prince Edward Island*, 2000 SCC1, Para. 53 [**Arsenault-Cameron**].

⁸ *Reference re Secession of Quebec*, [1998] 2 SCR 217, Para. 79, 80.

⁹ *Beaulac*, Para. 25; *Arsenault-Cameron*, Para. 27.

cultures, by ensuring that each language flourishes, as far as possible, in provinces where it is not spoken by the majority of the population”¹⁰.

14. In *Solski*, this Court reiterated that Section 23 “reflects a common desire to protect Canada’s English- and French-speaking minorities, and to promote their development”¹¹.
15. A broad understanding of Section 23’s purpose is crucial because the rights it protects are both individual and collective. In *Mahé*, the Court emphasized that Section 23 preserves minority languages “and their respective cultures”¹². In *Beaulac*, the Court affirmed that language rights are “a fundamental tool for the preservation and protection of official-language communities.”¹³ In *Gosselin*, the Court reiterated that Section 23 protects and promotes the minority language community in each province¹⁴. Collective interests are critical because the existence, vitality, and institutions of the minority community are necessary for the exercise of Section 23 rights.
16. First, the Section 23 right can only be exercised alongside other rights-holders: they “presuppose that a language community is present”¹⁵. The right is therefore inseparable from the community itself.
17. Second, minority language schools are the “primary instrument” for transmitting minority language and culture. Language is inherently communal, engaging a community of speakers, and it expresses culture and identity¹⁶. The Court first recognized this link in *Ford*¹⁷:

¹⁰ *Mahé*, P. 362; *Association des parents de l’école Rose-des-vents v. British Columbia (Education)*, 2025 SCC 21, Para. 27, [**Rose-des-vents**]; *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2015 SCC 21, Para. 26.

¹¹ *Solski*, Para. 7.

¹² *Mahé*, P. 362.

¹³ *Beaulac*, Para. 25.

¹⁴ *Gosselin*, Para. 28.

¹⁵ *Solski*, Para. 23.

¹⁶ *Re Manitoba Language Rights*, [1985] 1 SCR 721, Para. 744; *CSFCB*, Paras. 147-148.

¹⁷ *Ford v. Quebec (Attorney General)*, [1988] 2 SCR 712, Paras. 748-749, [**Ford**].

Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is [...] a means by which a people may express its cultural identity.

18. This Court adopted this principle in *Mahé*, stating that “[l]anguage is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it”¹⁸. Section 23 thus protects not merely the use of language, but the preservation of minority language, culture, and identity.
19. Minority language education plays a vital role in “encouraging linguistic and cultural vitality” of minority communities¹⁹. Schools also serve as community centers where members can “express their culture”²⁰. Section 23 is therefore not only a right to instruction in a minority language; it is a right to participate in a linguistic community and transmit that community’s language and culture to future generations.
20. The Court of Appeal asserted that Section 23 culture can only be protected “through language,” a position inconsistent with Supreme Court jurisprudence recognizing that language is an intrinsic component of culture but not its sole expression²¹. The Court of Appeal further concluded that rights-holders were not prejudiced, contradicting evidence accepted by the trial judge showing that the Act negatively affects cultural transmission and community integration.
21. Third, Section 23 guarantees the community’s collective right to manage and control educational facilities²². In *Mahé*, the Court found that Section 23 includes the right to exercise “a measure of management and control over the educational facilities in which their children are taught.”²³ This right is exercised collectively and is grounded in the link between language and culture: “management and control is vital to ensure that [minority] language and culture can flourish.”²⁴.

¹⁸ *Mahé*, P. 362.

¹⁹ *Mahé*, P. 350.

²⁰ *Mahé*, P. 363.

²¹ *CSFCB*, Paras. 18-19.

²² *Procureur général du Québec v. Quebec English School Boards Association*, 2025 QCCA 383, Paras. 109, 117, 132, 143, 174, 192, 194 [*QESBA*]. *Arsenault-Cameron*, Paras.45, 60-62.

²³ *Mahé*, Pgs. 371-372.

²⁴ *Mahé*, Para. 372.

22. The Court of Appeal's position, which minimizes this impact, is fundamentally flawed. The Court concluded that the Act does not infringe Section 23 because it does not restrict the use of English in instruction and only affects personnel hiring. This analysis disregards the broader purpose of Section 23, which protects both language and the cultural, institutional, and communal framework necessary to maintain minority-language communities.
23. In Quebec, English education elected school boards are the mechanism for exercising management and control. Section 23 protects and promotes these institutions, even as school boards face abolition elsewhere. Provincial governments have discretion in choosing the institutional means to meet Section 23 obligations, but any reform must respect rights-holders' role in managing and controlling schools²⁵.
24. The Act interferes with the collective rights of the English-speaking minority by restricting the ability of school boards to maintain and transmit cultural and linguistic heritage. By imposing a model of secularism on English-language schools, it affects the community's right to manage educational facilities and diminishes religious and cultural diversity.
25. It must be remembered that people of English culture in Canada strongly support multiculturalism and diversity, and it would be a serious interference with English education, and the concerns of the English community as a whole to impose an ideology of secularism; this would violate Section 23, whose intention was to facilitate the maintaining and transmission of the culture by the minority.
26. It is essential to note that multiculturalism and secularism represent two of the most important differences between French and English Canadian cultures. To force English Canada into the mold of Quebec's conception of secularism would constitute a violation of its cultural specificity²⁶.

²⁵ *Mahé*, Para. 393; *QESBA*, Paras. 109, 117, 132, 143, 174, 192, 194.

²⁶ *Hak c. Procureur général du Québec*, 2021 QCCS 1466, Paras. 983-1003, [*Trial judgment*].

27. It should also be recalled that the English-speaking community in Quebec is highly diverse, encompassing people from many cultural and religious backgrounds. The imposition of uniformity would significantly reduce individual choice and disproportionately disadvantage English-speaking members of minority groups.
28. If education and childcare services are affected, English-speaking students and families may be limited in their access to educators and service providers who reflect the cultural and religious diversity of the community. This further undermines the transmission of minority language, culture, and values.
29. The Act interferes with the cultural setting of English-language education and public institutions, diminishing religious diversity and limiting the ability of English-speaking communities to reflect their multicultural and pluralistic character. This interference violates the collective aspect of Section 23, which protects not only language but also the cultural and institutional framework of minority communities.
30. By limiting participation in public institutions, the Act undermines the community's capacity to exercise management and control over its educational and institutional structures. The vitality of the English-speaking minority, including its linguistic, cultural, and religious diversity, is directly threatened. Such interference is incompatible with the purpose of Section 23 and with the broader principles of minority rights protection recognized by the Supreme Court.

b. Are the infringements of Section 23 justified under Section 1?

31. The unique nature of the minority-language educational rights guaranteed under Section 23 of the Charter requires a distinct and careful analysis under Section 1²⁷. These rights are unlike other Charter provisions, as they are both remedial and protective of collective minority interests.

²⁷ CSFCB, Para. 147-150.

32. Any restriction on a Charter right must be “reasonable,” and its justification must be “demonstrably justified in a free and democratic society”²⁸. The first step of this test, articulated in *R. v. Oakes*, asks whether the objective of the law is sufficiently “pressing and substantial” to justify overriding a constitutionally protected right²⁹.
33. The QCGN submits that courts should rarely consider a law sufficiently pressing and substantial to justify interference with Section 23 rights. This position is supported by three considerations. First, the unique remedial and specific purpose of Section 23 demands a tailored Section 1 analysis. Second, Section 23 already contains internal limitations, making it extremely difficult to justify additional restrictions. Third, the exceptional nature of any justification is reinforced by the explicit exclusion of Section 23 from Section 33, the “notwithstanding clause.”
34. As this Court unanimously explained in *Attorney General (Que.) v. Quebec Protestant School Boards*, Section 23 is not, like other provisions of the same constitutional document, of those that one commonly encounters in charters and declarations of fundamental rights of the same kind. Rather, it constitutes “a unique set of constitutional provisions, entirely particular to Canada”³⁰.
35. This exceptional character is further reinforced by Section 23’s exclusion from Section 33, which signals that its protection is fundamental and immune from political override.
36. In the present case, the trial judge correctly concluded that the infringement of Section 23 could not be justified under Section 1.
37. Neither at the Superior Court nor at the Court of Appeal did the Attorney General of Quebec advance a justification under Section 1, as it was neither pleaded nor relied upon.

²⁸ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 SCR 199, Paras. 127, 128.

²⁹ *R. c. Oakes*, [1986] 1 R.C.S. 103, P. 137.

³⁰ *Quebec Protestant School Boards*, P. 79.

38. In any event, no evidence was presented to show that a less impairing alternative, such as exempting Section 23 schools from the Act's prohibitions, would harm the French speaking majority. The Attorney General offered no proof that allowing the English speaking minority to practice and transmit its culture within its schools would have any adverse effect.
39. The exclusion of Section 23 from Section 33 must inform the proportionality analysis under Section 1. As this Court has emphasized, the "values and principles essential to a free and democratic society" constitute the ultimate benchmark for assessing any justification. Section 33 cannot weaken this benchmark to justify restrictions on Section 23 rights.
40. The harms identified by the trial judge, including the direct impact on teachers and students, the threat to English-language culture, and the undermining of community development, must be fully weighed. These harms demonstrate that the deleterious effects of the Act overwhelmingly exceed any purported public benefit, confirming that the infringement of Section 23 is not justifiable under Section 1.
41. The QCGN submits that, in the event it is determined that the violation of Section 23 cannot be justified under Section 1, the appropriate remedy would be to declare the provision invalid and inoperative with respect to all teachers and school personnel.
42. It is submitted that the trial judge erred by severing those entitled to Section 23 protection instead of invalidating the impugned provision of the Act.
43. Although this position may seem paradoxical, given that Section 23 protects only the rights of linguistic minorities, it is the result of the application of the rules of severance, as reaffirmed by this Court in *Ontario (Attorney General) v. G.*,³¹.
44. This approach essentially reiterates the principles in *Ford v. Quebec (Attorney General)* and *Devine v. Quebec (Attorney General)*, where the Supreme Court

³¹ *Ontario (Attorney General) v. G.*, 2020 SCC 38, Paras. 112, 116.

invalidated the prohibition on the use of English on unilingual commercial signs, leaving it to the government to decide the subsequent course of action³².

45. The courts only sever or read in new sections when the part of the law that is unconstitutional is either minor or completely separate from the rest of the law, and does not violate the basic principles and purposes of the law³³.
46. It is therefore clear that severance is the exception, not the rule.
47. One must ask whether the government would have enacted the Act had it known that the law would not apply equally to both French and English schools. It cannot be asserted with certainty that the legislature would have limited the law to French schools only. This is especially true given its express desire to create a uniform school system.
48. It is plausible that, to preserve uniformity and avoid two distinct systems, the government would have preferred not to legislate at all.
49. Other public institutions, such as universities, are not subject to the prohibition on religious symbols; the distinction between English and French schools could arguably justify their exclusion. However, the Act's objective with respect to teachers and staff would not be fully achieved if certain schools were excluded, as this would undermine equality between the school systems.
50. Section 23 protects the rights of linguistic minorities to an equivalent level of educational services. Distinguishing between schools protected and unprotected by Section 23 creates an inequality contrary to government intent and should not be imposed by courts.

³² *Ford*, P. 739-745; *Devine v. Quebec (Attorney General)*, [1988] 2 SCR 790, P.812-816.

³³ *Ontario (Attorney General) v. G.*, Paras. 112 and 116 citing *Schachter v. Canada*, [1992] 2 SCR 679, P. 700; *Vriend v. Alberta*, [1998] 1 SCR 493, Paras. 149-150; *R. v. Sharpe*, 2001 SCC 2, Paras. 122-125.

51. It is contrary to the principles of statutory interpretation and severance for the courts to make that decision when one cannot be certain of which decision the legislator would have made, and when the result goes against an avowed goal³⁴.
52. The law should therefore be declared inoperative for all teachers and school staff; the National Assembly could then determine whether a separate regime for French schools is desirable.

PART IV – OVERVIEW OF FACTS AND OF INTERVENER'S POSITION

53. The QCGN seeks costs before all levels of court.

PART V AND VI – ORDERS AND ORDERS SOUGHT

54. The QCGN ask this Court to allow the appeal and declare that ss. 4 (first paragraph), 6, 7, 8, 12 (first and second paragraphs), 13, 14 and 16 of Bill 21, read together with paragraph 7 of Schedule I, paragraph 10 of Schedule II and paragraph 4 of Schedule III, impermissibly violate s. 23 of the Charter and are (i) of no force or effect pursuant to s. 52 of the Constitution Act, 1982, or alternatively (ii) of no force or effect with respect to English-language school boards pursuant to s. 52 of the Constitution Act, 1982.

³⁴ Côté, P.A., *Interprétation des lois*, 4th ed. (Montréal : Thémis, 2009); Pigeon, L.P., *Drafting and Interpreting Legislation* (Toronto: Carswell, 1988).

PART VI – SUBMISSIONS ON SEALING OR CONFIDENTIALITY ORDERS

N/A

Westmount, this ____ day of September 2025

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PART VII – AUTHORITIES**CASE LAW**

CASES	PARAGRAPH(S)
<i>AG (Que) v. Quebec Protestant School Boards</i> , [1984] 2 SCR 66	79
<i>Arsenault-Cameron v. Prince Edward Island</i> , 2000 SCC 1	27, 53
<i>Association des parents de l'école Rose-des-vents v. British Columbia (Education)</i> , 2025 SCC 21	13
<i>Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)</i> , 2023 SCC 31	4, 80
<i>Conseil scolaire francophone de la Colombie-Britannique v. British Columbia</i> , 2020 SCC 13	13, 148 - 149
<i>Devine v. Quebec (Attorney General)</i> , [1988] 2 SCR 790	Pgs. 812 - 816
<i>Doucet-Boudreau v. Nova Scotia (Minister of Education)</i> , 2015 SCC 21	26
<i>Ford v. Quebec (Attorney General)</i> , [1988] 2 SCR 712	748 - 749
<i>Gosselin (Tutor of) v. Quebec (Attorney General)</i> , 2005 SCC 15	28 - 29
<i>Hak c. Procureur général du Québec</i> , 2021 QCCS 1466	983 - 1003
<i>Mahé v. Alberta</i> , [1990] 1 SCR 342	Pgs. 350, 362, 363, 371 - 372, 393

Intervener's argument

Authorities

CASES	PARAGRAPH(S)
<i>Nguyen v. Quebec (Education, Recreation and Sports)</i> , 2009 SCC 47	14
<i>Ontario (Attorney General) v. G</i> , 2020 SCC 38	112, 116
<i>Procureur général du Québec v. Quebec English School Boards Association</i> , 2025 QCCA 383	109, 117, 132, 143, 174, 192, 194
<i>R. c. Oakes</i> , [1986] 1 R.C.S. 103	P. 137
<i>R. v. Beaulac</i> , [1999] 1 SCR 768	25
<i>R. v. Sharpe</i> , 2001 SCC 2	122 - 125
<i>Re Manitoba Language Rights</i> , [1985] 1 SCR 721	744
<i>Reference re Secession of Quebec</i> , [1998] 2 SCR 217	80
<i>RJR-MacDonald Inc. v. Canada (Attorney General)</i> , [1995] 3 SCR 199	127, 128
<i>Schachter v. Canada</i> , [1992] 2 SCR 217	P. 700
<i>Solski (Tutor of) v Quebec (Attorney General)</i> , 2005 SCC 14	5, 23
<i>Vriend v. Alberta</i> , [1998] 1 SCR 493	149 - 150

DOCTRINE

DOCTRINE	PARAGRAPH(S)
Côté, P.A.-., <i>Interprétation des lois</i> , 4th ed. (Montréal : Thémis, 2009)	
Pigeon, L.P.-., <i>Drafting and Interpreting Legislation</i> (Toronto: Carswell, 1988)	

LEGISLATION

LEGISLATION	PARAGRAPH(S)
<i>Canadian Charter of Rights and Freedoms</i> , Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11	
<i>Charte canadienne des droits et libertés</i> , partie I de la Loi constitutionnelle de 1982, constituant l'annexe B de la Loi de 1982 sur le Canada (R.-U.), 1982, c. 11	
<i>Act respecting the laicity of the State</i> , CQLR c. L-0.3	
<i>Loi sur la laïcité de l'État</i> , RLRQ, c. L-0.3	

