C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

S U P E R I O R C O U R T
(CIVIL DIVISION)

N^{O} 500-17-098209-177
500-17-098239-174
500-17-098901-179
500-17-099865-175
500-17-099913-173
500-17-098240-172
500-17-098238-176

[redacted]

Plaintiffs

v.

The Ministère de l'Immigration, Diversité et l'Inclusion, represented by the **Attorney General of Québec**

Defendant

PLAINTIFFS' MEMORANDUM OF ARGUMENT

I. INTRODUCTION

1. It is a basic tenet of the legality of administrative action that decision-makers cannot unilaterally add to the statutory or regulatory criteria, established by Government, that they are charged with administering. Where the criteria are satisfied, the decision-makers must issue the decision that follows, even if they disagree with the result. They can of course advise the Government that the statute or the regulation in question should be amended. But unless and until the Government decides to do so, the rule of law commands that the law be applied.

2. The Plaintiffs seek judicial review of decisions made by the Ministère de l'Immigration, de la Diversité et de l'Inclusion (the **"MIDI**") because the MIDI gravely breached this basic tenet and others.

3. Each Plaintiff plainly satisfied the requirements the Government has established by regulation to obtain a Québec Selection Certificate ("**CSQ**"). Dissatisfied with these results, the MIDI unilaterally subjected Plaintiffs to an undisclosed oral French exam that is nowhere provided for by statute or regulation, and deemed the results to be determinative of Plaintiffs' applications. Those who failed the new

oral exam by one or two levels saw their applications refused; those who failed by three levels or more were accused of fraud and saw their applications rejected.

4. This manner of proceeding cannot be tolerated in a society such as ours. The Minister's decisions must be quashed.

II. OVERVIEW

5. The Plantiffs seek judicial review of the MIDI's decisions to refuse or reject their applications for a CSQ pursuant to s. 3.2.1 of the *Act respecting Immigration to Québec* (the **"*Immigration Act*"**).[1]

6. Each Plaintiff applied for a CSQ under the *Programme de l'expérience québécoise* ("**PEQ**"), a fast-tracked, paper based immigration program that targets students and temporary foreign workers. One of the requirements of the PEQ is that applicants submit documentation that establishes that they have completed one of the courses or exams that are recognized by regulation as proof of the applicant's French proficiency.

7. One type of accepted document is proof that the applicant completed a French course that the Minister of Education has deemed to be intermediate-advanced, a list of which is provided by the MIDI. All Plaintiffs completed a course on the MIDI's list and submitted proof of this with their applications.

8. The Minister subsequently called each Plaintiff to an interview for the alleged purpose of verifying their documents. The Minister was never in fact interested in the documents. Instead, at these interviews, Plaintiffs were subjected to on-the-spot oral French evaluations of which they had no notice, and which are nowhere provided for by statute of regulation. Relying on the results of these evaluations alone, the Minister concluded that Plaintiffs were insufficiently proficient in French, despite the fact that the government, by regulation, has deemed the completion of the courses each Plaintiff successfully completed to be sufficient for the purposes of its program.

[1] CQLR c. I-0.2.

9. The Minister consequently refused some Plaintiffs' CSQ applications (the "**Decisions to Refuse**"), and rejected other Plaintiffs applications on the basis that they had knowingly and intentionally made false statements in their PEQ Applications and had thus committed fraud (the "**Decisions to Reject**").

10. In so acting, the Minister breached at least three of the most basic principles of the legality of administrative action:

    a) A decision-maker cannot unilaterally add to requirements found in statute or regulation. Where a decision is based on the extra-legal adoption and assessment of novel criteria, it will necessarily be unreasonable;

    b) An administrative actor cannot adopt a decision-making process that contradicts established decision-making criteria; and

    c) Where a decision must be based on conclusions about an individual's intent, a decision-maker's presumption that such intent exists for a large group of people, combined with failure to examine each person's circumstances on a case-by-case basis, amounts to a refusal to exercise statutory authority.

11. The Minister's Decisions to Refuse and Decisions to Reject the Plaintiffs' CSQ Applications in the present case run afoul of all three principles, are consequently unreasonable, and must be quashed.

12. In addition, even setting aside the substantive illegality of the Minister's actions, the Minister clearly breached her duty of procedural fairness to the Plaintiffs. First, none of the Plaintiffs was given proper notice of the fact that they would be required to undergo an oral French examination. What is more, the Minister presumed that certain Plaintiffs had intentionally committed fraud without giving Plaintiffs *any* real opportunity to rebut this presumption.

13. These violations of procedural fairness independently suffice to nullify the Minister's Decisions.

14. The MIDI's position in this case boils down to arguing that the ends justify the means. At the hearing, the Attorney General of Québec will no doubt attempt to highlight what it considers to be the worst excerpts from the MIDI's illegal on-the-spot oral French exams. This fundamentally misses the point about the legality of administrative action in a rule-of-law society such as ours. The Government can amend its regulation at any time. To this day it has chosen not to. Plaintiffs, who complied with the law in good faith, are entitled to expect that law to be applied.

III. FACTS

A. LEGISLATIVE FRAMEWORK

i) The *Programme de l'expérience québécoise*

15. Section 3.1 of the *Immigration Act* sets out the procedure to be followed by foreign nationals wishing to settle in Québec. The Minister's role is to issue a *Certificat de sélection du Québec* ("**CSQ**") to applicants who meet the conditions and selection criteria set by regulation.[2]

16. The Government is responsible for making the regulations that establish various classes of foreign nationals who may apply for a CSQ, and setting out the conditions of selection for each class.[3] It does so through the *Regulation respecting the selection of foreign nationals* (the "***Immigration Regulation***").[4]

17. Accordingly, the Government established the PEQ under ss. 38.1 and 38.2 of the *Immigration Regulation*. The PEQ provides an accelerated CSQ process for skilled foreign temporary workers who are already in Québec, or for individuals who have completed vocational secondary or post-secondary education in Québec.[5] It is advertised as being an expedited, paper-based program that does not entail a

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[2] *Immigration Act*, s. 3.1.
[3] *Immigration Act*, s. 3.3(b).
[4] CQLR c I-0.2, r 4.
[5] See **Exhibit P-1** to all Plaintiffs' proceedings: copy of the MIDI's website about the PEQ dated March 22, 2017.

selection interview, and in which decisions are expected to be rendered within a matter of months of the submission of an application.[6]

18. Foreign nationals who wish to apply for a CSQ through the PEQ as temporary foreign workers or as students must fulfill the conditions established by ss. 38.1 or 38.2 of the *Immigration Regulation*, respectively. One of the conditions listed in both ss. 38.1 and 38.2 is that an applicant must successfully take a French recognized exam or course, and submit documentation to that effect:

38.1. The Minister **issues** a selection certificate as a skilled worker to a foreign national who stayed temporarily in Québec with the main purpose of working in Québec or in the context of a youth exchange program under an international agreement entered into by Québec or Canada, if the foreign national	**38.1**. *Le ministre **délivre** un certificat de sélection à titre de travailleur qualifié à un ressortissant étranger qui a séjourné temporairement au Québec dans le but principal d'y travailler ou dans le cadre d'un programme d'échange jeunesse visé par une entente internationale conclue par le Québec ou par un accord international conclu par le Canada, s'il remplit les conditions suivantes*:
[…]	[…]
(*c*) accompanies the application with the result of a standardized French test showing an intermediate oral knowledge of French, level 7 or level 8 according to the Échelle québécoise des niveaux de compétence en français des personnes immigrantes adultes or its equivalent, or with a document certifying that the foreign national has met the linguistic requirements of a professional order, or has successfully completed at least 3 years of full-time studies in French at the secondary or post-secondary level or an intermediate French course, level 7 or level 8 according to that scale or its equivalent, offered by a	*c*) *soit il accompagne sa demande du résultat d'un test standardisé de français démontrant une connaissance orale de la langue française de stade intermédiaire, niveau 7 ou 8 selon l'Échelle québécoise des niveaux de compétence en français des personnes immigrantes adultes ou son équivalent ou d'un document attestant qu'il a satisfait aux exigences linguistiques d'un ordre professionnel, soit il a réussi au moins 3 ans d'études secondaires ou postsecondaires en français à temps plein ou un cours de français de stade intermédiaire, niveau 7 ou 8 selon cette échelle ou son équivalent, offert par un établissement*

[6] See e.g. Examination of [redacted] held on November 27, 2017 ("[redacted] **Examination**"), **Undertaking E-3**: Power Point presentations from 2015, 2016, and 2017, p. 8 of each presentation.

Québec educational institution in Québec;	*d'enseignement du Québec au Québec*;
38.2. The Minister **issues** a selection certificate as a skilled worker to a foreign national who stayed temporarily in Québec with the main purpose of studying in Québec, if the following conditions are met:	**38.2.** *Le ministre **délivre** un certificat de sélection à titre de travailleur qualifié à un ressortissant étranger qui a séjourné temporairement au Québec dans le but principal d'y étudier, s'il remplit les conditions suivantes*:
[…]	[…]
(*d*) the foreign national completed the program of studies in Québec in French, or the foreign national accompanies the application with the result of a standardized French test showing an intermediate oral knowledge of French, level 7 or level 8 according to the Échelle québécoise des niveaux de compétence en français des personnes immigrantes adultes or its equivalent, or with a document certifying that the foreign national has met the linguistic requirements of a professional order, or has successfully completed at least 3 years of full-time studies in French at the secondary or post-secondary level or an intermediate French course, level 7 or level 8 according to that scale or its equivalent, offered by a Québec educational institution in Québec;	*d*) *soit il a effectué son programme d'études au Québec en français, soit il accompagne sa demande du résultat d'un test standardisé de français démontrant une connaissance orale de la langue française de stade intermédiaire, niveau 7 ou 8 selon l'Échelle québécoise des niveaux de compétence en français des personnes immigrantes adultes ou son équivalent ou d'un document attestant qu'il a satisfait aux exigences linguistiques d'un ordre professionnel, soit il a réussi au moins 3 ans d'études secondaires ou postsecondaires en français à temps plein ou un cours de français de stade intermédiaire, niveau 7 ou 8 selon cette échelle ou son équivalent, offert par un établissement d'enseignement du Québec au Québec*;

19. Applicants who choose to fulfill the conditions of ss. 38.1(c) or 38.2(d) by submitting evidence of having completed an intermediate French course cannot simply complete any French course at any institution. Rather, they must choose from among a list of French courses that are recognized by the MIDI as meeting the requirements of ss. 38.1(c) or 38.2(d).[7]

[7] **Exhibit P-2** to all Plaintiffs' proceedings: Annex 3 to the *Guide des procedures d'immigration*.

20. These courses are **all** approved by the Ministère de l'Éducation as being equivalent to level 7 or 8 on the *Échelle québécoise des niveaux de compétence en français des personnes immigrantes adultes* (the "***Échelle québécoise***").[8] The MIDI accepts the Ministère de l'Éducation's qualification of these courses as reflecting that level. The MIDI is not involved in accrediting the courses and does not verify their content or how they are administered.[9]

21. The exams and courses set forth in ss. 38.1(c) and 38.2(d) are the **only** means the Government recognizes as satisfying the requirements of the PEQ.

22. This is reflected in Part 8 of the PEQ Application Form,[10] which asks applicants if they have a level that corresponds to an intermediate-advanced ability to speak and understand oral French, to which applicants must respond by checking boxes labeled "*Oui*" or "*Non*", with reference to the appropriate document prescribed by the *Immigration Regulation*. The question on the Application Form goes on to ask:

> *Si oui, quel(s) document(s), parmi les suivants, soumettez-vous pour attester votre niveau de connaissance en français?*

23. Applicants must specifically check the prescribed document they are submitting that attests to their meeting the PEQ's regulated requirement and provide that document. Applicants cannot simply self-assess their level of French without providing supporting documentation.[11] Nor can they, for example, sign an affidavit to the effect that their oral French is at an intermediate-advanced level, or provide an attestation from a French professor or anyone else to that effect.[12]

24. Applicants are neither expected nor permitted to self-evaluate their level of French independently of what is attested to by the document they provide.[13]

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[8] [redacted] Examination, p. 87.
[9] Examination, p. 89.
[10] **Exhibit P-3** to all Plaintiffs' proceedings: PEQ Application Form, A-0520-GF.
[11] [redacted] Examination, p. 37.
[12] Examination, p. 37.
[13] Examination, p. 42.

ii) The Minister's authority to review applications and impose penalties

25. The Minister may of course verify the truthfulness of the contents of a foreign national's CSQ application.[14] Any foreign national whose application contains declarations "the truthfulness of which is not demonstrated" can be called for a selection interview with the MIDI.[15] The applicant is required to answer an immigration officer's questions and produce documents to prove he or she meets the requirements set by the *Immigration Regulation*.[16]

26. If the Minister determines that a CSQ application contains false or misleading information, she may refuse that application pursuant to s. 3.2.1 of the *Immigration Act*.[17] The MIDI characterizes such refusals as rejections, distinguishing rejections made under s. 3.2.1 from rejections of files that are simply incomplete.[18]

27. The Minister may impose a penalty on the foreign national who submitted the application that contains such information:

3.2.2.1. The Minister may refuse to examine an application for a certificate made by a person who, in the past five years, has provided any false or misleading information or document relating to an application under this Act.	**3.2.2.1.** *Le ministre peut refuser d'examiner une demande de certificat d'une personne qui a fourni, depuis cinq ans ou moins, une information ou un document faux ou trompeur relativement à une demande faite en vertu de la présente loi*.

28. The difference between a refusal and a rejection of a CSQ application under s. 3.2.1 therefore relates directly to the possibility of sanction under s. 3.2.2.1.[19]

29. The Minister's power to impose such a sanction is a relatively recent addition to the *Immigration Act*. The second paragraph of s. 3.2.1 as well as s. 3.2.2.1 were introduced through Bill 53, *An Act to amend the Act respecting immigration to*

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[14] *Immigration Act*, s. 3.2.1
[15] *Immigration Regulation*, s. 8.
[16] *Immigration Regulation*, s. 9.
[17] *Immigration Act*, s. 3.2.1
[18] [redacted] Examination, p. 119.
[19] Examination, p. 118 : "*Le rejet présuppose qu'on va aller vers possiblement des sanctions*".

Québec,[20] whose preamble states that it "reinforces the provisions relating to the use of false documents and introduces an administrative sanction where an application for a certificate … may be rejected in such circumstances."

30. Michelle Courchesne, then-Minister of Immigration, stated: "*il faut s'assurer qu'effectivement on a la capacité de déceler ces documents faux ou trompeurs*", and further "*il y a quand même un degré de sévérité dans la sanction pour éviter que d'autres soient tentés de continuer de faire la même chose.*"[21]

31. In short, these provisions aim to weed out fraud.[22]

32. However, the MIDI does not actually have any written policy specifying what constitutes fraud, what would count as a false or misleading document, or in what circumstances the sanction created by s. 3.2.2.1 could apply.[23]

B. THE TREATMENT OF THE PLAINTIFFS' CSQ APPLICATIONS

33. Each of the Plaintiffs in this proceeding applied for a CSQ through the PEQ. [redacted] [redacted] and [redacted] applied as temporary workers under s. 38.1 of the *Immigration Regulation*. All other Plaintiffs applied after having completed, or while in the course of completing, a post-secondary or vocational degree at a Québec institution, pursuant to s. 38.2 of the *Immigration Regulation*.

34. Although all Plaintiffs submitted their applications on the understanding that if they successfully completed one of the French language exams or courses prescribed by the *Immigration Regulation*, they would meet the requirements of the program, this is not what occurred.

35. According to [redacted], the MIDI's PEQ coordinator[24] who swore affidavits in these proceedings, in the fall of 2016, representatives of the *Unité*

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[20] 1st Sess., 37 Leg., Quebec, 2004 (assented to June 17, 2004), S.Q. 2004, c. 18, ss. 7, 9.
[21] **Exhibit P-4** to all Plaintiffs' proceedings : *Journal des débats de la Commission de la Culture*, 37e législature, 1ère session, jeudi 10 juin 2004, Vol. 38 no 34, pp. 66 and 69.
[22] [redacted] Examination, p. 39.
[23] [redacted] Examination, p. 125.
[24] [redacted] Examination, p. 10.

permanente anti-corruption ("**UPAC**") informed the MIDI that some foreign nationals might be trying to circumvent the requirements of the PEQ.[25] Vaguely, the MIDI was told that CSQ applicants were allegedly attempting to get around the French language requirements of the PEQ using "*des voies de contournement*".[26]

36. The MIDI is not actually aware of what these alleged "*voies de contournement*" might be, or whether UPAC's suspicions have any truth to them.[27] Indeed, Ms. [redacted] admitted that the MIDI has no evidence that anyone has perpetuated any fraud in relation to the operation of the PEQ.[28]

37. Around the same time, the MIDI alleges it received phone calls from Canada Border Services Agency ("**CBSA**") agents stationed at U.S. land border crossings.[29] These agents would have informed the MIDI that "some" foreign nationals who held a CSQ through the PEQ had difficulty speaking French.[30] It is important to note that the CBSA does not play *any* role whatsoever in evaluating the French proficiency of CSQ applicants or holders.[31]

38. Looking for evidence of a fraud, the MIDI decided to call randomly selected PEQ applicants to interviews in November 2016 to verify the content of their applications.[32] In the course of these interviews, MIDI employees verified the applicants' documents; then, separate individuals acting as French evaluators assessed applicants' oral French ability.

39. At the completion of this random sampling of interviews, the MIDI did not find *any* evidence of fraud or of applicants falsifying documents.

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[25] [redacted] pp. 13, 15; Affidavit of [redacted] in file no. 500-17-098239-174, paras. 9-11 ("[redacted] **Afffidavit**"). **NOTE**: all references to the [redacted] Affidavit refer to the affidavit filed in file no. 500-17-098239-174. It is accepted that affidavits filed by [redacted] in all other joined files contain similar or identical statements.

[26] [redacted] Examination, pp. 13, 15.

[27] [redacted] Examination, pp. 44, 109.

[28] [redacted] Examination, pp. 107-108.

[29] [redacted] Affidavit, paras. 15-16; [redacted] Examination, pp. 14, 112-114.

[30] [redacted] Examination, p. 14, 113-114.

[31] [redacted] Examination, p. 115.

[32] [redacted] Examination, p. 17, [redacted] Affidavit, para. 18.

40. However, it decided that there was a problem with PEQ applicants' French ability. The MIDI consequently decided to administer its very own homegrown French language evaluation, which neither the *Immigration Act* nor the *Immigration Regulation* recognizes as a valid means of satisfying the PEQ's requirements, to every applicant who had submitted proof of having taken a French course.[33]

41. The MIDI sent letters to applicants, including all Plaintiffs in these proceedings, summoning them to interviews. Most letters contained the following statement:

> *Comme nous avons des motifs de croire que vous avez fourni une information ou un document faux ou trompeur relativement à votre niveau de connaissance du français, il vous est demandé de nous démontrer la véracité des déclarations faites à ce sujet en vous présentant à l'entrevue.*

42. Ms. [redacted] confirmed unequivocally that the MIDI's only reason to believe that applicants had provided "false or misleading information or documents" relating to their French ability – and the sole reason for which anyone was summoned to an interview – was the fact that applicants had submitted proof of having taken a French course.[34] Indeed, every applicant who submitted proof of a French course was summoned and subjected to the MIDI's new requirement.[35]

43. Table 1, attached, indicates which of the Plaintiffs received which type of letter summoning them to an interview.

44. When they attended their interviews, some Plaintiffs were interviewed by both immigration agents and French evaluators, while others' "interviews" only entailed the MIDI's new French evaluation.[36] A breakdown of which Plaintiffs received which type of interview is found in Table 2, attached.

45. The MIDI's new French exam was administered by one of five full-time or part-time MIDI employees who had been hired explicitly for the purpose of conducting such

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[33] [redacted] Affidavit, paras. 27-29.
[34] Examination, pp. 56-57.
[35] Examination, pp. 57-58.
[36] [redacted] Affidavit, paras. 34-35.

evaluations.[37] These evaluators were trained in applying the *Échelle québécoise* by the MIDI itself, and not by the Ministère de l'Éducation.[38]

46. Plaintiffs whose interviews were conducted by both an immigration agent and a French evaluator were informed immediately of the results of the MIDI's new oral French exam.[39] Plaintiffs who were evaluated as being at level 5 or 6 on the *Échelle québécoise* were told that their CSQ Applications would be refused, while Plaintiffs who were evaluated as being at level 4 or below were informed that their Applications would be rejected for misrepresentation.[40]

47. These Plaintiffs were then asked, on the spot, whether they wanted to provide the MIDI with any additional information to alter the MIDI's anticipated decision.[41]

48. Plaintiffs whose interviews consisted of only a French exam were not immediately informed of the result of that evaluation.[42] Rather, they subsequently received letters informing them of their results and of the MIDI's intent to refuse their applications (for levels 5 or 6) or reject them (for levels 4 or below).[43]

49. Some Plaintiffs attempted to provide follow-up information or documents to prove the veracity of their applications. These included attestations of Plaintiffs' attendance of their French courses and letters from their professors,[44] as well as personal letters in which Plaintiffs attempted to explain their performance on their French evaluation.[45] Letters from Plaintiffs' immigration attorneys even accompanied some submissions.[46] All of these follow-up submissions were futile.

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[37] [redacted] Examination, p. 146-147; **Undertaking E-9**: Ministerial rulings appointing French evaluators.
[38] Examination, pp. 144-145.
[39] Examination, p. 150.
[40] Examination, p. 150.
[41] Examination, pp. 150-151.
[42] Examination, p. 151-152.
[43] See Table 3.
[44] See e.g. file no. 500-17-098238-176: P-10; file no. 500-17-098240: P-10, P-90 through P-93; file no. 500-17-099865-175: P-17, P-38, P-45; file no. 500-17-099913-173: P-20, P-28, P-35, P-43, P-51, P-63, P-78, P-85, P-92, P-98, P-109, P-117, P-123, P-129, P-136, P-146.
[45] See e.g. file no. 500-17-099913-173: P-35, P-43, P-70.
[46] See e.g. file no. 500-17-098238-176: P-10; file no. 500-17-098240: P-10; file no. 500-17-099865-175: P-17, P-31, P-38, P-45; 500-17-099913-173: P-20, P-28, P-51, P-85, P-92, P-98, P-123, P-129, P-146, P-153.

C. THE DECISIONS TO REFUSE OR REJECT THE PLAINTIFFS' APPLICATIONS

50. The Minister ultimately refused or rejected each Plaintiff's CSQ application, regardless of whether the Plaintiff had submitted follow-up documentation. All Plaintiffs received letters informing them of the MIDI's decision.

51. As set out in Table 3, the Minister refused Plaintiffs whose oral French the MIDI assessed as being at level 5 or 6 on the *Échelle québécoise*, on the basis that these Plaintiffs did not meet the requirements for a CSQ under the PEQ. The Minister rejected Plaintiffs whose oral French was assessed as being at level 4 or below.[47]

52. While the MIDI occasionally issues administrative rejections, "*dans le cadre de l'opération ici, c'était vraiment utilisé initialement comme un rejet avec sanction*"[48] – that is, a rejection for fraud pursuant to s. 3.2.1 of the *Immigration Act*.

53. The letters the rejected Plaintiffs received (the content of which varied only depending on whether the Plaintiffs had provided follow-up information or documents in response to the MIDI's notice of intention to reject) all confirm this:

> *Les explications que vous nous avez fournies dans le cadre de votre entrevue ne permettent pas d'établir, de manière satisfaisante, conformément à l'article 3.2.1 de la Loi sur l'immigration au Québec, la véracité des déclarations faites ou l'authenticité de la documentation fournie relativement aux renseignements ou aux documents suivants :*
>
> • *Relevé de notes attestant la réussite d'un cours de français de stade intermédiaire, niveau 7 ou 8 selon l'Échelle québécoise des niveaux de compétence en français des personnes immigrantes ou son équivalent offert par un établissement d'enseignement du Québec au Québec.*
>
> *Lors de votre entrevue, vous avez démontré une connaissance du français oral de niveau [1 à 4] (production) selon l'Échelle québécoise des niveaux de compétence en français des personnes immigrantes, soit plus de deux niveaux d'écart avec le niveau de français déclaré.*
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> *En conséquence, nous vous informons que votre demande est rejetée.*

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[47] [redacted] Affidavit, paras. 42-45.
[48] [redacted] Examination, p. 119.

> *Nous vous rappelons également qu'en vertu de l'article 3.2.2.1 de la Loi sur l'immigration au Québec, le ministre peut refuser d'examiner toute nouvelle demande de certificat de votre part durant une période de cinq ans.*

54. The distinction between refusals and rejections was based on the MIDI's view that every Plaintiff whose French was assessed at level 4 or below had made false declarations on their Application Form with respect to their oral French ability.[49]

55. The MIDI's position was that Plaintiffs should have known the course the MIDI prescribed, and which they successfully completed, was insufficient; and that they therefore knowingly made false statements. As Ms. [redacted] put it, "*c'est en lien avec l'intention du candidat, c'est-à-dire est-ce qu'il avait l'intention de tromper le ministère?*"[50]

56. To be clear, the decision to treat Plaintiffs whose oral French was assessed at level 4 or below as having committed fraud was not made on the basis of any actual evidence of fraudulent activity taking place: the MIDI did not have any such evidence in a single Plaintiff's case.[51] Rather, the MIDI justified its presumption of fraud on the basis of UPAC's suspicions, the actual content or veracity of which is unknown to Ms. [redacted] and in any event, does not form part of the record.

57. Because of that "context", as Ms. [redacted] explained, the MIDI concluded that *all* Plaintiffs whose French was assessed as being at level or 4 below had probably been informed of the existence of strategies to circumvent the requirements of the PEQ, had participated in these strategies, and had therefore knowingly made false statements with respect to their French ability:[52]

> R : *Donc, considérant [existence de l'Échelle québécoise] et également, considérant que, avec les… les dénonciations qu'on avait eues de l'UPAC qu'on … qui nous avait informé là qu'il y avait des voies de contournement, qu'il y avait probablement des cas de fraude, qu'il y a… bon, il y avait des pratiques irrégulières comme on disait tout à l'heure là dans les … dans les établissements d'enseignement puis les commissions scolaires de la région de Montréal principalement, bien,*

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49 [redacted] Affidavit, paras. 42-44; [redacted] Examination, p. 120,
50 Examination, p. 121 (emphasis added)
51 Examination, p. 110.
52 Examination, p. 43.

> *on peut… on peut présumer ou on considère à ce moment-là que, bien, ces candidats-là, en toute connaissance de cause puis en étant souvent informés par des amis, des consultants en immigration, toutes sortes là […] Bien, on peut considérer là que l'information c'était probablement, « bien, il y a des cours de français qui se donnent à tel endroit… les cours sont probablement plus faciles qu'ailleurs, si vous voulez obtenir un CSQ, allez faire votre cours à cet endroit-là … puis, vous allez passer plus facilement. » Donc, nous, ce qu'on veut après, bien c'est… c'est contre-carrer ça*.
>
> Q : *Mais là, on parle d'hypothèses là, vous n'avez pas de preuve qu'un étudiant en particulier, dans le cadre de ce cours ou un autre, a réellement été dit que ce cours était plus facile en puis qu'il l'a choisi pour cette raison-la?*
>
> R : *On ne fait pas du… non, c'est ça, on fait pas du cas par cas, donc moi j'ai aucun… aucune preuve que, par exemple là, Monsieur [redacted] a délibérément choisi un cours de français parce que… parce que ce cours de français-là était considéré comme plus facile; donc il a utilisé une voie de contournement, sachant pertinemment que le document qu'il recevrait à la fin n'était pas… ne traduisait pas le niveau réel qu'il avait en français. Par contre, la problématique était tellement généralisée que, non, on ne peut pas faire du cas par cas. Mais on peut quand même considérer avec disons une assez grande certitude que beaucoup de candidats, disons étaient informés de la chose et ils ont pris la décision de… et on fait ça en sachant pertinemment que le document qu'ils avaient ne reflétait pas le niveau de français réel qu'ils … qu'ils aurait dû atteindre*.[53]

58. What is more, the MIDI decided to draw a "hard line" between Plaintiffs assessed as being at levels 4 or below and those assessed at level 5 or 6:

> *Dans un souci d'équité là, envers tous les candidats, on a appliqué une ligne dure. Donc un candidat qui était évalué 4 par un de nos évaluateurs, on a… un niveau 4, ça menait à une intention de rejet et à un rejet. Donc on a vraiment, on a appliqué une ligne dure pour justement éviter là de rentrer dans les cas par cas, puis d'avoir … de… de pouvoir avoir l'air de favoriser certaines personnes au détriment d'autres et tout ça*.[54]

59. Thus, in a context that Ms. [redacted] recognized was based on individual intent, the MIDI adopted a policy according to which every Plaintiff whose oral French

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[53] [redacted] Examination, pp. 106-108

[54] [redacted] Examination, p. 123 (emphasis added).

was judged to be at level 4 or below was deemed to have fraudulently misrepresented their French ability with the intention of deceiving the Minister.

60. Initially, Plaintiffs whose Applications were rejected received letters indicating that the Minister reserved the right to apply the sanction provided for in s. 3.2.2.1 of the *Immigration Act* to any subsequent application for a CSQ that the Plaintiff might submit in the next five years. At some point, however, the MIDI began issuing rejection letters that did not mention the sanction at s. 3.2.2.1 (see Table 4).

61. On June 30, 2017, faced with multiple Applications for Judicial Review, the MIDI backtracked somewhat. It issued the *Directive de gestion no*. *2017-001*[55] which stated that the Minister would not systematically apply the sanction at s. 3.2.2.1 to individuals whose applications were rejected because their French was assessed as being at level 4 or below. These applicants were permitted to apply without charge for a CSQ under the MIDI's Skilled Worker program within six months.[56]

IV. QUESTIONS AT ISSUE

62. These Applications for Judicial Review raise the following questions:

(1) Were the Decisions to Refuse and Decisions to Reject Plaintiffs' CSQ Applications unreasonable?

(2) Did the MIDI breach its obligations of procedural fairness to the Plaintiffs?

(3) If the Minister's Decisions are null, what is the appropriate remedy?

(4) Have all Plaintiffs filed for judicial review within a reasonable time?

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[55] File no. 500-17-099913-173, **Exhibit D-82**: *Directive de gestion no*. *2017-001*; [redacted] Examination, pp. 125, 131-132.

[56] [redacted] Affidavit, paras. 46-49.

V. ARGUMENT

A. STANDARD OF REVIEW

63. In deciding whether to grant Plaintiffs' applications for a selection certificate pursuant to s. 3.2.1 of the *Immigration Act* and ss. 38.1 and 38.2 of the *Immigration Regulation*, the Minister was interpreting and applying her home statute and connected legislation. As a result, the standard of review applicable to the Decisions to Refuse and the Decisions Reject is that of reasonableness.[57]

64. The question of whether the Minister breached her duty of procedural fairness continues to be assessed on a standard of correctness.[58]

65. Some jurisprudence from the Court of Appeal appears to allow for review of questions of natural justice on a standard of reasonableness where a decision-maker is applying its home statute.[59] Respectfully, however, that Court merely applied the reasoning used to arrive at a standard in substantive review to procedural questions, without justifying its approach or addressing the distinctions between substantive and procedural review.

66. In any event, to date, the Supreme Court of Canada has rejected such an approach. In *Khela*, the Supreme Court explicitly noted that:

> […] the ability to challenge a decision on the basis that it is unreasonable does not necessarily change the standard of review that applies to other flaws in the decision or in the decision-making process. For instance, the standard for determining whether the decision maker complied with the duty of procedural fairness will continue to be "correctness".[60]

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[57] *Dunsmuir v. New Brunswick*, 2008 SCC 9, para 54; *Goumbarak v. Québec (Attorney General)*, 2008 QCCA 1704, para. 39; *Liu c. Québec (Procureure générale)*, 2014 QCCS 5993, para. 37.
[58] *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, para. 43; *Mission Institution v. Khela*, 2014 SCC 24, para. 79; see also *Min c. Procureure générale du Québec (Ministère de l'Immigration, de la Diversité et de l'Inclusion)*, 2018 QCCS 15, paras. 13-14.
[59] See *Syndicat des travailleuses et travailleurs de ADF - CSN c. Syndicat des employés de Au Dragon forgé inc.*, 2013 QCCA 793, paras. 38, 44-47.
[60] *Khela*, para. 79.

67. This Court is bound by *Khela* and the other jurisprudence of the Supreme Court. Thus, the question as to whether the MIDI breached its obligation of procedural fairness to the Plaintiffs must be judged on the standard of correctness.

B. THE DECISIONS TO REFUSE AND REJECT WERE UNREASONABLE

68. The Minister takes the position that the MIDI is entitled to verify the accuracy of the information contained in individuals' CSQ applications, and is thus permitted to reassess applicants' French ability in the course of such "verifications". [61]

69. In reality, this case is not about whether the Minister may verify individuals' eligibility for a CSQ under the PEQ. The Plaintiffs do not question that the Minister has the power to verify "whether [the applicant] meets the requirements of [the] Regulation".[62] That is simply not what the Minister did in the present case.

70. The Minister did not "verify" whether Plaintiffs in fact met the requirements of ss. 38.1(c) or 38.2(d) of the *Immigration Regulation* – that is, whether Plaintiffs successfully completed a MIDI-approved course – nor did she question the veracity or authenticity of the document attesting to that fact.

71. Rather, the Minister disregarded the criteria established by Regulation and (1) imposed her own additional admission requirement on all PEQ applicants who submitted proof of having completed a MIDI-approved French course; (2) contradicted the actual requirements of ss. 38.1(c) and 38.2(d) of the *Immigration Regulation*; and (3) abdicated her decision-making responsibility with respect to Plaintiffs who were rejected by systematically deeming all Plaintiffs who scored level 4 or below on the MIDI's new French exam to have committed fraud.

72. The Minister's behaviour in all three respects was unreasonable, and irreparably tainted the decisions rendered with respect to the Plaintiffs' CSQ Applications. These Decisions to Refuse and Reject are not based on the prevailing statutory and regulatory requirements, and therefore cannot be reasonable.

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[61] [redacted] Examination, p. 37.
[62] *Immigration Regulation*, s. 9.

1. The Minister illegally imposed an additional admission requirement on PEQ applicants

73. Bodies that interpret a law or regulation – be they courts or administrative actors – may not supplement the text of that law or regulation.[63] Thus, an administrative actor who is called upon to render a decision based on the application of defined statutory or regulatory criteria cannot add to those criteria.[64] This is true even when the criteria in question are interpreted broadly and purposively.[65]

74. Where a decision is based on an assessment of criteria that are not found in the statute or regulation enabling that decision, it will necessarily be unreasonable.

75. As the Court of Appeal put in *Centre communautaire Mont Baldy inc. c. Québec (Commission municipale)*, a case concerning the interpretation and application of certain statutory criteria for exemptions from taxation by a municipal commission:

> *Les critères pour bénéficier du régime fiscal d'exception sont définis à la Loi. Le rôle de la Commission est de vérifier s'ils sont satisfaits et, suivant sa conclusion, d'accueillir ou rejeter la requête selon le cas. Elle ne peut se substituer au législateur pour ajouter aux obligations des demandeurs même si cela pouvait être utile ou prudent et surseoir à la reconnaissance du statut recherché jusqu'à ce que le requérant s'y soit conformé. Si elle le fait, cela constitue une violation flagrante et manifeste de la Loi et sa décision est manifestement déraisonnable car elle ne se fonde plus sur les dispositions législatives qu'elle est chargée d'interpréter et appliquer mais sur l'exécution d'une norme additionnelle externe et étrangère à celles découlant des critères formulés par le législateur*.[66]

76. In the present case, the language of the *Immigration Regulation* is crystal clear. Sections 38.1 and 38.2 specify that "The Minister issues a selection certificate … if the foreign national… accompanies the application" with one of the listed documents relating to the French language requirement. The *Regulation* thus requires the applicant to provide one of a specific set of documents attesting to his

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[63] See e.g. *Barrette v. Crabtree Estate*, [1993] 1 SCR 1027 at 1048-1049; *Marcoux c. Monty*, 2004 CanLII 17329 (QCCA) at paras. 7-10; *Directeur general des élections c. Larocque*, 2010 QCCA 1122 at paras. 35, 38-39; *Camps Odyssée inc. c. Commission municipale du Québec*, 2014 QCCS 1604 at para. 30.
[64] See e.g. *Canada (Procureur general) v. Lafrenière*, 2013 FCA 175 at para. 36; *Camps Odyssée inc. c. Commission municipale du Québec*, 2014 QCCS 1604 at para. 34.
[65] *Barrette v. Crabtree Estate* at 1048-1049.
[66] *Centre communautaire Mont Baldy inc. c. Québec (Commission municipale)*, EYB 1999-12407 (QC CA), p. 7 (emphasis added).

or her successful completion of a pre-approved means of evaluating French ability, not to pass an on-the-spot oral French evaluation – that has *not* been approved by Regulation – after having submitted an application.

77. The Minister's power to summon candidates to demonstrate the truthfulness of their application under s. 8 of the *Immigration Regulation* does not apply to permit the French evaluations that took place. In imposing a French assessment on the Plaintiffs, the Minister was not verifying whether the Plaintiffs had completed the French course to which their documents attested. [67] In fact, as Ms. [redacted] confirmed, the MIDI did not verify Plaintiffs' documents at all: "*On n'a pas fait de vérification dans le sens que le doute n'était pas sur est-ce que les documents qui ont été soumis en réponse à l'intention de rejet étaient véridiques ou non*."[68]

78. The same is true of any verification of the Plaintiffs' affirmative responses to Question 8 on the Application Form, namely their declarations that they possess an intermediate – advanced proficiency in oral French, with reference to the appropriate document. Question 8 cannot be read independently of the documents that candidates are required to submit, because doing so would amount to giving the question substantive weight as an independent selection criterion. Since the MIDI does not have the power to create new substantive requirements for the PEQ that are not found in the *Immigration Regulation*, it certainly cannot do so by simply inserting a new question into the CSQ Application Form.

79. Thus, while the Minister was entitled to verify the legitimacy of the documents serving as Plaintiffs' proof of completion of a French course, that did not permit her to subject the Plaintiffs to a new French examination.

80. The circumstances of the present case are analogous to those in the case *Larocque*, in which the Court of Appeal reproached the City of Montreal's electoral

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[67] Indeed, the additional documents filed by many Plaintiffs after receiving notices of the Minister's intent to reject their applications attested precisely to their having participated in and completed these courses – see e.g., just in file no. 500-17-099913-173, Exhibits P-20, P-28, P-35, P-43, P-51, P-78, P-85, P-92, P-98, P-109, P-117, P-123, P-129, P-136, and P-146.

[68] [redacted] Examination, p. 100.

revision commission for requiring that any individual making a demand to strike an elector off the list personally know the elector in question. The Court noted that, although the law imposed certain conditions on the admissibility of a request to strike an elector, "*[r]ien dans le texte des dispositions pertinentes n'impose une […] obligation [de connaissance personnelle]*".[69]

81. Notably, while the Court of Appeal acknowledged that the revision commission had the authority to test the declarations made by the individual requesting that an elector be struck off the list,

> *[c]e pouvoir [de la commission]… ne l'autorise pas à exiger comme condition préalable au dépôt d'une demande de radiation que le requérant ait une connaissance personnelle de la personne visée. Je reconnais que la commission de révision est maître de ses règles de preuve et de procédure, mais cela ne l'exempte pas de l'obligation de respecter la Loi. Elle ne peut ajouter aux conditions qui y sont prévues des éléments qui reviennent à nier le droit de déposer une demande de radiation lorsque, bien sûr, les conditions de recevabilité sont réunies*.[70]

82. Yet that is precisely what happened here. By imposing an oral French exam on all Plaintiffs, the Minister subjected them to a novel requirement found nowhere in the *Immigration Regulation*, breaching their right to have their CSQ applications considered in accordance with the process established by that *Regulation*, not to mention the MIDI's own accompanying *Guide des procedures d'immigration*.[71]

83. This is the only reasonable view of the MIDI's systematic summoning of all Plaintiffs, and indeed all PEQ applicants who submitted proof of having completed a French course pursuant to ss. 38.1(c) or 38.2(d) of the *Immigration Regulation*, [72] to an interview where their oral French was tested.

84. Ms. [redacted] herself acknowledged that these convocations were systematic, and based only on an applicant's having submitted a specific type of document:

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[69] *Directeur general des élections c. Larocque*, 2010 QCCA 1122 at para. 38.
[70] *Ibid* at para. 39 (emphasis added).
[71] **Exhibit PS-1**: *Guide des procédures d'immigration*, *Composante 3 : Programme de recrutement et de sélection des candidats à l'immigration économique, Chapitre 4 : Le programme de l'expérience québécoise* ("*Guide des procédures d'immigration* ").
[72] [redacted] Examination, p. 59.

> R: *Donc, systématiquement, un candidat qui présente une attestation pour le cours de français, on le rencontre en entrevue pour évaluer son niveau de français*.
>
> Q : *Donc, tout candidat, pour tout cours de français, peu importe la commission scolaire ou juste ces deux commissions scolaires là?*
>
> R : *Non, pour tout… toute commission scolaire (…) c'est basé sur le … le fait que c'est un cours de français de niveau intermédiaire avancé, donc l'attestation en tant que telle, tout document… tout candidat a été convoqué en entrevue*.[73]

85. Thus, for all applicants who submitted proof of having completed a recognized French course, passing the MIDI's own French assessment became a *de facto* requirement of the PEQ process.[74] Meanwhile, those who submitted other documents listed in ss. 38.1(c) or 38.2(d) were not even called to interviews.

86. This is a clear breach of the Minister's overarching obligation to act in accordance with the rule of law. The Court must intervene to sanction this illegitimate behaviour and to ensure that the Minister abides by the obligations and process imposed on her by law. For this reason alone, the Decisions to Refuse and Reject must be quashed.

2. The Minister unreasonably contradicted the requirements of the *Immigration Regulation*

87. In addition to illegally imposing a new condition for obtaining a CSQ on all Plaintiffs, the Minister adopted an unreasonable interpretation of ss. 38.1 and 38.2 of the *Immigration Regulation* that undermined the PEQ's actual requirements.

88. It is a basic principle of statutory interpretation that a decision-maker cannot adopt an interpretation that undermines the scheme of the statute or regulation in question.[75] An administrative decision that relies on such an interpretation will be unreasonable.[76]

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[73] [redacted] Examination, pp. 56-57.
[74] See [redacted] Examination, p. 60, lines 14-25.
[75] See e.g. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, para. 36.
[76] *Wilson v. Atomic Energy of Canada Ltd.*, paras. 35, 39.

89. It is accepted that the purpose of ss. 38.1(c) and 38.2(d) is to ensure a minimum French language requirement. However, as stated above, the actual requirements of these provisions are clear. Applicants for a CSQ must successfully complete one of the prescribed courses or exams and submit documentation attesting to that fact. The *Immigration Regulation* does not require applicants to otherwise demonstrate proficiency in oral French to the MIDI; rather, the Government deems satisfaction of one of the prescribed means, and proof thereof, to be sufficient.

90. The MIDI's own *Guide des procedures d'immigration* for the PEQ reflects this. Far from suggesting that candidates might be expected to independently demonstrate French proficiency to the MIDI, the *Guide* stipulates:

> … *[le candidat] démontre sa connaissance du français oral par la présentation d'un diplôme admissible, de relevés de notes, de résultats d'un test ou d'un diplôme reconnu par le Ministère pour l'évaluation des compétences du français ou d'un document attestant qu'il satisfait aux exigences linguistiques d'un ordre professionnel au Québec*;[77]
>
> *… le candidat doit satisfaire à la condition de la connaissance du français oral au moment de la présentation de sa demande… Dans tous les cas, le candidat est invité de présenter un document officiel permettant d'établir sa connaissance du français. Le document présenté doit correspondre à l'un des documents suivants :* […][78]
>
> *... Conformément à l'article 38.1 du RSRÉ, le candidat titulaire d'un permis de travail temporaire doit satisfaire à la condition de la connaissance du français oral au moment de la présentation de sa demande et il est invité à présenter, dans le format exigé dans la demande de CSQ, un des documents suivants afin de l'établir :* […][79]

91. Thus, to the extent that the goal of ss. 38.1(c) and 38.2(d) is to welcome immigrants with a certain French ability, when read together with the MIDI's own *Guide*, these sections indicate that this goal is to be met by a series of objective measures of French proficiency.

92. This is the only conclusion that can be drawn not just from the text of the *Regulations* and the *Guide*, but also from the fact that applicants are not expected

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[77] *Guide des procédures d'immigration*, p. 13.
[78] *Guide des procédures d'immigration*, p. 21.
[79] *Guide des procédures d'immigration*, p. 32.

to self-evaluate their French ability;[80] and that applicants must support their response to Question 8 on the Application Form with one of the documents listed in the *Immigration Regulation* – such that an applicant could only check the boxes for "*Oui*" in response to the question if he or she has fulfilled the criteria established by regulation and has a documents to prove it.

93. Indeed, the MIDI itself does not allow applicants to submit any other proof of their French proficiency.[81] In particular, applicants cannot simply request a French examination with the MIDI in lieu of submitting one of the documents listed in the *Immigration Regulation*. But if applicants cannot themselves dispense of the obligation to follow a six-month course and instead opt for a 30-minute interview, neither can the MIDI disregard the statutory criteria and impose its own.

94. Failing to accept documentation of a French course as the demonstration of a Plaintiff's French ability amounts to subjecting Plaintiffs to a standard that could arguably never be satisfied by any sort of document.[82] In fact, Ms. [redacted] herself was unable to say what sort of documentation or evidence any Plaintiff could possibly have submitted after an interview to demonstrate compliance with the requirements of the *Immigration Regulation*.[83]

95. Thus, by relying on an alternative measure of French proficiency when making decisions about the Plaintiffs' Applications, the Minister was not verifying whether an applicant meets the requirements of the *Regulation*. Rather, she was contradicting pre-established objective measures of French ability that had been deemed sufficient to meet the requirements of the PEQ program, and consequently undermining the very purpose of the exhaustive list provided for in ss. 38.1(c) and 38.2(d) of that *Regulation*. In short, an interview lasting an average of approximately half an hour was used to override courses that Plaintiffs attended for months, in which they completed assignments, met with professors, and took final examinations.

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[80] [redacted] Examination, p. 42.
[81] [redacted] Examination, p. 37.
[82] *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, para. 17.
[83] [redacted] Examination, pp. 111-112.

96. It bears emphasizing that the Minister is the one who determines which courses are deemed to satisfy the *Regulation*. The *Guide* contains the list of specific French courses that are recognized by the MIDI as being at level 7 or 8 of the *Échelle québécoise*,[84] all of which were evaluated by the Ministère de l'Éducation as representing an intermediate – advanced level of French.[85] Applicants must choose from among these particular courses.

97. Clearly, the Minister is now dissatisfied with the courses she herself approved. But if the problem is with the courses themselves, the Minister must address *that* problem.

98. Yet, despite acknowledging that there might be a problem with the approved French courses,[86] the MIDI has not done anything to try to solve it.

99. The MIDI has not verified the quality of the French courses listed in the *Guide*[87] – actually denying that it has any sort of mandate to do so.[88] It has not sought changes to the *Immigration Regulations*, it has not changed its *Guide*, and has not removed a single course from the list of approved courses. Nor has it suspended the operation of the PEQ, or its acceptance of French course results as one of the valid means of fulfilling the program's requirements. It has not even informed potential applicants that French course results are now considered meaningless, and that a 30-minute oral French exam now determines their fate.[89]

100. Thus, despite [redacted]'s claim that "*l'idée c'est pas de mettre la charge sur le dos du candidat là*",[90] that is precisely what the Minister has done.

101. If the Minister is unsatisfied with the outcomes of the French courses approved by the Ministère de l'Éducation, the MIDI should work either with that Ministère to change the course accreditation process, or with the Government to amend the

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[84] Annexes 1-3 to the *Guide des procédures d'immigration*, **Exhibits P-3**, **PS-2** and **PS-3**.
[85] [redacted] Examination, pp. 87-89.
[86] Examination, p. 102.
[87] Examination, p. 55.
[88] *Ibid*.
[89] [redacted] Examination, p. 62.
[90] Examination, p. 105.

criteria of ss. 38.1(c) and 38.2(d) of the *Immigration Regulation*.[91] However, until such time as any amendments to ss. 38.1(c) and 38.2(d) of the *Regulation* are brought into force, the Minister must apply the *Regulation* as it is drafted.

102. The Minister simply cannot penalize applicants for following the process established by law and attending a course that the MIDI approved. Doing so is unreasonable and unquestionably illegal. Consequently, the Decisions to Refuse and Reject the Plaintiffs' CSQ applications must be quashed.

3. The Minister abdicated her decision-making responsibility toward rejected Plaintiffs

103. As explained above, the MIDI adopted the hard-line policy – which Ms. [redacted] audaciously characterized as a mere "*décision administrative*"[92] – that all Plaintiffs whose French was assessed at level 4 or below on the *Échelle québécoise* had intended to deceive the Minister.[93] These Plaintiffs' Applications were rejected for misrepresentation/fraud. In doing so, the Minister abdicated her decision-making responsibility.

104. The adoption of a policy that is incompatible with the nature of the discretionary authority in question – in this case, a requirement of establishing individual intent – amounts to a refusal to exercise that authority.[94] Failing to determine if each rejected Plaintiff had the required individual intent is thus a refusal to apply the law:

> *Le titulaire d'un pouvoir discrétionnaire peut valablement adopter des politiques administratives qui ont pour effet de mieux cerner l'usage qu'il entend faire de son pouvoir. Cependant, une telle politique ne peut avoir pour effet de refuser d'appliquer la loi, en tout ou en partie, à l'ensemble des personnes assujetties ou à certaines catégories de ces personnes*.[95]

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[91] Indeed, **Undertaking E-1(d)** to the [redacted] Examination (*Note du 21 avril 2017*), p. 7, indicates that the MIDI did consider amendments to ss. 38.1(c) and 38.2(d) to refer only to a demonstration of a certain French ability, but these draft amendments were ultimately abandoned.

[92] [redacted] Examination, p. 121.

[93] [redacted] Examination, p. 121.

[94] Pierre Issalys and Denis Lemieux, *L'action gouvernementale, Précis de droit des institutions administratives*, 3rd ed. (Cowansville, Qc : Éditions Yvon Blais, 2009), p. 218.

[95] Issalys and Lemieux, p. 217.

105. Reliance on a general policy "*ne saurait … permettre à l'autorité à laquelle la loi confère une discrétion de s'en remettre à une ligne de conduite préétablie, au détriment de l'autonomie décisionnelle qui lui a été attribuée en vue d'apprécier chaque cas à son mérite*."[96]

106. The Minister clearly failed to appreciate the merits of the rejected Plaintiffs' cases. She rendered her decisions despite acknowledging the absence of evidence that any individual Plaintiff had acted fraudulently.[97] Rather, she invoked the context (namely, vague and unsubstantiated allegations from UPAC and CBSA[98]) to presume an ill intention:

> *… on pouvait considérer que les candidats qu'on avait rencontrés dans le cadre de… des entrevues, s'ils avaient un niveau 1, 2, 3 ou 4… avaient fait une fausse déclaration dans leur demande en sachant qu'il existait des voies de contournement, que les candidats été [sic] informés très probablement de ces voies de contournement là et avaient… avaient intégré ou avaient participé, finalement, en toute connaissance de cause là à ce… ces stratagèmes-là pour obtenir une attestation d'un cours de français qui n'attestait pas nécessairement de leur niveau réel*.[99]

107. Not only that, but by adopting a uniform standard for all Plaintiffs, the Minister refused to even consider that any Plaintiff might have acted in good faith:

> *Donc on a vraiment, on a appliqué une ligne dure pour justement éviter là de rentrer dans les cas par cas*.[100]

108. In one of the most egregious examples of the Minister's application of this policy, the Plaintiff [redacted] submitted the results of the TÉFAQ, an oral French test recognized as fulfilling the requirements of ss. 38.1(c) or 38.2(d), to the MIDI after her CSQ Application was rejected.[101] These test results not only clearly demonstrated Ms. [redacted]'s good faith but were moreover an alternate proof that she

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[96] *Lachine General Hospital Corp. c. Québec (Procureur general)*, [1996] RJQ 2804 (QC CA), p. 25 (emphasis added).
[97] [redacted] Examination, pp. 108, 109.
[98] [redacted] Affidavit, paras. 9-18; [redacted] Examination, pp. 43, 106.
[99] [redacted] Examination, pp. 43-44 (emphasis added).
[100] [redacted] Examination, p. 123 (emphasis added).
[101] See **Exhibit PS-4**: Letter from attorneys for [redacted] dated September 27, 2017, and accompanying test results showing [redacted] achieving a B2 level on the TÉFAQ.

fulfilled the criteria of the *Immigration Regulation*. Nevertheless, the MIDI maintained its Decision to Reject Ms. [redacted]'s Application on the basis that she committed fraud.

109. In fact, the MIDI actually had Ms. [redacted]'s TÉFAQ results re-evaluated by the Parisian organization that oversaw administration of the test.[102] The MIDI moreover stuck to its hard-line policy, taking the position that these test results, which showed Ms. [redacted]'s oral French as being at the level of B2 (intermediate – advanced), did not prove that she had possessed this level of French at the time she had submitted her CSQ Application.[103] This is despite the fact that the MIDI's French evaluations themselves took place weeks, if not months after Plaintiffs filed their Applications.[104]

110. The Decisions to Reject are not based on any individualized assessment of actual misrepresentation or fraud. For these reasons, the Decisions to Reject are clearly unreasonable and must be quashed.

C. THE MINISTER FAILED TO RESPECT THE REQUIREMENTS OF PROCEDURAL FAIRNESS

1. The Plaintiffs were entitled to notice of the case to be met

111. It is recognized that "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case."[105] Among the different forms that the guarantee of fairness can take is the right of individuals affected by an administrative decision to obtain notice of the case to be met and of the procedure that will be followed, and the disclosure of information that might lead a decision-maker to adopt a negative decision.[106]

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[102] Exhibit PS-5.
[103] **Exhibit PS-5**: Letter from the Attorney General of Québec dated October 2, 2017 in response to the letter sent on behalf of [redacted]
[104] [redacted] Examination, p. 93.
[105] *Knight v. Indian Head School Division No. 19*, [1990] 1 SCR 653 at 682; *An act respecting administrative justice*, CQLR c. J-3, ss. 2, 4-5.
[106] See Grant Huscroft, "From Natural Justice to Fairness: Thresholds, Content, and the Role of Judicial Review" in Colleen M. Flood & Lorne Sossin, *Administrative Law in Context* (2nd ed.) (Toronto: Emond Montgomery, 2013), 147 at p. 171-173.

112. The Supreme Court in *Baker v. Canada (Minister of Citizenship and Immigration)* set out five non-exhaustive factors to be evaluated in assessing how much procedural fairness is required in a particular case:

    a) The nature of the decision and decision-making process (administrative versus adjudicative);

    b) The role of the particular decision in the administrative scheme at hand, with a focus in particular on the availability of an appeal mechanism;

    c) The importance of the decision to the party affected by it;

    d) The existence of any legitimate expectations that a particular process will be followed; and

    e) The relevance of the choice of procedures made by the decision-maker.[107]

113. It cannot seriously be contested that the Minister's decisions in the present case are of significant importance to the Plaintiffs: the Supreme Court in *Baker* and subsequent cases recognized the "exceptional importance" of immigration decisions to the individuals affected by them.[108]

114. Moreover, the *Immigration Act* and *Immigration Regulations* contain no mechanism for Plaintiffs to internally appeal, or ask for reconsideration of, the decisions rendered with respect to their CSQ applications. Such a process is provided for the decision to revoke a CSQ, but not for the decision to refuse or reject an application for one.[109] This further militates for greater procedural protections for initial CSQ applicants such as the Plaintiffs.[110]

115. Finally, the PEQ is advertised by the MIDI[111] as being a paper-based, interview-free process. While the *Immigration Act* and *Immigration Regulation* permit the Minister to call CSQ applicants for interviews to verify the information and documents they submit, all Plaintiffs nevertheless had the legitimate expectation

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[107] *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, paras. 23-27; see also *Goumbarak*, para. 86.
[108] *Baker* para. 31.
[109] *Immigration Act*, s. 17(b).
[110] *Baker*, para. 24.
[111] [redacted] Examination, **Undertaking E-3**: Power Point presentations from 2015, 2016, and 2017, p. 8 of each presentation.

that such an interview would consist of a verification of the documentation they had already submitted, not of a novel French examination provided for nowhere in the MIDI's statute, regulations, or informal guides.

116. Thus, although in the present case the Minister does have the power to establish her own procedure,[112] and follows a decision-making process more administrative than adjudicative in nature, when balanced with the significance of the impact of the Minister's decisions on Plaintiffs' lives, the absence of any mechanism to appeal those decisions, and the Plaintiffs' legitimate procedural expectations, it is clear that Plaintiffs were entitled to significant procedural protections.

117. At the very least, Plaintiffs should have been informed of the reason they were being called in for an interview and what would be expected of them during that interview – namely, that they would be subject to an oral French evaluation.

2. The Minister failed to provide Plaintiffs notice of the case to be met

118. Certain Plaintiffs[113] received letters summoning them to interviews that contained absolutely no indication of why they were actually being summoned. They were simply told that purpose of the interview was to "*établir si vous répondez aux exigences du Programme de l'expérience québécoise*" and were required to bring the originals of the documents they submitted in support of their CSQ Application.

119. These Plaintiffs were not informed that the MIDI's only real concern had to do with the requirements of ss. 38.1(c) or 38.2(d) of the *Immigration Regulation*. They were certainly not informed that, in addition to[114] (or in lieu of![115]) having their documents checked, they would be subject to the MIDI's own oral French exam. This is despite the fact that the results of that evaluation were ultimately the sole reason for which the Plaintiffs' Applications were refused or rejected.

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[112] *Chazi v. Québec*, 2008 QCCA 1703, para. 29.
[113] See Table 1: Letter without mention of concern about French language ability.
[114] Table 2: Interview with immigration officer and French evaluator.
[115] Table 2: Interview with French evaluator only.

120. Essentially, the Plaintiffs were taken by surprise about a process that would turn out to be determinative of the outcome of their CSQ Applications.

121. To the extent the MIDI might claim that Plaintiffs received all the information they needed simply because the *Immigration Act* and *Immigration Regulations* provide for the possibility of an interview as part of the Minister's verification ability, this type of argument is disingenuous. The fact that Plaintiffs knew they could be called in for a verification interview does not mean they could have known they would be subject to a new linguistic examination in the course of that interview.

122. The Minister's failure to inform these Plaintiffs of the fact that their French would be evaluated therefore consists of a clear and complete breach of her obligation to provide Plaintiffs of notice of the case they had to meet to satisfy the MIDI. The Decisions rendered in these Plaintiffs' files must consequently be quashed.

123. At some point, the MIDI began sending letters with the following statement:

> *Comme nous avons des motifs de croire que vous avez fourni une information ou un document faux ou trompeur relativement à votre niveau de connaissance du français, il vous est demandé de nous démontrer la véracité des déclarations faites à ce sujet en vous présentant à l'entrevue.*

124. These letters were still inadequate; in fact, in some respects they are worse than the letters that did not mention French at all, in that they misleadingly made it seem as though information contained in Plaintiffs' documents was the problem.

125. To the extent that Plaintiffs could have expected to be asked to demonstrate the truthfulness of the declarations made in their Application Form, once again, the MIDI's *Guide* states that requisite French ability will be demonstrated by the presentation of proof of completion of a French course.

126. Thus, on the basis of the above convocation letter and the provisions of the *Guide*, Plaintiffs could have reasonably expected to be required to prove the veracity of their documents showing that they had completed a French course as the demonstration of the declaration they had made at Question 8 of the Application

Form. Indeed, according to the MIDI's own *Guide*, these documents were the only means for Plaintiffs to demonstrate their French ability!

127. These Plaintiffs certainly were not informed that the true purpose of the interview was an independent French examination that had nothing to do with the documents they were asked to present. The Minister's failure to provide this crucial information constitutes yet another breach of her procedural obligations toward them, and thus yet another reason to quash the impugned Decisions.

3. The Minister concluded that the vast majority of Plaintiffs had committed fraud without giving them the opportunity to defend themselves

128. The Minister's acknowledged failure to examine rejected Plaintiffs' files and motives on an individualized, case-by-case basis not only undermines the Decisions to Reject substantively, it is also grossly procedurally unfair.

129. The Minister's rejection of Plaintiffs on the grounds that they had intentionally committed fraud – a conclusion based on a presumption for which the Minister had no evidence, and which Plaintiffs were not permitted to rebut – is arbitrary and capricious. This is precisely the type of tainted decision-making that the guarantees of procedural fairness are meant to protect against.[116]

130. If the Minister truly suspected that Plaintiffs had intentionally committed fraud in their CSQ applications, the Minister actually had a stronger procedural obligation toward these Plaintiffs; that heightened obligation flows from the potential consequences of a rejection under s. 3.2.1 of the *Immigration Act*.[117]

131. First, Plaintiffs risk being subject to the discretionary sanction provided for at s. 3.2.2.1 of the *Immigration Act*, which poses a significant risk to these Plaintiffs' ability to submit any future immigration application within Quebec.

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[116] *Baker* para. 38, citing *Northwestern Utilities Ltd. v. City of Edmonton*, [1979] 1 SCR 685 at 706.
[117] *Baker*, para. 25.

132. The fact that the MIDI subsequently issued the *Directive de gestion no*. *2017-001* – a policy that can be repealed or replaced at any time with no formality – has no bearing on the nature of the procedural obligations incumbent on the Minister.

133. First, this *Directive* cannot have any real effect on the potential consequences of a rejection under s. 3.2.1 of the *Immigration Act*. The Minister cannot, by an internal policy, fetter the discretion created by s. 3.2.2.1 by refusing in advance to apply that sanction to a set of cases: "an internal policy should not invariably dictate the result of a decision and impose a position to which a public body may not derogate."[118] As long as the Minister retains the discretion to apply the sanction, rejected Plaintiffs should rightly be concerned that, *Directive* or no *Directive*, this sanction might be applied to them at some future date.

134. But even if this Court accepts that the Minister is now foreclosed from applying the sanction at s. 3.2.2.1 to any Plaintiffs who were rejected, a rejection under s. 3.2.1 can still have other negative consequences for these Plaintiffs.

135. Whatever the MIDI's internal policy with respect to s. 3.2.2.1, her Decisions remain rejections for misrepresentation or fraud. Indeed, when asked whether the *Directive* was adopted because the affected Plaintiffs were no longer considered to have committed fraud, Ms. [redacted] was not able to answer the question.[119]

136. This means that the notation in the Plaintiffs' MIDI file remains that their CSQ applications were rejected for fraud pursuant to s. 3.2.1 of the *Immigration Act*.

137. In addition to being a gross violation of the Plaintiffs' dignity, this can have serious consequences for any Plaintiffs who might subsequently decide to submit an immigration application in any other province, or federally. At the federal level, any Plaintiff who applies for permanent residence will need to indicate that he or she

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[118] *Kamran c. Québec (Ministère de l'Immigration, de la Diversité et de l'Inclusion)*, 2016 QCCS 2538, para. 64; see also Pierre Issalys and Denis Lemieux, *L'action gouvernementale, Précis de droit des institutions administratives*, 3rd ed. (Cowansville, Qc : Éditions Yvon Blais, 2009), p. 109 : « *les directives ne peuvent pas établir une règle obligatoire à laquelle les administrateurs n'ont aucun pouvoir discrétionnaire de déroger* ».

[119] [redacted] Examination, p. 131.

has been rejected by the MIDI in the past, and will need to explain that the basis of this rejection was a determination of misrepresentation.[120] The same type of declaration is required on immigration application forms in other provinces.[121] Such a declaration may jeopardize the Plaintiffs' other immigration application in a way that a mere administrative refusal or rejection would not.

138. Given the severity of the consequences a Plaintiff can suffer both inside and outside of Quebec for having been rejected pursuant to s. 3.2.1 of the *Immigration Act*, it is clear that such a rejection must only be issued in the context of even more stringent procedural safeguards than those ordinarily owed to CSQ applicants.

139. Most fundamentally, any conclusions the Minister drew about the existence of fraud should have been individualized and fact-specific, not based on general, vague, and unsubstantiated allegations of potential conspiracies or misdeeds.

140. As Ms. [redacted] explained, rejections under s. 3.2.1 of the *Immigration Act* are issued to individuals who have the intent to deceive the Minister. As such, the Minister should have made specific efforts to determine whether each individual Plaintiff genuinely intended to deceive the MIDI (as opposed to assuming it), informed each Plaintiff of the reasons for which he or she was individually suspected of having committed fraud, and given each Plaintiff a meaningful opportunity to submit evidence to contradict any such specific findings.

141. Instead, the Minister relied on rumour and conjecture, with Ms. [redacted] freely admitting that the MIDI had no evidence of any Plaintiff committing fraud. This is an abject failure to meet the Minister's procedural burden.

D. REMEDY

142. Normally, the remedy on judicial review of an administrative decision is to quash the impugned decision and remit it to the appropriate decision-maker for re-

[120] **Exhibit PS-4**: Citizenship and Immigration Canada form IMM 5669 E: Schedule A, question 6d)
[121] See **Exhibit PS-5**, *en liasse*: provincial immigration forms or requirements: PS-5-A and PS-5-B (provinces that require submission of CIC form IMM 5669 E); PS-5-C through PS-5-E (provinces whose own immigration forms ask about past immigration outcomes).

determination in a manner that cures the original decision's procedural and/or substantive defects.[122] That is certainly one option open to the Court in this case.

143. In some cases, however, courts can issue *mandamus* orders obliging the administrative actor in question to render a specific decision, particularly if simply remitting a file back to the decision-maker will be useless or inappropriate:[123]

> *L'ordonnance sera inutile si, en fonction des faits de l'espèce, la discrétion est restreinte ou qu'elle fut de fait exercée. Il en sera de même si l'organisme a épuisé sa compétence. L'ordonnance sera inappropriée notamment s'il est peu probable que l'organisme agisse conformément aux règles de justice naturelle ou encore si le retour occasionne un délai indu*.[124]

144. Remitting the file may moreover be useless where a remedy of the substantive defects will inevitably lead to only one outcome,[125] or inappropriate where the decision-maker has acted arbitrarily, abusively, or in bad faith.[126]

145. Both criteria are fulfilled in the present case.

146. Remitting the Plaintiffs' CSQ Applications to the Minister is futile because it is clear that the Plaintiffs fulfill all of the criteria of 38.1 and 38.2 of the *Immigration Regulation*. Indeed, according to the Decisions to Refuse and Reject, the only reason each Plaintiffs' Application was not granted was the result of that Plaintiff's French exam.

147. Thus, but for the Minister's illegal imposition of oral French evaluations and her unreasonable interpretation of the *Immigration Regulation*, these Plaintiffs would have been recognized as meeting the requirements for a CSQ.

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[122] *Québec (Ministre du Développement durable, de l'Environnement et des Parcs) c. 9007-5193 Québec inc.*, 2007 QCCA 667, paras. 26-27.
[123] *Québec (Ministre du Développement durable, de l'Environnement et des Parcs)*, para. 28.
[124] *Québec (Ministre du Développement durable, de l'Environnement et des Parcs)*, para. 28; see also *Canada (Attorney General) v. PHS Community Services*, 2011 SCC 44, para. 148; *9110-8274 Québec inc. c. St-Cyprien-de-Napierville (Municipalité de la paroisse de),* 2009 QCCS 6566, para. 124.
[125] *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*, 2001 SCC 41, para. 114; *PHS*, para. 148.
[126] *Vallières c. Courtiers J.D. & associés ltée*, 1998 CanLII 13074 (QC CA), EYB 1998-08041, pp. 29-30; *St-Cyprien-de-Napierville (Municipalité de la paroisse de) c. 9110-8274 Québec inc.*, 2011 QCCA 2048, para. 68, referring to the Trial Judge's conclusions in 2009 QCCS 6566, para. 112, 124.

148. While the Attorney General will doubtless argue that the Minister has a residual discretion under s. 3.1 of the *Immigration Act* to refuse a CSQ application even where an applicant fulfills all of the statutory criteria, in the particular circumstances of this case, the Minister did not, and could not, rely on this discretion to refuse the Plaintiffs' applications.

149. The only ground on which the Minister could plausibly argue that any Plaintiffs would not be able to properly integrate into Quebec society would be based on the MIDI's re-evaluation of the Plaintiffs' French ability. However, the Minister would necessarily be prohibited from relying on such a ground since it would amount to relying on the results of the illegal oral French evaluations.

150. Returning the files to the Minister would therefore not serve any useful purpose. In fact, in this case, it would also be inappropriate.

151. The MIDI's actions in the present case go beyond the merely unreasonable. Based on no evidence, the MIDI presumed all PEQ applicants who simply took a MIDI-approved French course to be in bad faith. Unable to identify a specific problem or pattern with any particular school board, educational institution, course or applicant, the MIDI furtively replaced the regulatory criteria with its own home-grown French evaluations without informing any Plaintiff of its new unilateral PEQ requirement. To this day, the MIDI has consciously chosen not to inform potential applicants that there is any problem with the courses,[127] or that every applicant who takes a course will be subjected to a MIDI oral French evaluation for which they cannot even prepare. The MIDI moreover has no intention of trying to regularize the situation for the future by seeking changes to the law. [128]

152. This type of blatant illegality is capricious and, from the perspective of a Plaintiff simply trying to follow the rules as they are written, arbitrary. In so acting, the Minister has totally abdicated her statutory responsibilities.

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[127] [redacted] Examination, p. 62.
[128] Examination, p. 60.

153. Moreover, obliging the Minister to reconsider her decision in every Plaintiff's case would take a considerable amount of time, causing some Plaintiffs significant prejudice because their work permits will expire in a matter of months.[129] Given that these Plaintiffs' precarious position is purely the result of the Minister's illegal decision-making, the Plaintiffs should not be forced to continue to bear the consequences of these decisions after they have been quashed.

154. In these circumstances, the only appropriate response by the reviewing Court is to ensure that the Minister does not have another opportunity to improperly treat the Plaintiffs' CSQ Applications by issuing a *mandamus* order directing the Minister on how to dispose of these Applications.

155. That being said, if this Court declines to order the Minister to issue each Plaintiff a CSQ, it must at the very least order the Minister to re-consider each Plaintiff's application based on the actual requirements of ss. 38.1 and 38.2 of the *Immigration Regulation*. This means that, if a Plaintiff presents actual proof of having completed a MIDI-approved French course in support of Question 8 on the Application Form, that Plaintiff must be deemed to fulfill the condition of s. 38.1(c) or 38.2(d) of the *Regulation*.

E. ALL PLAINTIFFS FILED FOR JUDICIAL REVIEW WITHIN A REASONABLE TIME

156. The MIDI contests the right of certain Plaintiffs to bring these proceedings at all, on the basis that they failed to file for judicial review within a reasonable time as required by art. 529 *CCP*. Normally courts consider a "reasonable time" to be within 30 days of the reception of the attacked decision; however, courts have the discretion to allow an application that has been filed after 30 days to proceed.[130]

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[129] [redacted] work permit will expire on May 4, 2018; [redacted] will expire on April 12, 2018; and [redacted] will expire on November 11, 2018 (file no. 500-17-099865-175, P-33).

[130] *Soucy c. Martrans Express (122085 Canada inc.)*, 2005 QCCA 654, para. 14.

157. The circumstances of each individual plaintiff's case (the nature of the rights at stake, and the reasons for the delay in filing) are relevant to an assessment of reasonableness.[131] As the Supreme Court put in *Immeubles Port Louis*,

> …the judge must take into account the nature of the disputed act, the nature of the illegality committed and its consequences, and second, the causes of the delay between the disputed act and the bringing of the action. The nature of the right relied on is a factor relevant to the exercise of the discretion, but it is not the only one. The court must also consider the plaintiff's behaviour.[132]

158. It is also important to underscore that, according to the Court of Appeal,

> *Ce n'est pas tellement le nombre de jours ou de semaines qui importe comme l'injustice que le délai peut causer à l'une et l'autre des parties. Si l'autre partie n'en souffre aucune injustice, le nombre de semaines ou de mois perd de son importance*.[133]

159. Table 4 sets out the Plaintiffs whose eligibility for judicial review the MIDI is contesting, the dates on which they received their Decisions and filed for judicial review, and a summary of reasons for any delay, as explained in their Affidavits.

160. From these Affidavits and the jurisprudence, it is clear that all Plaintiffs filed for judicial review within a reasonable time, and that in any event any failure to do so has not caused the MIDI any injustice or injury whatsoever.

161. First of all, the reasonable time should be calculated from the date a person receives[134] or becomes aware of[135] the contested decision. In the present case, [redacted] [redacted] filed for judicial review within 30 days of receiving or learning about the Decisions on their files, respectively.[136]

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[131] *Immeubles Port Louis Ltée v. Lafontaine (Village)*, [1991] 1 SCR 326, p. 372; see also *Bellemare c. Lisio*, 2010 QCCA 859, para. 23, cited in *Bonsaint c. Rudel-Tessier*, 2017 QCCA 379.
[132] *Immeubles Port Louis*, p. 372 (emphasis added).
[133] *Syndicat des employés du commerce de Rivière-du-Loup (Section Émilio Boucher, C.S.N.) c. Turcotte*, EYB 1984-142565, confirmed in *Soucy*, para. 19 (emphasis added).
[134] See *Québec (Procureur général) c. Tribunal administratif du Québec*, 2013 QCCS 3736, paras. 13-14.
[135] *Syndicat des employés du commerce de Rivière-du-Loup*, para. 17; *Soucy*, para. 16.
[136] Affidavit of [redacted] (file no. 500-17-098240-172), para. 2; Affidavit of [redacted] (file no. 500-17-098901-179), paras. 3-5.

162. Three Plaintiffs received incorrect legal advice about contesting their Decisions.[137] Incorrect legal advice has already been recognized an exceptional circumstance excusing a slight delay in filing a judicial review.[138] Once these Plaintiffs received the correct information, they acted with due haste to file proceedings.

163. Three other Plaintiffs were initially completely unaware of the existence of judicial review as a mechanism for challenging the Decisions in court, even if they attempted to contest these Decisions by other means; but they acted swiftly upon learning that judicial review was available to them.[139]

164. Where a party has behaved with reasonable diligence in seeking review of an impugned decision, courts need not hold a brief excess of 30 days against them. As the Court of Appeal put in a case involving a litigant with few resources and no legal knowledge, who still sought actively to contest an administrative decision:

> … *l'appelant, après avoir été informé de la décision de la C.L.P., n'est pas resté inactif. Au contraire, son comportement dénote en tout temps la volonté certaine de contester la décision de la C.L.P., malgré un contexte personnel et juridique fort difficile. Évidemment, les démarches qu'il a entreprises ne sont pas toujours heureuses : pensons par exemple aux demandes qu'il a adressées à ses députés fédéral et provincial. Mais on ne peut pas lui reprocher d'avoir agi ainsi : on a affaire ici à un individu démuni, sans connaissances juridiques, dont les ressources financières sont inexistantes et la situation personnelle extrêmement précaire* […].[140]

165. Finally, three Plaintiffs submitted their Applications for Judicial Review only a few days over the 30 day "deadline".[141] Given the widespread and capricious nature of the MIDI's illegal practices, and the significance of the impact of the MIDI's Decision to Reject on the Plaintiffs' lives, penalizing these individual Plaintiffs for submitting their materials mere days too late would simply be unjust in the

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[137] File no. 500-17-098240-172: Affidavit of [redacted], paras. 5-6; Affidavit of [redacted], paras. 3-4; Affidavit of [redacted], paras. 4-9.
[138] *Soucy*, para. 16; *Goulet c. Commission des lésions professionnelles*, 2010 QCCS 3186, para. 47.
[139] File no. 500-17-098240-172: Affidavit of [redacted], paras. 4-7; Affidavit of [redacted], paras. 3-5; Affidavit of [redacted], paras. 4-5.
[140] *Soucy*, para. 17 (emphasis added).
[141] File no. 500-17-099913-173: Affidavits of [redacted], [redacted], and [redacted].

circumstances. This is particularly true given that these Plaintiffs being a few days out of time causes no prejudice whatsoever to the MIDI.

166. This Court should therefore exercise its discretion to hear and grant all of the impugned Applications for Judicial Review.

WHEREFORE, MAY IT PLEASE THE COURT TO:

I. **GRANT** the present Applications for Judicial Review;

II. **DECLARE** null and without any effect the Decisions to Refuse and to Reject the Plaintiffs' applications for Québec Selection Certificates; and

III. **ORDER** the Minister to issue Québec Selection Certificates to all Plaintiffs;

or, in the alternative,

IV. **REMIT** the Plaintiffs' applications for Québec Selection Certificates to the Minister for re-determination in a manner that complies with the requirements of the *Immigration Act* and *Immigration Regulation*;

V. **DECLARE** that all Plaintiffs fulfill the requirements of ss. 38.1(c) or 38.1(d) of the *Immigration Regulation*, as the case may be and that the Minister may not refuse any Plaintiff's application under s. 38.1 of the *Immigration Act* on any grounds relating to that Plaintiff's French ability;

or, in the further alternative,

VI. **REMIT** Plaintiffs' applications for Québec Selection Certificates to the Minister for re-determination in a manner that complies with the requirements of the *Immigration Act* and *Immigration Regulation* and in accordance with any further orders this Court deems appropriate;

THE WHOLE with costs.

MONTREAL, this 22nd day of January 2018

(S) IMK LLP

TRUE COPY

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