

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

NO : 500-17-093778-168

COUR SUPÉRIEURE  
(Civil Chamber)

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**YOCHONON LOWEN**, domiciled and resident  
at [REDACTED]

and

**CLARA WASSERSTEIN**, domiciled and  
resident at [REDACTED]

**Plaintiffs**

v.

**ATTORNEY GENERAL OF QUEBEC**, having  
a place of business at 1, Notre-Dame East  
Street, 8<sup>th</sup> floor, district of Montreal, province of  
Quebec, H2Y 1B8

and

**COMMISSION SCOLAIRE DE LA  
SEIGNEURIE-DES-MILLE-ILES**, having a  
place of business at 430, Arthur Sauvé Blvd.,  
Saint-Eustache, district of Terrebonne,  
province of Quebec, J7R 6V6

and

**LE GRAND SÉMINAIRE RABBINIQUE DE  
MONTRÉAL**, a non-profit legal person having  
its domicile at 1250, René-Lévesque West  
Blvd., suite 4100, district of Montreal, province  
of Quebec, H3B 4W8

and

**COLLÈGE RABBINIQUE DE MONTRÉAL  
OIR HACHAIM D'TASH**, a non-profit legal  
person having its domicile a at 1250, René-  
Lévesque West Blvd., suite 4100, district of  
Montreal, province of Quebec, H3B 4W8

and

**CENTRE D'ÉDUCATION RELIGIEUSE KHAL  
OIR HACHAIM**, a non-profit legal person  
having its domicile at 1250, René-Lévesque

West Blvd., suite 4100, district of Montreal,  
province of Quebec, H3B 4W8

and

**CENTRE D'ÉDUCATION BETH TZIRIL**, a  
non-profit legal person having its domicile at  
1250, René-Lévesque West Blvd., suite 4100,  
district of Montreal, province of Quebec, H3B  
4W8

and

**YESHIVA OIR HACHAYIM**, an association  
having its domicile at 9, Beth-Halevy Street,  
Boisbriand, district of Terrebonne, province of  
Quebec, J7E 4H4

and

**ACADÉMIE DES JEUNES FILLES BETH  
TZIRIL**, a non-profit legal person having its  
domicile at 241, Beth-Halevy Street,  
Boisbriand, district of Terrebonne, province of  
Quebec, J7E 4H4

and

**ELIMELECH LOWY**, domiciled and resident at  
36, Beth-Halevy Street, Boisbriand, district of  
Terrebonne, province of Quebec, J7E 4H4

**Defendants**

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**APPLICATION FOR DECLARATORY JUDGMENT  
(ART. 142 C.c.p.)**

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF  
QUEBEC SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PLAINTIFFS  
ALLEGE THE FOLLOWING:**

**I. INTRODUCTION**

1. In Quebec, parents have the right to choose a religious education for their children. They also have the right to establish institutions which, according to their convictions, ensure the best transmission of their religious values;

2. This right, however, has limits. The State requires that the education of children be consistent with the legislative framework in place to ensure the respect of common values. This framework includes requirements concerning the right to operate an establishment, the educational content and the language of instruction. This framework aims to ensure the education of children and their development in society;
3. The plaintiffs, raised in the ultra-Orthodox Hasidic Jewish Tosh community of Boisbriand, attended schools that did not hold any permit;
4. In these schools, where the language of instruction was Yiddish, Quebec's legislative framework was totally ignored. The majority of the time devoted to instruction was devoted to religious studies. The plaintiffs have never received a class in history, geography, science, art or physical education. In the case of the plaintiff Yochonon Lowen, he never even had a French class. The plaintiffs completed their secondary education without knowing what the St. Lawrence River is or ever hearing about the theory of evolution;
5. These illegal schools still exist and hundreds of students attend them to the knowledge of the governmental authorities;
6. The plaintiffs want to prevent future generations of children from suffering what they suffered. Therefore, they seek a declaration by the Quebec Superior Court that the Government of Quebec, the Commission scolaire Seigneurie des Mille-Iles, the defendant schools and Rabbi Elimelech Lowy violate the rights of children in their community to receive the education to which they are entitled;

## **II. THE PARTIES**

### **The plaintiffs**

7. The plaintiff Yochonon Lowen was born on December 20, 1977 in the United Kingdom. He arrived in Quebec with his parents in late July 1988. The family settled in Boisbriand in the ultra-orthodox Jewish Tosh community;
8. The plaintiff obtained his permanent resident status in September 1992, as appears from the copy of his permanent resident card issued by the Government of Canada, filed in support hereto as Exhibit **P-1**;

9. Plaintiff Clara Wasserstein was born on April 23, 1978 in New York. She arrived in Quebec with her family around the month of April 1979 to also settle in the ultra-Orthodox Jewish Tosh community of Boisbriand;
10. She obtained her permanent resident status on May 15, 1979, as it appears from the copy of her permanent resident card issued by the Government of Canada, filed in support hereto as Exhibit **P-2**;
11. The plaintiffs have been married since 1996 and are the parents of four children;

### **The defendants**

12. The Attorney General of Quebec is sued as the representative of the Quebec government, which is responsible, in particular through the ministère de l'Éducation et de l'Enseignement supérieur, hereinafter the " ministère de l'Éducation ," for the enforcement of the *Education Act*, hereinafter "*E.A.*", *An Act Respecting Private Education*, hereinafter "*A.P.E.*", their regulations as well as the application of the *Charter of the French Language* in education;
13. The ministère de l'Éducation monitors the quality of educational services provided by school boards, as provided by the *E.A.*;
14. The Commission scolaire de la Seigneurie-des-Mille-Iles, hereinafter "CSSMI" is a legal person established in the public interest whose mission is "to organize the educational services provided by the *Education Act*, to promote and enhance the value of public education on its territory, to ensure the quality of educational services, and student success," as it appears from the *E.A.* and the document titled "Quel est le rôle de la Commission scolaire de la Seigneurie-des-Mille-Îles et des commissaires?"<sup>1</sup>, available on the website of the CSSMI and copy of which is communicated in support hereto as Exhibit **P-3**;
15. The territory of the CSSMI includes the city of Boisbriand where the members of the Tosh community reside, as it appears from the 2014 Annual Report of the CSSMI, copy of which is communicated in support hereto as Exhibit **P-4**;
16. The Grand Séminaire Rabbinique Tash de Montréal is a religious organization registered in 1971, as it appears from the excerpt of the Quebec

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<sup>1</sup> Translation from the Plaintiffs' lawyers.

- enterprise register dated May 10, 2016 a copy of which is communicated as Exhibit **P-5**;
17. The Collège Rabbiniqque de Montréal Oir Hachaim D'Tash is a religious organization registered in 1982, as it appears from the excerpt of the Quebec enterprise register dated May 10, 2016 a copy of which is communicated as Exhibit **P-6**;
  18. The Centre d'éducation religieuse Khal Oir Hachaim is a non-profit legal person registered since 2004 that promotes the study of the Jewish religion, manages and organizes an educational center designed to promote the study of religion among the boys in the Tosh community, as appears from the excerpt of the Quebec enterprise register dated May 10, 2016 a copy of which is communicated as Exhibit **P-7**;
  19. The Centre d'éducation Beth Tziril, registered since 2004, is an organization responsible for the advancement girls' education in the Tosh community, as it appears from the excerpt of the Quebec enterprise register dated May 10, 2016 a copy of which is communicated as Exhibit **P-8**;
  20. Yeshiva Oir Hachayim Association provides educational services to school age boys of the Tosh community since the sixties. It is registered in its current form since 2013, as appears from the excerpt of the Quebec enterprise register dated May 10, 2016 a copy of which is provided as Exhibit **P-9**;
  21. The Académie des jeunes filles Beth Tziril provides educational services to school age young girls of the Tosh community since the early sixties. It is registered in its current form since 1995, as it appears from the excerpt of the Quebec enterprise register dated May 10, 2016 a copy of which is communicated as Exhibit **P-10**;
  22. Elimelech Lowy (hereinafter "Lowy") is the son and successor of Rabbi Meshullam Ferencz Lowy, hereinafter " Rebbe Lowy ", the Grand Rebbe of the Tosh community, who died in 2015;
  23. Lowy presides the Grand Séminaire Rabbiniqque de Montréal, the Collège Rabbiniqque de Montréal Oir Hachaim D'Tash, the Centre d'éducation religieuse Khal Oir Hachayim et the Centre d'Éducation Beth Tziril, as it appears from the excerpts of the Quebec enterprise register communicated in support hereto as Exhibits P-5 to P-10;

24. The Grand Séminaire Rabbinique de Montréal, the Collège Rabbinique de Montréal Oir Hachaim D'Tash, the Centre d'éducation religieuse Khal Oir Hachaim, the Centre d'éducation Beth Tziril, the Yeshiva Oir Hachayim and the Académie des Jeunes Filles Beth Tziril collectively organize and supervise the education provided to children, girls and boys, from the Tosh community, under Lowy's ultimate authority;

### **III. THE FACTS**

#### **Ultra-Orthodox Hasidic communities in Quebec**

25. The arrival of Hasidic communities in North America results from the immigration of Hasidic Jews from Eastern Europe who survived the Second World War. These communities began to settle, mostly in New York and to a lesser extent, in Quebec, in the late forties;

26. There are five Hasidic communities in Quebec : the Belz, Satmar, Lubavitch, Skver, communities residing mainly in Montreal's neighbourhoods of Outremont and Parc Extension and the Tosh community based in Boisbriand;

27. The Hasidic communities in Quebec have a population of about 10,000 people, approximately 7,000 live in Montreal and 3,000 in Boisbriand, as it appears from the study conducted by the CJA Federation titled *2011 National Survey-The Jewish Community of Montreal. Part 2: Jewish Populations in Geographic Areas*, communicated in support hereto as Exhibit **P-11** (pages 31 and following);

28. Since their establishment in Montreal and Boisbriand in the forties, fifties and sixties, the Hasidic communities have created and operate preschools, primary and secondary schools for boys and girls;

29. These institutions provide an education based on the Torah and the Talmud. Children attend these schools full-time and receive little or no secular education. The language of instruction is not French, it is Yiddish. These schools will be designated in this proceeding as "Hasidic schools";

#### **The obligations of the Quebec government and the legal framework for education**

##### The obligations of the Quebec government in terms of education

30. The State has a compelling interest in the education of youth. It has the responsibility to ensure the education of all school age children in Quebec;

31. As acknowledged by the Attorney General of Quebec in the context of litigation with a Hasidic school in Montreal:

« 59. The State has a compelling interest in the education of its youth. This is a very important issue that has far-reaching consequences. Education is the foundation of modern society and promotes increasing wealth of society and prepares citizens to fulfill their responsibilities as citizens.

60. Education is a fundamental issue for the collective future of Quebecers in that it participates in the appreciation of the spirit of democracy based on respect for others and tolerance.

61. The State has the responsibility to ensure quality education for all children in Quebec, and including private school.

62. In fact, to democratize and supervise education in Quebec, the State therefore respectively adopted the Education Act (SQ 1988, c. 84) and the Private Education Act (SQ 1968, c 67).

63. The child's learning at school is certainly not reducible to learning to read, write and count, but also to acquire specific skills and abilities that will facilitate their future learning;

64. In the Québec education system, students will be placed in contact with the diversity of the heritage from the various fields of culture, with the most significant human achievements, and to allow them, a progressive deepening of thought, the knowledge of different fields, to link them to develop the skills and abilities necessary for understanding and mastery of their environment even as their integration in a changing world as creative beings and responsible citizens;

65. The State, in achieving its objectives, specifies requirements in order to ensure the best development of children, to ensure their full development and provide them with the knowledge and skills that allow them to gradually integrate into society;

66. Moreover, under international law, the State has the obligation to ensure that the education of children prepared to assume the responsibilities of life in a free society, in a spirit of understanding, peace, tolerance, gender equality and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin ";

[Références omises]

as it appears from the *Réponse et défense reconventionnelle du Procureur général du Québec à la demande reconventionnelle des défendeurs* in the case *Procureur général du Québec c. Académie Yeshiva Toras Moshe de Montréal*, hereinafter "Réponse du Procureur général du Québec" , a copy of which is communicated in support hereto as Exhibit **P-12**;

32. In the same proceedings, the Attorney General of Quebec admitted that full-time attendance of children in institutions that do not comply with the requirements of *Basic school regulation for preschool, elementary and secondary education* adopted under the *E.A.*, hereinafter the "*Basic school regulation*" violates the rights of these children, as it appears from Exhibit **P-12**, at paragraphs 117 to 119;

#### The legal framework of schools in Quebec

33. The *Charter of Human Rights and Freedoms* provides that every person has a right, to the extent and according to the standards provided for by law, to public education;
34. According to the *E.A.*, every child is entitled to preschool education services and elementary and secondary school instructional services provided therein;
35. Similarly, the *E.A.* provides for compulsory school attendance for all children between 6 and 16 years of age whether the school is public or private;
36. This compulsory school attendance aims to ensure that all children receive the education provided by the *Basic school regulation* in order to promote the development of students and their integration into society. The preamble of the *Basic school regulation* provides that:

“The purpose of elementary instructional services is to promote the overall development of students and their integration into society through basic learning, which will contribute to the progressive development of their autonomy and will prepare them for the level of learning required in secondary school.

The purpose of secondary instructional services is to further the overall development of students, to foster their social integration and to help them determine personal and career goals. The services complement and reinforce the basic education received by students so that they may obtain

a Secondary School Diploma or other occupational qualifications and, as the case may be, pursue postsecondary studies.”

as appears from the copy of the *Basic school regulation*, a copy of which is communicated as Exhibit **P-13**;

37. The *Basic school regulation* provides for a minimum of 25 hours of secular instruction a week, including nine hours of language instruction, either French or English, seven hours of mathematics, two hours of physical education and health and seven hours divided between arts education, history and geography, citizenship education, ethics and religious culture and science and technology, as appears from the *Basic school regulation*, Exhibit **P-13**;
38. Under the *A.P.E.*, no person may operate a private educational institution unless the person holds a permit issued by the Ministry of Education for the institution;
39. The Ministry of Education has the authority to issue permits to private institutions that meet its requirements, mainly those related to compliance with the *Basic school regulation*;
40. The *Charter of the French Language* provides the right to education in French and implements this right by providing that the elementary and secondary education must be taught in French. One exception, under certain conditions, is made for that education to be given in English;
41. There is no other exception. Therefore, an institution where the language of instruction is Yiddish is not allowed;

#### The role of the CSSMI

42. The CSSMI's mission is to organize, for the benefit of those within its jurisdiction, the educational services provided by the *E.A.* and the pedagogical programmes established by the government;
43. The CSSMI is responsible for ensuring that the compulsory school attendance is respected on its territory;
44. CSSMI's mission is also to promote and enhance education on its territory, to ensure the quality of educational services and student success in order to achieve a higher level of education and qualification of the population and

contribute, to the extent provided by law, to the social, cultural and economic development of its region, as appears from an excerpt of CSSMI's website dated May 10, 2016, a copy of which is communicated in support hereto as Exhibit **P-14**;

### **The Ministry of Education's knowledge of the illegality of Hasidic schools**

45. The Ministry of Education has known for decades that thousands of children attend illegal schools full-time, as appears from a debate on the *A.P.E.* on December 10, 1992 between the Minister of Education in office in 1992, Mrs. Lucienne Robillard and Mr. Daniel Trottier:

«[...] Ms. Robillard: I understand, Mr. President, that the objective is clear, then. It's really trying to have some control in schools, at present, existing, which are considered illegal because they work without status, without a permit. And it is to try, I would say, to protect the safety of children, except that by the means of control in physical capacity of the premises.

We know that, according to some religions, there is great difficulty in accepting the regular educational system and public schools. Take, for example, some denominations who not only completely refuse that children attend religious education but physical education; the child must not undress, etc. But we must still try ... These schools then, now, work, exist and there are no guarantees, first, adequate physical space for children; and second, they receive a minimum curriculum that will still get their high school diploma in life and they can intergrate socially. "

[...] M.Trottier: In the fall of 1991 there was a first census was done in schools which were known to exist, and was listed in this occasion forty, roughly. It can reach about a little more than 2,000 students, but I do not guarantee that data there. It is not ... [...] This is an order of magnitude that I give you. "

[emphasis added]

as appears from the excerpt of the Journal des Débats of the Quebec National Assembly dated December 10, 1992 at pages CE-1458 to CE-1460, a copy of which is communicated in support hereto as Exhibit **P-15**;

46. In 2009, the Minister of Education reached an agreement with five Hasidic schools to get them to comply with the requirements of the *Basic school regulation* within the next five years, as it appears from the *45<sup>e</sup> Rapport annuel de la Commission consultative sur l'enseignement privé 2013-2014*

- communicated in support hereto as Exhibit **P-16**, hereinafter " the 2013-2014 Commission Report on Private Education" on pages 81, 91, 133, 156 and 164.
47. Two of these schools, the Yeshiva Gedola-Merkaz Hatorah school for boys and the Belz community school, still did not meet the requirements of the *Basic school regulation* in 2014 according to the Consultative Commission on Private Education, as it appears from the 2013-2014 Commission Report on Private Education, P-16, on pages 81 and 164. The Belz community school alone had 898 students, as it appears from P-16, p. 81;
48. The three other schools that did not comply with the requirements of the Ministry of Education in 2009, the École première Mesifita du Canada for boys, the Académie Beth Rivkah for Girls and the Skver community schools for girls and boys only meet some of the requirements of the Ministry of education, as it appears from the 2013-2014 Commission Report on Private Education, P-16, pages 91, 133, 156;
49. In addition to these five schools, several other Hasidic schools do not meet the minimum requirements of the *Basic school regulation*;
50. According to the Consultative Commission on Private Education, the Collège Rabbinique du Canada, which held for several years a permit conditional upon certain requirements being met, did not comply in 2014 with the requirements of the *Basic school regulation*, as it appears from the 2013-2014 Commission Report on Private Education, P-16, page 67;
51. The Academy for Girls Beth Esther and the defendant the Académie des jeunes filles Beth Tziril have been closed down in 2011-2012 and 2012-2013, respectively, as it appears from the document prepared by the Ministry of Education's list of private schools closed since 2000, communicated in support hereof as Exhibit **P-17**. However, girls continue to attend these schools;
52. These schools welcomed 362 and 240 girls during the 2010-2011, respectively school year, as it appears from the *42<sup>e</sup> Rapport annuel de la Commission consultative sur l'enseignement privé 2010-2011*, communicated in support hereto as Exhibit **P- 18**;
53. Since 1952, the boys of the Satmar community attend the Académie Yeshiva Toras Moshe despite the fact that the school has never held a permit, as it

appears from the summary of the facts of Justice Gérard Dugré in his judgment in *Procureur général du Québec c. Yeshiva Toras Moshe*<sup>2</sup>;

54. As for the children of the Tosh community, they attend schools that do not respect the *Basic school regulation* or the *Charter of the French language*;
55. With respect to the boys, the Hasidic schools of the Tosh community don't hold and have never held a permit. Regarding the girls, although the defendant Académie des jeunes filles Beth Tziril held a permit from 1995 to 2012, it is clear from the *42<sup>e</sup> Rapport annuel de la Commission consultative sur l'enseignement privé 2010-2011*, P- 18, that this school has never fulfilled and does not meet the requirements of the Ministry of Education;
56. In light of the above, it is clear that the CSSMI and the Ministry of Education cannot be unaware that hundreds of children in the Tash community attend schools that do not meet the *Basic school regulation*, contrary to the the *E.A.* and the *A.P.E.* and the requirements of the *Charter of the French language*;
57. Thus, it is clear that the defendants have failed and continue to fail in their duty to protect children from the Tosh community who receive virtually no secular education so that their future will be compromised;

**The facts that justify the plaintiffs' action and their sufficient interest to act**

58. Upon his arrival in Quebec around the month of July 1988 and until September 1994, the plaintiff Yochonon Lowen attended two Yeshivas for boys in Tosh community established in Boisbriand;
59. These are now operated by the defendant Yeshiva Oir Hachayim which provides educational services to school age boys;
60. The Grand Séminaire Rabbinique Tash de Montréal and the Collège Rabbinique de Montréal Oir Hachaim D'Tash were and still are responsible for the religious education of the boys of the Tosh community of Boisbriand;
61. These schools gave and still give to the boys of the Tosh community an essentially religious education based on the Torah, the Talmud, and the teaching of the language intimately related to it, Yiddish;

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<sup>2</sup> 2011 QCCS 4622.

62. For the plaintiff, the study of the Talmud began at 7:00 am and ended at 6:00 pm, six days a week, leaving him with no time for secular education or for hobbies and develop skills outside the Yeshiva;
63. The plaintiff received rudimentary mathematics and English classes, less than six hours per week. He received no French, history, geography, science or physical education classes;
64. The plaintiff never attended institutions other than those run by the community. The only education he received is the Talmudic religious education based on the Torah;
65. Between the ages of 6 and 17 years, the plaintiff Clara Wasserstein attended two schools for girls in the Tosh community. These schools are now operated by the defendant the Académie des jeunes filles Beth Tziril;
66. The Plaintiff received there a secular education representing approximately six to ten hours per week between the ages of 6 and 13 years. She received about two hours of secular instruction per day, which included French, English and mathematics. She never received lessons in history, geography, science, or physical education;
67. Between the ages of 13 and 17 years, the plaintiff has only followed religious education classes in Yiddish because she had been exempted from secular education. The community authorities deemed that she had to spend her afternoons helping her mother at home and had enough secular knowledge;
68. The plaintiffs left the Hasidic Tosh community in 2010. They did not know then how to speak French and only had rudimentary knowledge of English. They had no modern scientific knowledge or notions of geography and history, besides notions related to the history of the Jewish people;
69. The Plaintiffs are now beneficiaries of the welfare system and have difficulty finding work, with no elementary or secondary school diploma;
70. The plaintiffs were completely isolated from Quebec's society and their integration is now very difficult, especially because of their difficulty in expressing themselves in French or English, but also because they were never taught notions as basic as the existence of the St. Lawrence River or the theory of evolution. Having been kept so long ignorant of the world

around them has seriously compromised their social and emotional development;

71. In light of the above, it is clear that the plaintiffs have a genuine interest to act in the proceedings;

72. The situation experienced by the plaintiffs continues to this day. The education provided by the schools in the Tosh community is still based on the precepts developed by Rebbe Lowy at the founding of the community in the early sixties. All teachers must follow the rules that the Rebbe himself has enacted:

- a. *All textbooks and literature to be used by the students in class or at home must first be approved by the principal.*
- b. *No stencil or photocopy of any other book may be used without approval.*
- c. *Students are not permitted to go to the public library nor is the teacher permitted to bring into the school, for the students, any such books.*
- d. *No newspaper or magazine may be read in school or hung up. Students are not permitted to read the above at home either.*
- e. *No records or tape may be used in the classroom without approval.*
- f. *No extra subjects, books, magazine supplement or other information which is not on the required curriculum of the school may be taught.*
- g. *For extra credit work or for class projects, students should not be told to write away for such material. The teacher should supply them with the material with approval.*
- h. *No discussion on boyfriends.*
- i. *No discussions of reproduction.*
- j. *No discussion about radio, television or movies.*
- k. *No discussion on religion.*
- l. *No discussion about Women's Liberation*
- m. *No homework on Thursdays;*

as it appears from the doctoral thesis of Mr. Gold Irving "Jewish Political Behavior-liberalism or Rational Political Tradition the Quebec Election 1989 and the Equality Party," 1996, communicated in support hereto as Exhibit P-19;

73. These teachings are clearly contrary to the requirements of *Basic school regulation* and the objectives of the *E.A.*;

### **The right to freedom of religion and the right to education: a real challenge**

74. The management of Hasidic schools by the Ministry of Education highlights the real problem of balancing the right of children to a quality public education with the right of the parents to transmit their personal beliefs, especially religious beliefs ;

75. This issue has recently been addressed by the Supreme Court in the case *Loyola High School v. Quebec (Attorney General)*, hereinafter "the Loyola case ", which, using the words of the Supreme Court in *S.L. v. Commission scolaire des Chênes*<sup>3</sup>, wrote:

« [40] [p]arents are free to pass their personal beliefs on to their children if they so wish. However, the early exposure of children to realities that differ from those in their immediate family environment is a fact of life in society. The suggestion that exposing children to a variety of religious facts in itself infringes their religious freedom or that of their parents amounts to a rejection of the multicultural reality of Canadian society and ignores the Quebec government's obligations with regard to public education. Although such exposure can be a source of friction, it does not in itself constitute an infringement of s. 2(a) of the *Canadian Charter* and of s. 3 of the *Quebec Charter*. "

76. In the *Loyola* decision written by Justice Deschamps, the Supreme Court of Canada concluded that:

[46] This does not mean that religious differences trump core national values. On the contrary, as this Court observed in *Bruker v. Marcovitz*, 2007 SCC 54 (CanLII), [2007] 3 S.C.R. 607:

Not all differences are compatible with Canada's fundamental values and, accordingly, not all barriers to their expression are arbitrary. Determining when the assertion of a right based on difference must yield to a more pressing public interest is a complex, nuanced, fact-specific exercise that defies bright-line application. It is, at the same time, a delicate necessity for protecting the evolutionary integrity of both multiculturalism and public confidence in its importance. [para. 2]

Or, as the Bouchard-Taylor report observed:

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<sup>3</sup> 2012 CSC 8, paragraphe 40.

A democratic, liberal State cannot be indifferent to certain core values, especially basic human rights, the equality of all citizens before the law, and popular sovereignty. These are the constituent values of our political system and they provide its foundation.

(Gérard Bouchard and Charles Taylor, Commission de consultation sur les pratiques d'accommodement reliées aux différences culturelles, *Building the Future: A Time for Reconciliation* (2008), at p. 134)

[47] These shared values — equality, human rights and democracy — are values the state always has a legitimate interest in promoting and protecting. They enhance the conditions for integration and points of civic solidarity by helping connect us despite our differences: Jürgen Habermas, “Religion in the Public Sphere” (2006), 14 *Eur. J. of Philos.* 1, at p. 5. This is what makes pluralism work. As McLachlin J. noted in *Adler v. Ontario*, 1996 CanLII 148 (SCC), [1996] 3 S.C.R. 609 (dissenting in part), “[a] multicultural multireligious society can only work . . . if people of all groups understand and tolerate each other”: para. 212. Religious freedom must therefore be understood in the context of a secular, multicultural and democratic society with a strong interest in protecting dignity and diversity, promoting equality, and ensuring the vitality of a common belief in human rights.

[48] The state, therefore, has a legitimate interest in ensuring that students in all schools are capable, as adults, of conducting themselves with openness and respect as they confront cultural and religious differences. A pluralist, multicultural democracy depends on the capacity of its citizens “to engage in thoughtful and inclusive forms of deliberation amidst, and enriched by,” different religious worldviews and practices: Benjamin L. Berger, “Religious Diversity, Education, and the ‘Crisis’ in State Neutrality” (2014), 29 *C.J.L.S.* 103, at p. 115.

emphasis added

77. It appears from the judgments of the Supreme Court and the legislation mentioned above that all children should receive an education allowing him or her to integrate into society and the State has an obligation to ensure this. The right to education is at the heart of Quebec and Canada’s fundamental values and does not violate freedom of religion;

78. The Government of Quebec’s tolerance towards the schools in the Toshi community and CSSMI’s non-compliance with the obligation to ensure school attendance are contrary to Quebec and Canada’s fundamental values;

79. By tolerating that children attend schools that do not allow them to integrate into Quebec society, the Government of Quebec and the CSSMI violated their rights;
80. The Government of Quebec and the CSSMI violated its obligations of monitoring and protection to these children and deprived them from their right to a public education in French;
81. The plaintiffs submit that the intervention of this Court is required in order to declare that the Government of Quebec's tolerance towards illegal schools is contrary to current laws on education;
82. This intervention is also required so that the Court confirms that the CSSMI has a duty to ensure that the children of the Tosh community attend schools that meet the requirements of the law;

**FOR THESE MOTIVES, MAY IT PLEASE THE COURT:**

**DECLARE** that the schools administered by the Tosh Hasidic community of Boisbriand operate in violation of the *Education Act*, *An Act Respecting Private Education*, the *Charter of the French Language* and the *Charter of Human Rights and Freedoms*;

**DECLARE** that the Government of Quebec and the Commission scolaire Seigneurie-des-Mille-Iles, by tolerating that the children of the Tosh community attend illegal schools, violate their obligations under the *Education Act*, *An Act Respecting Private Education*, the *Charter of the French Language* and the *Charter of Human Rights and Freedoms*;

**THE WHOLE** with costs

Montreal, May 11 2016

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**TRUDEL JOHNSTON & LESPÉRANCE**  
Plaintiff's Attorney