

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-17-139512-266

SUPERIOR COURT

PUBLIC INTEREST LITIGATION INSTITUTE,
legal person having a domicile at 1030 rue Berri,
Suite 102, Montréal, Québec H2L 4C3

and

LAWRENCE DAVID, natural person having
elected domicile at 1030 rue Berri, Suite 102,
Montreal, Quebec H2L 4C3

Applicants

v.

ATTORNEY GENERAL OF QUEBEC, having
offices at 1 rue Notre-Dame Est, bureau 8.00,
Montreal, Quebec H2Y 1B6

Respondent

and

ATTORNEY GENERAL OF CANADA, having
offices at 200 René-Lévesque Blvd., East Tower
– 9th Floor, Montreal, Quebec, H2Z 1X4

Mis en cause

**AMENDED APPLICATION FOR JUDICIAL REVIEW AND FOR DECLARATORY
JUDGMENT UNDER SECTION 52(1) OF THE CONSTITUTION ACT, 1982
AND NOTICE OF CONSTITUTIONAL QUESTION
(ARTS. 34, 76, 96, 529, 530 C.C.P. and ARTS. 2267 & 2271 C.C.Q.)**

TO ONE OF THE JUSTICES OF THE SUPERIOR COURT OF QUEBEC, THE
APPLICANTS SUBMIT AS FOLLOWS:

INTRODUCTION

1. The Applicants file the present application seeking a declaratory judgment under section 52(1) of the *Constitution Act, 1982* declaring that [*An Act to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly, S.Q. 2022, c. 30*](#) (“the Act”) and s. 128Q.1 of the [*Constitution Act, 1867*](#) are unconstitutional and thus of no force or effect;

2. In particular, the Applicants contend that section 128Q.1, as enacted by way of the *Act*, is an unconstitutional constitutional amendment for the following reasons:
 - Section 45 of the [Constitution Act, 1982](#) does not authorize Quebec or any other province to unilaterally amend the text of the *Constitution Act, 1867* [...];
 - Excluding Quebec from the application of s. 128 of the *Constitution Act, 1867* directly affects the status and role of the monarchy and therefore relates to the “office of the Queen” such that it can only be constitutionally authorized with the unanimous consent of the Parliament of Canada and of the ten provincial legislatures pursuant to s. 41(a) of the *Constitution Act, 1982*. As Section 128Q.1 is purported to have been adopted pursuant to the provincial unilateral constitutional amendment power in s. 45 of the *Constitution Act, 1982*, and as the requirements of s. 41(a) have not been satisfied, the Act and s. 128Q.1 are *ultra vires* and unconstitutional;
 - Excluding Quebec from s. 128 of the *Constitution Act, 1867* directly affects the status, role, and constitutional powers of the Lieutenant Governor of Quebec and therefore relates to the “office of the Lieutenant Governor” such that it can only be constitutionally authorized with the unanimous consent of the Parliament of Canada and of the ten provincial legislatures pursuant to s. 41(a) of the *Constitution Act, 1982*. As Section 128Q.1 is purported to have been adopted pursuant to the provincial unilateral constitutional amendment power in s. 45 of the *Constitution Act, 1982*, and as the requirements of s. 41(a) have not been satisfied, the Act and s. 128Q.1 are *ultra vires* and unconstitutional;
 - Section 128 of the *Constitution Act, 1867* is an indivisible part of Constitution of the Province of Quebec and of the Constitution of Canada, such that its amendment exceeds the scope of permissible unilateral constitutional amendments to provincial constitutions under s. 45;
3. Additionally, or alternatively, the Act and s. 128Q.1:
 - violate the right to vote protected under s. 3 of the [Canadian Charter of Rights and Freedoms](#) by leading to the election of politicians who are not constitutionally qualified to sit in the National Assembly by refusing to take the Oath of Allegiance;
 - violate the right to effective representation protected under s. 3 by leading to Quebecers being represented in the National Assembly by politicians who are not constitutionally qualified to hold office and whose votes on legislation and other activities in the National Assembly are constitutionally void;

- violate the right protected under s. 3 of the *Canadian Charter of Rights and Freedoms* to sit in the National Assembly – after being elected thereto – by purporting to nullify the constitutional condition precedent enshrined in s. 128 for a politician elected to the Assembly to validly “take [their] Seat” therein;
 - operate to amend s. 3 of the *Canadian Charter of Rights and Freedoms* and are therefore *ultra vires* the unilateral provincial constitutional amendment power entrenched in s. 45 of the *Constitution Act, 1982*;
4. A judicial declaration should therefore be issued pursuant to s. 52(1) of the *Constitution Act, 1982* declaring that the Act in its entirety and s. 128Q.1 of the *Constitution Act, 1867* are – individually and collectively – of no force or effect;

THE APPLICANTS

5. The present application is being pursued by two Applicants individually and collectively, namely: Public Interest Litigation Institute (“PILI”) and Professor Lawrence David, BA (Concordia), BCL/LLB (McGill), LL.M (Harvard);
6. Of course, public interest standing may be granted to a public interest organization such as PILI even in the absence of an individual co-plaintiff who is directly affected. (*British Columbia v. Council of Canadians with Disabilities*, [2022 SCC 27](#), at paras. 63-67). In this light, the opposite is also true: public interest standing may be granted to an individual plaintiff even in the absence of an institutional public interest co-plaintiff;

I – Public Interest Litigation Institute

7. The Applicant, Public Interest Litigation Institute (“PILI”),¹ is an unincorporated association within the meaning of, *inter alia*, art. 2267 C.C.Q., with offices in Montreal and Ottawa. PILI was established in December 2024 by Lawrence David, the President and Founder. The undersigned, Me Jeff Orenstein, is PILI’s Vice-President, a member in good standing of the Barreau du Québec since 2002, a resident of Montreal, and a voter in provincial general elections held in Quebec;
8. As per its Mission Statement and Statement of Principles,² PILI is dedicated to using strategic litigation and advocacy as vehicles for access to justice in order to advance the rights, interests, and values at the heart of Canada’s liberal democracy and to ensure the primacy of constitutionalism and the rule of law as guides and constraints on the exercise of public power;
9. In advancing this mission, PILI launches or intervenes in public and private law litigation bearing upon the public interest, constitutionalism, and the rule of law generally, and provides strategic counsel to lawyers and third parties involved in

¹ French name: Institut de litige d’intérêt public.

² **Exhibit R-4.**

litigation. In advancing its principles, PILI's mission is also partly educational, as it increasingly involves law students at the University of Ottawa's Faculty of Law to provide research assistance as a means of introducing them to public interest litigation, appeals, interventions, and litigation heard by the Supreme Court of Canada. This, in turn, contributes to cultivating the next generations of public interest lawyers and advocates;

10. PILI intervenes in litigation at different levels of court, and intends to expand PILI's standing as a vehicle for advancing access to justice. PILI also collaborates with lawyers interested in advancing the public interest and the rule of law, providing lawyers with free strategic advice, litigation insights, assistance, and support;
11. Represented by the co-Applicant, Professor Lawrence David, occasionally with Me Orenstein, PILI has had the distinct honour of intervening before the Supreme Court of Canada in several appeals of significant public and/or national importance. This includes significant appeals involving the interpretation and application of the Canadian constitution – including appeals involving the Respondent Attorney General of Quebec. In particular:
 - *English Montreal School Board v. Attorney General of Quebec* ([SCC No. 41231](#)): submissions focused on whether the precedent in *Ford v. Attorney General of Quebec*, [1988] 2 S.C.R. 712 should be partly overruled to prohibit the pre-emptive invocation of s. 33 of the *Canadian Charter of Rights and Freedoms* (hearing held March 23-26, 2026; judgment under reserve);
 - *Government of Saskatchewan as represented by the Minister of Education v. UR Pride Centre for Sexuality and Gender Diversity* ([SCC No. 41979](#)): submissions focused on the pre-emptive and omnibus invocation of s. 33 of the *Canadian Charter of Rights and Freedoms* (hearing to be held in Winter 2027);
 - *Attorney General of Quebec v. Joseph-Christopher Luamba* ([SCC No. 41605](#)): submissions focused on whether the precedent in *R. v. Ladouceur*, [1990] 1 S.C.R. 1257 should be overruled to prohibit the warrantless and suspicionless apprehension of motorists in Quebec and the rest of Canada (hearing held on January 19-20, 2026; judgment under reserve);
 - *His Majesty The King v. Abdel Karim Chemlal* ([SCC No. 41766](#)): submissions focused on the legal standard applicable to authorize a safety search of a person who is neither arrested nor under investigative detention (hearing scheduled for October 6, 2026);
 - *Ontario Place Protectors v. His Majesty The King in Right of Ontario* ([SCC No. 41805](#)): submissions focused on the effect of combining full or partial privative clauses with statutory immunity provisions limiting governmental liability in private law (hearing scheduled for October 13, 2026);

- *GCT Canada Limited Partnership v. International Longshore and Warehouse Union Ship and Dock Foremen, Local 514* (SCC No. 41951): submissions focused on the intersection between judicial deference and the vertical axis of *stare decisis* in judicial review of administrative action in Canada;
12. PILI has also intervened or been granted leave to intervene in the following private law appeals, with submissions focusing on *stare decisis* as an indispensable component of the Supreme Court of Canada's constitutional jurisdiction and of the Canadian judicial hierarchy (*Aphria Inc. v. Canada Life Assurance Company* (SCC No. 41665)³ and *H.N. v. Board of Education of School District No. 61 (Greater Victoria)* (SCC No. 41910))⁴ and on access to justice for consumers in national class actions involving violations of the federal Competition Act (*NHK Spring Co. Ltd. et al. v. Tony Cheung, et al.* (SCC No. 41451));⁵
 13. Over and above all, however, PILI has distinct expertise, interest, and involvement in constitutional law, in constitutional litigation, and in leveraging public interest litigation as an indispensable instrument for access to justice and giving voice to individuals, communities, and issues that cannot otherwise reasonably be adjudicated due to resource and other limitations;
 14. The Supreme Court of Canada's repeated conferral of intervener status to PILI in appeals of significant national and/or public importance is a testament to its capacity to intelligently contribute to complex legal and constitutional debates; to assist the court in its consideration of issues with considerable potential impacts; and to its ability to play a meaningful and constructive role in litigation involving various public and private sector stakeholders, including the Attorney General of Quebec;
 15. Nourished by the considerable experience of the undersigned and co-Applicant Professor David in litigation before Canadian courts – including this Honourable Court and the Quebec Court of Appeal – PILI's proposed application will proceed with due regard for professionalism, proportionality, candour, and intellectual rigour;

II – Lawrence David

16. The Applicant, Lawrence David, is a Canadian citizen born and raised in Montreal, Quebec. He is a lawyer and member in good standing of the Law Society of Ontario since 2016 and, since 2018, a law professor at the University of Ottawa's Faculty of Law, teaching constitutional law, administrative law, and criminal law and procedure in the English and French Common Law programs (see **Exhibit R-5**);⁶

³ Appeal heard February 18, 2026; judgment under reserve.

⁴ Appeal hearing scheduled for November 13, 2026.

⁵ Appeal hearing scheduled for October 8, 2026.

⁶ **Exhibit R-5** : Profile page of Professor David from the Faculty's website.

17. After his completing his primary, high school, CEGEP, and undergraduate education in Montreal (Concordia University, BA, 2010), Professor David completed his legal education at McGill University's Faculty of Law (BCL/LLB, 2014) and at Harvard Law School (LL.M, 2018), where his studies at the latter focused on US and comparative constitutional law (see **Exhibit R-5**);⁷
18. The only reason Professor David has yet to become Member of the Barreau du Québec is by accident of professional circumstance. After completing a judicial clerkship at the Quebec Court of Appeal in 2013-2014, Mr. David secured an articling position at the Department of Justice Canada's headquarters in Ottawa, Ontario, which he commenced after graduating from McGill in May 2014. Immediately after completing his articling requirements, Mr. David clerked at the Supreme Court of Canada in 2015-2016, only to then secure a position as Research and Policy Advisor at the Privy Council Office, also located in Ottawa in 2016-2017;
19. In May 2017, Professor David transferred to Justice Canada until August 2017, when he went on academic leave to complete his Master of Laws (LLM) studies at Harvard Law School. After completing his LLM studies in May 2018, he returned to his position at Justice Canada in Ottawa, and commenced teaching at the University of Ottawa's Faculty of Law in September 2018. In 2020-2021, Professor David also held the position of Senior Legal and Policy Advisor to the 40 Senators comprising the Independent Senators Group at the Senate of Canada, before returning to Justice Canada (see **Exhibit R-5**);
20. In 2023, Professor David departed from Justice Canada to explore private sector and public interest legal opportunities, which he pursues to the present day, in addition to continuing to teach at the University of Ottawa's Faculty of Law. Through his experiences Professor David has had the honour and privilege of acquiring experience and contributing to the policies, programs, and operations of all three branches of Canadian government, in both English and French;
21. This is a testament to Professor David's resolute commitment to Canadian constitutional democracy, the rule of law, the vitality and strength of Canada's democratic institutions, and his passionate desire to contribute to that enterprise – a passion that has animated the last 18 years of his life, including 9 years as servant of the Crown in a variety of professional roles in the three branches of government;⁸
22. Professor David has been fortunate to cultivate a burgeoning and impactful litigation career before Canadian and Quebec courts, in a variety of complex matters of significant public or national importance. Mr. David has appeared as counsel and delivered oral submissions before the Supreme Court of Canada,⁹ the

⁷ **Exhibit R-5.**

⁸ Even prior to his first internship at the office of a Member of Parliament in Ottawa in 2010-2011.

⁹ *Quebec Major Junior Hockey League v. Lukas Walter* ([SCC No. 41532](#)), under reserve.

Quebec Court of Appeal,¹⁰ the Quebec Superior Court,¹¹ the Federal Court,¹² the Ontario Superior Court,¹³ and the Ontario Court of Justice,¹⁴ in addition to writing or contributing to numerous legal proceedings filed before other courts in Canada. Note that Professor David's appearances before Quebec courts were made possible by virtue of Special Authorizations issued by the Barreau du Québec;

23. As concerns appearances before the Supreme Court of Canada, Professor David argued the appeal in *Quebec Major Junior Hockey League et al. v. Lukas Walter et al.* ([SCC No. 41532](#)), on February 16, 2026, with the judgment currently under reserve. This is in addition to acting as counsel for interveners in fifteen (16) appeals heard or to be heard by the Supreme Court between 2024 and 2027 (see **Exhibit R-5 and R-10 en liasse**). In addition to the aforementioned appeal in *Walter* and the appeals involving PILI identified at paras. 11-12, Professor David has or will appear as counsel in the following appeals on behalf of interveners other than PILI:
- *Canadian National Railway Company v. Alberta Pacific Forest Industries Inc.* ([SCC No. 42092](#)): submissions focusing on whether the Federal Court and Federal Court of Appeal's jurisdiction to undertake judicial review is constitutionally protected (hearing scheduled for November 12, 2026);
 - *Ville de Québec v. Jardins de Vêrone S.E.C.* ([SCC No. 41748](#)): submissions focused on the correctness standard of review and appeals of judicial reviews of statutory appeals decided by a court of justice (hearing held on May 12, 2026, judgment under reserve);
 - *Democracy Watch v. Attorney General of Canada*, [2026 SCC 28](#): submissions focusing on the unconstitutionality of privative clauses;
 - *Quebec (Attorney General) v. Kanyinda*, [2026 SCC 7](#): submissions focusing on the discriminatory nature of regulatory exclusions of asylum seekers from Quebec's subsidized childcare spaces program;
 - *TransAlta Generation Partnership LLP v. Alberta*, [2024 SCC 37](#): submissions focused on the standard of review for subordinate or delegated legislation in Canadian administrative law;
 - *Auer v. Auer*, [2024 SCC 36](#): submissions focused on the standard of review for subordinate or delegated legislation in Canadian administrative law;

¹⁰ e.g., *Hôpital Royal-Victoria c. Tanny*, [2025 QCCA 1451](#).

¹¹ e.g., *Tanny c. Royal Victoria Hospital*, [2025 QCCS 3590](#), leave to appeal dismissed.

¹² e.g., *Shehu v. Canada (Public Safety and Emergency Preparedness)*, [2024 FC 1532](#).

¹³ e.g., *Buis v. Keurig Canada Inc.*, [2025 ONSC 6875](#).

¹⁴ Unreported criminal law matters.

24. Professor David is the author of various legal publications, including [Stare Decisis, The Charter and The Rule of Law in The Supreme Court of Canada](#) (LexisNexis, 2020), the only monograph on the doctrine and practice of constitutional *stare decisis* in the Supreme Court of Canada. This publication was notably cited by the Quebec Court of Appeal in its influential judgment in *Organisation mondiale sikhe du Canada c. Procureur général du Québec*, [2024 QCCA 254](#) (at para. 264), concerning the constitutionality of Bill 21 and the invocation of s. 33 of the *Canadian Charter of Rights and Freedoms*, as well as in *R. c. Lapointe*, [2021 QCCA 360](#) (at para. 56). This is in addition to being cited by the Supreme Court of Canada in *R. v. Bouvette*, [2025 SCC 18](#), at para. 270,¹⁵ and in the academic publications of various legal and constitutional scholars around the world;¹⁶
25. As part of his study, practice, resolute commitment to constitutionalism and the rule of law, Mr. David greatly respects and admires His Majesty The King Charles III in his capacity as Canada's head of state and insists that any changes to Canada's constitutional framework must be undertaken pursuant to the legal and therefore legitimate methods of constitutional amendment listed in Part V of the *Constitution Act, 1982*;¹⁷

PUBLIC INTEREST STANDING

26. The Applicants respectfully submit that they each and both – individually and collectively – have public interest standing to pursue the present application;
27. In the interest of efficiency, proportionality, and the avoidance of unnecessary debates, the Applicants draw the Respondents' attention to judgments including *Gélinas-Faucher c. Procureur-général du Québec*, [2025 QCCS 2846](#); *Henderson c. Québec (Procureur général)*, [2007 QCCA 1138](#); *Alford v. Canada (Attorney General)*, [2019 ONCA 657](#) and *Alford v. Canada (Attorney General)*, [2026 SCC 14](#).
28. The test for public interest standing applied by the Court of Appeal¹⁸ is that set out by the Supreme Court of Canada in *Downtown Eastside*,¹⁹ as mostly recently affirmed in *Council for Canadians with Disabilities*;²⁰
29. In particular:

¹⁵ Another one of Mr. David's publications was cited by the Supreme Court of Canada in *Loyola High School v. Quebec (Attorney General)*, [2015 SCC 12](#), at para. 60.

¹⁶ e.g., Noura Karazivan, "Informer Ford", [\(2026\) 71:1 McGill LJ 1](#); Oren Tamir, "Political Stare Decisis" [\(2022\) 22:2 Chicago Journal of International Law 493](#) at 552. These are only two examples.

¹⁷ *Reference re Secession of Quebec*, [\[1998\] 2 S.C.R. 217](#), at paras. 33, 78, 86, 89-90, 150.

¹⁸ *Conseil de bande de Pessamit c. Rock*, [2024 QCCA 1532](#), at para. 63, cited in, *inter alia*, *Gélinas-Faucher c. Procureur-général du Québec*, [2025 QCCS 2846](#), at para. 19.

¹⁹ *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, [2012 SCC 45](#), at paras. 2, 37.

²⁰ *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, [2022 SCC 27](#).

[28] The decision to grant or deny public interest standing is discretionary (*Downtown Eastside*, at para. 20). In exercising its discretion, a court must cumulatively assess and weigh three factors purposively and with regard to the circumstances. These factors are: (i) whether the case raises a serious justiciable issue, (ii) whether the party bringing the action has a genuine interest in the matter, and (iii) whether the proposed suit is a reasonable and effective means of bringing the case to court (para. 2).²¹

30. These three factors are to “flexibly and purposively weigh[ed]... in light of the particular circumstances’ and in a ‘liberal and generous manner’” (para. 25).
31. Each of these factors is satisfied for each of the two respective Applicants. The fact that each Applicant individually satisfies the test for public interest standing further means that they collectively satisfy the test for public interest standing.

(i) The Application Raises Serious Justiciable Issues

32. The present application raises several issues that are manifestly serious and justiciable. In particular, the application involves:
 - a challenge to the constitutionality of legislation purporting to effect a constitutional amendment;
 - allegations that the legislation exceeds the power of unilateral provincial constitutional amendments enshrined in s. 45 of the *Constitution Act, 1982*;
 - the constitutional definition of the phrase “Provincial Constitutions” enshrined in Part V of the *Constitution Act, 1867*;
 - allegations that the constitutional amendment purportedly effected under the impugned legislation is unconstitutional for having been introduced under the wrong amendment formula;
 - the identification of the constitutionally correct amendment formula required to effect the constitutional amendment sought to be achieved by the impugned legislation;
 - the constitutional definition of the phrase “office of the Queen” in s. 41(a) of the *Constitution Act, 1867*;
 - the test for determining whether legislation in relation to the “office of the Queen” or the office of Lieutenant Governor constitutes an “An amendment to the Constitution of Canada” for the purposes of s. 41 of the *Constitution Act, 1982*;

²¹ *Council of Canadians with Disabilities*, at para. 28.

- Whether the constitutional amendment purportedly effected by the impugned legislation impacts upon the “office of the Queen” or Lieutenant Governor;
 - the interpretation and application of s. 128 of the *Constitution Act, 1867*;
 - the nature of the relationship between elected legislators and the monarch as the Canadian sovereign and head of state;
33. The common denominator uniting these non-exhaustive issues is that they all concern questions of constitutional law. As well, individually and collectively, these issues are manifestly serious and justifiable;
34. First, each of the issues raised in the application are clearly “serious” within the meaning of the applicable test in *Canadian Council with Disabilities*:
- [49] A serious issue will arise when the question raised is “far from frivolous” (*Downtown Eastside*, at para. 42, citing *Finlay*, at p. 633). Courts should assess a claim in a “preliminary manner” to determine whether “some aspects of the statement of claim could be said to raise a serious issue as to the validity of the legislation” (*Downtown Eastside*, at para. 42, citing *Canadian Council of Churches*, at p. 254).
35. None of the issues identified in the present application can reasonably be characterized as “frivolous.” The application clearly raises at least one “serious issue as to the validity” of [*An Act to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly, S.Q. 2022, c. 30*](#) (“the Act to recognize the oath”) and of s. 128Q.1 of the *Constitution Act, 1867*;
36. In *Henderson c. Québec (Procureur général)*, [2007 QCCA 1138](#), the Court of Appeal unanimously held that the contention that the Quebec National Assembly acted *ultra vires* its powers under s. 45 of the *Constitution Act, 1982* in enacting ss. 1, 5 and 13 of the *Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State*, R.L.R.Q. c. E-20.2 was a serious issue for the purposes of public interest standing (see paras. 65, 67, 70). The conclusions in *Henderson* apply *mutatis mutandis* to the present case;
37. As the present application clearly reveals at least one serious issue, it is unnecessary to minutely examine every pleaded claim to assess standing;
38. Further, it is indisputable that at least one – and indeed all – of the serious issues raised in the present application are justiciable as constitutional questions are, by definition, justiciable. As explained in *Council of Canadians with Disabilities*:

[50] To be justiciable, an issue must be one that is appropriate for a court to decide, that is, the court must have the institutional capacity and legitimacy to adjudicate the matter (*Highwood Congregation*, at paras. 32-34). Public interest standing hinges on the existence of a justiciable question (*Downtown Eastside*, at para. 30).

39. Of course: “The question of the constitutionality of legislation has in this country always been a justiciable question.”;²²
40. As noted, each of the serious issues raised in the present application are constitutional questions. The interpretation of constitutional provisions is a pure question of law.²³ The same is true for the identification of the correct amendment formula to be used to achieve constitutional amendment,²⁴ and for the issue of whether a law is inconsistent with one or more provisions of the constitution;²⁵
41. Directly relevant to the present application, a constitutional challenge to “the constitutional competence of Parliament to pass legislation abridging Parliamentary privilege, without a constitutional amendment” has also been characterized as a “pure question of law”;²⁶
42. As the guardian of the constitution, the judicial branch of government is the institution *par excellence* with “the institutional capacity and legitimacy” to adjudicate the present application.²⁷ This is particularly true for the Superior Court, whose core jurisdiction to adjudicate constitutional questions – including the constitutionality of legislation – cannot be removed from it absent constitutional amendment;²⁸
43. As the application raises issues that are serious and justiciable, the first step of the test for public interest standing is satisfied for both Applicants;

(ii) The Applicants Each Have A Genuine Interest

44. The Applicants Public Interest Litigation Institute and Professor Lawrence David individually and collectively have a “genuine interest” in the issues raised in the present application;

²² *Thorson v. Attorney General of Canada*, [1975] 1 S.C.R. 138, at 151.

²³ *Société de l'Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, 2026 SCC 22, at para. 20; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras. 55-56.

²⁴ *Reference re Senate Reform*, 2014 SCC 32, at paras. 4-5, 21-22; *Reference re Supreme Court Act*, ss. 5 and 6, 2014 SCC 21, at paras. 8, 96-107.

²⁵ *Société de l'Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, 2026 SCC 22, at para. 20; *Société des casinos du Québec inc. v. Association des cadres de la Société des casinos du Québec*, 2024 SCC 13, at paras. 45, 94-97.

²⁶ *Alford v. Canada (Attorney General)*, 2019 ONCA 657, at para. 3, quoted and affirmed in *Alford v. Canada (Attorney General)*, 2026 SCC 14, at para. 12.

²⁷ *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, at para. 153; *Reference re Securities Act*, 2011 SCC 66, at para. 55.

²⁸ *Reference re Code of Civil Procedure (Que)*, art. 35, 2021 SCC 27, at para. 68; *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43, at para. 18.

45. As stated by the Supreme Court:

This factor asks “whether the plaintiff has a real stake in the proceedings or is engaged with the issues they raise” (*Downtown Eastside*, at para. 43). To determine whether a genuine interest exists, a court may refer, among other things, to the plaintiff’s reputation and to whether the plaintiff has a continuing interest in and link to the claim (see, e.g., *Canadian Council of Churches*, at p. 254).²⁹

46. Critically:

...la Cour d’appel [du Québec] a établi qu’un citoyen, une association ou toute autre entité juridique, sauf le gouvernement, peut intenter un recours dans l’intérêt public sans démontrer un préjudice né, actuel, personnel et direct distinct du préjudice subi par la collectivité”³⁰

47. Further, public interest litigants in constitutional litigation need not demonstrate that their personal interests or constitutional rights are directly impacted or infringed;³¹

48. For Public Interest Litigation Institute, its genuine interest is reflected in, *inter alia*, paragraphs 7 to 15 of the present application, which are hereby incorporated by reference to avoid unnecessary repetition;

49. For Professor David, his genuine interest is reflected in, *inter alia*, paragraphs 16 to 26 of the present application, which are hereby incorporated by reference to avoid unnecessary repetition. In addition, as a Canadian citizen, Professor David has a genuine interest and public interest standing to act in respect of the legality of legislation that purports to amend the *Constitution Act, 1867* in respect of the Oath of Allegiance that all Canadian federal and provincial legislators are required to take as a condition of holding office pursuant to s. 128 of the *Constitution Act, 1867*. As per the Court of Appeal’s judgment in *Henderson*, this is *ipso facto* sufficient to establish public interest standing.³² But there is more;

50. Critically, the vast majority of Mr. David’s family members – including his elderly mother – have resided in Quebec for decades, are regular voters in provincial general elections in Quebec, and are and will continue to be subject to the laws enacted by the National Assembly. This includes laws enacted after the general provincial election scheduled to be held in Quebec on October 5, 2026³³ – the first election since the passage of the *Act to recognize the oath* and s. 128Q.1;

²⁹ *Council of Canadians with Disabilities*, at para. 51.

³⁰ *Gélinas-Faucher c. Procureur-général du Québec*, [2025 QCCS 2846](#), at para. 19, citing *Conseil de bande de Pessamit c. Rock*, [2024 QCCA 1532](#), at para. 63.

³¹ *Council of Canadians with Disabilities*, at paras. 2, 37-38.

³² *Henderson c. Québec (Procureur général)*, [2007 QCCA 1138](#), at paras. 64, 78; *Justice pour le Québec c. Procureur général du Canada*, [2024 QCCS 2855](#), at paras. 3, 44;

³³ Élections Québec, “Current and upcoming elections”, online: <https://www.electionsquebec.qc.ca/en/vote/current-and-upcoming-elections/> (Exhibit R-6).

51. This is a significant fact, as the Applicants contend that politicians who refuse to take the Oath after being elected will not be constitutionally eligible to sit in the National Assembly, thereby undermining the legal validity of laws passed in reliance on their votes;³⁴
52. In turn, benefits, programs or other social measures enacted or authorized under those laws on which Mr. David's family members in Quebec rely may be imperilled;
53. Jurisprudence on public interest standing in constitutional cases involving constitutional challenges to legislation strongly support the conclusion that the Applicants each and both have public interest standing to pursue the present application:
 - *Henderson c. Quebec (Procureur général)*, [2007 QCCA 1138](#) (see paras. 8-64, 66-67, 78): The Court of Appeal granted public interest standing to a leader of a political party in his capacity as a private citizen to institute a constitutional challenge alleging that, *inter alia*, the Quebec National Assembly acted *ultra vires* its powers under s. 45 of the *Constitution Act, 1982* in enacting ss. 1, 5 and 13 of the *Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State*, R.L.R.Q. c. E-20.2;
 - *Alford v. Canada (Attorney General)*, [2019 ONCA 657](#): The Ontario Court of Appeal granted public interest standing to a law professor to institute a constitutional challenge to “the constitutional competence of Parliament to pass legislation abridging Parliamentary privilege, without a constitutional amendment.”³⁵ The professor alleged that Parliament acted *ultra vires* s. 18 of the *Constitution Act, 1867* in enacting s. 12 of the *National Security and Intelligence Committee of Parliamentarians Act*, S.C. 2017, c. 15, which abridges Parliamentary privilege and subjects members of the Committee to possible criminal sanction. The Court of Appeal overturned the lower court's decision and granted Mr. Alford standing despite the fact that the legislation only applies to Members of Parliament, and the fact that Mr. Alford “is not a current or past member of the Committee, nor a parliamentarian” and therefore did not have a “real stake in th[e] matter.”³⁶ This judgment is relevant to both Applicants, but is particularly relevant in concluding that Professor David has a genuine interest in the issues raised in the present application;³⁷

³⁴ Yan Campagnolo & Camille Bontems, “L’abolition unilatérale du serment au Roi par le Québec est-elle constitutionnelle?” (2026) 71(2) McGill LJ 549, at 596-597, 600 (**Exhibit R-3**).

³⁵ Paragraph 3.

³⁶ *Alford v. Canada (Attorney General)*, [2026 SCC 14](#), at para. 12, summarizing the reasons in *Alford v. Canada (Attorney General)*, [2018 ONSC 3984](#), at para. 18.

³⁷ Note that the judgment on the merits was appealed all the way to the Supreme Court of Canada, with a majority holding that Parliament had not contravened s. 18 of the *Constitution Act, 1867*: see *Alford v. Canada (Attorney General)*, [2026 SCC 14](#).

- *Justice pour le Québec c. Procureur général du Canada*, [2024 QCCS 2855](#): The Court granted public interest standing to an individual on the basis of his Canadian citizenship in order for him to advance a constitutional challenge contesting the constitutional validity of the Her Majesty The Queen Elizabeth II's appointment of a unilingual Governor General, despite the fact that the individual did not specifically articulate his interest in the issues raised in the application. The Court permitted two public interest organizations to amend the application pursuant to art. 168(4) C.P.C. in order to specify their respective interest in the issues raised therein (see paras. 39-48);
 - *Gélinas-Faucher c. Procureur général du Québec*, [2025 QCCS 2846](#): A law professor who was born and raised in Quebec but intermittently lived outside Quebec between 2008 and 2022 – and has not resided in Quebec since 2022 – was found to have a genuine interest and was granted public interest standing to successfully challenge s. 282 of Quebec's *Loi électorale*, R.L.R.Q. c E-3.3 despite not having personally suffered an injury to his right to vote in Quebec provincial elections protected under s. 3 of the *Canadian Charter of Rights and Freedoms*.³⁸ This judgment is relevant to both Applicants, but is particularly relevant in concluding that Professor David has a genuine interest in the issues raised in the present application;
54. Overall, as the Applicants individually and collectively have genuine interest in the serious and justiciable issues raised in the application, the second step of the test for public interest standing is satisfied for both Public Interest Litigation Institute and Professor David;
- (iii) This Application Is A Reasonable and Effective Means of Bringing The Issues Before This Honourable Court
55. The present application is a reasonable and effective means of having this Honourable Court adjudicate the serious justiciable issues it addresses;
56. In *Council of Canadians with Disabilities*, the Supreme Court articulated the criterion of reasonable and effective means as follows:

[54] To determine whether, in light of all the circumstances, a proposed suit is a reasonable and effective means of bringing an issue before the court, courts should consider whether the proposed action is an economical use of judicial resources, whether the issues are presented in a context suitable for judicial determination in an adversarial setting, and whether permitting the proposed action to go forward will serve the purpose of upholding the principle of legality (*Downtown Eastside*, at para. 50). Like the other factors, this one should be applied purposively, and from a “practical and pragmatic point of view” (para. 47). (emphasis added)

³⁸ *Gélinas-Faucher*, at paras. 29-79.

[55] The following non-exhaustive list outlines certain “interrelated matters” a court may find useful when assessing the third factor (*Downtown Eastside*, at para. 51):

1. *The plaintiff's capacity to bring the claim forward*: What resources and expertise can the plaintiff provide? Will the issue be presented in a sufficiently concrete and well-developed factual setting?

2. *Whether the case is of public interest*: Does the case transcend the interests of those most directly affected by the challenged law or action? Courts should take into account that one of the ideas animating public interest litigation is that it may provide access to justice for disadvantaged persons whose legal rights are affected.

3. *Whether there are alternative means*: Are there realistic alternative means which would favour a more efficient and effective use of judicial resources and would present a context more suitable for adversarial determination? If there are other proceedings relating to the matter, what will be gained in practice by having parallel proceedings? Will the other proceedings resolve the issues in an equally or more effective and reasonable manner? Will the plaintiff bring a particularly useful or distinctive perspective to the resolution of those issues?

4. *The potential impact of the proceedings on others*: What impact, if any, will the proceedings have on the rights of others who are equally or more directly affected? Could “the failure of a diffuse challenge” prejudice subsequent challenges by parties with specific and factually established complaints? (citing *Danson v. Ontario (Attorney General)*, [1990] 2 S.C.R. 1086, at p. 1093).

57. These factors lead to the conclusion that the present application “is an economical use of judicial resources” and that presents serious justiciable issues “in a context suitable for judicial determination in an adversarial setting”;
58. As well, permitting the Applicants to pursue the present application on its merits will manifestly “serve the purpose of upholding the principle of legality”;³⁹

a. The Applicants' Capacity To Pursue the Application

59. Individually and collectively, the Applicants have the capacity to pursue the present application with due regard for professionalism, proportionality, candour, intellectual rigour, and respect for the legal and ethical rules, principles, and precedents applicable in all legal proceedings held in Quebec courts;

³⁹ *Canadian Council with Disabilities*, at para. 54.

60. Indeed, the present application is being filed by Me Jeffrey Orenstein on behalf of Public Interest Litigation Institute and by Professor David in his own personal individual capacity;
61. Me Orenstein is a Member in good standing of the Barreau du Québec since 2002 and has appeared in hundreds of judicial proceedings before this Honourable Court, the Court of Appeal, the Federal Court, the Ontario Superior Court of Justice, and the Supreme Court of Canada, among others;
62. Professor David is, as noted, a graduate of, *inter alia*, McGill University's Faculty of Law, where he completed the bijuridical joint common law and civil law program in both official languages. Professor David is a Member in good standing of the Law Society of Ontario since 2016;
63. As he has done in the context of his participation as attorney of record in legal proceedings before this Honourable Court and the Court of Appeal,⁴⁰ immediately upon filing this application and being provided with the file number, Professor David obtained special authorization from the Barreau du Québec in order to allow him to also participate in the proceedings as attorney of record for the Applicant Public Interest Litigation Institute alongside Me Orenstein. This [...] ensures that Professor David is in full compliance with arts. 128.1 and 128.1 of the Quebec's [Code of Professional Conduct of Lawyers, C.Q.L.R. c. B-1, r. 3](#);
64. In addition to being represented by a longstanding member of the Quebec Bar,⁴¹ who is also PILI's Vice-President, PILI's capacity to pursue the application are demonstrated by its Mission Statement, its Statement of Principles, as well as its noteworthy record of interventions in significant constitutional and other appeals of public or national importance heard by the Supreme Court of Canada. For the avoidance of unnecessary repetition, paragraphs 7 to 15 of the present application are hereby incorporated by reference;
65. Professor David's capacity to pursue the present application is evidenced by his legal training in common law and civil law, his training, experience, expertise in public and constitutional law, his stellar litigation record that includes several appearances as counsel of record in interventions and appeals before the Supreme Court of Canada, and in proceedings and appeals before this Honourable Court and the Court of Appeal. For the avoidance of unnecessary repetition, paragraphs 16 to 26 of the present application are hereby incorporated by reference;
66. It is further respectfully submitted that the present application and the extensive legal research conducted as part of its preparation further testifies to the Applicants' respective and collective capacity to pursue the application;

⁴⁰ Some of which are identified at footnotes 11 and 12 of the present application.

⁴¹ *Gélinas-Faucher c. Procureur général du Québec*, [2025 QCCS 2846](#), at paras. 74-75.

67. Significantly – and as discussed at paragraphs 32 to 43 above – the constitutional questions raised in the present application are “pure questions of law.” As a result, the absence of a “factual context can have no appropriate bearing on this constitutional challenge.”⁴²
68. As held by the Supreme Court of Canada: “A statute’s very existence, for example, or the manner in which it was enacted can be challenged on the basis of legislative facts alone.”⁴³ This is precisely the case here;
69. Further, in *Henderson*, the Court of Appeal noted that “L’absence de faits adjudicatifs n’est pas en soi déterminante”⁴⁴ in granting a private citizen public interest standing to advance a constitutional challenge contending that Quebec’s National Assembly acted *ultra vires* the provincial powers of unilateral constitutional amendment in s. 45 of the *Constitution Act, 1982* in enacting ss. 1, 5 and 13 of the *Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State*, R.L.R.Q. c. E-20.2.⁴⁵ The Court was clear: “La nécessité d’une trame factuelle quelconque à l’appui d’une démarche judiciaire est, en matière constitutionnelle, beaucoup moins importante.”⁴⁶
70. Also, in *Alford v. Canada (Attorney General)*, [2019 ONCA 657](#) (at para. 3), the Ontario Court of Appeal held that “factual context can have no appropriate bearing on this constitutional challenge” raising “the pure question of law” of whether Parliament acted *ultra vires* s. 18 of the *Constitution Act, 1867* in enacting s. 12 of the *National Security and Intelligence Committee of Parliamentarians Act*, S.C. 2017, c. 15 without a constitutional amendment;
71. The above supports the conclusion that this application “is an economical use of judicial resources” and that it presents serious justiciable issues “in a context suitable for judicial determination in an adversarial setting”⁴⁷

b. The Issues Raised In The Application Are Clearly of Public Interest

72. The serious justiciable issues raised in the present application are manifestly of public interest;
73. As noted, the issues are constitutional questions that pertain to the scope and extent of the power conferred by s. 45 of the *Constitution Act, 1982* to Canada’s ten provinces to unilaterally amend their provincial constitutions and to whether abolishing the oath of allegiance to the Canadian head of state prescribed by s. 128 of the *Constitution Act, 1867* is an amendment to the “office of the Queen” and/or

⁴² *Alford v. Canada (Attorney General)*, [2019 ONCA 657](#), at para. 3, quoted and affirmed in *Alford v. Canada (Attorney General)*, [2026 SCC 14](#), at para. 13.

⁴³ *Council of Canadians with Disabilities*, at para. 63.

⁴⁴ *Henderson*, at para. 77.

⁴⁵ *Henderson*, at paras. 8-64, 66-67, 77-78.

⁴⁶ *Henderson*, at para. 73.

⁴⁷ *Council of Canadians with Disabilities*, at para. 54.

the office of Lieutenant Governor and therefore *ultra vires* s. 45 and only achievable by unanimous consent under s. 41(a) of the *Constitution Act, 1982*;

74. These issues manifestly transcend the Applicants' genuine individual and collective interest in their resolution.⁴⁸ The Constitution of Canada belongs to all Canadians.⁴⁹ Every Canadian – and, indeed, the people of Canada as a whole – has an interest in ensuring that governments act within the spheres of their constitutional powers; that constitutional amendments only be achieved in compliance with the amendment formulas listed in Part V of the *Constitution Act, 1982*; and that courts will adjudicate and provide legal clarity pertaining to any serious and justiciable controversy calling these interests and expectations into question;
75. In advancing the interests and expectations of Canadians, the present application serves as a catalyst for access to justice and for providing legal clarity on constitutional questions of the highest magnitude. It is especially significant that the specific questions raised in the present application have never been addressed by any court in Canada;
76. These questions are also clearly of public interest since they concern the powers of unilateral constitutional amendment enjoyed by every province in Canada under s. 45 of the *Constitution Act, 1982*, as well as their interaction with the power of constitutional amendment requiring the unanimous consent of the federal Parliament and each of the ten provincial legislature under s. 41(a);
77. The questions also pertain to the constitutional definition of the phrase “office of the Queen” in s. 41(a), and to the nature and extent of the allegiance legislatures must affirm under s. 128 of the *Constitution Act, 1867*, both of which bear directly on the Canadian head of state. These issues are manifestly of public interest;
78. For example, in *Motard v. Procureur général du Canada*,⁵⁰ two law professors represented by legal counsel filed a constitutional challenge to the federal *Succession to Throne Act, 2013*, S.C. 2013, c. 6, alleging that Canada had acted unconstitutionally in not seeking the unanimous consent of Parliament and the ten provincial legislatures since the Act pertained to the “office of the Queen” within the meaning of s. 41(a). While the professors' standing was not challenged, these cases show that issues pertaining to the scope of the authority to amend the Constitution with regards to the “office of the Queen” under s. 41(a) are of significant public interest;

⁴⁸ *Council of Canadians with Disabilities*, at para. 55.

⁴⁹ e.g., *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 85; *R. v. Conway*, 2010 SCC 22, at para. 77.

⁵⁰ See *Motard c. Procureur général du Canada*, 2016 QCCS 588, appeal dismissed in *Motard c. Procureur général du Canada*, 2019 QCCA 1826. Leave to appeal to the Supreme Court of Canada dismissed, April 23, 2020 (SCC No. 38986).

79. In this light, granting the Applicants public interest standing to advance the present application will not only advance the public interest, but will achieve access to justice for Canadians from coast to coast to coast;

c. No Realistic Alternative Means

80. There are no “realistic alternative means which would favour a more efficient and effective use of judicial resources and would present a context more suitable for adversarial determination” of the serious justiciable issues raised in the present application;⁵¹
81. **First**, there are no realistic alternative means to contesting the constitutionality of the *Act to recognize the oath* and s. 128Q.1 of the *Constitution Act, 1867* other than an application for a declaratory judgment under s. 52(1) of the *Constitution Act, 1982* declaring them of no force or effect;
82. The Act and s. 128Q.1 cannot be challenged in the context of an application for judicial review under administrative law principles because the Act is primary – not subordinate – legislation. Nor is it conceivable that the Act and s. 128Q.1 could ever be challenged in the context of a dispute governed by private law principles – and this, even if constitutional challenges to legislation may be brought in the context of such proceedings;⁵²
83. As well, the failure of a politician to take the oath prior to commencing their duties in the National Assembly following an election is unlikely to be amenable to judicial review under administrative law principles,⁵³ which would preclude a constitutional challenge to the Act and to s. 128Q.1 in the context of judicial review proceedings;
84. In any event, as the present application is ripe for judicial consideration, it is unnecessary and undesirable to await such a hypothetical future proceeding, since the same remedy of declaratory judgment under s. 52(1) of the *Constitution Act, 1982* sought in the present application would have to be requested in any future proceeding seeking to declare the Act and s. 128Q.1 unconstitutional;⁵⁴
85. **Second**, both before and after passing the Act, the Government of Quebec could have – but did not – seek an advisory opinion from the Court of Appeal concerning its constitutionality. It is particularly significant that the Government has not sought such an opinion prior to the provincial general election scheduled for October 2026,⁵⁵ which will be the first provincial general election held since the Act was passed in December 2022. There is, therefore, no assurance that politicians elected

⁵¹ *Council of Canadians with Disabilities*, at para. 55.

⁵² *Tulasne c. Rozon*, [2026 QCCS 1076](#); art. 76 C.C.P.

⁵³ e.g., *British Columbia (Attorney General) v. Provincial Court Judges' Association of British Columbia*, [2020 SCC 20](#), at para. 51.

⁵⁴ Arts. 529 & 530 C.C.P.

⁵⁵ Élections Québec, “Current and upcoming elections”, online: <https://www.electionsquebec.qc.ca/en/vote/current-and-upcoming-elections/>

in October can constitutionally assume office without taking the oath mandated by s. 128 of the *Constitution Act, 1867*;

86. Note as well that the National Assembly is currently dissolved such that there is no possibility that the Act and s.128Q.1 will be repealed or amended before the provincial general election. As the Act was adopted unanimously by all parties in the National Assembly, and as none of the parties have subsequently called its constitutionality into question, it is highly unlikely that any party would do after the election as it may expose that their elected Members of the National Assembly were not constitutionally authorized to assume their office therein;
87. **Third**, the Act was adopted unanimously by all political parties represented in the National Assembly on December 9, 2022. Over three and a half years later, no Member of the National Assembly has filed a constitutional challenge to the Act and to s. 128Q.1 and neither has any political party. This should not be surprising: as affirmed by the Court of Appeal, political parties do not have standing to challenge the constitutionality of laws in the context of judicial proceedings.⁵⁶ As emphasized in *Henderson*:

[40] On ne s'attend pas à ce qu'un parti politique autorisé puisse, d'une part, participer aux travaux pour l'adoption d'une loi en Commission parlementaire ou à l'Assemblée nationale et, d'autre part, attaquer sa validité et contester judiciairement sa légalité. La première vocation d'un parti politique autorisé est de participer au processus démocratique pour l'adoption des lois, ce qui limite d'autant son action judiciaire. La contestation judiciaire des lois, comme leur défense d'ailleurs, ne revient pas aux partis politiques.

[41] Or, le Parti égalité était, du moins au temps où les procédures furent intentées, un parti politique autorisé en vertu de la *Loi électorale*, précitée. Le recours intenté par celui-ci ne porte pas sur ses activités courantes. Il ne s'agit pas ici d'une poursuite intentée à titre d'employeur, par exemple, ni d'une réclamation contre un fournisseur de services, mais plutôt d'une contestation de la validité de certaines dispositions d'une loi adoptée à la majorité par l'Assemblée nationale et dûment sanctionnée.
[...]

[44] La requête en jugement déclaratoire présentée par le Parti égalité est donc irrecevable et doit être rejetée.

88. As any attempt by a political party to file a constitutional challenge to legislation would be inadmissible, and as there are no other means to challenge the constitutionality of the Act and s. 128Q.1, the present application is a reasonable and effective means of having these serious justiciable issues adjudicated;

⁵⁶ *Henderson c. Procureur général du Québec*, [2007 QCCA 1138](#), at paras. 38-44.

89. The same conclusion obtains even if a Member of the National Assembly could theoretically challenge the legislation in their capacity as a private citizen – a matter which is not free from doubt. In *Henderson*, the Court of Appeal granted public interest standing to the leader of the Parti Égalité in his capacity as a private citizen despite refusing it for the Parti itself.⁵⁷ However, Mr. Henderson had never been elected to the National Assembly;
90. In any event, the prospect of an MNA bringing an application contesting the constitutionality of the Act and s. 128Q.1 is highly unlikely. As noted, the Act was adopted unanimously, and even if an MNA were to file such a challenge, they would likely face immediate expulsion from the party caucus. Regardless, the spectre of an uncertain hypothetical future contestation by an MNA acting in their capacity as MNA or as a private citizen is not determinative of the existence of reasonable alternative means to the present application that is manifestly ripe for judicial determination;
91. As noted, in *Alford v. Canada (Attorney General)*, [2019 ONCA 657](#): The Ontario Court of Appeal granted public interest standing to a law professor seeking to institute a constitutional challenge to “the constitutional competence of Parliament to pass legislation abridging Parliamentary privilege, without a constitutional amendment”⁵⁸ despite the fact that the legislation only applies to Members of Parliament, and the fact that Mr. Alford “is not a current or past member of the Committee, nor a parliamentarian” and therefore did not have a “real stake in th[e] matter.”⁵⁹
92. It should also be noted that the Lieutenant Governor of Quebec is not in a position to institute legal proceedings challenging the constitutionality of the *Act to recognize the oath* and s. 128Q.1 or even to refuse to give Royal Assent to legislation passed by legislators who did not take the Oath of Allegiance in s. 128 and whose votes are therefore constitutionally invalid.⁶⁰ The reason for this is the separation of powers. As stated in a press release issued by the Office of the Lieutenant Governor of Quebec after assenting to the *Act* (**Exhibit R-7**):⁶¹

The Lieutenant Governor's role is apolitical and neither can he nor should he interfere with the role of the Legislature or substitute himself for the will of elected officials. It is the latter who are responsible for drafting legislation and they have a duty to ensure the legality and constitutionality of the bills they submit for assent. These are the duties

⁵⁷ *Henderson*, at paras. 44, 63-64, 74.

⁵⁸ Paragraph 3.

⁵⁹ *Alford v. Canada (Attorney General)*, [2026 SCC 14](#), at para. 12, summarizing the reasons in *Alford v. Canada (Attorney General)*, [2018 ONSC 3984](#), at para. 18.

⁶⁰ The legal and constitutional invalidity of votes taken by members of the National Assembly who did not take the Oath of Allegiance is discussed later in this proceeding.

⁶¹ Office of the Lieutenant-Governor of Quebec, “The Lieutenant-Governor of Quebec Assents Bill 4 – An Act to Recognize the Oath Provided in the Act Respecting the National Assembly as the Sole Oath Required in Order to Sit in the Assembly”, December 9, 2022 ([online](#)).

of the democratically elected Members of the National Assembly of Quebec. The Canadian constitutional monarchy is based on the principle of the separation of executive, legislative and judicial powers. Thus, should the legality or constitutionality of a law be raised, the matter falls under the jurisdiction of the judiciary and not the Lieutenant Governor. (emphasis added)

93. But there is more;
94. Despite this avenue being entirely open to the Government of Canada acting via the Governor in Council,⁶² the Attorney General of Canada has not pursued legal proceedings seeking to ascertain the constitutionality of the Act and of s. 128Q.1. Nor has any indication been provided that such proceedings will indeed be pursued;
95. The fact that Public Interest Litigation Institute is represented by counsel, and that Professor David is a lawyer, law professor, and litigator with experience and expertise in litigation before the Quebec courts and significant expertise in constitutional and public law also positions this application as “an efficient and effective use of judicial resources” and as highly “suitable for adversarial determination.”⁶³ It is respectfully submitted that the contents of the present application themselves attest to this reality;
96. Finally, the Applicants are unaware of any other proceedings raising the constitutional issues addressed in the present application, such that granting public interest standing to the Applicants will not give rise to a parallel proceeding,⁶⁴ or to concerns relating to litispendence;
97. The above supports the conclusion that this application “is an economical use of judicial resources” and that it presents serious justiciable issues “in a context suitable for judicial determination in an adversarial setting”⁶⁵

d. Potential Impact on Others

98. The serious justiciable issues raised in the present application will inevitably impact the interests of “others”.
99. It is, however, key to identify who those “others” are and how they will be impacted;

⁶² For example, pursuant to ss. 53(1) of the [Supreme Court Act, R.S.C. 1985, c. S-26](#), the Governor in Council could refer questions to the Supreme Court of Canada concerning “(a) the interpretation of the Constitution Acts” or “(b) the constitutionality or interpretation of any federal or provincial legislation.”

⁶³ *Council of Canadians with Disabilities*, at para. 55; *Gélinas-Faucher c. Procureur général du Québec*, [2025 QCCS 2846](#), at para. 78; *Alford v. Canada*, [2019 ONCA 657](#), at para. 4;

⁶⁴ *Council of Canadians with Disabilities*, at para. 55.

⁶⁵ *Council of Canadians with Disabilities*, at para. 54.

100. **First**, as noted, adjudication of the present application will impact the constitutional powers of the National Assembly to adopt legislation purporting to unilaterally amend the constitution of the province pursuant to s. 45 of the *Constitution Act, 1982*. However, the Attorney General of Quebec is named as Respondent, and will be able to fully assert the rights, powers, and interests of the National Assembly and the Government of Quebec in the context of the present legal proceedings;
101. **Second**, as the questions engage the power of constitutional amendment by unanimous consent under s. 41 of the *Constitution Act, 1982*, adjudication of the present application will impact the interests of the federal Parliament and of the nine other provincial legislatures. Importantly, however, nothing precludes any of the federal or provincial Attorneys General from seeking to intervene in the present proceedings. If any do, the Applicants undertake not to oppose their interventions;
102. However, the present proceedings will not “prejudice subsequent [possible] challenges” that may be pursued in the future in other the courts of other Canadian jurisdictions.⁶⁶ This is true for several non-exhaustive reasons:
- This application concerns the constitutionality of Quebec legislation that does not apply extraterritorially such that it can only be challenged in Quebec courts;
 - No person in any other province will be foreclosed from challenging legislation adopted by that province that purports to unilaterally amend the constitution of that province;
 - The constitutional conclusions to be stated by this Honourable Court and/or the Court of Appeal will only be binding in the province of Quebec as the horizontal *stare decisis* effect of their respective public law judgments do not extend beyond the province. Only the constitutional declarations of the Supreme Court of Canada have *erga omnes* effect across Canada, and this, as a matter of vertical *stare decisis*;⁶⁷
103. **Third**, adjudication of the present application will impact the rights, interests, expectations, and entitlement of all Quebecers – and indeed, all Canadians in the exercise of legislative and governmental powers in a constitutionally-compliant manner;
104. These rights, interests, expectations, and entitlements will be vindicated whether or not this Court grants the present application and issues a declaratory judgment declaring unconstitutional and of no force or effect the *Act to recognize the oath* and/or s. 128Q.1 of the *Constitution Act, 1867*;

⁶⁶ *Council of Canadians with Disabilities*, at para. 55.

⁶⁷ *R. v. Sullivan*, [2022 SCC 19](#), at paras. 55, 59.

105. Relatedly – and subject to the doctrines of *stare decisis*, *res judicata*, and abuse of process – adjudication of the present application will not prevent anyone from challenging the said Act and/or s. 128Q.1 in future proceedings;
106. This scenario, of course, only arises if this Court dismisses the present application. If a future challenge is pursued, this Court's constitutional conclusions on the pure questions of law raised in this application will be binding as a matter of horizontal *stare decisis* but will not preclude their revisitation under applicable principles.⁶⁸ Nor will these conclusions necessarily determine the outcome of questions of fact and/or mixed fact and law that may be presented in a subsequent constitutional challenge;
107. **Fourth**, this Court's adjudication of the constitutional issues relating to the right to vote, the right to effective representation, and the right of politicians elected to the National Assembly to take their seat therein – as protected under s. 3 of the *Canadian Charter of Rights and Freedoms* – will impact the rights of voters and of politicians elected to the Assembly;
108. Critically, the vast majority of Mr. David's family members – including his elderly mother – have resided in Quebec for decades, are regular voters in provincial general elections in Quebec, and are and will continue to be subject to the laws enacted by the National Assembly. This includes laws enacted after the general provincial election scheduled to be held in Quebec on October 5, 2026 – the first election since the Act to recognize the oath and s. 128Q.1. This is a significant fact, as the Applicants contend that politicians who refuse to take the Oath after being elected will not be constitutionally eligible to sit in the National Assembly, thereby undermining the legal validity of laws passed in reliance on their votes;⁶⁹
109. Importantly, there are no "others" whose rights, interests, or powers will be irreparably harmed. This is true even if this Court grants the present application and issues a declaratory judgment under s. 52(1) of the *Constitution Act, 1982* declaring unconstitutional and of no force or effect the *Act to recognize the oath* and/or s. 128Q.1;
110. The reason for this is simple: if this Court so concludes, it will simply highlight that the National Assembly never had the constitutional authority to enact them under s. 45 of the *Constitution Act, 1982* in the first place. The affirmation that particular exercises of public power are *ultra vires* does not affect past, present, or future exercises that comply with the constitution;
111. Overall, the potential impact of the present application – and the legal clarity it may help achieve – further weigh in favour of the application being a reasonable and effective means of adjudicating the serious justiciable issues it inescapably raises;

⁶⁸ *Sullivan*, at para. 75.

⁶⁹ *Campagnolo & Bontems*, at 596-597, 600 (Exhibit R-3).

e. Upholding Access To Justice and The Principle of Legality

112. Granting public interest standing to the applicants to pursue the present application will manifestly advance access to justice and “serve the purpose of upholding the principle of legality”;⁷⁰

113. The symbiotic relationship between access to justice and principle of legality was described as follows in *Council of Canadians with Disabilities*:

[33] The legality principle encompasses two ideas: (i) state action must conform to the law and (ii) there must be practical and effective ways to challenge the legality of state action (*Downtown Eastside*, at para. 31). Legality derives from the rule of law: “[i]f people cannot challenge government actions in court, individuals cannot hold the state to account — the government will be, or be seen to be, above the law” (*Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 S.C.R. 31, at para. 40).

[34] Access to justice, like legality, is “fundamental to the rule of law” (*Trial Lawyers*, at para. 39). As Dickson C.J. put it, “[t]here cannot be a rule of law without access, otherwise the rule of law is replaced by a rule of men and women who decide who shall and who shall not have access to justice” (*B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214, at p. 230).

114. Granting public interest standing to the Applicants upholds both principles because giving the Applicants “access to the courts”⁷¹ to pursue the present application will ensure that the actions of the Quebec National Assembly in passing *Act to recognize the oath* and s. 128Q.1 of the *Constitution Act, 1867* “conform to the law” of the Constitution of Canada;⁷²

115. By contrast, if the Applicants are prevented from pursuing the present application, the National Assembly and the Members elected to it will continue to engage in conduct under legislation that is manifestly unconstitutional. As well, the absence of a constitutional challenge to the Act and s. 128Q.1 may incentivize the National Assembly to adopt additional unconstitutional legislation purporting to unilaterally amending the Canadian constitution;

116. In either scenario, without judicial intervention clarifying the state of the law, “the government will be, or be seen to be, above the law.”⁷³ This is, in turn, antithetical to the rule of law and to public confidence in Canada – and Quebec’s – democratic institutions;

⁷⁰ *Council of Canadians with Disabilities*, at para. 54.

⁷¹ *Council of Canadians with Disabilities*, at para. 33.

⁷² *Council of Canadians with Disabilities*, at para. 35.

⁷³ *Council of Canadians with Disabilities*, at para. 33.

117. The interests of legality and access to justice therefore weigh in favour of granting public interest standing to both Applicants;

f. Conclusion on Third Step

118. Overall, as the present application is a reasonable and effective means of adjudicating the serious and justiciable issues it raises, the third step for public interest standing is satisfied for both Public Interest Litigation Institute and Professor David, individually and collectively;

119. This conclusion finds further support in the jurisprudence.

120. For example, in *Henderson*, which involved allegations that the National Assembly had acted *ultra vires* the unilateral constitutional amendment power in s. 45 in enacting ss. 1, 5 and 13 of the *Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State*, the Court of Appeal unanimously held:

...il est difficile d'imaginer une manière autre ou plus efficace de soumettre la question de la validité de ces dispositions de la Loi aux tribunaux. Le débat en est un purement de droit, même si l'objet de la Loi a, par ailleurs, un caractère politique. La contestation judiciaire ne concerne que la légalité de ces dispositions, et rien d'autre.⁷⁴

121. These conclusions apply, *mutatis mutandis*, to the present application;

(iv) Conclusion on Public Interest Standing

122. As Public Interest Litigation Institute and Professor David each and both satisfy the test for public interest standing, public interest standing should be granted to both applicants with respect to the present application;

123. Alternatively, if only one of the two applicants satisfies the test for public interest standing, that applicant should be granted public interest standing even if the other applicant does not satisfy the test and is not granted public interest standing;⁷⁵

FACTS

124. The Preamble of the *Constitution Act, 1867* provides that Canada is a federation united “under the Crown of the United Kingdom of Great Britain and Ireland”. Section 9 of the *Constitution Act, 1867* vests “The Executive Government and Authority of and over Canada” in the Queen. The *Constitution Act, 1982* then

⁷⁴ *Henderson c. Procureur général du Québec*, [2007 QCCA 1138](#), at para. 72.

⁷⁵ *Henderson*, at para. 44. For example, in *Henderson*, the Court of Appeal granted public interest standing to Mr. Henderson, the leader of the Parti Égalité, despite not granting public interest standing to the Parti Égalité. Note that the Parti was not granted standing simply because political parties do not have standing to challenge the constitutionality of laws and are not endowed with legal personality (paras. 38-44)

“completed the ‘Canadianization’ of the Crown”⁷⁶ While the *Constitution Act, 1982* “removed the last vestige of British authority over the Canadian Constitution,”⁷⁷ it also “reinforced... [t]he role of Her Majesty as sovereign” and head of state;⁷⁸

125. Her Royal Highness Her Majesty The Queen Elizabeth II died on September 8, 2022. Her successor, His Royal Highness His Majesty The King Charles III, acceded to the Throne on September 8, 2022. On May 6, 2023, His Majesty The King and his wife were coronated, respectively, as King and Queen of the United Kingdom and the 14 other Commonwealth realms, including Canada.

126. By virtue of coronation, “The Executive Government and Authority of and over Canada” became vested in His Majesty The King Charles III, who is now Canada’s Head of State, and whose powers are exercised on his behalf in Canada by the Governor General of Canada for His Majesty The King in Right of Canada, and by the Lieutenant Governors for His Majesty The King in Right of each of 10 provinces, respectively.⁷⁹ Indeed, under the principle of symmetry, “The monarchy continues uninterrupted through changes in the individual monarch.”⁸⁰

127. Like his predecessor Her Majesty The Queen Elizabeth II, His Majesty The King Charles III is “the embodiment of the Crown in Canada,”⁸¹ “the personification of the state” and its values and institutions,⁸² and the constitutional head of state;⁸³

127.1 The monarchy’s role and status in Canada’s modern constitutional monarchy can only be appreciated in the broader historical and traditional context rooted in the United Kingdom;

127.2 Of particular relevance to the present case, since the 5th year of the reign of Queen Elizabeth I, politicians elected to the British House of Commons have been required to take an Oath of Allegiance to the Sovereign;⁸⁴

127.3 In Canada, even before Confederation in 1867, the Oath of Allegiance has also been required to be taken by persons elected to a legislative body;⁸⁵

⁷⁶ *McAteer v. Canada (Attorney General)*, [2014 ONCA 578](#), at para. 47.

⁷⁷ *Reference re Secession of Quebec*, [\[1998\] 2 S.C.R. 217](#), at para. 46.

⁷⁸ *McAteer et al. v. Attorney General of Canada*, [2013 ONSC 5895](#), at para. 17.

⁷⁹ *Constitution Act, 1867*, ss. 12 and 65; *Société de l’Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, [2026 SCC 22](#), at paras. 28-31.

⁸⁰ *George Gordon First Nation v. Saskatchewan (Attorney General)*, [2020 SKQB 90](#), at para. 9; *Motard v. Attorney General of Canada*, [2019 QCCA 1826](#), at paras. 41-53.

⁸¹ *McAteer et al. v. Attorney General of Canada*, [2013 ONSC 5895](#), at para. 20, citing [Royal Title and Styles Act, R.S.C. 1985, c. R-12, s. 2](#).

⁸² *McAteer v. Canada (Attorney General)*, [2014 ONCA 578](#), at para. 51.

⁸³ *Constitution Act, 1867*, s. 9.

⁸⁴ See **Exhibit R-11**: Assemblée nationale du Québec, *Encyclopédie du parlementarisme québécoise*, « Serment », citing Joseph-François Perrault, *Lex Parliamentaria ou traité de la Loi et la Coutume des Parlements montant leur antiquité, noms, espèces et qualité* (Québec, P.E. Desbarats, 1803), at p. 179, [193, 207](#)

⁸⁵ *Ibid.*

127.4 For example, section VII of [The Quebec Act, 1774](#)⁸⁶ (**Exhibit R-12**) required persons elected to the Conseil de Québec to take the Oath of Allegiance to the King:

No Person professing the Romish Religion obliged to the take Oath of 1 Eliz., but to take before the Governor, & c. the following Oath

VII. Provided always, and be it enacted, That no person professing the Religion of the Church of Rome, and residing in the said Province, shall be obliged to take the Oath required by the said Statute passed in the first Year of the Reign of Queen Elizabeth, or any other Oaths substituted by any other Act in the Place thereof, but that **every such Person who, by the said Statute, is required to take the Oath therein mentioned, shall be obliged, and is hereby required, to take and subscribe the following Oath before the Governor, or such other Person in such Court of Record as his Majesty shall appoint, who are hereby authorized to administer the same; videlicet,**

The Oath

“I A.B. do sincerely promise and swear, That I will be faithful, and bear true Allegiance to his Majesty King George, and him will defend to the utmost of my Power, against all traitorous Conspiracies, and Attempts whatsoever, which shall be made against his Person, Crown, and Dignity; and I will do my utmost Endeavor to disclose and make known to his Majesty, his Heirs and Successors, all Treasons, and traitorous Conspiracies, and Attempts, which I shall know to be against him, or any of them; and all

Toutes personnes professantes la Religion Romaine ne seront point obligées de prendre le serment du 1. d'Elisabeth; mais prendront devant le Gouverneur, &c. le serment ci-apres

VII. Pourvu aussi, et it est Etabli, Que toutes personnes professantes la Religion de l'Eglise de Rome, et qui résideront en la dite province, ne seront point obligées de prendre le serment ordonné par le dit acte, passé dans la première année du regne de la Reine Elisabeth, ou quelque'autre serment substitué en son lieu et place par aucun autre acte; **mais que toutes telles personnes, à qui par le dit statut, il est ordonné de prendre le serment qui y est contenu, seront contraintes, et il leur est ordonné de prendre et souscrire le serment ci-après, devant le Gouverneur, ou telle autre personne dans tel greffe, qu'il plaira à sa Majesté d'établir, qui sont par ces présentes autorisés à le recevoir, ainsi qu'il suit:**

Serment

« Je A.B. promets sincerement et affirme par serment, que je serai fidel, et que je porterai vraie foi et fidelité à sa Majesté le Roi George, que je le defendrai de tout mon pouvoir et en tout ce qui dependra de moi, contre toutes perfides conspirations et tous attentats quelconques, qui seront entrepris contre sa personne, sa couronne et sa dignité; et que je ferai tous mes efforts pour découvrir et donner connaissance à sa Majesté, ses héritiers et

⁸⁶ [The Quebec Act, 1774, 14 George III, c. 83 \(U.K.\)](#) (full title: *An Act for making more effectual Provision for the Government of the Province of Quebec in North America*). See also Exhibit R-11.

<u>this I do swear without any Equivocation, mental Evasion, or secret Réserve, and renouncing all Pardons and Dispensations from any Power or Person whomsoever to the contrary. So help me GOD.</u>	<u>successeurs, de toutes trahisons, perfides conspirations, et de tous attentats, que je pourrai apprendre se tramer contre lui ou aucun d'eux; et je fais serment de toutes ces choses sans aucune équivoque, subterfuge mental, et restriction secrete, renonçant pour m'en relever à tous pardons et dispenses d'aucuns pouvoirs et personnes quelconques. Ainsi DIEU me soit en Aide.»</u>
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127.5 Enacted on July 23, 1840, the [Union Act, 1840 \(UK\)](#)⁸⁷ (**Exhibit R-13**), also known as *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada* maintained the requirement that the Oath of Allegiance to the Sovereign be taken by persons elected to its legislative assemblies. Taking the Oath was a condition precedent to lawfully sitting and voting in the Legislative Council and Legislative Assembly of the Province of Canada:

<u>No Member to sit or vote until he has taken the following Oath of Allegiance</u> <u>XXXV. And be it enacted, That no Member, either of the Legislative Council or of the Legislative Assembly of the Province of Canada, shall be permitted to sit or vote therein until he shall have taken and subscribed the following Oath before the Governor of the said Province, or before some Person or Persons authorized by such Governor to administer such Oath:</u> <u>Oath of Allegiance</u> <u>“I A.B. do sincerely promise and swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Province of Canada, dependent on and belonging to the said United Kingdom; and that I will defend Her</u>	<u>Aucun membre ne pourra siéger ni ne voter, avant d'avoir prêté le serment d'allégeance suivant :</u> <u>XXXV. Et qu'il soit statué, qu'il ne sera permis à aucun Membre, soit du Conseil Législatif, ou de l'Assemblée Législative de la Province du Canada, d'y siéger ou voter jusqu'à ce qu'il ait prêté et souscrit le serment suivant devant le Gouverneur de la dite Province, ou devant quelques personne ou personnes autorisées par tel Gouverneur à l'administrer.</u> <u>Serment d'allégeance</u> <u>«Je, A. B. promets sincèrement et jure que je serai fidèle et porterai vraie allégeance à Sa Majesté, la Reine Victoria, comme légitime Souveraine du Royaume-Uni de la Grande Bretagne et d'Irlande, et de cette Province du Canada, dépendant du dit Royaume-Uni et lui appartenant; et que je la défendrai de tout mon pouvoir contre toutes conspirations et attentats</u>
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⁸⁷ [The Union Act, 1840, 3-4 Victoria, c. 35 \(U.K.\)](#), July 23, 1840 (full title: *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*) (**Exhibit R-13**).

<u>to the utmost of my Power against all traitorous Conspiracies and Attempts whatever which shall be made against Her Person, Crown, and Dignity; and that I will do my utmost Endeavour to disclose and make known to Her Majesty, Her Heirs and Successors, all Treasons and traitorous Conspiracies and Attempts which I shall know to be against Her or any of them; and all this I do swear without any Equivocation, mental Evasion, or secret Reservation, and renouncing all Pardons and Dispensations from any Person or Persons whatever to the contrary. So help me GOD.”</u> <u>Affirmation instead of Oath</u> <u>XXXVI.</u> And be it enacted, That every Person authorized by Law to make an Affirmation instead of taking an Oath may make such Affirmation in every Case in which an Oath is herein-before required to be taken.	<u>perfides quelconques qui pourront être tramés contre Sa Personne, Sa Couronne et Sa Dignité; et que je ferai tout en mon pouvoir pour découvrir et faire connaître à Sa Majesté, Ses Héritiers et Successeurs, toutes trahisons et conspirations et attentats perfides que je saurai avoir été tramés contre Elle ou aucun d'eux; et tout ceci je le jure sans aucun équivoque, subterfuge mental ou restriction secrète, et renonçant à tous par dons et dispenses d'aucunes personne ou personnes quelconques à ce contraires. Ainsi que Dieu me soit en aide.»</u> <u>Affirmation au lieu du serment</u> <u>XXXVI.</u> Et qu'il soit statué, que toute personne autorisée par la Loi à faire une affirmation au lieu de prêter serment pourra faire telle affirmation dans tous les cas ou un serment est requis comme ci-dessus.
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127.6 As well, the 1856 UK statute [*An Act to change the Constitution of the Legislative Council by rendering the same Elective, Prov C, 1856, c 140 \(Exhibit R-8\)*](#) reiterated the requirement in *The Union Act of 1840* for Members of the Legislative Council of the Province of Canada to take the Oath of Allegiance prior to being able to take their seat and vote therein:

<u>Oath of office.</u> <u>XVI.</u> Every Legislative Councillor shall, before taking his seat, take the oath in the Schedule D. before the Clerk of the said Council. <u>SCHEDULE D.</u> <u>OATH OF ALLEGIANCE.</u> I, A.B., do sincerely promise and swear that I will be faithful and bear true Allegiance to Her Majesty Queen <i>Victoria</i>, as lawful Sovereign of the United Kingdom of <i>Great Britain and Ireland</i>, and of this Province of <i>Canada</i> dependent on and belonging to the said United Kingdom ; and that I will defend Her to the utmost of my power against all traitorous conspiracies and attempts whatever, which shall be made against Her Person, Crown and Dignity ; and that I will do my utmost endeavour to disclose and make known to Her Majesty, Her Heirs and Successors, all treasons and traitorous conspiracies and attempts which I
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shall know to be against Her or any of them ; and all this I do swear without any equivocation, mental evasion or secret reservation, and renouncing all pardons and dispensations from any person or persons whatever to the contrary: - So help me God.

127.7 At Confederation, s. 128 of the [Constitution Act, 1867](#) entrenched the Oath of Allegiance found in the *Quebec Act, 1774* and the *Act of Union, 1840* into the Constitution of Canada and of every province and maintained it as a constitutional condition precedent for any person elected to the Parliament of Canada or to a provincial legislature to lawfully take their seat and vote therein.

127.8 Section 128 of the *Constitution Act, 1867* reads:

<u>Serment d'allégeance, etc.</u>	<u>Oath of Allegiance, etc.</u>
<u>128 Les membres du Sénat ou de la Chambre des Communes du Canada devront, avant d'entrer dans l'exercice de leurs fonctions, prêter et souscrire, devant le gouverneur-général ou quelque personne à ce par lui autorisée, — et pareillement, les membres du conseil législatif ou de l'assemblée législative d'une province devront, avant d'entrer dans l'exercice de leurs fonctions, prêter et souscrire, devant le lieutenant-gouverneur de la province ou quelque personne à ce par lui autorisée, — le serment d'allégeance énoncé dans la cinquième annexe de la présente loi; et les membres du Sénat du Canada et du conseil législatif de Québec devront aussi, avant d'entrer dans l'exercice de leurs fonctions, prêter et souscrire, devant le gouverneur-général ou quelque personne à ce par lui autorisée, la déclaration des qualifications énoncée dans la même annexe.</u>	<u>128 Every Member of the Senate or House of Commons of Canada shall before taking his Seat therein take and subscribe before the Governor General or some Person authorized by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall before taking his Seat therein take and subscribe before the Lieutenant Governor of the Province or some Person authorized by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of Canada and every Member of the Legislative Council of Quebec shall also, before taking his Seat therein, take and subscribe before the Governor General, or some Person authorized by him, the Declaration of Qualification contained in the same Schedule.</u>

127.8 The oath contained in the Fifth Schedule to the *Constitution Act, 1867* is as follows:

<u>Serment d'allégeance</u>	<u>Oath of Allegiance</u>
<u>Je, A.B., jure que je serai fidèle et porterai vraie allégeance à Sa Majesté la Reine Victoria.</u>	<u>I A.B. do swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Victoria.</u>

<u>N.B. — Le nom du Roi ou de la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, alors régnant, devra être inséré, au besoin, en termes appropriés.</u>	<u>Note - The Name of the King or Queen of the United Kingdom of Great Britain and Ireland for the Time being is to be substituted from Time to Time, with proper Terms of Reference thereto.</u>
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127.9 As per the substitution expressly envisaged in the Fifth Schedule, the Oath now requires legislators to swear to “be faithful and bear true Allegiance” to His Majesty The King Charles III.

127.10 As stated in s. 128, every person elected to the Parliament of Canada or to a provincial legislature is required to take their Oath of Allegiance prior to taking their seat therein. As s. 128 forms part of the Constitution of Canada, “the taking of the Oath is a constitutional requirement.”⁸⁸

127.11 The Canadian [House of Commons Procedure and Practice, Fourth Edition 2025](#) (Exhibit R-9) states:

4.3.1 Before taking their seats and voting in the House of Commons, duly elected Members must take an oath or make a solemn affirmation of allegiance or loyalty to the Sovereign and sign the Test Roll, a book whose pages are headed by the text of the oath or affirmation.

[...]

The Constitution Act, 1867 requires all members of Parliament to take the following oath...

[...]

4.3.6 If a member fails or refuses to swear the oath of allegiance or make a solemn affirmation, the member cannot take their seat in the chamber. Thus, it is the taking of the oath or affirmation which enables a member to participate in the proceedings of the House, in person or remotely, and to vote.

[...]

4.3.8. After a member's election certificate has been received by the Clerk of the House and they have sworn the oath of allegiance or made an affirmation and signed the Test Roll, the member may participate in House proceedings.(emphasis added)⁸⁹

⁸⁸ [Decision of Speaker John Fraser, “Oath/affirmation of allegiance : Member's right to sit in the House in the face of an alleged repudiation of oath; meaning and significance of the oath”, November 1, 1990, House of Commons Debates, 34th Parliament, 2nd Session, Vol. 1, at pp. 14969-70 \(Exhibit R-24\).](#) See also [Assemblée nationale du Québec, « DÉCISION DE LA PRÉSIDENTE concernant le refus de prêter le serment d'allégeance », November 1, 2022 \(Exhibit R-15\)](#) and [Exhibit R-11: Assemblée nationale du Québec, Encyclopédie du parlementarisme québécoise, « Serment »](#). See also Exhibit R-9.

⁸⁹ Note that as of 2026, “There do not appear to be any cases of members refusing to take the oath of allegiance or make a solemn affirmation.”

- 127.12 As stated in s. 128, “every Member of a Legislative Council or Legislative Assembly **of any Province** shall before taking his Seat therein take and subscribe before the Lieutenant Governor **of the Province** or some Person authorized by him, the Oath of Allegiance...” (emphasis added)
- 127.13 In Quebec, the National Assembly’s “Encyclopédie du parlementarisme québécois” (Exhibit R-11) states: “Le serment constitue une ‘véritable parole sacrée’ qui scelle la cohésion et l’appartenance au Parlement. L’assermentation est tout à la fois ‘énonciation performative’, ‘acte d’institution’ et procédure légale’
- 127.14 At all times prior to December 9, 2022, every politician elected to Quebec’s National Assembly complied with the constitutional requirement in s. 128 to take the Oath of Allegiance prior to taking their seat in the Assembly;⁹⁰
- 127.15 However, a provincial general election was held in Quebec on October 3, 2022.⁹¹ On October 11, 2022, ten days before he was slated to be sworn in, the elected member for Camille-Laurin, Paul St-Pierre Plamondon, wrote to the National Assembly’s secretary general to ask for authorization to take his seat in the Assembly and commence his parliamentary functions without fulfilling the constitutional requirement of taking the Oath of Allegiance prescribed by s. 128 of the *Constitution Act, 1867*.⁹²
- 127.16 On October 13, 2022, “le secrétaire général lui a répondu qu’il ne pouvait donner suite à sa demande. Il lui indiqué par la même occasion que le défaut de prêter serment prive un député du droit de siéger à l’Assemblée nationale.”⁹³
- 127.17 On October 19, 2022, politicians elected to the National Assembly as members of the Québec solidaire party refused to take the Oath of Allegiance required under s 128 and only took the oath to the people of Quebec provided for under s. 15 of the [Act respecting the National Assembly, C.Q.L.R. c. A-23.1](#), which has always been understood as distinct, separate, and apart from the oath provided for in s. 128;⁹⁴
- 127.18 October 21, 2022, politicians elected to the National Assembly as members of the Parti Québécois – including its leader, Mr. St-Pierre Plamondon – refused to take the Oath of Allegiance required under s 128 and only took the oath to the people of Quebec provided for under s. 15 of the *Act respecting the National Assembly*.⁹⁵

⁹⁰ [Assemblée nationale du Québec, Encyclopédie du parlementarisme québécoise, « Serment » \(Exhibit R-11\)](#)

⁹¹ [Élections Québec, “Results of October 3, 2022 general election” \(Exhibit R-14\).](#)

⁹² [Exhibit R-11: Assemblée nationale du Québec, Encyclopédie du parlementarisme québécoise, « Serment ».](#)

⁹³ [Assemblée nationale du Québec, « DÉCISION DE LA PRÉSIDENTE concernant le refus de prêter le serment d’allégeance », November 1, 2022 \(Exhibit R-15\).](#)

⁹⁴ [Exhibit R-11: Assemblée nationale du Québec, Encyclopédie du parlementarisme québécoise, « Serment ».](#)

⁹⁵ Ibid.

127.19 On November 1, 2022, the Speaker of the National Assembly, François Paradis, issued a private ruling declaring that the Oath of Allegiance prescribed by s. 128 of the *Constitution Act, 1867* is a constitutional requirement that must be fulfilled by any politician elected to the National Assembly in order to lawfully take their seat therein and to take part in parliamentary activities. As a result, the Speaker concluded that the elected members of Québec solidaire and of the Parti Québécois were prohibited from taking their seat in the National Assembly and from participating in parliamentary activities and committees due to their failure to take the Oath.⁹⁶

127.20 The Speaker emphasized the constitutionally mandatory nature of the Oath in the following terms (Exhibit R-15 at pages 4-7):

En l'espèce, selon l'article 128 de la Loi constitutionnelle de 1867, tout membre de l'assemblée législative d'une province doit (« shall »), avant d'y prendre son siège (« before taking his Seat therein »), prêter et souscrire le serment d'allégeance énoncé dans la cinquième annexe¹³.

Cette expression est claire et a toujours été comprise de la même façon, ici comme ailleurs. Dans l'état actuel du droit, ce serment n'est pas facultatif. Tout membre d'une assemblée législative canadienne doit, avant d'occuper son siège, prêter le serment d'allégeance. Un député qui ne prête pas serment ne peut prendre place à l'Assemblée et participer aux travaux parlementaires. Il s'agit de l'opinion unanime des auteurs de doctrine parlementaire¹⁴.

La même pratique est observée dans les autres provinces canadiennes. Certaines lois provinciales témoignent de la même interprétation de l'article 128 en réitérant qu'un député ne peut voter ni prendre place à l'assemblée avant d'avoir prêté le serment d'allégeance au souverain^{15 97}.

[...]

Toutefois, malgré l'interdiction de participer aux travaux parlementaires, le refus de prêter serment n'entraîne pas la vacance du siège d'un député¹⁹. Le serment, en effet, n'est pas requis pour acquérir la qualité de député : un candidat élu devient membre de l'Assemblée nationale dès que le secrétaire général reçoit la liste des candidats proclamés élus²⁰. Le serment est toutefois une condition pour siéger à

⁹⁶ [Assemblée nationale du Québec, « DÉCISION DE LA PRÉSIDENTE concernant le refus de prêter le serment d'allégeance », November 1, 2022 \(Exhibit R-15\).](#)

⁹⁷ Citing historical and contemporary Parliamentary procedure texts pertaining to the Canadian House of Commons, and to parliamentary procedure in the UK, Australia, and New Zealand, as well as section 24 of British Columbia's *Constitution Act*, R.S.B.C. 1996, c. 66; and s. 23 of Alberta's *Legislative Assembly Act*, R.S.A. 2000, c. L-9.

l'Assemblée et participer aux travaux parlementaires. Le défaut de prêter serment a donc une conséquence claire : cela empêche la personne en défaut de siéger.

[...]

Qu'il suffise de constater que l'article 128 de la Loi constitutionnelle de 1867 est toujours en vigueur au Québec. Dans ce contexte, la présidence n'a pas le pouvoir de dispenser un député d'une obligation constitutionnelle et elle ne peut juger recevable une motion qui permettrait de passer outre à cette obligation.

Pour ces motifs, je déclare que le serment d'allégeance visé à l'article 128 de la Loi constitutionnelle de 1867 est obligatoire pour prendre part aux travaux parlementaires. En conséquence, j'avise les députés qui n'ont pas prêté serment que cela les empêche de prendre place à la Salle de l'Assemblée nationale ou dans l'une de ses commissions pour y siéger. Par contre, je tiens à préciser que les députés concernés sont libres de se raviser en tout temps. Ils n'auront, le cas échéant, qu'à informer le secrétaire général qu'ils entendent prêter serment pour que des dispositions soient prises à cette fin. Lorsque ce dernier aura constaté que toutes les conditions requises ont été remplies pour siéger, l'interdiction de participer aux délibérations parlementaires sera alors levée pour les personnes concernées.

Par ailleurs, et afin que tous les parlementaires saisissent bien la portée de la présente décision, **je donne l'ordre formel à la sergente d'armes de veiller à ce que la présente décision soit appliquée de manière que les députés qui n'ont pas prêté serment ne puissent prendre place dans la Salle de l'Assemblée nationale ou dans l'une de ses commissions. Dans le cas où une personne refuserait de se plier à cette interdiction, la sergente d'armes sera légitimée de l'expulser.** (emphasis added throughout)

127.21 Following the Speaker's ruling, the elected members of Québec solidaire proceeded to taking the Oath of Allegiance required under s. 128.⁹⁸ The members of the Parti Québécois did not;

127.22 On November 29, 2022 commenced the 1st session of the 43rd Legislature in the National Assembly.⁹⁹ The [Order Paper for November 29, 2022 \(Exhibit R-17\)](#) includes a Notice that the Member for Jean-Lesage would be tabling *An Act to recognize the Members' oath to the people of Québec as the sole oath required*

⁹⁸ **Exhibit R-11:** Assemblée nationale du Québec, Encyclopédie du parlementarisme québécoise, « Serment ».

⁹⁹ [National Assembly of Quebec, Votes and Proceedings of the Assembly, Tuesday, 29 November 2022 – No. 1, 43rd Legislature, 1st Session \(Exhibit R-16\)](#).

for Members to take office. The Member for Jean-Lesage was at this time the elected member of Québec solidaire, Sol Zanetti;

127.23 On December 1, 2022, Mr. St-Pierre Plamondon and the two other elected members of the Parti Québécois attempted to enter the Blue Room (Salon Bleu) of the National Assembly without having taken the Oath of Allegiance required under s. 128. Mr. St-Pierre Plamondon and the members were, however, denied entry by the National Assembly's sergeant-at-arms, Véronique Michel (as appears below and at **Exhibit R-18**):¹⁰⁰



127.24 At the same time Mr. St-Pierre Plamondon and the members were being prevented from entering the Salon Bleu, the National Assembly's new Speaker, Nathalie Roy, stated from behind the door of the Salon Bleu that she was and would be enforcing her predecessor's ruling of November 1, 2022 concerning the mandatory nature of the Oath of Allegiance to be taken pursuant to s. 128. The Speaker reiterated that the members of the Parti québécois were prohibited from taking their seats in the National Assembly or in any parliamentary committee in light of their failure to take the Oath;¹⁰¹

¹⁰⁰ [CBC News, "PQ denied entry to Quebec's National Assembly after refusing to swear oath to King", December 1, 2022 \(Exhibit R-18\).](#)

¹⁰¹ Ibid and **Exhibit R-11**: Assemblée nationale du Québec, Encyclopédie du parlementarisme québécoise, « Serment ».

- 127.25 Speaking on December 1, 2022, but prior to the incident with Mr. St-Pierre Plamondon and the members of the Parti Québécois, then-Premier of Quebec François Legault was quoted as saying: “I don’t like swearing the oath to the King. I think we’re all in agreement that the requirement should be abolished.” (translated into English by CBC News in the article attached as Exhibit R-18);
- 127.26 CBC News also quoted Premier Legault as saying that **“allowing the PQ members in [the National Assembly] without following proper procedure could have had consequences. The laws they’re voting on could potentially be challenged.”** (emphasis added) (Exhibit R-18)
- 127.27 The Premier also signalled that his government would be tabling legislation the following week to abolish the requirement for elected members of the National Assembly to take the Oath of Allegiance prior to lawfully taking their seat therein (Exhibit R-18);
128. On [December 6, 2022](#)¹⁰² (see **Exhibit R-1**), during the First Session of the Forty-Third Legislature of the Parliament of Quebec, the Minister Responsible for Democratic Institutions and for Canadian Relations and the Canadian Francophonie tabled Bill 4, [An Act to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly, S.Q. 2022, c. 30](#);
129. On December 9, 2022, without any substantive debate in the Parliament of Quebec, the said Act was passed following a unanimous vote and subsequently assented to by the Lieutenant-Governor of Quebec;¹⁰³
130. The Act contains two clauses, which provide as follows:

LE PARLEMENT DU QUÉBEC DÉCRÈTE CE QUI SUIT: LOI CONSTITUTIONNELLE DE 1867 1. La Loi constitutionnelle de 1867 est modifiée par l’insertion, après l’article 128, du suivant: « 128Q.1. L’article 128 ne s’applique pas au Québec. ». DISPOSITION FINALE 2. La présente loi entre en vigueur le 9 décembre 2022.	THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS: CONSTITUTION ACT, 1867 1. The Constitution Act, 1867 is amended by inserting the following after section 128: “128Q.1 Section 128 does not apply to Quebec.” FINAL PROVISION 2. This Act comes into force on 9 December 2022.
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¹⁰² [Assemblée nationale du Québec, Journal des débats, 43rd Legislature, 1st Session, Tuesday, December 6, 2022, Vol. 47, No. 5 \(Exhibit R-1\).](#)

¹⁰³ [Assemblée nationale du Québec, Journal des débats, 43rd Legislature, 1st Session, Friday, December 9, 2022, Vol. 47, No. 8 \(Exhibit R-2\)](#)

131. Section 128Q.1 purports to exclude Quebec from the application of s. 128 of the *Constitution Act, 1867*. The “EXPLANATORY NOTES” published in the Act state as follows:

<i>Cette loi a pour objet d'abolir l'obligation de prêter et de souscrire le serment d'allégeance au roi prévue par la Loi constitutionnelle de 1867 à laquelle doivent satisfaire les députés pour pouvoir siéger à l'Assemblée nationale.</i>	<i>The purpose of this Act is to abolish the requirement to take and subscribe the Oath of Allegiance to the King prescribed by the Constitution Act, 1867, which Members must fulfil in order to sit in the National Assembly.</i>
<i>À cette fin, la loi ajoute dans la Loi constitutionnelle de 1867 un article soustrayant le Québec à l'application de l'article 128 de cette loi, qui prévoit une telle obligation.</i>	<i>To that end, the Act adds to the Constitution Act, 1867 a section exempting Québec from the application of section 128 of that Act, which provides for such a requirement.</i>

- 131.1 Significantly, the EXPLANATORY NOTES expressly acknowledge that the Oath of Allegiance prescribed by s. 128 is a requirement “which Members must fulfil in order to sit in the National Assembly” and that a constitutional requirement is necessary to exempt Quebec – and therefore, any other province – from the application of s. 128;

132. [...]

[...]

133. [...]

[...]

134. [...]

135. The Minister was clear that Bill 4 was intended to amend the *Constitution Act, 1867*.¹⁰⁴ During his speech in the National Assembly on December 9, 2022, the Minister identified the constitutional source of Quebec’s authority to enact the *Act* to recognize the oath as s. 45 of the *Constitution Act, 1982*.¹⁰⁵ Section 45 states:

Modification par les législatures 45 Sous réserve de l'article 41, une législature a compétence exclusive	Amendments by provincial legislatures 45 Subject to section 41, the legislature of each province may exclusively make
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¹⁰⁴ [Cabinet du ministre responsable des institutions démocratiques, « Projet de loi no 4 – Un projet de loi pour abolir définitivement l'obligation de prêter serment au roi » dated December 6, 2022 \(Exhibit R-22\)](#)

¹⁰⁵ [Assemblée nationale de Québec, Journal des débats, 43rd Legislature, 1st Session, Friday, December 9, 2022, Vol. 47, No. 8 \(per Minister Jean-François Roberge\) \(Exhibit R-2\)](#)

pour modifier la constitution de sa province.	laws amending the constitution of the province.
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136. In turn, s. 41 of the *Constitution Act, 1982* provides, in relevant part:

Consentement unanime 41 Toute modification de la Constitution du Canada portant sur les questions suivantes se fait par proclamation du gouverneur général sous le grand sceau du Canada, autorisée par des résolutions du Sénat, de la Chambre des communes et de l'assemblée législative de chaque province : a) la charge de Reine, celle de gouverneur général et celle de lieutenant-gouverneur;	Amendment by unanimous consent 41 An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province: (a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;
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136.1 Despite voting in favour of passing the Act to recognize the oath on December 9, 2022 the opposition Parti libéral du Québec expressly stated its doubts that the National Assembly could abolish the requirement to take the Oath of Allegiance under s. 128 of the *Constitution Act, 1867* by way of a unilateral constitutional amendment adopted pursuant to s. 45 of the *Constitution Act, 1982*. The Parti libéral also warned that the government's manner of proceeding was vulnerable to constitutional challenge. As stated by Monsef Derraji, who spoke in the Salon Bleu on behalf of the Parti libéral:¹⁰⁶

Notre caucus, M. le Président, a pris une position commune, une position commune, et ce sera la même position pour tout le monde. **La question qui est devant nous, est-ce qu'on doit porter serment d'allégeance au roi, sur le fond, nous sommes d'accord qu'il est temps de passer à autre chose. Toutefois, nous déplorons, nous déplorons l'approche juridique du gouvernement d'amender unilatéralement la Constitution sans consultation. C'est pour cela, nous avons aimé et apprécié avoir un débat avant de procéder. Le gouvernement n'est pas à l'abri de contestations judiciaires. Nous lui souhaitons que ces avis juridiques, qu'il a reçus, soient solides. Il répondra lui-même de la suite des événements, si jamais la loi ne passe pas le test des tribunaux. (emphasis added)**

¹⁰⁶ [Assemblée nationale de Québec, Journal des débats, 43rd Legislature, 1st Session, Friday, December 9, 2022, Vol. 47, No. 8 \(Exhibit R-2\)](#)

137. After the adoption of the *Act to recognize the oath* on December 9, 2022, four Members of the National Assembly were elected in subsequent by-elections and did not, on the basis of s. 128Q.1, take the Oath of Allegiance prior to taking their seats in the National Assembly;¹⁰⁷

138. A provincial general election in Quebec is scheduled for October 5, 2026;¹⁰⁸

138.1 Since the legislature has been dissolved since June 12, 2026, and since no laws may be passed or repealed by the National Assembly until after it is reconvened following the election scheduled for October 5, 2026, the *Act to recognize the oath* will remain in force unless and until it is repealed by a law adopted in the Assembly after the election by a majority of Members who took the Oath of Allegiance prior to taking their seat therein;

138.2 The chances of that occurring are highly unlikely;

138.3 Indeed, the present application for judicial review and for a declaratory judgment pursuant to s. 52(1) of the *Constitution Act, 1982* was filed and served on August 11, 2026. On August 12, 2026, Mr. St-Pierre Plamondon stated as follows in response to the application (see **Exhibit R-19 and R-20**):

En 2022, l'Assemblée nationale a uniquement dit non au serment d'allégeance au roi, sous la pression du Parti Québécois. Pour nous, c'est clair : la loyauté des élus va au peuple québécois, pas à la monarchie. Cette décision est pourtant aujourd'hui contestée devant les tribunaux. C'est la limite du fédéralisme : même quand le Québec est unanime, tant que le Québec ne sera pas indépendant, les décisions et les volontés des Québécois pourront être contestées par les institutions canadiennes, dans le mépris complet de nos choix démocratiques.

138.4 It is manifestly clear that Parti Québécois does not intend to take the Oath of Allegiance required by s. 128 prior to taking their Seat in the National Assembly, let alone repeal the *Act to recognize the oath*;

138.5 The article published in La Presse on August 12, 2026 and attached herein as **Exhibit R-20** summarizes the publicly-expressed position of the Parti libéral du Québec:

De passage à Montréal, le chef du Parti libéral du Québec, Charles Milliard, a soutenu pour sa part que le serment au roi n'était pas un dossier « prioritaire ».

¹⁰⁷ Campagnolo & Bontems, at 553 (**Exhibit R-3**).

¹⁰⁸ Élections Québec, "Current and upcoming elections", online: <https://www.electionsquebec.qc.ca/en/vote/current-and-upcoming-elections/>

« On a voté pour l'abolition au Parti libéral. [...] Ça été discuté par les parlementaires en 2022. Je pense qu'on peut passer à un autre appel », a-t-il répondu aux journalistes.

138.6 It is far from clear that the Parti libéral will instruct politicians elected to the National Assembly in October 5, 2026 to take the Oath of Allegiance in s. 128 before taking their seat therein or will adopt legislation repealing the *Act to recognize the oath*. Even if the Parti libéral formed government and introduced such legislation, it would need the support of at least one opposition party for the legislation to be adopted unless it forms a majority;

138.7 The article updated by CBC on August 12, 2026 and attached herein as **Exhibit R-21** summarizes the publicly-expressed position of the Government of Québec, by way of the Minister of Justice and Attorney General, Simon Jolin-Barrette:

The office of Quebec Justice Minister Simon Jolin-Barrette told CBC News it has taken note of the legal action and intends to defend the province's right to alter its own rules.

"A very large majority of Quebecers reject the monarchy. The change made respects the position of the Quebec nation," spokesperson Élisabeth Gosselin said in an email on Wednesday.

"We will continue to occupy the constitutional space that belongs to us."

138.8 Québec solidaire does not appear to have issued public statements concerning the present application. However, it is unlikely that any of its elected members will take the Oath of Allegiance following the October election prior to taking their seat in the National Assembly. As well, Québec solidaire has never formed government and is unlikely to table legislation that would repeal an *Act to recognize the oath* since it was the first party to introduce legislation to abolish the Oath of Allegiance following the October 2022 election and prior to the government introducing Bill 4 on December 6, 2022.¹⁰⁹ Québec solidaire evidently voted in favour of Bill 4's passage on December 9, 2022;¹¹⁰

138.9 As the Act to recognize the oath remains in force, and as Quebec politicians are content to rely on it, it is highly likely that the provincial general election in Quebec scheduled for October 5, 2026 will lead to the election of politicians who will not take the Oath of Allegiance required under s. 128 of the *Constitution Act, 1867* prior to taking their seat in the National Assembly and performing parliamentary activities reserved for politicians who have indeed taken the Oath;

¹⁰⁹ [Aile parlementaire de Québec solidaire, « Québec solidaire siègera au Salon bleu et déposera un projet de loi pour rendre facultatif le serment au roi », dated November 3, 2022 \(Exhibit R-23\).](#)

¹¹⁰ [Assemblée nationale de Québec, Journal des débats, 43rd Legislature, 1st Session, Friday, December 9, 2022, Vol. 47, No. 8 \(Exhibit R-2\).](#)

138.10 This is problematic. As noted, taking the Oath of Allegiance is a constitutional requirement for any person elected to a Canadian legislature, including the National Assembly. An elected politician who refuses or otherwise fails to take the Oath of Allegiance is not lawfully entitled to take their seat in the legislature or to participate in parliamentary activities;¹¹¹

138.11 In light of the above, even if Quebec politicians elected in October 2026 rely on the *Act to recognize the oath* to not take the Oath, any vote taken in the National Assembly by a member who has not taken the Oath will not have legal effect. The same is true for any law that the Assembly purports to adopt following votes by a majority of members who did not take the Oath of Allegiance. This is because the National Assembly acted *ultra vires* s. 45 of the *Constitution Act, 1982* by purporting to unilaterally abolish the Oath by way of the *Act to recognize the oath* and s. 128Q.1. Abolishing the Oath requires the unanimous consent of Parliament and the ten provincial legislatures pursuant to s. 41(a) of the *Constitution Act, 1982*;

138.12 As acknowledged by the Premier of Quebec prior to the introduction of Bill 4, allowing Members to sit in the National Assembly “**without following proper procedure could have [...] consequences. The laws they’re voting on could potentially be challenged.**” (emphasis added) (Exhibit R-18)

LEGAL ISSUES

139. The *Act to recognize the oath* – and, therefore, s. 128.Q1 – are each and both *ultra vires* Quebec’s constitutional authority under s. 45 of the *Constitution Act, 1867*:

- Section 45 does not authorize Quebec or any other province to unilaterally amend the text of the *Constitution Act, 1867*, [...] (**ISSUE 1**);
- Excluding Quebec from the requirement under s. 128 concerning the Oath of Allegiance directly affects the “status of the Crown” and thus relates to the “office of the Queen”, such that it can only be effected with the unanimous consent of the Parliament of Canada and the ten provincial legislatures pursuant to the requirements for constitutional amendments stated in s. 41(a) of the *Constitution Act, 1982*;¹¹² (**ISSUE 2**)
- Excluding Quebec from s. 128 of the *Constitution Act, 1867* directly affects the status, role, and constitutional powers of the Lieutenant Governor of Quebec and therefore relates to the “office of the Lieutenant Governor” such that it can only be constitutionally authorized with the unanimous consent of the Parliament of Canada and of the ten provincial legislatures pursuant to s. 41(a) of the *Constitution Act, 1982* (**ISSUE 2**);

¹¹¹ [Assemblée nationale du Québec, « DÉCISION DE LA PRÉSIDENTE concernant le refus de prêter le serment d’allégeance », November 1, 2022 \(Exhibit R-15\)](#). See also [House of Commons Procedure and Practice, Fourth Edition 2025 \(Exhibit R-9\)](#)

¹¹² See generally, Campagnolo & Bontems (Exhibit R-3).

- Section 128 of the *Constitution Act, 1867* is an indivisible part of Constitution of the Province of Quebec and of the Constitution of Canada, such that its amendment exceeds the scope of permissible unilateral constitutional amendments to provincial constitutions under s. 45 (**ISSUE 3**);
- The *Act to recognize the oath* violates the right to vote protected under s. 3 of the *Canadian Charter of Rights and Freedoms* by leading to the election of politicians who are not constitutionally qualified to sit in the National Assembly by refusing to take the Oath of Allegiance (**ISSUE 4**);
- The *Act to recognize the oath* violates the right to effective representation protected under s. 3 by leading to Quebecers being represented in the National Assembly by politicians who are not constitutionally qualified to hold office and whose votes on legislation and other activities in the National Assembly are constitutionally void (**ISSUE 4**);
- The *Act to recognize the oath* violates the right protected under s. 3 of the *Canadian Charter of Rights and Freedoms* to sit in the National Assembly – after being elected thereto – by purporting to nullify the constitutional condition precedent enshrined in s. 128 for a politician elected to the Assembly to validly “take [their] Seat” therein (**ISSUE 4**);
- The *Act to recognize the oath* and s. 128Q.1 operate to amend s. 3 of the *Canadian Charter of Rights and Freedoms* and are therefore *ultra vires* the unilateral provincial constitutional amendment power entrenched in s. 45 of the *Constitution Act, 1982* (**ISSUE 4**);

140. A judicial declaration should therefore be issued pursuant to s. 52(1) of the *Constitution Act, 1982* declaring that the *Act to recognize the oath* and s. 128Q.1 are – individually and collectively – of no force or effect (**ISSUE 6**);¹¹³

ISSUE 1 – SECTION 45 OF THE CONSTITUTION ACT, 1982 DOES NOT AUTHORIZE PROVINCIAL AMENDMENTS TO THE TEXT OF THE CONSTITUTION ACT, 1867

141. The National Assembly was constitutionally incorrect in invoking s. 45 of the *Constitution Act, 1982* in passing the *Act to recognize the oath* and purporting to entrench s. 128Q.1 into the text of the *Constitution Act, 1867*;¹¹⁴

¹¹³ *Canada (Attorney General) v. Power*, [2024 SCC 6](#), at para. 34.

¹¹⁴ As noted, during his speech on December 9, 2022 preceding the adoption of the Act, the Minister Responsible for Democratic Institutions and for Canadian Relations and the Canadian Francophonie identified the constitutional source of Quebec’s authority to enact the said Act as s. 45 of the *Constitution Act, 1982*: see [Assemblée nationale de Québec, Journal des débats, 43rd Legislature, 1st Session, Friday, December 9, 2022, Vol. 47, No. 8 \(per Minister Jean-François Roberge\)](#) (**Exhibit R-2**).

142. Section 45 does not authorize Quebec or any other province to unilaterally amend the text of the *Constitution Act, 1867*.¹¹⁵ Subject to its express and implied limits,¹¹⁶ s. 45 only authorizes provinces to unilaterally amend their respective “Provincial Constitutions” by way of legislation or regulations that alter, modify, or repeal:
- i. any of the matters listed under Part V of the *Constitution Act, 1867* for which amendment is permissible;¹¹⁷
 - ii. for provinces not addressed in Part V of the *Constitution Act, 1867*, any of the matters listed in their respective constitutional documents that are part of the “Constitution of Canada”¹¹⁸ for which amendment is permissible;
 - iii. legislation enacted under (i) or (ii) that forms part of the provincial constitution; or
 - iv. matters forming part of the provincial constitution’s unwritten elements such as constitutional conventions, parliamentary privileges, and prerogative powers.¹¹⁹
143. However, like its predecessor s. 92(1), s. 45 does not authorize provinces to unilaterally amend aspects of their provincial constitutions that are indivisible from the constitution of Canada.¹²⁰ Nor does s. 45 authorize constitutional amendments in respect of matters governed by other amendment formulas entrenched in Part V of the *Constitution Act, 1982*, or that are contrary to the constitution’s basic structure;
144. These conclusions are arrived at by applying the governing principles of constitutional interpretation, as recently reiterated in *Alford v. Canada (Attorney General)*, [2026 SCC 14](#).¹²¹

¹¹⁵ Nor does it authorize amendments to the *Constitution Act, 1982* or any other part of the “Constitution of Canada” within the meaning of s. 52(2) and (3) of the *Constitution Act, 1982*.

¹¹⁶ Of course, any amendment under s. 45 – like any other amendment to the Canadian Constitution – must be consistent with all applicable written and unwritten limits to the amendment power, including other constitutional provisions, the constitution’s basic structure, and the fundamental nature of the government it establishes: see e.g. *Reference re Senate Reform*, [2014 SCC 32](#), at para. 97; *Alford v. Canada (Attorney General)*, [2026 SCC 14](#), at para. 66.

¹¹⁷ See footnote 150 below, for a further explanation of impermissible amendments to Part V of the *Constitution Act, 1867*.

¹¹⁸ See footnote 151 below, for a further explanation. As the present appeal focuses on Quebec, it is unnecessary to explore this point in greater detail at this stage.

¹¹⁹ *Ontario (Attorney General) v. OPSEU*, [\[1987\] 2 S.C.R. 2](#), at paras. 82-85.

¹²⁰ *Attorney General of Quebec v. Blaikie*, [\[1979\] 2 S.C.R. 1016](#), at 1025; *OPSEU*, at para. 87.

¹²¹ These principles were articulated in the context of interpreting and applying s. 18 of the *Constitution Act, 1867*. Section 18 concerns Parliament’s powers to define the “privileges, immunities and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively”

[47] The interpretation of a constitutional provision must be anchored in the meaning of its words, considered in context, with a view to the purpose it was intended to serve (*R. v. Blais*, 2003 SCC 44, [2003] 2 S.C.R. 236, at para. 16; *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, at pp. 155-56). Constitutional documents must be read generously and purposively within their textual, contextual, and historical confines (*Blais*, at paras. 17 and 40).

[48] The meaning given to a constitutional provision must also be harmonious with the structure of government implemented by the Constitution, as expressed through both the 1867 and 1982 *Constitution Acts* (*Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 50; *Reference re Senate Reform*, at para. 26). The interpretation of a single provision must be consistent with other provisions of the Constitution: one part of the Constitution cannot be construed to deprive another of its effect (*New Brunswick Broadcasting*, at pp. 373 and 390).

[49] The interpretive exercise is therefore guided and “constrained by the language, structure, and history of the constitutional text, by constitutional tradition, and by the history, traditions, and underlying philosophies” of the system of government these enactments are intended to establish (*Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, at p. 394).

(a) Text of Section 45

145. Under this methodology, “[t]he first step to interpreting s. [45] is to consider the ordinary and grammatical meaning of its text.”¹²² Section 45 reads:

Modification par les législatures	Amendments by provincial legislatures
45 Sous réserve de l'article 41, une législature a compétence exclusive pour modifier la constitution de sa province.	45 Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the province.

146. As stated by the Supreme Court of Canada: “The words employed in Part V [of the *Constitution Act, 1982*] are guides to identifying the aspects of our system of government that form part of the protected content of the Constitution.”;¹²³
147. The text of s. 45 is unequivocal: s. 45 only authorizes each of Canada’s ten provincial legislatures to amend the constitution of their respective provinces. It does not authorize the provinces to make amendments to the “Constitution of Canada” –

¹²² *Alford*, at para. 50.

¹²³ *Reference re Senate Reform*, [2014 SCC 32](#), at para. 64.

a phrase which appears in, *inter alia*, s. 41. The schedule to s. 52(2)(b) identifies the “Constitution of Canada” as including the *Constitution Act, 1867*. The law is clear that “‘Canada’ has two distinct meanings in our Constitution”, namely, “the country as a whole or the federal level within it.”¹²⁴ It is clear that “Canada” in s. 52(2) refers to Canada “as a whole”;¹²⁵

148. It is true that parts of “the constitution of the province” identified in s. 45 are contained in the *Constitution Act, 1867*. For example, Part V of that document is titled “Provincial Constitutions.”¹²⁶ However, this only means that *parts* of the constitution of each province are found in the text of the “Constitution of Canada” – not that s. 45 authorizes provinces to unilaterally amend the text of the “Constitution of Canada”;
149. Thus, while provinces “may exclusively make laws amending the constitution of the province,” such “laws” cannot purport to amend, alter, or in any other way modify the written text of the *Constitution Act, 1867* (or any other textual parts of the “Constitution of Canada”). In other words, a provincial amendment to the constitution of the province authorized by s. 45 takes the form of “laws” entirely external to the text of the Constitution of Canada.¹²⁷ Nothing in the text of s. 45 expressly or implicitly suggests otherwise;
150. This conclusion is entirely consistent with the reality that the “constitution of the province” is not limited to textual constitutional provisions contained in the “Constitution of Canada”, including Part V of the *Constitution Act, 1867*. In addition to those provisions, the expression “constitution of the province” also embodies provisions “enacted by ordinary statutes” of the provincial legislature in furtherance of the provisions in Part V, as well as constitutional conventions and common law rules governing matters such as the royal prerogative;¹²⁸
151. As those sources of provincial constitutional law are external to the “Constitution of Canada”, unilateral provincial constitutional amendments under s. 45 concerning them do not, by definition, entail amendments to the text of the *Constitution Act, 1867* or any other part thereof;
152. Overall, the text of s. 45 provides no support for the view expressed by the Minister¹²⁹ or in the *Act to recognize the oath* that s. 45 authorizes Quebec – or any other province¹³⁰ – to amend the text of the *Constitution Act, 1867* in any way whatsoever;

¹²⁴ *Windsor (City) v. Canadian Transit Co.*, [2016 SCC 54](#), at para. 63.

¹²⁵ Unlike, s. 101 of the *Constitution Act, 1867*, for example. See *Windsor (City)*, at para. 63, citing several judgments.

¹²⁶ *Ontario (Attorney General) v. OPSEU*, [\[1987\] 2 S.C.R. 2](#), at paras. 82-85.

¹²⁷ Campagnolo & Bontems at 572-573 (Exhibit R-3); *OPSEU*, at paras. 82-85.

¹²⁸ *OPSEU*, at paras. 82-85.

¹²⁹ see [Assemblée nationale de Québec, Journal des débats, 43rd Legislature, 1st Session, Friday, December 9, 2022, Vol. 47, No. 8 \(per Minister Jean-François Roberge\) \(Exhibit R-2\).](#)

¹³⁰ *Reference re Senate Reform*, [2014 SCC 32](#), at para. 31.

153. This conclusion reflects the reality that s. 45 only provides for a “limited ability to make changes unilaterally”¹³¹ It is also supported by s. 45’s historical and constitutional contexts, as well as its purpose;

(b) “Historical Context”¹³²

154. The second step of the interpretive exercise consists of analyzing s. 45’s historical context.¹³³ Section 45 is the successor provision of s. 92(1) of the *Constitution Act, 1867*.¹³⁴ Prior to its repeal and replacement by s. 45, s. 91(2) read:

Sujets soumis au contrôle exclusif de la législation provinciale 92 Dans chaque province la législature pourra exclusivement faire des lois relatives aux matières tombant dans les catégories de sujets ci-dessous énumérés, savoir : <u>1. L’amendement de temps à autre, nonobstant toute disposition contraire énoncée dans le présent acte, de la constitution de la province, sauf les dispositions relatives à la charge de lieutenant-gouverneur;</u>	Subjects of exclusive Provincial Legislation 92 In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, <u>1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.</u>
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155. Like its successor s. 45, s. 92(1) conferred an exclusive authority on the provincial legislatures to “make Laws” in relation to the “Constitution of the Province” This authority was conferred “notwithstanding anything in this Act” – meaning the *Constitution Act, 1867*. On its face, the distinction between “Constitution of the Province” and the “Act” conveys that the two were not synonymous, and this, notwithstanding the fact that Part V of the *Constitution Act, 1867* is titled “Provincial Constitutions.” Once again, the provisions in Part V are parts of the Constitution of Canada that form part of the constitution of each province;
156. Section 92(1) – like s. 45 today – authorized provincial legislatures to amend the constitution of the province by way of laws entirely external to the text of the *Constitution Act, 1867*. Section 92(1) did not authorize provinces to amend, alter, or otherwise modify the text of the *Constitution Act, 1867*, to any extent. Nothing in s. 92(1) or elsewhere in the *Constitution Act, 1867* expressly or impliedly suggests this;

¹³¹ Reference re Senate Reform, at para. 48.

¹³² Alford, sub-heading above para. 57.

¹³³ Alford, at paras. 57-63.

¹³⁴ Alford, at para. 61; Ontario (Attorney General) v. OPSEU, [1987] 2 S.C.R. 2, at paras. 66, 82; Re: Authority of Parliament in relation to the Upper House, [1980] 1 S.C.R. 54, at 74; Reference re Senate Reform, at paras. 47-48.

157. The result of a provincial law lawfully amending aspects of the constitution of the province contained in Part V under the authority of s. 92(1) was to alter, supplement, or limit the scope of its provisions or to render the relevant provisions of Part V spent if the provincial legislation intended to repeal provisions authorized to be amended by s. 92(1). No amendments to the text of the *Constitution Act, 1867* were made;
158. For example, ss. 72 to 79 of the *Constitution Act, 1867* consist of provisions pertaining to the Legislative Council of Quebec. Sections 72 to 79 were supplemented by several provisions of Quebec's *Legislature Act*, R.S.Q. 1964, c. 6, which – for this reason – can be said to have formed part of the “Constitution of the Province”. The *Legislature Act* was enacted under the authority of s. 92(1) and did not effect any textual modifications of the *Constitution Act, 1867*;¹³⁵
159. In 1968, the Quebec legislature again used the unilateral constitutional amendment power in s. 92(1) to make further amendments to the “Constitution of the Province.” Indeed, *An Act respecting the Legislative Council of Quebec*, S.Q. 1968, c. 9 “repealed the provisions of the *Legislature Act*, R.S.Q. 1964, c. 6, relating to the Legislative Council of Quebec,” and provided that “the Legislature of Quebec shall consist of the Lieutenant Governor and the National Assembly of Quebec.”¹³⁶ In other words, the 1968 Act abolished the Legislative Council of Quebec;¹³⁷
160. Here again, *An Act respecting the Legislative Council of Quebec* clearly effected a series of constitutional amendments to the portions of the written “Constitution of the Province” entrenched in ss. 72-79 of the *Constitution Act, 1867*. However, the amendments took the form of legislation entirely external to the *Constitution Act, 1867* and did not alter or modify its text in the slightest. This explains why ss. 72-79 provisions remain in the *Constitution Act, 1867* to this very day. The effect of *An Act respecting the Legislative Council of Quebec* was, instead, to render ss. 72-79 “completely spent”;¹³⁸
161. All other unilateral provincial constitutional amendments effected under the authority of s. 92(1) consisted of provincial legislation entirely external to the *Constitution Act, 1867* that did not alter, modify, or amend its text in the slightest. Prominent examples include:
- Quebec's *Executive Power Act*, R.S.Q. 1964, c. 9 and its prior and subsequent versions and amendments each amended s. 63 of the *Constitution Act, 1867*, which concerns, *inter alia*, the “Appointment of Executive Officers for... Quebec”;¹³⁹

¹³⁵ *Constitution Act, 1867*, at Endnote (35).

¹³⁶ *Constitution Act, 1867*, at Endnote (35).

¹³⁷ *Attorney General of Quebec v. Blaikie*, [1979] 2 S.C.R. 1016, at 1024.

¹³⁸ *Constitution Act, 1867*, at Endnote (35).

¹³⁹ *Constitution Act, 1867*, at Endnote (31).

- Ontario's *Executive Council Act*, R.S.O. 1897, c. 14 and its subsequent versions and amendments each amended s. 63 of the *Constitution Act, 1867*, which concerns, *inter alia*, the "Appointment of Executive Officers for Ontario";¹⁴⁰
- Ontario's *Representation Act*, 2005, S.O. 2005, c. 35 and its prior and subsequent versions and amendments each amended s. 70 of the *Constitution Act, 1867*, which stipulates the number of electoral districts composing the Legislative Assembly of Ontario. The effect of the *Representation Act, 2005* (and its prior and subsequent versions and amendments) was to render s. 70 completely "spent";¹⁴¹
- Quebec's *An Act respecting the electoral districts*, S.Q. 1970, c. 7 amended s. 80 of the *Constitution Act, 1867*, which stipulates the number of Electoral Divisions or District to compose the Legislative Assembly of Quebec. Quebec's *Act* essentially repealed s. 80, as the *Act* "provides that this section no longer has effect.";¹⁴²
- Ontario's *Legislative Assembly Act*, R.S.O. 1990 c. L.10 and Quebec's *National Assembly Act*, R.S.Q. 1977, c. A-23.1 and their respective prior and subsequent versions and amendments respectively amended s. 83 of the *Constitution Act, 1867*, which concerns "Restrictions on election of Holders of offices", with the effect that s. 83 is considered to be "probably spent";¹⁴³
- Ontario's *Election Act*, R.S.O. 1990, c. E.6 and *Legislative Assembly Act*, R.S.O. 1990 c. L.10 and Quebec's *Elections Act*, R.S.Q. 1977, c. E-3.3 and *National Assembly Act*, R.S.Q. 1977, c. A-23.1, and their respective prior and subsequent versions and amendments, respectively amended s. 84 of the *Constitution Act, 1867*, which concerns the continuance of election laws in force at the time of Confederation, with the effect that s. 84 is considered to be "probably spent";¹⁴⁴
- Even before ss. 4(1) and (2) of the *Canadian Charter of Rights and Freedoms* set the maximum duration of a legislature at five years barring exceptional circumstances, Quebec's *National Assembly Act*, R.S.Q. 1977, c. A-23.1 fixed the maximum duration to 5 years by amending s. 85 of the *Constitution Act, 1867* (which provided for a maximum duration of four years). Section 85 has, in any event, been repealed by ss. 4(1) and 4(2);

¹⁴⁰ *Constitution Act, 1867*, at [Endnote \(31\)](#).

¹⁴¹ *Constitution Act, 1867*, at [Endnote \(34\)](#).

¹⁴² *Constitution Act, 1867*, at [Endnote \(36\)](#).

¹⁴³ *Constitution Act, 1867*, at [Endnote \(38\)](#).

¹⁴⁴ *Constitution Act, 1867*, at [Endnote \(39\)](#).

162. Importantly, all of the provisions of the *Constitution Act, 1867* that were amended or rendered “completely spent” as a result of the above legislative amendments remain in the said *Act* without any amendment to substance of their text whatsoever. The only changes to the *Constitution Act, 1867* occasioned by these legislative amendments are explanatory “End Notes” that provide information about the unilateral provincial constitutional amendments impacting the relevant provisions;¹⁴⁵
163. For this reason, the *Constitution Act, 1867* does not contain a single textual amendment occasioned by the adoption of provincial legislation effecting a unilateral constitution amendment pursuant to the authority conferred by s. 92(1). The same remained true with regards to provincial legislation adopted pursuant to s. 45 of the *Constitution Act, 1982*, reflecting a cross-generational, multigovernmental and multi-partisan consensus as to the scope and purport of the provincial unilateral constitutional amendment authority under these respective documents;
164. This appears to have been the understanding of all partners in Confederation prior to 2022 – that is, the year when Quebec and Saskatchewan became the first provinces in Canada to enact legislation pursuant to s. 45 that purported to amend the actual text of the *Constitution Act, 1867* as part of an attempt to amend “the constitution of the province.” In chronological order:
- On June 1, 2022, Quebec adopted [*An Act respecting French, the official and common language of Québec, S.Q. 2022, c. 14*](#), which purports to entrench new sections 90Q.1 and 90Q.2 into the text of the *Constitution Act, 1867*;
 - As noted, on December 9, 2022, Quebec adopted [*An Act to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly, S.Q. 2022, c. 30*](#), which purports to entrench the new section 128Q.1 into the text of the *Constitution Act, 1867*;
 - On September 15, 2023, Saskatchewan adopted [*The Saskatchewan First Act, S.S. 2023, c. 9*](#), which purports to entrench new sections 90S.1(1), 90S.1(2) and 90S.1(3) into the text of the *Constitution Act, 1867*;
165. Overall, prior to 2022 – whether under s. 92(1) or s. 45 – no province had ever used the power of unilateral constitutional amendment to enact legislation purporting to amend the literal text of the *Constitution Act, 1867* or any other part of the “Constitution of Canada.” As previously stated, this reflects a multi-general, pan-Canadian consensus that neither s. 45 – nor s. 92(1) before it – authorize the provincial legislatures to unilaterally amend the constitution of their province to make textual alterations of any kind to the *Constitution Act, 1867* or to any other parts of the Constitution of Canada;

¹⁴⁵ Online : <https://laws-lois.justice.gc.ca/eng/Const/endNotes.html>

166. The text and the historical context of s. 45 therefore provide no support for the view expressed by the Minister¹⁴⁶ or in the *Act to recognize the oath* that s. 45 authorizes Quebec – or any other province¹⁴⁷ – to amend the text of the *Constitution Act, 1867* in any way whatsoever;

(c) “Constitutional Context”¹⁴⁸

167. The broader constitutional context within which s. 45 is situated provides strong support for the view that s. 45 does not authorize any provincial legislature to amend the text of the *Constitution Act, 1867* – whether in unilaterally amending their respective provincial constitutions or otherwise;
168. In addition to analyzing its text and historical context, s. 45 “must also be read harmoniously with the Constitution as a whole...”¹⁴⁹ Significantly, nowhere in the *Constitution Act, 1867*, the *Constitution Act, 1982* or any other parts of the “Constitution of Canada” identified in s. 52(2) of the *Constitution Act, 1982* is it expressly stated that s. 45 confers the authority on provinces to amend the text of the *Constitution Act, 1867* or any other parts of the “Constitution of Canada” in unilaterally amending their respective provincial constitutions;
169. Relatedly, the law is clear that “particular constitutional grants of power” to the federal and provincial legislatures – including the constitutional amendment powers listed in Part V of the *Constitution Act, 1982* – “must be read together with other grants of power so that the Constitution operates as an internally consistent harmonious whole”.¹⁵⁰ To this end: “The words employed in Part V are guides to identifying the aspects of our system that form part of the protected content of the Constitution.”;¹⁵¹
170. Significantly, Part V and Part VII each and both draw an express textual distinction between the “Constitution of Canada” and “the constitution of the province”;
171. First, s. 52(1) provides that “The Constitution of Canada is the supreme law of Canada....” (emphasis added)
172. Second, s. 52(2) defines the “Constitution of Canada”:

¹⁴⁶ see [Assemblée nationale de Québec, Journal des débats, 43rd Legislature, 1st Session, Friday, December 9, 2022, Vol. 47, No. 8 \(per Minister Jean-François Roberge\) \(Exhibit R-2\).](#)

¹⁴⁷ *Reference re Senate Reform*, [2014 SCC 32](#), at para. 31.

¹⁴⁸ *Alford*, sub-heading above para. 64.

¹⁴⁹ *Alford*, at para. 64.

¹⁵⁰ *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, [2014 SCC 59](#), at para. 22; *Reference re Senate Reform*, at para. 26.

¹⁵¹ *Reference re Senate Reform*, at para. 64.

Constitution du Canada (2) La Constitution du Canada comprend : a) la <i>Loi de 1982 sur le Canada</i> , y compris la présente loi; b) les textes législatifs et les décrets figurant à l'annexe; c) les modifications des textes législatifs et des décrets mentionnés aux alinéas a) ou b).	Constitution of Canada (2) The Constitution of Canada includes: (a) the Canada Act 1982, including this Act; (b) the Acts and orders referred to in the schedule; and (c) any amendment to any Act or order referred to in paragraph (a) or (b)
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173. The *Constitution Act, 1867* is one of “the Acts... referred to in the schedule” under (b). As a result, pursuant to s. 52(2)(c), any amendment to the *Constitution Act, 1867* – or to any other component of the “Constitution of Canada” – itself forms part of the “Constitution of Canada”;
174. By contrast, s. 45 of the *Constitution Act, 1982* only authorizes the legislature of each province to “make laws amending the constitution of the province.” As the *Constitution Act, 1867* is part of the “Constitution of Canada”, and as s. 45 only authorizes amendments to “the constitution of the province”, s. 45 only authorizes amendments to provincial constitutions that do not entail textual modifications of the *Constitution Act, 1867* or of any other component of the “Constitution of Canada”;
175. Even the text of the provisions of the “Constitution of Canada” that form part of the textual components of a province’s written constitution – such as the provisions in Part V of the *Constitution Act, 1867* – cannot be amended pursuant to s. 45 because such textual amendments would amend the text of the “Constitution of Canada” and not only that of “the constitution of the province”;
176. Section 45 also confines unilateral provincial constitutional amendments to matters that are not governed by other amendment provisions entrenched in Part V of the *Constitution Act, 1982*. Indeed, s. 52(3) provides as follows:

Modification (3) La Constitution du Canada ne peut être modifiée que conformément aux pouvoirs conférés par elle.	Amendments to Constitution of Canada (3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.
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177. Significantly, each of the provisions in Part V of the *Constitution Act, 1982* aside from s. 45 speak of amendments to “the Constitution of Canada” - not of “the constitution of the province.” In fact, s. 45 is the only mention of that phrase in the

Constitution Act, 1982 and that phrase is not at all mentioned in the current version of the “*Constitution Act, 1867*”;¹⁵²

178. By contrast, Part V of the *Constitution Act, 1982* is entitled “Procedure for Amending Constitution of Canada” (in French: “Procédure de modification de la Constitution du Canada”). As well,

- Section 38 provides for the “General procedure for amending Constitution of Canada”;
- Section 41 governs “Amendment by unanimous consent” – that is, “An amendment to the Constitution of Canada” requiring the unanimous consent of the Parliament of Canada and of the legislative assembly of each province;
- Section 42 identifies matters in relation to which “An amendment to the Constitution of Canada” may only be made by way of the general procedure in s. 38;
- Section 43 governs “An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces...”;
- Section 44 provides for the Parliament of Canada’s exclusive authority to unilaterally “make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.” (emphasis added throughout)
- Section 47 provides for the circumstances under which “An amendment to the Constitution of Canada made by proclamation under section 38, 41, 42 or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation”

179. The phrase “Constitution of Canada” also appears in other provisions in Part VII additional to ss. 52(1), (2) and (3). In particular:

- Section 55 concerns the preparation of a “French version of the portions of the Constitution of Canada referred to in the schedule”;
- Section 56 affirms that the English and French versions of “the Constitution of Canada are equally authoritative”;

180. The phrase “Constitution of Canada” also appears in ss. 21 and 29 of the *Canadian Charter of Right and Freedoms*:

¹⁵² Recall that s. 92(1) of the *Constitution Act, 1867* – which authorized provincial legislatures to amend their respective provincial constitutions – was repealed and replaced by s. 45.

Continuation of existing constitutional provisions 21 Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.	Maintien en vigueur de certaines dispositions 21 Les articles 16 à 20 n'ont pas pour effet, en ce qui a trait à la langue française ou anglaise ou à ces deux langues, de porter atteinte aux droits, privilèges ou obligations qui existent ou sont maintenus aux termes d'une autre disposition de la Constitution du Canada.
Rights respecting certain schools preserved 29 Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools	Maintien des droits relatifs à certaines écoles 29 Les dispositions de la présente charte ne portent pas atteinte aux droits ou privilèges garantis en vertu de la Constitution du Canada concernant les écoles séparées et autres écoles confessionnelles.

181. In relation to s. 21, ss. 16 to 20 of the *Charter* concern the “Official Languages of Canada” and New Brunswick and related linguistic obligations. The reference to “any other provision of the Constitution of Canada” in s. 21 includes s. 133 of the *Constitution Act, 1867* and s. 23 of the *Manitoba Act, 1870*,¹⁵³ which is also mentioned in the scheduled referred to in s. 52(2)(b) of the *Constitution Act, 1982*;
182. The reference to “any rights or privileges guaranteed by the Constitution of Canada in respect of denominational, separate or dissentient schools” concerns s. 93 of the *Constitution Act, 1867*, which affirms provincial legislative jurisdiction over “Legislation respecting Education... subject and according” to four “Provisions”¹⁵⁴
183. Significantly, but also reflecting the reality that the “Classes of Subjects” over which provincial legislatures are conferred legislative jurisdiction under s. 92, 92A, 93, and 95 are not part of “the constitution of the province” for the purposes of s. 45(1) – or s. 92(1) before it¹⁵⁵ – Quebec’s constitutional exclusion from s. 93’s application was realized by way of a bilateral constitutional amendment made under s. 43 of the *Constitution Act, 1982* that entrenched s. 93A into the *Constitution Act, 1867*;¹⁵⁶
184. This is illustrative of a broader constitutional reality existing under the provisions authorizing constitutional amendment in Part V of the *Constitution Act, 1982*;

¹⁵³ [Constitution Act, 1982, End Note \(93\)](#).

¹⁵⁴ [Constitution Act, 1867, s. 93](#) and [Constitution Act, 1982, End Note \(96\)](#).

¹⁵⁵ *Ontario (Attorney General) v. OPSEU*, [1987] 2 S.C.R. 2, at para. 88; *Attorney General of Quebec v. Blaikie*, [1979] 2 S.C.R. 1016, at 1024-1025.

¹⁵⁶ [Constitution Amendment, 1997 \(Quebec\), SI/97-141](#).

185. **First**, s. 45 does not authorize unilateral constitutional amendments to “the constitution of the province” that result in amendments to text of the “Constitution of Canada” even if the amendment concerns a provision of the “constitution of the province” that is included in the “Constitution of Canada.” This includes provisions situated in Part V of the *Constitution Act, 1867*, entitled “Provincial Constitutions”;
186. **Second**, the only circumstances in which provincial constitutional amendment can involve actual alterations or modifications of the text of any part of the “Constitution of Canada” – including the *Constitution Act, 1867* – are those governed by the general, bilateral, or multilateral procedures for constitutional amendment in ss. 38, 42, 43 of the *Constitution Act, 1982* or under the formula requiring the unanimous consent of Parliament and the ten provincial legislatures entrenched in s. 41;
187. The reason for this is simple: each of these procedures and formulas involves the Governor General of Canada and the Parliament of Canada, the only constitutional actors constitutionally authorized to alter or otherwise modify the text of the *Constitution Act, 1867* or other any other parts of the “Constitution of Canada” as defined in ss. 52(2);
188. This further “reflects the principle that Parliament and the provinces are equal stakeholders in the Canadian constitutional design” and that “[n]either level of government acting alone can alter the fundamental nature and role of the institutions provided for in the Constitution”;¹⁵⁷
189. Fundamentally, the *Constitution Act, 1982* expressly draws an unequivocal distinction between “the constitution of the province” within the meaning of s. 45 and “the Constitution of Canada”. As noted, “‘Canada’ has two distinct meanings in our Constitution”, namely, “the country as a whole or the federal level within it.”¹⁵⁸ It is clear that “Canada” in the “Constitution of Canada” refers to Canada “as a whole” – unlike, s. 101 of the *Constitution Act*, for example;¹⁵⁹
190. As a result, the phrases “constitution of the province” and “Constitution of Canada” are not synonymous, even if one accepts that parts of “the constitution of the province” within the meaning of s. 45 includes provisions contained in the *Constitution Act, 1867* – and thus, in the “Constitution of Canada”;¹⁶⁰
191. This distinction strongly supports the conclusion that unilateral amendments to “the constitution of the province” cannot take the form of amendments to the text of “the Constitution of Canada” even if those amendments pertain to provisions found in Part V of the *Constitution Act, 1867* (“Provincial Constitutions”) or other provisions of the Constitution of Canada;

¹⁵⁷ *Reference re Senate Reform*, [2014 SCC 32](#), at para. 48.

¹⁵⁸ *Windsor (City) v. Canadian Transit Co.*, [2016 SCC 54](#), at para. 63.

¹⁵⁹ *Windsor (City)*, at para. 63, citing several judgments.

¹⁶⁰ *Ontario (Attorney General) v. OPSEU*, [\[1987\] 2 S.C.R. 2](#), at paras. 82-85.

(d) Purpose of Section 45

192. The purpose of s. 45 – which it shares with s. 44 – reinforces the view that this provision does not authorize provinces to unilaterally amend the texts of the *Constitution Act, 1867* or *1982*, or any other written part of the “Constitution of Canada” in amending their respective constitutions. This purpose has been articulated as follows:

This limited ability to make changes unilaterally [in ss. 44 and 45] reflects the principle that Parliament and the provinces are equal stakeholders in the Canadian constitutional design.¹⁶¹ (emphasis added)

193. In other words, “the limited ability” of unilateral constitutional amendment under ss. 44 and 45 is an exception to the other constitutional amendment formulas in Part V of the *Constitution Act, 1982* that require the consent of Parliament and the legislative assembly of at least one province to authorize an amendment to “the Constitution of Canada.”;

194. Indeed, the “Part V amending formula reflects the principle that constitutional change that engages provincial interests requires both the consent of Parliament and a significant degree of provincial consent”;¹⁶²

195. A key difference, however, is that whereas Parliament is authorized to unilaterally amend the “Constitution of Canada” pursuant to s. 44 – including by amending its text – s. 45 only confers a “limited ability” on provincial legislatures to amend their respective “constitution of the province” without amending the text of “the Constitution of Canada”;

196. In other words, because “Parliament and the provinces are equal stakeholders in the Canadian constitutional design,” a province can only amend the text of “the Constitution of Canada” under a constitutional amendment formula that requires Parliament’s participation. This is the case for the bilateral, multilateral, and unanimous consent formulas for constitutional amendment entrenched in Part V. The sole exception is s. 44, which allows Parliament to unilaterally amend the text of “the Constitution of Canada” – including its text – but only as concerns matters that do not also engage the interests of one or more provinces so as to trigger another constitutional amendment formula;¹⁶³

197. The common denominator between ss. 44 and 45 is that each gives the respective level of government to which they apply “the ability to unilaterally amend certain aspects of the Constitution that relate to their own level of government, but which do not engage the interests of the other level of government.”¹⁶⁴

¹⁶¹ *Reference re Senate Reform*, [2014 SCC 32](#), at para. 48.

¹⁶² *Reference re Senate Reform*, [2014 SCC 32](#), at para. 29.

¹⁶³ *Alford v. Canada (Attorney General)*, [2026 SCC 14](#), at para. 66.

¹⁶⁴ *Reference re Senate Reform*, at para. 48.

198. Fundamentally, even if s. 45 allows provincial legislatures to amend “the constitution of the province”, it does not allow provinces to amend the text of “the Constitution of Canada” because that text engages the interests of Parliament and every other province in Canada;
199. Section 45, like other constitutional provisions, must be interpreted in light of its purpose, and in light of how this purpose fits within the basic architecture and structure of government established under the Canadian Constitution;¹⁶⁵
200. From this vantage point, the purpose of s. 45 provides no support for the view that provinces can unilaterally amend the text of the “Constitution of Canada,” including its provisions that also form part of the “constitution of the province”;

(e) Overall Conclusion

201. Reading the text of s. 45 in light of its purpose and its historical and constitutional context, it is clear that it grants each of Canada’s ten provinces the authority to unilateral amend their respective provincial constitutions subject to the following four limits:
- I. Section 45 does not authorize amendments governed by any other amending formula in Part V of the *Constitution Act, 1982*;
 - II. Section 45 does not authorize Quebec or any other province to unilaterally amend the text of the *Constitution Act, 1867* or of any other document forming part of the “Constitution of Canada” within the meaning of s. 52(2) of the *Constitution Act, 1982*;
 - III. Subject to the express and implied limits identified herein,¹⁶⁶ s. 45 only authorizes provinces to unilaterally amend their respective constitutions by way of legislation or regulations that alter, modify, or repeal
 - i. any of the matters listed under Part V of the *Constitution Act, 1867* for which unilateral amendment is permissible;¹⁶⁷

¹⁶⁵ Alford, at paras. 48-49, citing *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 50; *Reference re Senate Reform*, at para. 26; and *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, at p. 394.

¹⁶⁶ e.g. *Reference re Senate Reform*, 2014 SCC 32, at para. 97; Alford, at para. 66.

¹⁶⁷ Unilateral amendment is not permitted for the matters covered by ss. 58, 59, 60, 67, 71, 80, 82, the amendment of which is only permissible under s. 41(a) of the *Constitution Act, 1982*. Sections 58, 59, 61 concern matters “in relation to the Office of... the Governor General and the Lieutenant Governor of a province”; ss. 60, 71, 80, 82, relate to “the Office of...the Lieutenant Governor of a province”; and s. 67 relates to “the Office of... the Governor General...” Note that even where unilateral provincial amendment is permissible, “the power of constitutional amendment given to the provinces by s. 92(1) of the *Constitution Act, 1867* – since repealed and replaced by s. 45 – does not necessarily comprise the power to bring about a profound constitutional upheaval by the introduction of political institutions foreign to and incompatible with the Canadian system” (*OPSEU*, at para. 111) or otherwise “alter the fundamental nature and role of

- ii. for provinces not expressly addressed in Part V of the *Constitution Act, 1867*, any of the matters listed in their respective constitutional documents that are part of the “Constitution of Canada” for which amendment is permissible;¹⁶⁸
- iii. legislation enacted under (i) or (ii) that forms part of the provincial constitution; or
- iv. matters forming part of the provincial constitution’s unwritten elements, such as constitutional conventions, parliamentary privileges, and prerogative powers.¹⁶⁹

202. As the *Act recognizing the oath* amended the text of the *Constitution Act, 1867* by purporting to entrench s. 128Q.1 within it, the *Act* exceeded one of s. 45’s essential limits. The *Act* and s. 128Q.1 are, therefore, each and both unconstitutional as a matter of form¹⁷⁰ and, therefore, of no force or effect;

ISSUE 2 – ABOLITION OF THE OATH OF ALLEGIANCE REQUIRES UNANIMOUS CONSENT OF PARLIAMENT AND THE PROVINCES UNDER SECTION 41(A) OF THE CONSTITUTION ACT, 1982

(a) Overview

203. Section 128Q. and the *Act to recognize the oath* are each and both *ultra vires* Quebec’s power of unilateral amendment of its provincial constitution under s. 45 of the *Constitution Act, 1982*. By seeking to exclude Quebec from the application of s. 128 of the *Constitution Act, 1867*, the *Act* and s. 128.Q1 deleteriously impact the status and role of His Majesty The King III as the institutional personification of the Canadian state¹⁷¹ – and, therefore, relate to the “office of the Queen” within the meaning of s. 41(a) of the *Constitution Act, 1982*. The *Act* and s. 128Q.1 also affect the status, role, and constitutional powers of the office of Lieutenant Governor. In light of s. 41(a), any amendment to the text or obligatory nature of s. 128 can only be achieved by way of constitutional amendment unanimously consented to by Parliament and the ten provincial legislatures;¹⁷²

the institutions provided for in the Constitution” or the basic architecture of the Constitution (*Reference re Senate Reform*, [2014 SCC 32](#), at para. 48, 97).

¹⁶⁸ For example, the [Manitoba Act, 1870, 33 Vict., c. 3 \(Can.\)](#); [The Alberta Act, 1905, 4-5 Edw. VII, c. 3 \(Can.\)](#); [The Saskatchewan Act, 1905, 4-5 Edw. VII, c. 42 \(Can.\)](#). As the present application focuses on Quebec, it is unnecessary to discuss which parts of the said Acts may or may not be amended unilaterally by the relevant provinces pursuant to s. 45 of the *Constitution Act, 1982*.

¹⁶⁹ *Ontario (Attorney General) v. OPSEU*, [\[1987\] 2 S.C.R. 2](#), at paras. 82-85.

¹⁷⁰ Campagnolo & Bontems, at 572-573 (Exhibit R-3).

¹⁷¹ *McAteer v. Canada (Attorney General)*, [2014 ONCA 578](#), at para. 51; Campagnolo & Bontems, at 592 (Exhibit R-3).

¹⁷² See generally, Campagnolo & Bontems at **Exhibit R-3**.

(b) Constitutional Provisions

204. Authority for constitutional amendments in relation to “the office of the Queen” or to the office of Lieutenant Governor is enshrined in s. 41(a):

Consentement unanime 41 Toute modification de la Constitution du Canada portant sur les questions suivantes se fait par proclamation du gouverneur général sous le grand sceau du Canada, autorisée par des résolutions du Sénat, de la Chambre des communes et de l’assemblée législative de chaque province : a) la charge de Reine, celle de gouverneur général et celle de lieutenant-gouverneur;	Amendment by unanimous consent 41 An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province: (a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;
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205. The power of the provinces to unilaterally amend their respective provincial constitutions is enshrined in s. 45 of the *Constitution Act, 1982*:

Modification par les législatures 45 Sous réserve de l’article 41, une législature a compétence exclusive pour modifier la constitution de sa province.	Amendments by provincial legislatures 45 Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the province.
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206. Section 45 states that the power of the legislature of each province to “exclusively make laws amending the constitution of the province” is “[s]ubject to section 41.” Section 41 applies to any amendment to the Constitution of Canada in relation to the matters enumerated therein. Section 41(a) includes the “office of the Queen” and the office of the Lieutenant Governor;
207. On its face, then, the powers of the provinces to unilaterally amend their respective provincial constitutions under s. 45 do not extend to any “amendment to the Constitution of Canada in relation to... the office of the Queen” or the office of Lieutenant Governor. As noted, this does not mean that the said provincial powers may be used to make unilateral amendments to either office as long as such amendments do not impact “the Constitution of Canada”;
208. Rather, any constitutional amendment “in relation to” either “office” is – by definition – “An amendment to the Constitution of Canada...” Such an amendment can, therefore, only be lawfully achieved with the unanimous consent of Parliament and the legislatures of each of ten provinces under s. 41(a);

209. This conclusion is supported by s. 45's historical context;

210. As noted, the constitutional predecessor of s. 45 is s. 92(1) of the *Constitution Act, 1867*.¹⁷³ Section 92(1) authorized provincial legislatures to amend “the Constitution of the province”, except as regarded the office of the Lieutenant Governor, “notwithstanding anything” else in the *Constitution Act, 1867*.¹⁷⁴

211. In *Ontario (Attorney General) v. OPSEU*, [1987] 2 S.C.R. 2, the Supreme Court of Canada held as follows with respect to the scope of the power of provincial unilateral constitutional amendment entrenched in s. 92(1)

...an enactment can generally be considered as an amendment of the constitution of a province when it bears on the operation of an organ of the government of the province,... **provided of course it is not explicitly or implicitly excepted from the amending power bestowed upon the province by s. 92(1), such as the office of Lieutenant-Governor and, presumably and a fortiori, the office of the Queen who is represented by the Lieutenant-Governor.**¹⁷⁵
(emphasis added)

212. The power of provincial unilateral constitutional amendment entrenched in s. 92(1) did not, therefore, encompass legislation impacting the offices mentioned in s. 41(a). The repeal and replacement of s. 92(1) by s. 45¹⁷⁶ makes this unequivocal, with s. 45 subordinating the provincial power of unilateral constitutional amendment to s. 41, which includes, *inter alia*, the “office of the Queen... and the Lieutenant Governor of a province”. Whereas the exclusion of the “office of the Queen” was implicit from the explicit exclusion of the “office of Lieutenant Governor” from s. 92(1), the combined reading of ss. 45 and 41(a) made both exclusions explicit;

(c) The “office of the Queen” in Section 41(a)

213. The definition of the phrase “office of the Queen” (in French: “la charge de Reine”) determines whether provincial legislation is *ultra vires* s. 45 of the *Constitution Act, 1982* for trenching upon s. 41(a);

214. The Court of Appeal has affirmed the following interpretation of the phrase “the office of the Queen” for the purposes of s. 41(a):¹⁷⁷

¹⁷³ *Alford v. Canada (Attorney General)*, 2026 SCC 14, at para. 61; *OPSEU*, at paras. 66, 82.

¹⁷⁴ *Ibid*, and *Re: Authority of Parliament in relation to the Upper House*, [1980] 1 S.C.R. 54, at 74. Section 92(1) read: “1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.”

¹⁷⁵ *OPSEU*, at para. 89.

¹⁷⁶ *Reference re Senate Reform*, 2014 SCC 32, at para. 48.

¹⁷⁷ *Motard c. Procureur général du Canada*, 2019 QCCA 1826, affirming *Motard c. Canada (Procureur général)*, 2016 QCCS 588 (see, in particular, paras. 133-140). Note that the Supreme Court of Canada dismissed the application for leave to appeal the Court of Appeal's judgment (see *SCC No. 38986*), April 23, 2020.

[91] S'appuyant sur l'opinion des professeurs Benoît Pelletier et Andrew Heard, le juge détermine que la « charge de Reine » vise les pouvoirs, le statut et le rôle constitutionnel du monarque dans la Constitution canadienne. [...] **Il est d'avis que la protection constitutionnelle du paragraphe 1 de l'article 41 de la Loi constitutionnelle de 1982 vise à protéger les pouvoirs, le statut et le rôle conférés au monarque et que la modification aux règles britanniques de succession n'a aucune incidence sur ces attributs**[44].

[92] **La Cour est d'accord avec cet énoncé du juge d'instance. Simplement dit, le paragraphe a) de l'article 41 de la Loi constitutionnelle de 1982 protège l'institution monarchique** et non les règles procédurales qui permettent à une personne d'accéder au trône. Les modifications apportées par le Parlement britannique aux règles de la succession royale n'ont aucune incidence sur la « charge de Reine » au Canada. **La Loi canadienne d'assentiment de 2013 n'apporte aucun changement aux pouvoirs, au statut et au rôle constitutionnel dévolu à la Reine. Il ne vise donc pas la « charge de Reine ».** (emphasis added)

215. The Court of Appeal's interpretation was recently affirmed by the Supreme Court of Canada and applied to “the office” of the Lieutenant Governor of a province in *Société de l'Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, [2026 SCC 22](#), at para. 106:¹⁷⁸

[106] **As the Court of Appeal found, s. 41 protects the institution of the monarchy and is concerned with the essential attributes of the viceregal role, that is, the powers, status and functions vested in the Lieutenant Governor (C.A. reasons, at para. 44; see *Motard v. Attorney General of Canada*, 2019 OCCA 1826, at para. 92).** In this case, the recognition of an obligation of personal bilingualism under the *Charter* **does not affect the Lieutenant Governor's role, status or constitutional powers.** It changes only the language requirements that must be met by the person called upon to hold this office. Such an obligation does not transform the nature of the power of appointment exercised under s. 58 of the *Constitution Act, 1867* and is not a constitutional amendment within the meaning of s. 41 of the *Constitution Act, 1982*.

¹⁷⁸ The Supreme Court affirmed the New Brunswick Court of Appeal's application of the Quebec Court of Appeal's interpretation of s. 41(a) in *Motard* to the “office of Lieutenant Governor”: see *The Right Honourable Prime Minister of Canada et al. v. La Société de l'Acadie du Nouveau-Brunswick and The Attorney General for New Brunswick*, [2024 NBCA 70](#), at paras. 43-45. By expressly citing *Motard* in affirming the New Brunswick Court of Appeal's interpretation, the Supreme Court affirms that *Motard* applies to both “the office of the Queen” and the office of Lieutenant Governor.

216. As such, laws that “affect” the “role, status or constitutional powers” vested in the King are considered to be “in relation to... the office of the Queen” and can therefore only be authorized with the unanimous consent of Parliament and the ten provincial legislatures pursuant to s. 41(a). Based on *Motard* and *Société de l’Acadie*, laws that affect the conditions or requirements for a person to serve in the capacity of “Queen” (or King), Lieutenant Governor, or Governor General are not encompassed within s. 41(a);
217. Identifying the circumstances in which a law may be said to “**affect**” the “role, status or constitutional powers” vested in the King is critical to delineating the scope of s. 41(a). Section 41 has been identified as being limited to “fundamental changes to the Constitution of Canada.”¹⁷⁹ As such, “the limitation on provincial constitutional amendments under s. 41(a) is only engaged by transformative institutional changes” to any of the “office[s]” identified in s. 41(a).¹⁸⁰ The key question is whether the concrete impact of the legislation “undermine[s] the legal theory underlying the office or institution” of the monarchy.¹⁸¹ If the answer is affirmative, s. 41(a) applies;
218. The notion that s. 41(a) only embraces legislation that “would undermine the legal theory underlying the office or institution” of the monarchy was first articulated by the Judicial Committee of the Privy Council in respect of the provincial power of unilateral constitutional amendment previously entrenched in s. 92(1) of the *Constitution Act, 1867*.¹⁸² As noted, this power expressly excluded the “office of the Lieutenant Governor” and implicitly excluded the “office of the Queen.”¹⁸³ As s. 92(1) is the predecessor of s. 45 of the *Constitution Act, 1982*, and as s. 45 is “[s]ubject to section 41”, the “legal theory” standard for identifying legislation that constitutes an amendment “in relation to...the office of the Queen” applies *mutatis mutandis* to s. 41(a);
219. Other standards have also been proposed for identifying amendments in relation to the offices listed in s. 41(a). The first, referred to as the “strict limits” theory, posits that legislation of any kind that relates to any of the said offices engages s. 41(a).¹⁸⁴ The second, referred to as the transformation theory, posits that any changes to these offices do not engage s. 41(a) unless they abolish or fundamentally transform their respective powers.¹⁸⁵ Both of these theories are, however, incompatible with the the “legal theory standard” identified by the Judicial Committee of the Privy Council, which was subsequently reaffirmed by the Supreme Court of Canada;¹⁸⁶

¹⁷⁹ *Reference re Senate Reform*, [2014 SCC 32](#), at para. 41.

¹⁸⁰ *Democracy Watch v. British Columbia (Lieutenant Governor)*, [2022 BCSC 1037](#), at para. 26; Campagnolo & Bontems, at 589 (Exhibit R-3).

¹⁸¹ *Democracy Watch*, at paras. 22, 26, 37, citing *Re the Initiative and Referendum Act*, [\[1919\] A.C. 935 \(UK JCPC\)](#), at 24. See also Campagnolo & Bontems, at 589 (Exhibit R-3).

¹⁸² *Re the Initiative and Referendum Act*, [\[1919\] A.C. 935 \(UK JCPC\)](#), at 24, cited in *Democracy Watch*, at paras. 22, 26, 37.

¹⁸³ *Ontario (Attorney General) v. OPSEU*, [\[1987\] 2 S.C.R. 2](#), at para. 89.

¹⁸⁴ Note that this was the theory of s. 41(a) advanced by the *Attorney General of Quebec in Motard c. Canada (Procureur général)*, [2016 QCCS 588](#). See paras. 133-134.

¹⁸⁵ *Democracy Watch*, at paras. 23-24; Campagnolo & Bontems, at 587-590 (Exhibit R-3).

¹⁸⁶ *Democracy Watch*, at paras. 22-26; *Re Manitoba Language Rights*, [\[1985\] 1 S.C.R. 721](#), at 777.

220. Still, under any of these three standards, the *Act to recognize the oath* and s. 128Q.1 manifestly relate to “the office of the Queen” within the meaning of s. 41(a) and are *ultra vires* s. 45. In compliance with the jurisprudence, the “legal theory” standard

(d) The Act and s. 128Q.1 Relate to “the office of the Queen”

221. By purporting to exclude Quebec and persons elected to the National Assembly from the requirement to take the Oath of Allegiance entrenched in s. 128 of the *Constitution Act, 1867*, the *Act to recognize the oath* and s. 128Q.1 “affect” the monarchy’s “role, status or constitutional powers” and therefore relate to “the office of the Queen.”¹⁸⁷ Indeed, discharging members of the National Assembly from the constitutional requirement to take the Oath prior to taking their seat therein “undermine[s] the legal theory underlying the office or institution”¹⁸⁸ of the monarchy. The *Act* and s. 128Q.1 are, therefore, *ultra vires* the amending power in s. 45 and entirely unconstitutional;

(e) The Act and s. 128Q.1 Affect the Status & Role of “the office of the Queen”

222. The *Act to recognize the oath* and s. 128Q.1 affect the status and role of the “office of the Queen” and are therefore *ultra vires* s. 45. The *Act* and s. 128Q.1 “undermine the legal theory underlying the office or institution” of the monarchy as the personification of the Canadian state as a federal liberal democratic constitutional monarchy in which the person occupying the “office of the Queen” (or King) is the head of state;¹⁸⁹
223. The “status” and “role” of “the office of the Queen” must be understood in light of “the legal theory underlying the office or institution” of the monarchy.¹⁹⁰ Canada is a constitutional monarchy with a democratic form of government. The King is expressly designated at the head of state of Canada and of its constituent provinces, pursuant to the Preamble and s. 9 of the *Constitution Act, 1867*. As the Crown is indivisible, the King of Canada is also the King of every Canadian province;¹⁹¹

¹⁸⁷ *Société de l'Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, [2026 SCC 22](#), at para. 106, citing *Motard c. Procureur général du Canada*, [2019 QCCA 1826](#), at para. 92.

¹⁸⁸ *Democracy Watch*, at paras. 22, 26, 37, citing *Re the Initiative and Referendum Act*, [\[1919\] A.C. 935 \(UK JCPC\)](#), at 24. See also Campagnolo & Bontems, at 588-589 (Exhibit R-3).

¹⁸⁹ *McAteer v. Canada (Attorney General)*, [2014 ONCA 578](#), at para. 51; *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, [2017 SCC 40](#), at para. 28; Campagnolo & Bontems, at 592 (Exhibit R-3).

¹⁹⁰ *Democracy Watch*, at paras. 22, 26, 37, citing *Re the Initiative and Referendum Act*, [\[1919\] A.C. 935 \(UK JCPC\)](#), at 24.

¹⁹¹ *George Gordon First Nation v. Saskatchewan (Attorney General)*, [2020 SKQB 90](#), at para. 8.

224. It is, moreover, indisputable that the monarchy is the institutional personification of the Canadian state and its democratic values,¹⁹² and the institutional repository of all executive, legislative and judicial authority.¹⁹³ As was stated with regards to the Queen, which applies *mutatis mutandis* to the King:

The Queen acts through her officials. Officials in each of the three branches of government – legislative, executive and judicial – act in her name. Senior officials – legislators, ministers, military and police officers and judges – swear solemn oaths to loyally serve their Sovereign.¹⁹⁴

225. Indeed, these “solemn oaths” are required to be taken precisely because the individuals required to take them exercise – on the monarch’s behalf – duties, powers, and functions that are vested in the monarch, or otherwise serve in institutions of which the monarch forms part;¹⁹⁵
226. For its part, the Oath of Allegiance prescribed by s. 128 of the *Constitution Act, 1867* must be taken by all persons elected to the National Assembly – prior to taking their seat therein¹⁹⁶ – precisely because legislators elected to the Assembly serve in an institution of which the King forms part by way of the Lieutenant Governor.¹⁹⁷ As well, a Minister of the Crown who is also an elected member of the Assembly¹⁹⁸ exercises executive and legislative power¹⁹⁹ and can only take their seat therein after taking the Oath. The Oath is in addition to the oath to be taken as a Minister who exercises executive authority vested in the monarch;²⁰⁰
227. As the Crown is divisible for the purposes of Canadian federalism, the King of Canada is also the King of every Canadian province.²⁰¹ A province excluding its legislators from the requirement to take the Oath of Allegiance necessarily “undermine[s] the legal theory underlying the office or institution” of the monarchy because it materially and deleteriously impacts the relationship between the legislature and the King as the head of state and as the institutional repository of

¹⁹² *McAteer v. Canada (Attorney General)*, [2014 ONCA 578](#), at paras. 51-52; *Clyde River*, at para. 28; *Canada (Attorney General) v. Power*, [2024 SCC 26](#), at para. 327; *Sanis Health Inc. v. British Columbia*, [2024 SCC 40](#), at para. 47.

¹⁹³ *Canada (Attorney General) v. Power*, [2024 SCC 26](#), at paras. 173, 327.

¹⁹⁴ *George Gordon First Nation*, at para. 6.

¹⁹⁵ *George Gordon First Nation*, at para. 7.

¹⁹⁶ *M. Bonsaint, Parliamentary Procedure in Quebec* (Quebec: National Assembly) at 162 (**Exhibit R-9**).

¹⁹⁷ *Constitution Act, 1867*, at s. 71; *Société de l’Acadie du Nouveau-Brunswick*, at paras. 30-31.

¹⁹⁸ A person can be named Minister of the Crown without being elected to the National Assembly. However, an elected member of the Assembly can only take their seat therein after taking the Oath of Allegiance, even if they are named a Minister of the Crown.

¹⁹⁹ *Mikisew Cree First Nation v. Canada (Governor General in Council)*, [2018 SCC 40](#), at para. 2, 34, 40; *Canada (Attorney General) v. Power*, [2024 SCC 26](#), at paras. 193-198, 349.

²⁰⁰ All executive authority is vested in the monarch: *Constitution Act, 1867*, at s. 9; *Power*, at para. 328.

²⁰¹ *George Gordon First Nation*, at para. 8; *R. v. Secretary of State for Foreign and Commonwealth Affairs, ex parte Indian Association of Alberta*, [1982] Q.B. 892, at 917 (Eng. C.A.), per Lord Denning.

legislative, executive, and judicial power.²⁰² Indeed: “The oath to the Queen of Canada is an oath to our form of government, as symbolized by the Queen as the apex of our Canadian parliamentary system of constitutional monarchy”;²⁰³

228. By contrast, the rationale proffered by the Minister immediately prior to the passage of the *Act to recognize the oath* belies a fundamental misunderstanding of the monarchy’s status and role as the personification of the Canadian state – and its constituent units – and of the divisibility of the Crown in right of Canada resulting in the King of Canada also being the King of Quebec. As stated by the Minister:²⁰⁴

...je veux quand même dire et affirmer ici, au salon bleu, qu'au Québec **nous sommes des démocrates, nous ne sommes pas un peuple de monarchistes**. Et c'est donc important de poser le geste que nous posons aujourd'hui, un geste d'affirmation nationale, un geste de modernité...
[...]

Ce qui veut dire qu'à partir de maintenant, lorsqu'elle sera sanctionnée, les députés qui auront l'honneur de représenter leurs concitoyens ici, à l'Assemblée nationale, n'auront plus à prêter serment au roi d'un autre pays. (emphasis added)

229. Whether one understands the Minister’s reference to “un autre pays” as referring to Canada or to the United Kingdom, that reference is legally and constitutionally incorrect. The Oath of Allegiance relates to the King of Canada, who is also the King of Quebec²⁰⁵ – “[i]t is not an oath to a foreign sovereign.”²⁰⁶ As explained by the Supreme Court of Canada, “the proclamation of the *Constitution Act, 1982* removed the last vestige of British authority over the Canadian constitution”;²⁰⁷
230. Further, the Oath required under s. 128 is not one of personal allegiance to the human being occupying the “office of the Queen.” It is, as noted, an oath to the institution of the monarchy as the personification of the Canadian state as a federal liberal democratic constitutional monarchy governed by the rule of law and in which the person occupying the “office of the Queen” (or King) is the head of state;²⁰⁸

²⁰² *Power*, at paras. 173, 327.

²⁰³ *McAteer v. Canada (Attorney General)*, [2014 ONCA 578](#), at para. 52. Note that *McAteer* concerns the oath required to be taken under s. 24 of the federal *Citizenship Act* as part of becoming a naturalized Canadian citizen. However, the Court of Appeal was clear that its interpretation of the citizenship oath was directly informed by the Oath of Allegiance required under s. 128 of the *Constitution Act, 1867*: see *McAteer*, at paras. 6, 43, 61; and *Wurring v. Law Society of Alberta*, [2023 ABKB 580](#), at paras. 111-114.

²⁰⁴ [Assemblée nationale de Québec, Journal des débats, 43rd Legislature, 1st Session, Friday, December 9, 2022, Vol. 47, No. 8 \(per Minister Jean-François Roberge\) \(Exhibit R-2\)](#)

²⁰⁵ *George Gordon First Nation*, at para. 8; *R. v. Secretary of State for Foreign and Commonwealth Affairs, ex parte Indian Association of Alberta*, [1982] Q.B. 892, at 917 (Eng. C.A.), per Lord Denning.

²⁰⁶ *McAteer v. Canada (Attorney General)*, [2014 ONCA 578](#), at para. 54.

²⁰⁷ *Reference re Secession of Quebec*, [\[1998\] 2 S.C.R. 217](#), at para. 46, cited in, *inter alia*, *McAteer v. Canada (Attorney General)*, [2014 ONCA 578](#), at para. 47.

²⁰⁸ *McAteer v. Canada (Attorney General)*, [2014 ONCA 578](#), at paras. 6, 51-52, 59-61, citing R. Marleau & C. Montpetit (eds.), *House of Commons Procedure and Practice*, 2000 ed. (Montreal: Chenelière/McGraw-

231. A refusal or failure to take the Oath of Allegiance is, therefore, a failure to pledge allegiance to the Canadian state – including its basic structure, its institutions, its values, and the theory of government established under “the Constitution of Canada.” It is, moreover, a repudiation of monarch’s status and role as head of state of Canada and its constituent federal units – including Quebec – as entrenched in, *inter alia*, s. 9 of the *Constitution Act, 1867*;
232. As the status and role of “the office of the Queen” includes its personification of the Canadian state as head of state and institutional repository of all public power, a refusal or failure by legislators in any Canadian legislature to take the Oath of Allegiance inescapably affects the “office of the Queen”;
233. The conclusion that excluding any legislators from the requirement in s. 128 to take the Oath of Allegiance relates to “the office of the Queen” – and is therefore governed by s. 41(a) – is further illustrated by the following hypothetical;
234. If such an amendment to s. 128 were authorized by the unilateral federal and provincial constitutional amendment powers, Parliament and every province in Canada could abolish the requirement with respect to members of their own legislature. All legislators in Canada would then be exempt from taking the Oath despite the monarch forming part of the legislature and despite some of the legislators also being Ministers of the Crown exercising legislative and executive power. The institutional link between the monarchy and the legislature would be severed – or, at the very least, significantly altered. In either case, it would amount to a clear repudiation of the monarchy’s status and role in the Canadian constitutional system. Such an outcome would necessarily “undermine[] the legal theory underlying the position of the office or institution” of the monarchy in the Canadian constitutional system and necessarily affect “the office of the Queen”;²⁰⁹
235. An outcome of this nature would necessarily fall within the category of “fundamental changes to the Constitution of Canada” that is the exclusive preserve of s. 41.²¹⁰ Indeed, in *Reference re Senate Reform*, [2014 SCC 32](#), the Supreme Court of Canada endorsed the following “rationale for requiring unanimity for the enumerated categories of amendments”²¹¹ in s. 41:

[translation] . . . the unanimity rule provided for in section 41 of the 1982 Act is justified by the need . . . to give each of the partners of Canada’s federal compromise a veto on those **topics that are considered the most essential to the survival of the state.**²¹² [...]

Hill, 2000), at p. 176. See also Campagnolo & Bontems, at 592 (Exhibit R-3); and *Warring v. Law Society of Alberta*, [2025 ABCA 413](#), at paras. 74-75, 81, 101.

²⁰⁹ *Democracy Watch*, at paras. 22, 26, 37, citing *Re the Initiative and Referendum Act*, [\[1919\] A.C. 935 \(UK JCPC\)](#), at 24; *Société de l’Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, [2026 SCC 22](#), at para. 106, citing *Motard c. Procureur général du Canada*, [2019 QCCA 1826](#), at para. 92. See also Campagnolo & Bontems, at 588-589 (Exhibit R-3).

²¹⁰ *Reference re Senate Reform*, [2014 SCC 32](#), at para. 41.

²¹¹ *Ibid.*

²¹² *Ibid.*, quoting Benoit Pelletier, *La modification constitutionnelle au Canada* (1996), at p. 208.

236. The hypothetical scenario discussed above would necessarily undermine the survival of the Canadian state as a liberal democratic constitutional monarchy in which the King is the head of state and the institutional repository of executive, legislative, and judicial power. This is, indeed, “the legal theory underlying the position of the office or institution” of the monarchy in the Canadian constitutional system,²¹³ as reflected in, *inter alia*, the Preamble and s. 9 of the *Constitution Act, 1867*;
237. In this light, an amendment to – or exclusion from – s. 128’s constitutional requirement can only be achieved by way of a constitutional amendment requiring the unanimous consent of Parliament and the ten provincial legislatures pursuant to s. 41(a) of the *Constitution Act, 1982*. As a result, the *Act to recognize the oath* and s. 128Q.1 are *ultra vires* s. 45;

(f) The Act and s. 128Q.1 Affect The Status, Role, and Powers of “the office of Lieutenant Governor”

238. In addition, or alternatively, the *Act to recognize the oath* and s. 128Q.1 affect the status, role, and constitutional powers of the “office of the... Lieutenant Governor” and are therefore *ultra vires* s. 45 of the *Constitution Act, 1982*;
239. The status, role, and constitutional powers of “the office of the... Lieutenant Governor” must be understood in light of “the legal theory underlying the office or institution” of the monarchy,²¹⁴ and in light of the elements of “the Constitution of Canada” defining them. Canada is a constitutional monarchy with a democratic form of government. As noted, the King is expressly designated at the head of state of Canada and of its constituent provinces, pursuant to the Preamble and s. 9 of the *Constitution Act, 1867*. In turn, the Lieutenant Governor is the representative of the Sovereign in right of the province;
240. As explained by the Supreme Court of Canada in *Société de l’Acadie du Nouveau Brunswick v. Canada (Prime Minister)*, [2026 SCC 22](#):

[29] The Lieutenant Governor is the Crown’s representative in the province and, as such, embodies the Crown and exercises the powers, prerogatives, immunities and capacities granted to it in right of the province (J. McL. Hendry, *Memorandum on the Office of Lieutenant-Governor of a Province: Its Constitutional Character and Functions (With Appendices)* (1955), at p. 19; J. T. Saywell, *The Office of Lieutenant-Governor: A Study in Canadian Government and Politics* (1957)). This constitutional status was decisively affirmed by the Judicial Committee of the Privy Council in *Liquidators of the Maritime Bank of Canada v. Receiver-General of New Brunswick*, [1892] A.C. 437, which established that, **for the purposes of**

²¹³ See footnote 171.

²¹⁴ *Democracy Watch*, at paras. 22, 26, 37, citing *Re the Initiative and Referendum Act*, [\[1919\] A.C. 935 \(UK JCPC\)](#), at 24.

provincial government, the Lieutenant Governor is a representative of the Sovereign and not merely an officer of the federal government.

[30] The office of Lieutenant Governor has a dual character. The Lieutenant Governor is, on the one hand, a representative of the Crown in right of the province and a constituent element of the legislature and, on the other, a provincial authority appointed by the federal government, through the constitutional mechanism for designating the Crown's representatives in the provinces. In the context of responsible government, the Lieutenant Governor must almost always act on the advice of the Premier of the province and the ministers who have the confidence of the elected assembly, as most political power remains in the hands of democratically elected authorities. However, the Lieutenant Governor retains reserve powers, which must be exercised with exceptional discretion, when it is necessary to resolve a parliamentary crisis of confidence (P. W. Hogg and W. K. Wright, *Constitutional Law of Canada* (5th ed. Supp.), at § 9:3). One of the Lieutenant Governor's essential responsibilities is to give royal assent to laws passed by the provincial legislature, and this assent normally cannot be denied.

[31] Finally, the Lieutenant Governor performs an important ceremonial and social role. Through their participation in the public life of the province, they embody the continuity of the state and the relationship between institutions and citizens. The Lieutenant Governor thus performs a symbolic function, both as a constituent element of the provincial legislature and as a representative of the Crown in right of the province, thereby providing a link between the Crown and Canadian society. (emphasis added)

241. In the present case, the *Act to recognize the oath* and s. 128Q.1 each and both directly affect the (i) status and (ii) powers of the Lieutenant Governor of Quebec and, therefore, relate to “the office of the... Lieutenant Governor” within the meaning of s. 41(a) of the *Constitution Act, 1982*. The *Act to recognize the oath* and s.128Q.1 are, therefore, each and both *ultra vires* s. 45 and unconstitutional;
242. In a judgment decided under s. 92(1) of the *Constitution Act, 1867*, the Supreme Court of Canada characterized s. 128 “as referable to the office of the Governor-General and of the Lieutenant-Governor and touching the position of the Crown in respect of members of the legislative chambers, so long as such chambers exist.”²¹⁵ (emphasis added);

²¹⁵ *Attorney General of Quebec v. Blaikie, et al.*, [1979] 2 S.C.R. 1016, at 1024.

243. As concerns Quebec, as long as the National Assembly exists, the Oath of Allegiance prescribed by s. 128 will continue to “touch[] the position of the Crown” in respect of persons elected to sit in the Assembly. This conclusion is not displaced – but is rather reinforced – by s. 41(a) of the *Constitution Act, 1982*;

244. **First**, the Act to recognize the oath and s. 128Q.1 affect the status of the Lieutenant Governor of Quebec.²¹⁶

- The Lieutenant Governor’s “constitutional status” is to serve as “a representative of the Sovereign” in right of the Province of Quebec;²¹⁷
- The Lieutenant Governor “embodies the Crown” in right of the province and the continuity of Canada and the Province of Quebec as a constituent political unit in Canada’s federal democratic constitutional monarchy, as well as its relationship with the citizens of Quebec by “providing a link between the Crown and Canadian society”;²¹⁸
- The Oath of Allegiance required by s. 128 of the *Constitution Act, 1867* is an Oath of Allegiance to the monarch as the personification of the Canadian state and must be “take[n] and “subscribe[d] before the Lieutenant Governor”;
- Abolishing the requirement to take the Oath reflects a refusal to pledge Allegiance to the King as head of state and to do so before the Lieutenant Governor as the King’s representative;
- The refusal to take the Oath of Allegiance is a repudiation of the monarchy as the institutional personification of the Canadian state and identity as a liberal democratic federal constitutional monarchy;
- A repudiation of the monarchy necessarily entails a repudiation of the Lieutenant Governor’s status and role as the “representative of the sovereign in the province”;²¹⁹
- As such, the *Act to recognize the oath* and s. 128Q.1 undermine “the legal theory underlying the office or institution” of the monarchy and directly affect the status of the office of Lieutenant Governor within the meaning of s. 41(a) of the *Constitution Act, 1982*. The *Act* is therefore *ultra vires* s. 45 and unconstitutional

245. **Second**, the *Act to recognize the oath* and s. 128Q.1 affect the powers of the Lieutenant Governor of Quebec in the following ways:

²¹⁶ Campagnolo & Bontems, at 593-594 (Exhibit R-3).

²¹⁷ *Société de l’Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, [2026 SCC 22](#), at para. 29, citing *Liquidators of the Maritime Bank of Canada v. Receiver-General of New Brunswick*, [1892] A.C. 437

²¹⁸ *Société de l’Acadie du Nouveau-Brunswick*, at para. 30.

²¹⁹ Campagnolo & Bontems, at 593-594 (Exhibit R-3).

- Section 71 of the *Constitution Act, 1867* provides that the “Legislature for Quebec” includes “the Lieutenant Governor”²²⁰ The Lieutenant Governor is, in other words, a “constituent element” of the National Assembly²²¹ and exercises the Sovereign’s legislative powers;²²²
- Section 82 of the *Constitution Act, 1867* provides that the Lieutenant Governor of Quebec “shall from Time to Time, in the Queen’s Name, by instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province”²²³ (emphasis added);
- Section 128 of the *Constitution Act, 1867* provides: “every Member of a Legislative Council or Legislative Assembly of any Province shall before taking his Seat therein take and subscribe before the Lieutenant Governor of the Province or some Person authorized by him, the Oath of Allegiance...”;
- Pursuant to s. 128, one of the constitutional powers of the Lieutenant Governor of Quebec is to administer the Oath of Allegiance, including after having summoned and called together the National Assembly following a provincial general election pursuant to s. 82;
- In this light, by purporting to exclude Quebec from s. 128’s application, the *Act to recognize the oath* and s. 128Q.1 directly “affect” the constitutional power of the Lieutenant-Governor under s. 128 to administer the Oath of Allegiance and the related power to authorize another person to administer the Oath in their name;
- Further, s. 128 establishes the Oath of Allegiance as a constitutional condition precedent for politicians elected to the National Assembly to lawfully take their “Seat therein”. If all or a majority of politicians elected to the National Assembly do not take the Oath prior to taking their seat therein, the Assembly will not be lawfully constituted;²²⁴

²²⁰ In French : “Est instituée la Legislature du Québec, composée du lieutenant gouverneur et de...”

²²¹ *Société de l’Acadie du Nouveau-Brunswick*, at para. 30. See also *Re the Initiative and Referendum Act*, [1919] A.C. 935 (UK JCPC), at 944-945.

²²² *Constitution Act, 1867*, at s. 90. See also *Mikisew Cree First Nation v. Canada (Governor General in Council)*, 2018 SCC 40, at paras. 129-134, 161; *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, at para. 28; *Canada (Attorney General) v. Power*, 2024 SCC 26, at para. 194-196, 349; *Re the Initiative and Referendum Act*, [1919] A.C. 935 (UK JCPC), at 944-945.

²²³ In French: “Le lieutenant-gouverneur... de Québec devra, de temps à autre, au nom de la Reine, par instrument sous le grand sceau de la province, convoquer l’assemblée législative de la province.”

²²⁴ *House of Commons Procedure and Practice, Third Edition, 2017*: “...it is the taking of the oath or affirmation which enables a Member to take his or her seat in the House and to vote.” (Exhibit R-9). See also Campagnolo & Bontems, at 602 (Exhibit R-3). *Decision of Speaker John Fraser, “Oath/affirmation of allegiance : Member’s right to sit in the House in the face of an alleged repudiation of oath; meaning and significance of the oath”, November 1, 1990, House of Commons Debates, 34th Parliament, 2nd Session, Vol. 1, at pp. 14969-70 (Exhibit R-24)*. See also *Assemblée nationale du Québec, « DÉCISION DE LA PRÉSIDENCE concernant le refus de prêter le serment d’allégeance », November 1, 2022 (Exhibit R-*

- Because the taking of the Oath is a constitutional condition precedent to lawfully sitting in the National Assembly, removing the Lieutenant Governor's power to administer the Oath also removes the Lieutenant Governor's power to assemble the legislature in a constitutionally compliant manner;

246. **Third**, the *Act to recognize the oath* and s. 128Q.1 affect additional constitutional powers of the Lieutenant Governor of Quebec:

- As noted, Section 71 of the *Constitution Act, 1867* provides that the "Legislature for Quebec" includes "the Lieutenant Governor"²²⁵
- The Lieutenant Governor is, in other words, a "constituent element" of the National Assembly²²⁶ and exercises the Sovereign's legislative powers;²²⁷
- The monarch's legislative powers, exercised in the provinces by the Lieutenant Governor, are captured under the concept of "the Crown-in-Parliament" and embrace "three determinative acts that are part of Parliament's core functions as a legislative body: royal recommendation, royal consent, and royal assent";²²⁸
- By purporting to abolish the Oath of Allegiance in s. 128, the *Act to recognize the oath* and s. 128Q.1 impair and undermine each of these "determinative acts" – and, therefore, the Lieutenant Governor's legislative role;
- **First**, the Act and s. 128Q.1 impair and undermine the Lieutenant Governor's power of granting **royal recommendation**. Royal recommendation "provides for the procedure to be followed in respect of authorizing expenditure of public monies."²²⁹ Abolishing the Oath undermines the Lieutenant Governor's power of granting royal recommendation because it forces them to authorize the expenditure of public monies as part of legislation that has been introduced and will be voted on in the National Assembly by politicians who did not take the Oath before taking their seat, do not lawfully sit in the Assembly, and whose votes on legislation are therefore legally invalid.²³⁰ The

15) and **Exhibit R-11**: [Assemblée nationale du Québec, Encyclopédie du parlementarisme québécoise, « Serment »](#).

²²⁵ In French : "Est instituée la Législature du Québec, composée du lieutenant gouverneur et de..."

²²⁶ *Société de l'Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, [2026 SCC 22](#), at para. 30; *Re the Initiative and Referendum Act*, [\[1919\] A.C. 935 \(UK JCPC\)](#), at 944-945.

²²⁷ *Constitution Act, 1867*, at s. 90. See also *Mikisew Cree First Nation v. Canada (Governor General in Council)*, [2018 SCC 40](#), at paras. 129-134, 161; *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, [2017 SCC 40](#), at para. 28; *Canada (Attorney General) v. Power*, [2024 SCC 26](#), at para. 194-196, 349; *Re the Initiative and Referendum Act*, [\[1919\] A.C. 935 \(UK JCPC\)](#), at 944-945.

²²⁸ *Mikisew Cree*, at paras. 130, 161, citing C. Robert, "The Role of the Crown-in-Parliament: A Matter of Form and Substance" in M. Bédard and P. Lagassé, eds., *The Crown and Parliament* (2015) at 96. See also *Constitution Act, 1867*, at s. 90; *Clyde River*, at para. 28; and *Power*, at paras. 194-196, 349.

²²⁹ *Mikisew Cree*, at paras. 131, 161, 117. See also *Constitution Act, 1867*, at s. 90; *Power*, at para. 309.

²³⁰ [House of Commons Procedure and Practice, Third Edition, 2017](#): "...it is the taking of the oath or affirmation which enables a Member to take his or her seat in the House and to vote." (**Exhibit R-9**) See also [E. Janse & J. LeBlanc, House of Commons Procedure and Practice, Fourth Edition, 2025](#) (also **R-9**).

Lieutenant Governor is, in essence, enjoined to authorize the expenditure of public monies in legislation voted on in an Assembly that has not been lawfully constituted – and thus without following the constitutionally required steps for the passage of legislation²³¹ – rendering illegal the exercise of the power of granting royal recommendation;

- **Second**, the Act and s. 128Q.1 impair and undermine the Lieutenant Governor's power of granting royal consent. "Royal consent is a practice based on a convention limiting [the legislature's] right to take measures infringing the Crown prerogative or other Crown rights and interests."²³² Abolishing the Oath undermines the Lieutenant Governor's power of granting royal consent because it enjoins them to authorize the infringement of Crown prerogative powers and other Crown rights and interests as part of legislation that has been introduced and will be voted on in the National Assembly by politicians who did not take the Oath before taking their seat, are not loyal to the Sovereign, do not lawfully sit in the Assembly, and whose votes on legislation are therefore legally invalid.²³³ The Lieutenant Governor is, in essence, enjoined to authorize the infringement of Crown prerogatives and other Crown rights and interests in legislation voted on in an Assembly that has not been lawfully constituted – and thus without following the constitutionally required steps for the passage of legislation²³⁴ – rendering illegal the exercise of the power of granting royal consent;
- **Third**, the Act and s. 128Q.1 impair and undermine the Lieutenant Governor's power of granting royal assent to legislation in the Sovereign's name.²³⁵ Royal assent is the final step of the legislative process and is required for any law to officially enter into force.²³⁶ Royal assent is "[o]ne of the Lieutenant Governor's essential responsibilities..."²³⁷ Abolishing the Oath undermines the Lieutenant Governor's power of granting royal assent

[Decision of Speaker John Fraser, "Oath/affirmation of allegiance : Member's right to sit in the House in the face of an alleged repudiation of oath; meaning and significance of the oath", November 1, 1990, House of Commons Debates, 34th Parliament, 2nd Session, Vol. 1, at pp. 14969-70 \(Exhibit R-24\).](#) See also [Assemblée nationale du Québec, « DÉCISION DE LA PRÉSIDENCE concernant le refus de prêter le serment d'allégeance », November 1, 2022 \(Exhibit R-15\) and Exhibit R-11: Assemblée nationale du Québec, Encyclopédie du parlementarisme québécoise, « Serment ».](#)

²³¹ The main phases of the constitutionally required process for the passage of legislation in a provincial legislature, including the National Assembly, are: (1) introduction and First Reading of the bill in the legislature; (2) Second Reading of the bill (approval in principle); (3) clause by clause consideration in the relevant parliamentary committee(s); (4) Report(s) on the bill by the committee(s), including any recommended amendments; (5) Third Reading (passage) and final approval of the bill by way of votes by every legislator present in the legislature. Note that "Each stage ends with a vote by the Members" of the legislative assembly: [M. Bonsaint, dir., Parliamentary Procedure in Québec \(Québec, Bibliothèque nationale du Québec, 2012\)](#), at 392-407

²³² *Mikisew Cree*, at paras. 131, 161, 117. See also *Constitution Act, 1867*, s. 90, and *Power*, at para. 309.

²³³ See footnote 213 and [M. Bonsaint, Parliamentary Procedure in Québec](#) at 162, both at **Exhibit R-9**.

²³⁴ The steps are summarized at footnote 214.

²³⁵ *Re the Initiative and Referendum Act*, [1919] A.C. 935 (UK JCPC), at 945; *Constitution Act, 1867*, s. 90.

²³⁶ *Mikisew Cree*, at paras. 131, 161, 117. See also *Constitution Act, 1867*, s. 90 and *Power*, at para. 309.

²³⁷ *Société de l'Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, 2026 SCC 22, at para. 30.

because it forces them to grant assent to legislation that has been voted on and passed in the National Assembly by politicians who did not take the Oath before taking their seat, are not loyal to the Sovereign, do not lawfully sit in the Assembly, and whose votes on legislation are therefore legally invalid. The Lieutenant Governor is, in essence, enjoined to assent to legislation passed by an Assembly that has not been lawfully constituted – and thus without following the constitutionally required steps for the passage of legislation²³⁸ – rendering illegal the exercise of the power of royal assent. The *Act to recognize the oath* and s. 128Q.1 therefore affect “the office of... Lieutenant Governor” under s. 41(a) and are, therefore, *ultra vires* s. 45;

- o This conclusion is consistent with over a century of binding judicial precedents, including the Judicial Committee of the Privy Council’s decision in *Re Initiative and Referendum Act*, [1919] A.C. 935 (P.C.), which has since been reaffirmed by the Supreme Court of Canada in *Re Manitoba Language Rights*, [1985] 1 S.C.R. 721 and *OPSEU*.²³⁹
- o To wit, in *Re Manitoba Language Rights* (at p. 777), the Supreme Court unanimously held that a law purporting “to give legal force and effect” to other legislation without the latter receiving royal assent “must fail as an unconstitutional attempt to interfere with the powers of the Lieutenant Governor.” The Court was clear that such a “scheme is clearly *ultra vires* the province under s. 41(a) of the *Constitution Act, 1982*” and quoted *In re Initiative and Referendum Act*, [1919] A.C. 935 (P.C.) in support of that conclusion;
- o The *Act to recognize the oath* produces a strikingly analogous result. By purporting to abolish the Oath of Allegiance, the Act results in forcing the Lieutenant Governor to grant royal assent to legislation that has been voted on by politicians who have not lawfully taken their seat in the Assembly; by an Assembly that has not been lawfully constituted; and in the absence of the constitutionally required steps in the legislative process that must precede royal assent.²⁴⁰ Forcing the Lieutenant Governor to grant royal assent to legislation in such circumstances is equivalent to royal assent being of no force or effect since royal assent can only be given to legislation passed under the constitutionally required process. Alternatively, or in addition, the power of royal assent is de-natured or radically transformed by being coerced into being exercised to provide legal imprimatur to legislation whose passage is constitutionally infirm. In either case, the *Act to recognize the oath* is “an unconstitutional attempt to interfere with the powers of the Lieutenant Governor”;²⁴¹

²³⁸ The steps are summarized at footnote 231.

²³⁹ *Ontario (Attorney General) v. OPSEU*, [1987] 2 S.C.R. 2, at para. 110.

²⁴⁰ The steps are summarized at footnote 231.

²⁴¹ *Re Manitoba Language Rights*, [1985] 1 S.C.R. 721, at 777.

- o A related constitutional defect can be identified by analyzing the reasons given in *Re the Initiative and Referendum Act*, [1919] A.C. 935 (UK JCPC) for declaring legislation *ultra vires* s. 92(1) of the *Constitution Act, 1867* for affecting the office of the Lieutenant Governor. As summarized in *OPSEU*, the legislation at issue in that case “empowered the electors of Manitoba to legislate directly by way of a referendum procedure.”²⁴² In arriving at this conclusion, the Judicial Committee of the Privy Council stated that a provincial legislature cannot “create and endow with its own capacity a new legislative power not created by the Act to which it owes its own existence” – namely, the *Constitution Act, 1867*;²⁴³
- o A functionally equivalent situation has occurred by way of the *Act to recognize the oath*. By abolishing the requirement for politicians elected to the National Assembly to take the Oath of Allegiance prior to taking their seat therein, the Act purports to authorize a legislative assembly that is not lawfully constituted and whose votes and other parliamentary activities are equally void *ab initio*.²⁴⁴ This is the legislature that will be assembled following the provincial general election to be held on October 5, 2026, and every subsequent legislature in Quebec unless and until the *Act to recognize the oath* and s. 128Q.1 are declared unconstitutional and of no force or effect. In other words, the Act purports to create or otherwise allow the operation of an illegally assembled body of elected politicians within the National Assembly, whose purported parliamentary activities constitute a usurpation of legislative powers that belong only to Members who have taken the Oath of Allegiance before taking their seat and to a National Assembly composed of at least a majority of Members who have taken the Oath. And, as noted, the effect of the Act is to force the Lieutenant Governor to grant royal recommendation, royal consent, and royal assent to the laws purportedly but not lawfully passed by this illegally assembled body operating within the National Assembly. This is contrary to the text and basic structure of the *Constitution Act, 1867* and is, therefore, constitutionally impermissible, in addition to being *ultra vires* s. 45 of the *Constitution Act, 1982*;
- o As was stated by the Supreme Court of Canada in *OPSEU*: “the power of constitutional amendment given to the provinces by s. 92(1) of the *Constitution Act, 1867* does not necessarily comprise the power to bring about a profound constitutional upheaval by the introduction of

²⁴² *Ontario (Attorney General) v. OPSEU*, [1987] 2 S.C.R. 2, at para. 110.

²⁴³ *Re the Initiative and Referendum Act*, [1919] A.C. 935 (UK JCPC), at p. 945, affirmed in *OPSEU*, at paras. 110-111.

²⁴⁴ *House of Commons Procedure and Practice, Third Edition, 2017*: “...it is the taking of the oath or affirmation which enables a Member to take his or her seat in the House and to vote.” (**Exhibit R-9**) See also *E. Janse & J. LeBlanc, House of Commons Procedure and Practice, Fourth Edition, 2025* and *M. Bonsaint, Parliamentary Procedure in Quebec* at 162, both also at **Exhibit R-9**.

political institutions foreign to and incompatible with the Canadian system.”²⁴⁵ The same is true for the constitutional successor of s. 92(1), namely, s. 45 of the *Constitution Act, 1982*. Yet, the purpose and effect of the *Act to recognize the oath* and s. 128Q.1 is to introduce “a profound constitutional upheaval” incompatible with the basic structure of the Canadian constitution;

247. It is no answer to any of the above to say that Lieutenant Governor could simply withhold consent, refuse assent to legislation, or exercise the power of reservation in the name of the King in right of Quebec;²⁴⁶
248. **First**, potential constitutional defects in legislation do not justify withholding consent, refusing assent, or exercising the power of reservation;
249. As stated in a press release issued by the Office of the Lieutenant Governor after granting royal assent to the *Act to recognize the oath* on December 9, 2022 (**R-7**):²⁴⁷

The Lieutenant Governor's role is apolitical and neither can he nor should he interfere with the role of the Legislature or substitute himself for the will of elected officials. It is the latter who are responsible for drafting legislation and they have a duty to ensure the legality and constitutionality of the bills they submit for assent. These are the duties of the democratically elected Members of the National Assembly of Quebec. **The Canadian constitutional monarchy is based on the principle of the separation of executive, legislative and judicial powers. Thus, should the legality or constitutionality of a law be raised, the matter falls under the jurisdiction of the judiciary and not the Lieutenant Governor.** (emphasis added)

250. **Second**, the very reason that refusing consent, withholding assent, or exercising, the power of reservation would be contemplated with respect to legislation passed by politicians who did not take the Oath of Allegiance before taking their seat in the National Assembly is because it raises constitutional issues pertaining to the office of the Lieutenant Governor and “the office of the Queen” within the meaning of s. 41(a) of the *Constitution Act, 1982*;
251. Overall, individually or collectively, the above establishes that the *Act to recognize the oath* and s. 128Q.1 directly undermine the status, constitutional role and powers of the Lieutenant Governor and the legal theory underlying the office or institution so as to affect the office of Lieutenant Governor within the meaning of s. 41(a) of the *Constitution Act, 1867*. The *Act to recognize the oath* is therefore *ultra vires* s. 45 and s. 128Q.1 constitutes an unconstitutional amendment;

²⁴⁵ *OPSEU*, at para. 111.

²⁴⁶ As the Lieutenant Governor is authorized to do under s. 90 of the *Constitution Act, 1867*. See *Mikisew Cree*, at paras. 161, 131-133; *Clyde River*, at para. 28.

²⁴⁷ Office of the Lieutenant-Governor of Quebec, “The Lieutenant-Governor of Quebec Assents Bill 4 – An Act to Recognize the Oath Provided in the Act Respecting the National Assembly as the Sole Oath Required in Order to Sit in the Assembly”, December 9, 2022 ([online](#)).

ISSUE 3 – SECTION 128 OF THE CONSTITUTION ACT, 1867 CANNOT BE AMENDED PURSUANT TO SECTION 45 OF THE CONSTITUTION ACT, 1982

252. Alternatively, if the *Act to recognize the oath* does not relate to “the office of the Queen” and/or to the office of Lieutenant Governor, it is still *ultra vires* s. 45 of the *Constitution Act, 1982* in purporting to amend 128 of the *Constitution Act, 1867*;
253. Section 128 is an indivisible part of “the Constitution of Canada” and of the constitutions of each of Canada’s ten provinces and is, therefore, beyond the scope of the power of unilateral provincial constitutional amendment entrenched in s. 45.
254. Indeed, s. 45 does not authorize provinces to unilaterally amend aspects of their provincial constitutions that are indivisible from the constitution of Canada²⁴⁸ – in other words, matters that are “entrenched as being indivisibly related to the implementation of the federal principle or to a fundamental term or condition of the union”;²⁴⁹
255. Amendments of this nature are prohibited under s. 45 whether in the form of textual or extra-textual amendments. This reflects the reality that “an amendment to the Constitution of Canada is not limited to textual modifications”;²⁵⁰
256. Section 128 of the *Constitution Act, 1867* reads:

Serment d’allégeance, etc.

128 Les membres du Sénat ou de la Chambre des Communes du Canada devront, avant d’entrer dans l’exercice de leurs fonctions, prêter et souscrire, devant le gouverneur-général ou quelque personne à ce par lui autorisée, — et pareillement, les membres du conseil législatif ou de l’assemblée législative d’une province devront, avant d’entrer dans l’exercice de leurs fonctions, prêter et souscrire, devant le lieutenant-gouverneur de la province ou quelque personne à ce par lui autorisée, — le serment d’allégeance énoncé dans la cinquième annexe de la présente loi; et les membres du Sénat du Canada et du conseil législatif de Québec devront aussi, avant d’entrer dans l’exercice de leurs fonctions,

Oath of Allegiance, etc.

128 Every Member of the Senate or House of Commons of Canada shall before taking his Seat therein take and subscribe before the Governor General or some Person authorized by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall before taking his Seat therein take and subscribe before the Lieutenant Governor of the Province or some Person authorized by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of Canada and every Member of the Legislative Council of Quebec shall also, before taking his Seat therein, take and subscribe before the Governor General, or some Person authorized by him, the Declaration of

²⁴⁸ *Attorney General of Quebec v. Blaikie*, [1979] 2 S.C.R. 1016, at 1025; *OPSEU*, at para. 87.

²⁴⁹ *Reference re Senate Reform*, 2014 SCC 32, at para. 47, citing *OPSEU*, at para. 89.

²⁵⁰ *Reference re Senate Reform*, at para. 107.

prêter et souscrire, devant le gouverneur-général ou quelque personne à ce par lui autorisée, la déclaration des qualifications énoncée dans la même annexe.	Qualification contained in the same Schedule.
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257. On its face, s. 128 clearly applies to every provincial legislature. As s. 128 pertains includes every provincial legislature within its scope of application, it is part of the constitutions of each of Canada's ten provinces. However, in applying to both the federal Parliament and to the ten provincial legislatures – and in being entrenched in the *Constitution Act, 1867* – s. 128 also forms part of “the Constitution of Canada”;²⁵¹
258. Section 128 is, in other words, an “indivisible part” of the “Constitution of Canada” and of the ten respective provincial constitutions. As a result, it is beyond the provincial unilateral amendment power enshrined in s. 45 of the *Constitution Act, 1982* even if the “constitution of the province” can be amended by way of legislation that does not alter the text of the *Constitution Act, 1867*;²⁵²
259. It is indisputable that the predecessor of s. 45 of the *Constitution Act, 1982* is s. 92(1) of the *Constitution Act, 1867*, which provided the legislature of a province with the authority to amend “the Constitution of the province”,²⁵³ except as regarded the office of the Lieutenant Governor, “notwithstanding anything” else in the *Constitution Act, 1867*;²⁵⁴
260. In *Ontario (Attorney General) v. OPSEU*, [1987] 2 S.C.R. 2, the Supreme Court of Canada held as follows with regards to constitutional amendments authorized under s. 92(1):

an enactment can generally be considered as an amendment of the constitution of a province when it bears on the operation of an organ of the government of the province, provided it is not otherwise entrenched as being indivisibly related to the implementation of the federal principle or to a fundamental term or condition of the union, and provided of course it is not explicitly or implicitly excepted from the amending power bestowed upon the province by s. 92(1), such as the office of Lieutenant-Governor and, presumably and a fortiori, the office of the Queen who is represented by the Lieutenant-Governor.²⁵⁵
(emphasis added)

²⁵¹ *Constitution Act, 1982*, at s. 52(2)(b).

²⁵² *Attorney General of Quebec v. Blaikie*, [1979] 2 S.C.R. 1016, at 1025, affirmed in *Ontario (Attorney General) v. OPSEU*, [1987] 2 S.C.R. 2, at para. 89.

²⁵³ *Alford v. Canada (Attorney General)*, 2026 SCC 14, at para. 61; *OPSEU*, at paras. 66, 82.

²⁵⁴ *Re: Authority of Parliament in relation to the Upper House*, [1980] 1 S.C.R. 54, at 74.

²⁵⁵ *OPSEU*, at para. 89.

261. Even if it could be contended that the *Act to recognize the oath* does not relate to “the office of the Queen” or to the Office of Lieutenant Governor – which is *prima facie* implausible – *OPSEU* makes it clear that the amending power in s. 92(1) also expressly excludes what can be characterized as “a fundamental term or condition of the union”;
262. Significantly, “a fundamental term or condition of the union formed in 1867²⁵⁶ expressly identified in the Preamble to the *Constitution Act, 1867* is that Canada and the provinces are “to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom”;²⁵⁷
263. Section 9 of the *Constitution Act, 1867* – among many other provisions of this Act – further reinforces this fundamental term of the union, declaring that “[t]he Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.” (emphasis added);
264. Section 128 was intentionally entrenched into the *Constitution Act, 1867* as a fundamental term of the union. Section 128 ensured that the pre-Confederation Oath of Allegiance to the Sovereign required under the Union Act of 1840 for all persons elected to the Legislative Council or to the Legislative Assembly of Canada to be allowed to take their seat and to vote therein be continued in the respective provincial legislatures and in the Parliament of Canada.²⁵⁸ Section 128 also ensured that the pre-Confederation Oath of Allegiance to the Sovereign required for all Councillors to sit in the Legislative Council of the Province of Canada continued to be required as of Confederation.²⁵⁹ Section 128 was intended to ensure that individuals elected to serve in the Parliament of Canada and the provincial legislatures show allegiance to the head of state of the newly-formed Canadian federation and to the structure, values, and principles upon which Canadian government and society are built.
265. As a result, even if s. 128 of the *Constitution Act, 1867* forms part of every Canadian provincial constitution, it does not *only* form part of those provincial constitutions but is also an indivisible part of “the Constitution of Canada,” such that it fell beyond the scope of the amending power in s. 92(1);
266. This conclusion is entirely unaffected by the Supreme Court’s judgment in *Blaikie* stating that it was not “necessary to come to a determination whether s. 128 is part of the Constitution of the Province and amendable as such under s. 92(1).”²⁶⁰
- First, the Court did not hold that s. 128 is amendable under s. 92(1).

²⁵⁶ *OPSEU*, at para. 90.

²⁵⁷ *Constitution Act, 1867*, Preamble.

²⁵⁸ See *The Union Act, 1840* at XXXV (**Exhibit R-13**).

²⁵⁹ See [An Act to change the Constitution of the Legislative Council by rendering the same Elective, Prov C, 1856, c 140](#), at XVI (**Exhibit R-8**).

²⁶⁰ *Attorney General of Quebec v. Blaikie et al.*, [1979] 2 S.C.R. 1016, at 1025.

- Second, the Court provided no indicia that s. 128 is amendable under s. 92(1), instead taking no position at all.
- Third, *Blaikie* (1979) antedates the judgment in *OPSEU* (1987) by 8 years, with the latter articulating a test for identifying permissible and impermissible amendments to the constitution of the province under s. 92(1) that has since been repeatedly reaffirmed by the Supreme Court of Canada;²⁶¹

267. In any event, s. 92(1)'s successor provision, s. 45 of the *Constitution Act, 1982*, makes it unequivocal that the unilateral power to amend the constitution of the province is subject to – and thus limited by – s. 41 of the *Constitution Act, 1982*:

Modification par les législatures	Amendments by provincial legislatures
45 Sous réserve de l'article 41, une législature a compétence exclusive pour modifier la constitution de sa province.	45 Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the province.

268. As s. 45 is the successor of s. 92(1), and as s. 45 reinforces the limits on provincial amendment power codified in its predecessor, *OPSEU*'s test for identifying permissible and impermissible constitutional amendments applies *mutatis mutandis* to s. 45.²⁶² Thus, a matter does not form part of “the constitution of the province” for the purposes of s. 45 if it is “entrenched as being indivisibly related to the implementation of the federal principle or to a fundamental term or condition of the union” – and this, even if “it bears on the operation of an organ of the government of the province”;²⁶³

269. Here, it is unquestionable that the *Act to recognize the oath* “bears on the operation” of the National Assembly. It is, however, equally unquestionable that it bears on “a fundamental term or condition of the union”;

270. That s. 45 authorizes provinces to amend their respective provincial constitutions subject to s. 41 does not mean that “the office of the Queen, the Governor General and the Lieutenant Governor of a province” do not form part of the constitution of every province. Instead, s. 45 recognizes that they do, but subjects their amendment to the unanimous consent formula under s. 41(a) because these offices are also part of the “Constitution of Canada.” The interplay between s. 45 and s. 41(a) fully testifies to these offices being an indivisible part of the “Constitution of Canada” and of the constitutions of each of Canada’s ten provinces, respectively;

²⁶¹ e.g., *Alford v. Canada (Attorney General)*, [2026 SCC 14](#), at paras. 61, 66; *Reference re Senate Reform*, [2014 SCC 32](#), at para. 26, 47; *Reference re Secession of Quebec*, [\[1998\] 2 S.C.R. 217](#), at paras. 50, 62.

²⁶² Campagnolo & Bontems, at 593 (Exhibit R-3), citing several sources.

²⁶³ *OPSEU*, at para. 89.

271. Indeed, s. 41 speaks of “matters” in relation to which an amendment is considered to be “An amendment to the Constitution of Canada” (emphasis added). The law is clear that “‘Canada’ has two distinct meanings in our Constitution”, namely, “the country as a whole or the federal level within it.”²⁶⁴ It is clear that “Canada” in s. 41 refers to Canada “as a whole” – unlike, s. 101 of the *Constitution Act*, for example;²⁶⁵
272. In any event, since *OPSEU* remains binding as a matter of *stare decisis*²⁶⁶ and was reinforced – rather than overturned by ss. 41(a) and 45 – even if one assumed that s. 128 did not relate to “the office of the Queen, the Governor General and the Lieutenant Governor of a province”, the Oath of Allegiance to the monarch to be taken by every legislator remains “indivisibly related... to a fundamental term or condition of the union” formed in 1867.²⁶⁷ This is the agreement of Confederation partners to structure Canada as federal constitutional monarchy in which the Executive Power of Canada and all of its federal and provincial constituent parts remain vested in the monarch as the head of state;²⁶⁸
273. In *Blaikie*, the Supreme Court of Canada held that the unilateral power of provincial constitutional amendment previously entrenched in s. 92(1) of the *Constitution Act, 1867* did not extend to provisions that are a “part of the Constitution of Canada and of Quebec in an indivisible sense,” because provisions of this nature were not part of Quebec’s provincial constitution within the meaning of s. 92(1).²⁶⁹ Thus, s. 92(1) did not permit an amendment to s. 133 of the *Constitution Act, 1867*. The same is true today under s. 45: the provincial power of unilateral amendment power only extends to provisions or other dimensions of the provincial constitution that are not also indivisible parts of the “Constitution of Canada”. Thus, s. 45 does not permit an amendment to s. 128 of the *Constitution Act, 1867*;
274. Overall, whether under the former s. 92(1) of the *Constitution Act, 1867* or its successor, s. 45 of the *Constitution Act, 1982*, s. 128 does not form part of the “constitution of the province” of Quebec – or of any other province²⁷⁰ – and is therefore beyond the provincial unilateral amendment power codified in s. 45 even if the “constitution of the province” can be amended by way of legislation that does not alter the text of the *Constitution Act, 1867*;

ISSUE 4 – THE APPLICABLE FORMULA FOR AMENDMENTS TO SECTION 128

275. The Applicants contend that legislation purporting to exclude a province from the application of s. 128 of the *Constitution Act, 1867* constitutes an amendment to the “office of the Queen” and/or to the office of the Lieutenant Governor of Quebec and can, therefore, only be lawfully authorized with the unanimous consent of Parliament

²⁶⁴ *Windsor (City) v. Canadian Transit Co.*, [2016 SCC 54](#), at para. 63.

²⁶⁵ *Windsor (City)*, at para. 63, citing several judgments.

²⁶⁶ See footnote 245.

²⁶⁷ *OPSEU*, at para. 89.

²⁶⁸ *Constitution Act, 1867*, ss. 4 and 9.

²⁶⁹ *Attorney General of Quebec v. Blaikie*, [\[1979\] 2 S.C.R. 1016](#), at 1025, affirmed in *OPSEU* at para. 89.

²⁷⁰ *Reference re Senate Reform*, [2014 SCC 32](#), at para. 31.

and the ten provincial legislatures pursuant to s. 41(a) of the *Constitution Act, 1982*. As the *Act to recognize the oath* and s. 128Q.1 were expressly adopted in reliance on the unilateral provincial constitutional amendment formula in s. 45, they are each and both *ultra vires*, unconstitutional, and of no force or effect;

276. Alternatively, if the *Act to recognize the oath* and s. 128Q.1 do not relate to “the office of the Queen” or of the Lieutenant Governor, they are still *ultra vires* s. 45, because s. 128 of the *Constitution Act, 1867* is an indivisible part of “the Constitution of Canada” and of “the constitution of the province” of every Canadian province such that it falls beyond the scope of the unilateral provincial constitutional amendment power entrenched in s. 45. As s. 128 is not expressly identified as falling within any other constitutional amendment power in Part V of the *Constitution Act, 1982*, it would be subject to the residual amendment formula entrenched in s. 38;²⁷¹
277. Alternatively, even if it were contended that s. 128 is not an indivisible part of “the Constitution of Canada” and of the constitution of every Canadian province, but only an indivisible part of “the Constitution of Canada” and “the constitution of the province” of Quebec, an amendment pertaining to s. 128 could only be achieved under the bilateral constitutional amendment formula entrenched in s. 43 of the *Constitution Act, 1982*, requiring the consent of the National Assembly and the Parliament of Canada. Note that this scenario is only presented by the Applicants for the sake of argument;
278. Overall, under any of these scenarios, the *Act to recognize the oath* and s. 128Q.1 are *ultra vires* s. 45, unconstitutional and, therefore, of no force or effect;

ISSUE 5 – THE ACT AND SECTION 128Q.1 VIOLATE SECTION 3 OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

279. The *Act to recognize the oath* and s. 128Q.1 each and both occasion all or at least one of the following violations of s. 3 of the *Canadian Charter of Rights and Freedoms*:
- violations of the right to vote by leading to the election of politicians who are not constitutionally qualified to sit in the National Assembly by refusing to take the Oath of Allegiance;
 - violations of the right to effective representation in leading to Quebecers being represented in the National Assembly by politicians who are not constitutionally qualified to hold office and whose votes on legislation and other activities in the National Assembly are therefore constitutionally void;²⁷²

²⁷¹ *Reference re Senate Reform*, [2014 SCC 32](#), at para. 36; Campagnolo & Bontems, at 580-583 (R-3).

²⁷² [House of Commons Procedure and Practice, Third Edition, 2017](#): “...it is the taking of the oath or affirmation which enables a Member to take his or her seat in the House and to vote.” (**Exhibit R-9**) See also [E. Janse & J. LeBlanc, House of Commons Procedure and Practice, Fourth Edition, 2025](#) and [M. Bonsaint, Parliamentary Procedure in Quebec](#) at 162, both also at **Exhibit R-9**.

- violations of the right to sit in the National Assembly after being elected thereto by purporting to nullify the constitutional condition precedent enshrined in s. 128 for a politician elected to the Assembly to validly “take [their] Seat”, resulting in the constitutional invalidity of the politician’s votes and other actions taken in the Assembly;

(a) Section 3 of The Charter

280. Section 3 provides:

Droits démocratiques des citoyens 3 Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales.	Democratic rights of citizens 3 Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.
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281. The right to vote and the right “to be qualified for membership” in “the House of Commons or of a legislative assembly” are distinct but interrelated rights protected under s. 3. Section 3 also protects “the right to effective representation.”²⁷³ The rights enshrined in s. 3 lie “at the heart of our democracy.”²⁷⁴ This is evidenced by, *inter alia*, the fact that s. 3 is not subject to legislative override enshrined in s. 33 of the *Charter*.²⁷⁵

282. The purpose of s. 3 has been explained as follows:

In the final analysis, I believe that the Court was correct in *Haig* [*v. Canada*, [1993] 2 S.C.R. 995], to define s. 3 with reference to the right of each citizen to play a meaningful role in the electoral process. Democracy, of course, is a form of government in which sovereign power resides in the people as a whole. In our system of democracy, this means that each citizen must have a genuine opportunity to take part in the governance of the country through participation in the selection of elected representatives. The fundamental purpose of s. 3, in my view, is to promote and protect the right of each citizen to play a meaningful role in the political life of the country. Absent such a right, ours would not be a true democracy.²⁷⁶

²⁷³ *Toronto (City) v. Ontario (Attorney General)*, [2021 SCC 34](#), at paras. 44-46; *Working Families*, at para. 194; *Reference re Provincial Electoral Boundaries*, [\[1991\] 2 S.C.R. 158](#), at 168; *Harper v. Canada (Attorney General)*, [2004 SCC 33](#), para. 68; *Figueroa v. Canada (Attorney General)*, [2003 SCC 37](#), at paras. 23, 25.

²⁷⁴ *Ontario (Attorney General) v. Working Families Coalition (Canada)*, [2025 SCC 5](#), at para. 1.

²⁷⁵ *Frank v. Canada (Attorney General)*, [2019 SCC 1](#), at paras. 25, 32; *Working Families*, at paras. 180, 268; *Opitz v. Wrzesnewskyj*, [2012 SCC 55](#), at para. 29.

²⁷⁶ *Opitz*, at para. 28, citing *Figueroa*, at para. 36. See also *Working Families*, at paras. 8-9.

283. The Supreme Court of Canada also recently emphasized as follows in *Ontario (Attorney General) v. Working Families Coalition (Canada) Inc.*, [2025 SCC 5](#):

[8] This Court’s interpretation of s. 3 has been “guided by the ideal of a ‘free and democratic society’ upon which the *Charter* is founded” (*Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158 (*Saskatchewan Reference*), at p. 181; *Figueroa v. Canada (Attorney General)*, 2003 SCC 37, [2003] 1 S.C.R. 912, at paras. 26-27). To interpret the scope of s. 3’s protection, this Court has emphasized free and open participation, respect for the diverse interests of a broad range of citizens, fairness in political discourse, and the importance of citizen participation in political life for public faith in our laws and institutions (*Saskatchewan Reference*, at pp. 181-82 and 188; *Figueroa*, at paras. 27-30; *Harper*, at paras. 70 and 72).

[9] In this way, this Court has held that the purpose of s. 3 is for voters to be effectively represented in government, and to play a meaningful role in the electoral process.

284. In the present case, these interpretive principles inform the analysis and the conclusion that the *Act to recognize the oath* and s. 128Q.1 individually and collectively violate the distinct rights protected under s. 3 of the *Charter*;

(b) Violation of Right to Vote

285. The Act and s. 128Q.1 each and both violate the right to vote of Quebec electors entitled to vote in a provincial election by leading to the election of politicians who are not constitutionally qualified to sit in the National Assembly by refusing to take the Oath of Allegiance;
286. As emphasized by the Supreme Court of Canada in *Frank v. Canada (Attorney General)*, [2019 SCC 1](#):

[25] The right of every citizen to vote lies at the heart of Canadian democracy (*Sauvé #2*, at para. 1; *Opitz*, at para. 10).

[26] The central purpose of s. 3 is to ensure the right of each citizen to participate meaningfully in the electoral process (*Figueroa v. Canada (Attorney General)*, 2003 SCC 37, [2003] 1 S.C.R. 912, at paras. 25-26). Civic participation is fundamentally important to the health of a free and democratic society. Democracy demands that each citizen have a genuine opportunity to participate in the governance of the country through the electoral process. If this right were not protected adequately, ours would not be a true democracy (*Figueroa*, at para. 30).

[27] Therefore, **a broad interpretation of s. 3 enhances the quality of our democracy and strengthens the value on which our free and democratic state is premised (Figueroa, at para. 27). As a corollary, an overly narrow interpretation of the right to vote would diminish the quality of democracy in our system of government.**

[82] [...] Denying citizens the right to vote not only strikes at the heart of their fundamental rights, but also comes at the expense of their dignity and their sense of self-worth (*Sauvé #2*, at para. 35). As McLachlin C.J. noted in *Sauvé #2*: “When basic political rights are denied, proof of additional harm is not required” (para. 59). In other words, denial of the fundamental right to vote, in and of itself, inflicts harm on affected citizens. This is particularly true where there is simply no convincing rationale to support the denial. (emphasis added)

287. In the present case, the *Act to recognize the oath* and s. 128Q.1 each and both violate the right to vote because:

- Section 3 guarantees, *inter alia*, “the right to vote in an election of members... of a legislative assembly”, such as the National Assembly (emphasis added);
- Constitutional provisions such as s. 3 must not be read in isolation and should instead be read harmoniously as part of an internally consistent constitutional document and in light of the nature and structure of government implemented through, *inter alia*, the *Constitution Acts 1867 and 1982*;²⁷⁷
- Section 3 should be read in light of, *inter alia*, s. 128 of the *Constitution Act, 1867*, as well as s. 128Q.1;²⁷⁸
- Section 128Q.1 purports to exclude Quebec from the constitutional requirement in s. 128 of the *Constitution Act, 1867* that politicians elected to the National Assembly must take the Oath of Allegiance in order to be qualified to sit as “members” of the Assembly;²⁷⁹

²⁷⁷ *Alford v. Canada (Attorney General)*, [2026 SCC 14](#), at para. 48.

²⁷⁸ Provisions enshrined in the *Constitution Act, 1867* should be read in manner consistent with relevant *Charter* provisions: see e.g., *Société de l'Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, [2026 SCC 22](#), at paras. 104-105; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Communauté urbaine de Montréal*, [2004 SCC 30](#), at para. 16.

²⁷⁹ [Decision of Speaker John Fraser, “Oath/affirmation of allegiance : Member’s right to sit in the House in the face of an alleged repudiation of oath; meaning and significance of the oath”, November 1, 1990, House of Commons Debates, 34th Parliament, 2nd Session, Vol. 1, at pp. 14969-70 \(Exhibit R-24\)](#). See also [Assemblée nationale du Québec, « DÉCISION DE LA PRÉSIDENTE concernant le refus de prêter le serment d’allégeance », November 1, 2022 \(Exhibit R-15\)](#) and [Exhibit R-11: Assemblée nationale du Québec, Encyclopédie du parlementarisme québécoise, « Serment »](#). See also Exhibit R-9.

- Section 128Q.1 does not prohibit elected politicians to take the Oath required by s. 128 prior to take their seat; however, as its title stipulates, the purpose and effect of the *Act to recognize the oath* is “to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly”; (emphasis added)²⁸⁰
- A provincial general election is scheduled to be held in Quebec on October 5, 2026;²⁸¹
- As a result of s. 128Q.1, it is anticipated as a matter of logic and common sense that most – if not all – of the politicians elected to the National Assembly in the October election will not take the Oath of Allegiance required under s. 128 of the *Constitution Act, 1867* prior to taking their seat in the Assembly.²⁸² This situation will persist in every subsequent provincial election, including by-elections, unless and until the *Act* and s. 128Q.1 are declared unconstitutional;
- Not taking the Oath will constitute a failure to comply with s. 128;
- A failure to comply with s. 128 means that an elected politician is not constitutionally eligible to sit as a “member” of the National Assembly;²⁸³
- A voter who voted for a politician who does not take the Oath will have voted for a politician who is not constitutionally qualified to sit as a “member” of the National Assembly;²⁸⁴
- As such, the effect of s. 128Q.1 and the *Act to recognize the oath* is to nullify the right to vote of Quebec electors by leading to the election of politicians who are not constitutionally qualified to sit in the National Assembly. In other words, the *Act* and s. 128Q.1 nullify “the right to vote in an election of members... of a legislative assembly” enshrined in s. 3 of the *Charter*;
- This nullification of the right to vote constitutes a significant infringement of the right to vote protected under s. 3;

²⁸⁰ The French title of the Act is « Loi visant à reconnaître le serment prévu par la Loi sur l'Assemblée nationale comme seul serment obligatoire pour y siéger » (emphasis added)

²⁸¹ Élections Québec, “Current and upcoming elections”, online:

<https://www.electionsquebec.qc.ca/en/vote/current-and-upcoming-elections/>

²⁸² This should not be surprising, as (i) the *Act to recognize the oath* was passed unanimously in 2022; (ii) the same political parties who voted for the Act in 2022 are competing in the election and will have members re-elected; and as (iii) elected politicians are likely to rely on the presumed constitutionality of the Act in not taking the Oath of Allegiance.

²⁸³ *House of Commons Procedure and Practice, Third Edition, 2017*: “...it is the taking of the oath or affirmation which enables a Member to take his or her seat in the House and to vote.” (**Exhibit R-9**) See also *E. Janse & J. LeBlanc, House of Commons Procedure and Practice, Fourth Edition, 2025* and *M. Bonsaint, Parliamentary Procedure in Quebec* at 162, both also at **Exhibit R-9**. See also footnote 279.

²⁸⁴ *Ibid.*

- The conclusion that the right to vote is infringed by the Act and s.128Q.1 reflects the fundamental axiom that “[t]he right to vote is more than ‘the bare right to place a ballot in a box’”;²⁸⁵

(c) Violation of Right to Effective Representation

288. In addition, or alternatively, the Act to recognize the oath and s. 128Q.1 each and both violate the independent right to “effective representation” also protected under s. 3 of the *Charter*;
289. Section 3 protects a “right to effective representation” that is related to – but separate from – the right to vote.²⁸⁶ The right to effective representation includes, but is not limited to, “a right to be effectively represented in Parliament” (or provincial legislature).²⁸⁷ In other words, s. 3 guarantees “the right of each citizen to an effective representative in the legislative assembly”²⁸⁸ (emphasis added)
290. As the right to vote and the right to effective representative are complementary but separate, a citizen’s right to effective representation can be violated even if they were not denied or prevented from exercising their right to vote;²⁸⁹
291. Of course, the effectiveness contemplated by the right to effective representation is not concerned with the results delivered by the relevant elected politician, such as whether they fulfilled their campaign promises or succeeded in passing a private members’ bill addressing matters of interest to their constituents; Instead, the effectiveness contemplated by the right to effective representation concerns the legal effectiveness of the politician as the elected representative of their constituents – that is the legal and constitutional ability to fulfill the tasks, roles, functions, obligations and responsibilities common to all elected representatives in a given Canadian legislature. Indeed, “effective representation has quantitative and qualitative dimensions”²⁹⁰ (emphasis added);
292. Consistent with the approach to *Charter* interpretation generally, but also reflecting its significance to the Westminster system of parliamentary democracy, the right to effective representation is to be interpreted and applied generously and purposively;
293. In this light, the *Act to recognize the oath* and s. 128Q.1 each and both violate the right to effective representation for the following reasons:

²⁸⁵ *Working Families*, at para. 2, citing *Dixon v. B.C. (A.G.)*, [1989] W.R. 393 (B.C.S.C.), per McLachlin C.J., at 403. See also *Figueroa*, at para. 19, also citing *Dixon*.

²⁸⁶ *Toronto (City) v. Ontario (Attorney General)*, [2021 SCC 34](#), at paras. 44-46; *Working Families*, at paras. 112, 194, 196; *Reference re Provincial Electoral Boundaries*, [\[1991\] 2 S.C.R. 158](#), at 168; *Harper v. Canada (Attorney General)*, [2004 SCC 33](#), at para. 68.

²⁸⁷ *Harper*, at para. 69; *Figueroa*, at para. 25.

²⁸⁸ *Figueroa v. Canada (Attorney General)*, [2003 SCC 37](#), at para. 23.

²⁸⁹ *Reference re Provincial Electoral Boundaries*, [\[1991\] 2 S.C.R. 158](#), at 184.

²⁹⁰ *Quebec (Attorney General) v. Lalonde*, [2026 SCC 13](#), at para. 15.

- As noted, s. 3 should be read in light of, *inter alia*, s. 128 of the *Constitution Act, 1867*, as well as s. 128Q.1;²⁹¹
- Section 128Q.1 purports to exclude Quebec from the constitutional requirement in s. 128 of the *Constitution Act, 1867* that politicians elected to the National Assembly must take the Oath of Allegiance in order to be qualified to sit as “members” of the Assembly;²⁹²
- Section 128Q.1 does not prohibit elected politicians to take the Oath required by s. 128 prior to take their seat; however, as its title stipulates, the purpose and effect of the Act is “to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly”; (emphasis added)²⁹³
- As a result of s. 128Q.1, it is anticipated as a matter of logic and common sense that most – if not all – of the politicians elected to the National Assembly in the October 2026 election will not take the Oath of Allegiance required under s. 128 of the *Constitution Act, 1867* prior to taking their seat in the Assembly;²⁹⁴
- This situation will persist in every subsequent provincial election, including by-elections, unless and until the Act and s. 128Q.1 are declared unconstitutional;
- Not taking the Oath will constitute a failure to comply with s. 128;
- A failure to comply with s. 128 means that an elected politician is not constitutionally eligible to sit as a “member” of the National Assembly;²⁹⁵

²⁹¹ Provisions enshrined in the *Constitution Act, 1867* should be read in manner consistent with relevant *Charter* provisions: see e.g., *Société de l'Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, [2026 SCC 22](#), at paras. 104-105; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Communauté urbaine de Montréal*, [2004 SCC 30](#), at para. 16.

²⁹² [Decision of Speaker John Fraser, “Oath/affirmation of allegiance : Member’s right to sit in the House in the face of an alleged repudiation of oath; meaning and significance of the oath”, November 1, 1990, House of Commons Debates, 34th Parliament, 2nd Session, Vol. 1, at pp. 14969-70 \(Exhibit R-24\)](#). See also [Assemblée nationale du Québec, « DÉCISION DE LA PRÉSIDENTE concernant le refus de prêter le serment d’allégeance », November 1, 2022 \(Exhibit R-15\)](#) and [Exhibit R-11: Assemblée nationale du Québec, Encyclopédie du parlementarisme québécoise, « Serment »](#). See also Exhibit R-9.

²⁹³ The French title of the Act is « Loi visant à reconnaître le serment prévu par la Loi sur l’Assemblée nationale comme seul serment obligatoire pour y siéger » (emphasis added)

²⁹⁴ This should not be surprising, as (i) the Act to recognize the oath was passed unanimously in 2022; (ii) the same political parties who voted for the Act in 2022 are competing in the election and will have members re-elected; and as (iii) elected politicians are likely to rely on the presumed constitutionality of the Act in not taking the Oath of Allegiance.

²⁹⁵ [House of Commons Procedure and Practice, Third Edition, 2017](#): “...it is the taking of the oath or affirmation which enables a Member to take his or her seat in the House and to vote.” (Exhibit R-9) See also [E. Janse & J. LeBlanc, House of Commons Procedure and Practice, Fourth Edition, 2025](#) and [M. Bonsaint, Parliamentary Procedure in Quebec](#) at 162, both also at Exhibit R-9.

- This infringes a voter's right to effective representation in at least two ways:
- **First**, a politician who does not take the Oath prior to taking their seat deprives the voter of their "right to an effective representative" in the National Assembly.²⁹⁶ As the politician who does not take the Oath prior to taking their seat fails to satisfy a constitutional condition precedent to legally taking office, all of their votes and other official activities in the Assembly are void *ab initio* and without legal effect.²⁹⁷ Any representation provided by that politician is literally legally ineffective. The voter's "right to be effectively represented"²⁹⁸ is inevitably compromised (emphasis added);
- The **second** infringement of the right to effective representation occasioned by the Act and s. 128Q.1 concerns the dilution of the votes of voters who voted for a politician who does not take the Oath of Allegiance prior to taking their seat in the National Assembly;
- The jurisprudence on the right to effective representation recognizes that the right may be infringed by, *inter alia*, the dilution of the weight of individual votes relative to other votes.²⁹⁹ The law is clear that "s. 3 does not guarantee absolute parity of voting power, but rather the effective representation of electors."³⁰⁰ As explained by the Supreme Court of Canada:³⁰¹

What are the conditions of effective representation? The first is relative parity of voting power. A system which dilutes one citizen's vote unduly as compared with another citizen's vote runs the risk of providing inadequate representation to the citizen whose vote is diluted. The legislative power of the citizen whose vote is diluted will be reduced, as may be access to and assistance from his or her representative. The result will be uneven and unfair representation.

- The effect of the *Act to recognize the oath* and s. 128Q.1 is to dilute the "relative parity of voting power" that forms part of the right to effective representation. By dissuading politicians elected to the National Assembly from taking the Oath of Allegiance – or by otherwise conveying that taking the Oath is not legally required – the Act and s. 128Q.1 result in the votes of electors who voted for politicians who did not take the Oath having less legal

²⁹⁶ *Figueroa v. Canada (Attorney General)*, [2003 SCC 37](#), at para. 23. See also *Toronto (City) v. Ontario (Attorney General)*, [2021 SCC 34](#), at paras. 44-46; *Working Families*, at paras. 112, 194, 196; *Reference re Provincial Electoral Boundaries (Sask.)*, [\[1991\] 2 S.C.R. 158](#), at 168; *Harper v. Canada (Attorney General)*, [2004 SCC 33](#), at para. 68.

²⁹⁷ See footnote 275 and Campagnolo & Bontems, at 596-597, 600 (Exhibit R-3).

²⁹⁸ *Harper*, at para. 69; *Figueroa*, at para. 25.

²⁹⁹ e.g., *Reference re Prov. Electoral Boundaries*, at 188-189; *Toronto (City)*, at paras. 46-47; *Lalande*, at para. 15.

³⁰⁰ *Lalande*, at para. 15, citing *Reference re Prov. Electoral Boundaries*, at 184. See also *Toronto (City)*, at paras. 46-47.

³⁰¹ *Reference re Prov. Electoral Boundaries (Sask.)*, at 183-184.

weight than those of voters who voted for a politician who took the Oath regardless. This is because the votes and other official activities performed by politicians who did not take the Oath prior to taking their seat are constitutionally void *ab initio* whereas the same votes and activities performed by politicians who took the Oath are constitutionally valid. In turn, the constitutionality of legislation adopted by a majority of politicians who never took the Oath is undermined;³⁰²

- To use the words of the Supreme Court of Canada quoted above: the Act and s. 128Q.1 undermine “the conditions of effective representation” because they establish “[a] system which dilutes one citizen’s vote unduly as compared with another citizen’s vote.” And as the acts of a politician who did not take the Oath are legally ineffective,³⁰³ “[t]he legislative power of the citizen” who voted for them is necessarily “diluted” and “reduced” in comparison to the citizen who voted for a politician who took the Oath despite the Act and s. 128Q.1. “The result [is and] will be uneven and unfair representation.”;³⁰⁴
- Individually and collectively, these two direct effects arising from the Act and s. 128Q.1 constitute a significant infringement of “the right of each citizen to an effective representative in the legislative assembly”³⁰⁵ under s. 3;
- It is no answer to say that a politician elected to the National Assembly could simply refuse to take the Oath on the basis of their personal convictions in regards to the monarchy. Even if that were true, there is a “sufficient causal connection”³⁰⁶ between the *Act to recognize the oath*, s. 128Q.1, and a politician’s refusal to take the Oath because the Act and s. 128Q.1 convey the Oath in s. 128 is no longer obligatory and constitutionally required in order to validly take their seat in the National Assembly. Regardless of a politician’s personal convictions, the Act and s. 128Q.1 communicate to the member that acting in accordance with those convictions is legally permissible when it is not;

294. The infringements of the “right of each [Quebec] citizen to be effectively represented in the legislative assembly”³⁰⁷ compounds the infringement of each citizen’s right to vote, as described above;

³⁰² See footnote 275 and Campagnolo & Bontems, at 596-597, 600 (Exhibit R-3).

³⁰³ Ibid.

³⁰⁴ *Reference re Prov. Electoral Boundaries (Sask.)*, at 184.

³⁰⁵ *Figueroa v. Canada (Attorney General)*, [2003 SCC 37](#), at para. 23. See also *Toronto (City) v. Ontario (Attorney General)*, [2021 SCC 34](#), at paras. 44-46; *Ontario (Attorney General) v. Working Families Coalition (Canada) Inc.*, [2025 SCC 5](#), at paras. 112, 194, 196; *Reference re Provincial Electoral Boundaries*, at 168; *Harper v. Canada (Attorney General)*, [2004 SCC 33](#), at para. 68.

³⁰⁶ *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#), at para. 76, citing *Canada (Prime Minister) v. Khadr*, [2010 SCC 3](#), at para. 21. See also *R. v. Sharma*, [2022 SCC 39](#), at paras. 43, 49.

³⁰⁷ *Figueroa v. Canada (Attorney General)*, [2003 SCC 37](#), at para. 23.

(d) Violation of Right To Be Qualified For Membership

295. The *Act to recognize the oath* and s. 128Q.1 violate the right to be qualified for membership in the National Assembly by purporting to nullify a constitutional requirement enshrined in s. 128 for a politician elected to it to validly take their seat, resulting in the constitutional invalidity of the politician's votes and other actions taken in the Assembly.
296. Section 3 guarantees to every Canadian citizen the right to be “qualified for membership” in the House of Commons or in a legislative assembly. Consistent with the purposes of s. 3 generally, this distinct right “should be read in a broad manner” – that is, generously and purposively.³⁰⁸
297. The right to be “qualified for membership” provides for at least two protections: (1) the right to be a candidate in an election for membership to the House of Commons or a legislative assembly; and (2) the right “to sit as a member of Parliament or a legislative assembly” if elected to the relevant legislative body.³⁰⁹ (emphasis added);
298. The distinct nature of these rights is illustrated by, *inter alia*, the types of state action that may impact them. For example, statutes disqualifying active members of the judiciary from seeking elected office impact on the right to be a candidate in an election.³¹⁰ By contrast, statutes requiring the permanent expulsion of elected members of a legislature based on a criminal conviction after being elected would impact on the right “to sit as a member” of the relevant legislative body;³¹¹
299. In the present case, the *Act to recognize the oath* and s. 128Q.1 each and both violate the right “to sit” as a member of the National Assembly because they act as an impediment to an elected politician lawfully taking their seat in the Assembly by purporting to remove a constitutional condition precedent to doing so. In particular:
- Section 3 should be read harmoniously with s. 128 of the *Constitution Act, 1867*, with neither provision abrogating or derogating from the other;³¹²
 - Section 128 requires politicians elected to the National Assembly to take the Oath of Allegiance before taking their seat therein: “...every Member of a Legislative Council or Legislative Assembly of any Province **shall before taking his Seat therein** take and subscribe before the Lieutenant Governor of the Province or some Person authorized by him, the Oath of Allegiance...” (emphasis added)

³⁰⁸ *Harvey v. New Brunswick (Attorney General)*, [1996] 2 S.C.R. 876, at para. 28.

³⁰⁹ *Harvey*, at paras. 28, 30.

³¹⁰ *Harvey*, at para. 31.

³¹¹ *Harvey*, at para.

³¹² Provisions enshrined in the *Constitution Act, 1867* should be read in manner consistent with relevant *Charter* provisions: see e.g., *Société de l'Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, 2026 SCC 22, at paras. 104-105; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Communauté urbaine de Montréal*, 2004 SCC 30, at para. 16.

- The French version is equally unequivocal: “les membres du conseil législatif ou de l’assemblée législative d’une province **devront, avant d’entrer dans l’exercice de leurs fonctions**, prêter et souscrire, devant le lieutenant-gouverneur de la province ou quelque personne à ce par lui autorisée — le serment d’allégeance...”³¹³
- Section 128 does not set a qualification on the right to compete in an election as a candidate; it sets a constitutional condition precedent for a person who has been elected to the National Assembly to exercise their right to take their seat therein.³¹⁴ The condition set by s. 128 is additional to the condition in s. 3 that only Canadian citizens are qualified “to sit” in the House of Commons or a legislative assembly after having been elected. The condition of Canadian citizenship pertains to being “chosen” (e.g., elected) to the relevant legislative body. The condition set by s. 128 applies to politicians who have been “chosen” (e.g., elected) to represent an electoral district in the legislative body;³¹⁵
- As noted, s. 128Q.1 purports to exclude Quebec from the constitutional requirement in s. 128;³¹⁶
- Section 128Q.1 does not prohibit elected politicians to take the Oath required by s. 128 prior to take their seat; however, as its title stipulates, the purpose and effect of the *Act to recognize the oath* is “to recognize the oath provided in the Act respecting the National Assembly **as the sole oath required in order to sit in the Assembly**”; (emphasis added)³¹⁷
- A provincial general election is scheduled to be held in Quebec on October 5, 2026;³¹⁸

³¹³ Quebec does not deny this, since the impugned Act is titled “*An Act to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly*”, in contradiction to the status quo. If Quebec did not believe the Oath of Allegiance in s. 128 to be obligatory, the impugned Act would be unnecessary (emphasis added)

³¹⁴ *House of Commons Procedure and Practice, Third Edition, 2017*: “...it is the taking of the oath or affirmation which enables a Member to take his or her seat in the House and to vote.” (**Exhibit R-9**) See also *E. Janse & J. LeBlanc, House of Commons Procedure and Practice, Fourth Edition, 2025* and *M. Bonsaint, Parliamentary Procedure in Quebec* at 162, both also at **Exhibit R-9**.

³¹⁵ *Harvey v. New Brunswick (Attorney General)*, [1996] 2 S.C.R. 876, at para. 28.

³¹⁶ *Decision of Speaker John Fraser, “Oath/affirmation of allegiance : Member’s right to sit in the House in the face of an alleged repudiation of oath; meaning and significance of the oath”, November 1, 1990, House of Commons Debates, 34th Parliament, 2nd Session, Vol. 1, at pp. 14969-70 (Exhibit R-24)*. See also *Assemblée nationale du Québec, « DÉCISION DE LA PRÉSIDENTE concernant le refus de prêter le serment d’allégeance », November 1, 2022 (Exhibit R-15)* and **Exhibit R-11: Assemblée nationale du Québec, Encyclopédie du parlementarisme québécoise, « Serment »**. See also Exhibit R-9.

³¹⁷ The French title of the Act is « *Loi visant à reconnaître le serment prévu par la Loi sur l’Assemblée nationale comme seul serment obligatoire pour y siéger* » (emphasis added)

³¹⁸ Élections Québec, “Current and upcoming elections”, online: <https://www.electionsquebec.qc.ca/en/vote/current-and-upcoming-elections/>

- As a result of s. 128Q.1, it is anticipated that most – if not all – of the politicians elected to the National Assembly in the October election will not take the Oath required under s. 128 prior to taking their seat in the Assembly;³¹⁹
- Not taking the Oath will constitute a failure to comply with s. 128;
- A failure to comply with s. 128 means that an elected politician is not constitutionally eligible to sit as a “member” of the National Assembly;³²⁰
- As such, the effect of s. 128Q.1 and the *Act to recognize the oath* is to nullify the right of a politician elected to the National Assembly to “take [their] Seat”³²¹ therein. A politician who refuses to take the Oath after being elected and prior to taking their seat will never have lawfully taken their seat at all. The tasks performed as Member of the National Assembly who has not taken the Oath will be void *ab initio*;³²²
- In other words, s. 128Q.1 and the *Act* prevent a Canadian citizen who is “qualified for membership” after being elected to the Assembly from taking their seat because they prevent – or at the very least dissuade – the elected politician from fulfilling a constitutional condition precedent to lawfully performing the roles and functions of a Member of the National Assembly. The French version of s. 128 is unequivocal that Members must take the Oath “**avant d’entrer dans l’exercice de leurs fonctions**”. A politician who performs these roles and functions without having taken the Oath cannot, under s. 128, be said to have “entrer dans l’exercice de leurs fonctions”;
- Put another way, the *Act* and s. 128Q.1 do not violate the right “to sit as a member” of the National Assembly by *adding* requirements or conditions to be fulfilled aside from being a Canadian citizen and having been elected to a given electoral district.³²³ Instead, the *Act* and s. 128Q.1 violate this right by purporting to *remove* a constitutional requirement whose fulfillment is a condition precedent to lawfully taking one’s seat in the Assembly. As a result of the *Act* and s. 128Q.1, a politician who is otherwise qualified for membership in the National Assembly will not be able to lawfully perform their roles, duties, and functions;³²⁴

³¹⁹ This should not be surprising, as (i) the *Act to recognize the oath* was passed unanimously in 2022; (ii) the same political parties who voted for the *Act* in 2022 are competing in the election and will have members re-elected; and as (iii) elected politicians are likely to rely on the presumed constitutionality of the *Act* in not taking the Oath of Allegiance.

³²⁰ [House of Commons Procedure and Practice, Third Edition, 2017](#): “...it is the taking of the oath or affirmation which enables a Member to take his or her seat in the House and to vote.” (**Exhibit R-9**) See also [E. Janse & J. LeBlanc, House of Commons Procedure and Practice, Fourth Edition, 2025](#) and [M. Bonsaint, Parliamentary Procedure in Quebec](#) at 162, both also at **Exhibit R-9**.

³²¹ *Constitution Act, 1867*, s. 128.

³²² Campagnolo & Bontems, at 597, 599-600 (Exhibit R-3).

³²³ Like the requirement that an individual not have been convicted of a criminal offence: see *Harvey*.

³²⁴ [House of Commons Procedure and Practice, Third Edition, 2017](#): “...it is the taking of the oath or affirmation which enables a Member to take his or her seat in the House and to vote.” (**Exhibit R-9**) See

- Indeed, the right “to sit as a member” of the National Assembly – or of any other legislature – is more than just a right to physically sit on a bench reserved for the members of a legislative body. Sitting as a member includes, *inter alia*, voting on legislation, proposing amendments, delivering speeches in the legislature, the opportunity to be a member of a parliamentary committee, exercising parliamentary privileges, asking oral and written questions to, *inter alia*, the Premier and Ministers, and advocating on behalf of constituents. None of these roles, tasks, or functions will be done lawfully if the member did not take Oath prescribed in s. 128 prior to taking their seat (“avant d’entrer dans l’exercice de leurs fonctions”);³²⁵
- Fundamentally, the *Act to recognize the oath* and s. 128Q.1 each and both violate the right “to sit” as a member of the National Assembly because they act as an impediment to an elected politician lawfully taking their seat in the Assembly by purporting to remove a constitutional condition precedent to doing so;
- The effect of the *Act* and s. 128Q.1 preventing or otherwise dissuading elected politicians from taking the Oath prior to taking their seat is a significant infringement of the right “to sit as a member of... a legislative assembly”³²⁶ protected by s. 3 of the *Charter*;³²⁷
- By preventing or otherwise dissuading an elected politician from lawfully taking their seat in the National Assembly, the *Act* and s. 128Q.1 make the right to sit in the Assembly “a hollow and empty one, devoid of meaning or substance.”;³²⁸

300. It is no answer to say that the *Act* and s. 128Q.1 do not prevent politicians elected to the National Assembly from taking the Oath or force them to refrain from taking it under penalty of law. By its very title, the purpose and effect of the *Act* is “to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly” (emphasis added)

also [E. Janse & J.LeBlanc, *House of Commons Procedure and Practice*, Fourth Edition, 2025](#) and [M. Bonsaint, *Parliamentary Procedure in Quebec*](#) at 162, both also at **Exhibit R-9**. See also [Decision of Speaker John Fraser, “Oath/affirmation of allegiance : Member’s right to sit in the House in the face of an alleged repudiation of oath; meaning and significance of the oath”, November 1, 1990, House of Commons Debates, 34th Parliament, 2nd Session, Vol. 1, at pp. 14969-70 \(Exhibit R-24\)](#). See also [Assemblée nationale du Québec, « DÉCISION DE LA PRÉSIDENCE concernant le refus de prêter le serment d’allégeance », November 1, 2022 \(Exhibit R-15\)](#) and [Exhibit R-11: Assemblée nationale du Québec, Encyclopédie du parlementarisme québécoise, « Serment »](#).

³²⁵ *Ibid.*

³²⁶ *Harvey*, at paras. 28, 30.

³²⁷ Note that the requirement for elected politicians to take the Oath prior to taking their seat does not violate their right to freedom of expression or any other right enshrined in the *Charter*. As noted, *Charter* rights and freedoms must be read harmoniously with s. 128, as “one part of the Constitution cannot be construed to deprive another of its effect”: *Alford v. Canada (Attorney General)*, [2026 SCC 14](#), at para. 48. See also *Société de l’Acadie du Nouveau-Brunswick v. Canada (Prime Minister)*, [2026 SCC 22](#), at para. 105;

³²⁸ *Harvey*, at para. 37.

301. By communicating the message that the Oath of Allegiance is not necessary, and that only the oath provided in the *Act respecting the National Assembly* is, the Act and s. 128Q.1 create the false belief that not taking it is both lawful and constitutional, thus dissuading newly elected politicians from taking the Oath;
302. Even newly elected politicians who would otherwise take the Oath will be dissuaded from taking it, as the Act enjoins the National Assembly to not recognize the Oath at all, and as taking the Oath would have no legal force or effect unless and until the Act and s. 128Q.1 are declared unconstitutional;

(e) The Infringements are Not Justified Under Section 1

303. The infringements of the rights to vote, to effective representation, and to be qualified for membership in the National Assembly occasioned by the *Act to recognize the oath* are not justified under s. 1 of the *Charter*. The Act is, therefore, unconstitutional for this additional reason;

e.1 – Oakes Test

304. As affirmed in *Frank v. Canada (Attorney General)*, [2019 SCC 1](#), a judgment decided under s. 3 of the *Charter*: an infringement of s. 3 will only be justified if the Attorney General shows that the law has a pressing and substantial objective and that the means are proportional to that objective.³²⁹ In turn, a law is proportionate if:
- 1) there is a rational connection between the infringement and the objective
 - 2) it is minimally impairing of the right or freedom in question; and
 - 3) there is proportionality between the deleterious and salutary effects of the law.³³⁰
305. Note that an infringement may be unjustified under s. 1 based on the purpose of the infringing measure, its effects, or both.³³¹ The burden lies on the Attorney General of Quebec to show on a balance of probabilities that the limits on s. 3 are reasonable and demonstrably justified under s. 1;³³²
306. Importantly, “[c]ourts must exercise ‘great care’ when determining whether a breach of s. 3 is justified under s. 1 of the *Charter*”³³³
307. As well, “[t]he jurisprudence also requires that a stringent standard of justification be applied when the government seeks to justify a limit on the s. 3 right to vote”;³³⁴

³²⁹ *Frank*, at para. 38, citing *R. v. Oakes*, [\[1986\] 1 S.C.R. 103](#), at pp. 136-40.

³³⁰ *Frank*, at para. 38, citing *Oakes*, at pp. 136-40.

³³¹ *R. v. Big M Drug Mart Ltd.*, [\[1985\] 1 S.C.R. 295](#), at p. 331.

³³² *Oakes*, at pp. 135, 137.

³³³ *Ontario (Attorney General) v. Working Families Coalition (Canada) Inc.*, [2025 SCC 5](#), at para. 60.

³³⁴ *Frank v. Canada (Attorney General)*, [2019 SCC 1](#), at paras. 43-44.

e.2 – Application of Oakes

e.2.1 – No Pressing and Substantial Purpose

308. The *Act to recognize the oath* does not pursue a pressing and substantial purpose sufficient to warrant the infringement of s. 3.³³⁵ This is in and of itself sufficient to conclude that the infringements are not justified and that the Act is unconstitutional;³³⁶
309. It is trite law that “[t]he purpose of a provision or state is identified by reference to the time at which it was enacted...”³³⁷ The purpose of the *Act to recognize the oath* is identified in its “Explanatory Notes” as follows:

<u>Cette loi a pour objet d'abolir l'obligation de prêter et de souscrire le serment d'allégeance au roi prévue par la Loi constitutionnelle de 1867 à laquelle doivent satisfaire les députés pour pouvoir siéger à l'Assemblée nationale. À cette fin, la loi ajoute dans la Loi constitutionnelle de 1867 un article soustrayant le Québec à l'application de l'article 128 de cette loi, qui prévoit une telle obligation.</u>	<u>The purpose of this Act is to abolish the requirement to take and subscribe the Oath of Allegiance to the King prescribed by the Constitution Act, 1867, which Members must fulfil in order to sit in the National Assembly. To that end, the Act adds to the Constitution Act, 1867 a section exempting Québec from the application of section 128 of that Act, which provides for such a requirement.</u>
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310. Immediately prior to the passage of the Act the Minister elaborated as follows:

...je veux quand même dire et affirmer ici, au salon bleu, qu'au Québec **nous sommes des démocrates, nous ne sommes pas un peuple de monarchistes.** Et c'est donc important de poser le geste que nous posons aujourd'hui, **un geste d'affirmation nationale, un geste de modernité,** et d'adopter ensemble, unanimement, ce projet de loi là, qui va nous permettre d'avancer... Ce qui veut dire qu'à partir de maintenant, lorsqu'elle sera sanctionnée, **les députés qui auront l'honneur de représenter leurs concitoyens ici, à l'Assemblée nationale, n'auront plus à prêter serment au roi d'un autre pays.**³³⁸ (emphasis added)

311. Significantly, the Supreme Court of Canada has rejected that “preserving the social contract is a pressing and substantial objective for the purposes of s. 1” justification analyses of infringements of the right to vote;³³⁹

³³⁵ Oakes, at para. 69, citing *Big M*, at p. 352.

³³⁶ *Big M*, at para. 88. See also para. 85.

³³⁷ *Big M*, at pp. 334-36.

³³⁸ [Assemblée nationale de Québec, Journal des débats, 43rd Legislature, 1st Session, Friday, December 9, 2022, Vol. 47, No. 8 \(per Minister Jean-François Roberge\) \(Exhibit R-2\)](#)

³³⁹ *Frank v. Canada (Attorney General)*, [2019 SCC 1](#), at paras. 49, 53-54.

312. Necessarily, then, a legislative objective involving the *repudiation* of the social contract crystallized in the Constitution of Canada – including the very nature of the state as a constitutional monarchy – can similarly not justify infringements of the right to vote. Both preserving the social contract and repudiating it suffer from the same fatal flaw: each “superficially and vaguely evokes a political philosophy which is ill-suited to withstand the rigours of the s. 1 analysis”;³⁴⁰
313. The Act’s unconstitutional purpose further results in the right to effective representation and the right to be qualified for membership in the National Assembly being unjustifiably infringed within the meaning of s. 1 of the *Charter*;
314. The absence of a pressing and substantial purpose is sufficient to conclude that the infringements of s. 3 occasioned by the *Act to recognize the oath* are not reasonable limitations demonstrably justified in Canada – and Quebec’s – free and democratic society. As held in *Big M Drug Mart*: “If the legislation fails the purpose test, there is no need to consider further its effects, since it has already been demonstrated to be invalid.”³⁴¹ It is, moreover, “difficult to conceive of legislation with an unconstitutional purpose, where the effects would not also be unconstitutional.”³⁴² This precisely describes the *Act to recognize the oath*;

e.2.2 – Rational Connection

315. As noted, in the absence of a pressing and substantial purpose, it is unnecessary to assess whether the rational connection stage is satisfied. In any event, if the court was still willing to entertain submissions on this point, the burden of establishing a rational connection lies on the Attorney General;³⁴³

e.2.3 – The Act Is Not Minimally Impairing

316. As the Act and s. 128Q.1 are motivated by an unconstitutional purpose, it is unnecessary to undertake an analysis into minimal impairment;
317. For the sake of argument, however: the Act and s. 128Q.1 are not minimally impairing of the right to vote, the right to effective representation, or the right to be qualified for membership in the National Assembly. The fact that the same measures so directly strike at three of the rights protected under s. 3 of the *Charter* in and of itself demonstrates that these measures are not minimally impairing;
318. When applying the minimal impairment stage of the Oakes test, “courts must examine the legislature’s choice more closely in areas where those rights at the heart of our democracy are at stake. Section 3 is one of those rights.”³⁴⁴

³⁴⁰ *Frank*, at para. 49.

³⁴¹ *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at para. 88.

³⁴² *Big M*, at para. 85.

³⁴³ *R. v. Oakes*, [1986] 1 S.C.R. 103, at 135, 137.

³⁴⁴ *Working Families*, at para. 64, citing *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158 and *Sauvé*.

319. As well, “the mere fact” that the *Act to recognize the oath* “was passed unanimously by the National Assembly is not here a determinative consideration that shields the [Act] from constitutional scrutiny and relieves [the Attorney General] of his burden... of demonstrating that the law has been ‘carefully tailored so that rights are impaired no more than necessary’”³⁴⁵
320. Should this Court deem it necessary to consider this issue, the Attorney General should be put to his strict burden of proof to show that the impugned measures are minimally impairing;

e.2.4 – Balancing Effects and Legislative Objective

321. As was the case in two recent Supreme Court judgments decided under s. 3 of the *Charter*, since the *Act to recognize the oath* is not minimally impairing, “it is unnecessary to address the final stage of *Oakes*.”³⁴⁶
322. Even if this stage were addressed, however, the deleterious impacts of the grave individual and collective violations of three fundamental democratic rights protected under s. 3 are determinative since no salutary effects can be seen to arise and since the *Act*’s objective is fundamentally incompatible with Canada’s constitutional nature as a liberal democratic constitutional monarchy;
323. The *Act to recognize the oath* fails to satisfy the *Oakes* test. The infringements of s. 3 are not justified under s. 1. The *Act* is, therefore, unconstitutional for this additional reason;

(f) The Act and Section 128Q.1 Unconstitutionally Amend The Charter

324. Alternatively, or in addition, the *Act to recognize the oath* and s. 128Q.1 so dramatically impact the right to vote, the right to effective representation, and the right to be qualified for membership in the National Assembly guaranteed under s. 3 of the *Charter* that they operate to amend the *Canadian Charter of Rights and Freedoms*;
325. Amendments to the *Canadian Charter of Rights and Freedoms* cannot, however, be authorized under the provincial power to unilaterally amend “the constitution of the province” entrenched in s. 45 of the *Constitution Act, 1982*;
326. Indeed, even if the *Charter* unquestionably applies in every Canadian province, it is part of “the Constitution of Canada”,³⁴⁷ and is not part of “the constitution of the province” for the purposes of s. 45;

³⁴⁵ *Quebec (Attorney General) v. Lalonde*, [2026 SCC 13](#), at para. 7, citing *RJR-MacDonald Inc. v. Canada (Attorney General)*, [\[1995\] 3 S.C.R. 199](#), at para. 160.

³⁴⁶ *Working Families*, at para. 65; *Lalonde*, at para. 9.

³⁴⁷ *Constitution Act, 1982*, s. 52(2)(a).

327. Amendments to the *Charter* can only be effected under the residual “General procedure for amending [the] Constitution of Canada” entrenched in s. 38 of the *Constitution Act, 1982*, requiring the consent of the Parliament of Canada and the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate at least fifty per cent of the population of all the provinces;³⁴⁸
328. This is a further reason for concluding that the *Act to recognize the oath* and s. 128Q.1 are *ultra vires* s. 45 and, therefore, unconstitutional;

ISSUE 6 – REMEDY

(a) Declaratory Judgment Is The Only Appropriate Remedy

329. The constitutional conclusion that the *Act* and s. 128Q.1 are *ultra vires* Quebec’s power of unilateral constitutional amendments to the constitution of the province under s. 45 of the *Constitution Act, 1982* requires a remedy that vindicates the supremacy of the constitution. This remedy consists of a declaratory judgment issued under s. 52(1) of the *Constitution Act* declaring that the *Act* and s. 128Q.1 are *ultra vires*, unconstitutional, and, therefore, of no force or effect;
330. As emphasized by the Supreme Court of Canada: “declarations of invalidity will be issued only if more tailored remedies, such as reading in, reading down, or severance, are inappropriate.”³⁴⁹ In the present case, a declaratory judgment should be issued because none of those tailored remedies would be appropriate;
331. This conclusion flows directly from the *Act* and s. 128Q.1 themselves. Indeed, the *Act* and s.128Q.1 provide as follows:

LE PARLEMENT DU QUÉBEC DÉCRÈTE CE QUI SUIT: LOI CONSTITUTIONNELLE DE 1867 1. La Loi constitutionnelle de 1867 est modifiée par l’insertion, après l’article 128, du suivant: « 128Q.1. L’article 128 ne s’applique pas au Québec. ». DISPOSITION FINALE 2. La présente loi entre en vigueur le 9 décembre 2022.	THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS: CONSTITUTION ACT, 1867 1. The Constitution Act, 1867 is amended by inserting the following after section 128: “128Q.1 Section 128 does not apply to Quebec.” FINAL PROVISION 2. This Act comes into force on 9 December 2022.
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³⁴⁸ *Reference re Senate Reform*, [2014 SCC 32](#), at para. 36.

³⁴⁹ *R. v. Albashir*, [2021 SCC 48](#), at para. 46, citing *Ontario (Attorney General) v. G.*, [2020 SCC 38](#), at paras. 112, 114.

332. Section 128Q.1 provides that Quebec is completely excluded from the application of s. 128 of the *Constitution Act, 1867*. Based on this categorical exclusion that admits of no exception, it is not possible to “read in” an exception or under circumstance under which s. 128 can indeed apply to Quebec;
333. The categorical and comprehensive exclusion of Quebec from the application of s. 128 also makes it impossible to “read down” s. 128Q.1 in a manner that would result in s. 128’s application to Quebec;
334. The remedy of severance is also unavailable, because severing any part of s. 128Q.1 would also lead to s. 128 applying to Quebec, which is directly contrary to the Act’s plain language, text, purpose, and to the intent of the Minister and the National Assembly as a whole in unanimously adopting it in December 2022;
335. Importantly, tailored remedies “are only appropriate when a court is confronted with a ‘law that is substantially constitutional and peripherally problematic’”³⁵⁰ In this light, “tailored remedies should only be granted where it can be fairly assumed that ‘the legislature would have passed the constitutionally sound part of the scheme without the unsound part’ and where it is possible to precisely define the unconstitutional aspect of the law...”³⁵¹
336. In the present case, the Act and s. 128Q.1 are entirely unconstitutional and entirely problematic – there is no “constitutionally sound part” to these enactments. The declaratory judgment requested by the Applicants is, therefore, the only appropriate remedy able to vindicate the supremacy of the Constitution;

(b) A Hybrid Suspended Declaration of Invalidity Is Appropriate

337. The effect of the declaratory judgment declaring that the Act and s. 128Q.1 are unconstitutional and, therefore, of no force or effect should be suspended. Suspension is required to prevent the legal chaos and threats to the rule of law that would arise from the consequent immediate invalidation of all laws passed by a majority of Members of the National Assembly who did not take the Oath required by s. 128 of the *Constitution Act, 1867* after being elected to the National Assembly on October 5, 2026;³⁵²
338. A hybrid suspended declaration of invalidity is, however, appropriate;
339. Specifically, the declaration should only be suspended for laws adopted by the National Assembly between the date the new legislature is formed after the October 2026 election and the date on which this Court issues its declaratory judgment. From the date of the declaratory judgment, any laws proposed by, or otherwise before, the National Assembly will not have any force or effect unless and until they have

³⁵⁰ *R. v. Bissonnette*, [2022 SCC 23](#), at para. 127, citing *R. v. Sharpe*, [2001 SCC 2](#), at para. 127.

³⁵¹ *Ontario (Attorney General) v. G.*, [2020 SCC 38](#), at para. 114, citing *Schachter v. Canada*, [\[1992\] 2 S.C.R. 679](#), at 697.

³⁵² Campagnolo & Bontems, at 600-601 (Exhibit R-3).

been adopted by a majority of Members of the National Assembly who took the Oath of Allegiance prior to voting in favour of the legislation and received Royal Assent;

340. This approach echoes that adopted by the Supreme Court of Canada in *Reference re Manitoba Language Rights*, [\[1985\] 1 S.C.R. 721](#), in which the Court declared that all unilingual English statutes adopted by the Manitoba legislature since 1890 were unconstitutional for violating the constitutional requirement of legislative bilingualism in Manitoba. The Court's suspended the effect of its declaratory judgment only with respect to laws passed prior to the date of its judgment. As for laws to be adopted after that date, the Court stated at p. 769:

Temporary validity, however, will not apply to unilingual Acts of the Legislature passed after the date of this judgment. From the date of judgment, laws not enacted, printed and published in both languages will be invalid and of no force or effect *ab initio*.³⁵³

341. A hybrid suspended declaration of invalidity is not only not unprecedented, it is also consistent with the exceptional nature of suspended declarations in the first place. Indeed, suspending the effect of a declaration of invalidity is an exception to the presumption that such declarations operate retroactively with immediate effect.³⁵⁴ Insisting that the declaration not be suspended for laws that may be adopted after October 2026 therefore reflects the legal status quo for declaratory relief;
342. Suspending the declaration for laws adopted between October 2026 and the date of the declaratory judgment to be issued by this Court is also consistent with the prevailing law. As stated by the Supreme Court of Canada:

[83] ...suspensions of declarations of invalidity should be rare, granted only when an identifiable public interest, grounded in the Constitution, is endangered by an immediate declaration to such an extent that it outweighs the harmful impacts of delaying the declaration's effect.³⁵⁵

343. A suspended declaration of invalidity is justified when immediate effect would pose a threat to the rule of law.³⁵⁶ The most famous example of the effect of a constitutional declaration being suspended is *Reference re Manitoba Language Rights*, [\[1985\] 1 S.C.R. 721](#), where the Supreme Court of Canada held that legislation enacted by the Manitoba legislature in English only was unconstitutional for failing to meet the constitutional requirement of legislative bilingualism in Manitoba. Instead of immediately invalidating all of Manitoba's unilingual statutes then in force, the Court suspended the effect of its declaration to provide the legislature with the opportunity to re-enact all of its legislation in both English and

³⁵³ See also *Reference re Manitoba Language Rights*, [\[1992\] 1 S.C.R. 212](#), at 234.

³⁵⁴ *Albashir*, at paras. 34, 38; *G*, at paras. 117, 133, 139, 156.

³⁵⁵ *G*, at para. 83.

³⁵⁶ *G*, at paras. 118, 124, citing *Schachter*, at 715-716.

French.³⁵⁷ An immediate declaration would have threatened the rule of law by occasioning a legal vacuum;³⁵⁸

344. In the present case, a suspended declaration is required to prevent threats to the rule of law because the invalidation of the Act and s. 128Q.1 directly impacts upon the constitutionality of laws enacted by the National Assembly if its Members – or the majority of the Members who voted in favour of particular legislation – did not take the Oath of Allegiance required under s. 128 of the *Constitution Act, 1867*;³⁵⁹
345. Section 128 enshrines a constitutional condition precedent to a politician being legally entitled to assume the office of Member of Parliament, Senator, or Member of a provincial legislature. Indeed, the politician “shall... take and subscribe... the Oath of Allegiance... before his taking his Seat...” (emphasis added) A Quebec politician elected to the National Assembly shall, therefore, take and subscribe the Oath of Allegiance before assuming the Office of Member of the National Assembly. If the Oath is not taken, the Member will not be occupying their seat constitutionally and, therefore, lawfully;³⁶⁰
346. The risks of this situation manifesting are highly likely. A provincial general election in Quebec is scheduled for October 5, 2026.³⁶¹ The Act and s. 128Q.1 benefit from a presumption of constitutionality unless and until both are successfully constitutionally challenged.³⁶² The present application is unlikely to be heard until after the election. It is, therefore, highly probable – if not a virtual certainty – that the vast majority, if not the totality, of politicians elected to the National Assembly in October will not take the Oath prior to taking their seat in the Assembly;³⁶³
347. This, in turn, risks impacting the constitutionality of laws passed by the National Assembly after the election. While the substantive content of those laws would be unaffected, the failure of the Members of the National Assembly to take the Oath would result in their votes in favour of the legislation being constitutionally invalid, as the legislative majority required for laws to be considered validly passed consists of a majority of Members who have taken the Oath of Allegiance pursuant to s. 128 of the *Constitution Act, 1867*;³⁶⁴

³⁵⁷ See pages 758, 768-769; G, at paras. 124, 135.

³⁵⁸ *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721, at 758, 742, 747, 749, 755-56, 760-761, 765-66; Campagnolo & Bontems at 601 (Exhibit R-3).

³⁵⁹ Campagnolo & Bontems, at 596-601 (Exhibit R-3).

³⁶⁰ *House of Commons Procedure and Practice, Third Edition, 2017*: “...it is the taking of the oath or affirmation which enables a Member to take his or her seat in the House and to vote.” (Exhibit R-9).

³⁶¹ Élections Québec, “Current and upcoming elections”, online:

<https://www.electionsquebec.qc.ca/en/vote/current-and-upcoming-elections/> (Exhibit R-6)

³⁶² *Reference re Impact Assessment Act*, 2023 SCC 23, at paras. 69-73, citing several cases.

³⁶³ Campagnolo & Bontems, at 596, 600 (Exhibit R-3).

³⁶⁴ Campagnolo & Bontems, at 597, 599-600 (Exhibit R-3).

348. The automatic and instantaneous invalidation of all laws passed by the National Assembly by a majority of Members who did not take the Oath prior to taking their seat after the October 2026 election would undoubtedly plunge Quebec into an unprecedented legal crisis threatening the rule of law in the province.³⁶⁵ It is, at this time, impossible to calculate the number of laws that will be passed between October 2026 and the date on which the present application is decided on its merits and all appeal routes have been exhausted. However, the more time passes until constitutional clarity is provided, the higher the number of laws will be adopted and impacted by a declaratory judgment declaring the Act and s. 128Q.1 unconstitutional;
349. For laws adopted by the National Assembly between the date the new legislature is formed after the October 2026 election and the date on which this Court issues its declaratory judgment, the declaration of invalidity should be suspended for the period of time the Attorney General of Quebec establishes is required for all Members of the National Assembly to take the Oath of Allegiance prescribed in s. 128 of the *Constitution Act, 1867* and for the said laws to be re-adopted by the National Assembly after all Members have taken the Oath;³⁶⁶
350. The hybrid declaration of suspended invalidity should also be issued with regards to any regulations, orders-in-council, decrees, and any other document created by the Government of Quebec that was incorporated by reference into legislation³⁶⁷ passed by the National Assembly between the October 2026 election and the date of a judgment issued by this court declaring the *Act to recognize the oath* and s. 128Q.1 unconstitutional and, therefore, of no force or effect. Authority for the application of the suspended declaration of invalidity in this manner is rooted in *Reference re Manitoba Language Rights*, [1992] 1 S.C.R. 212 (at 228-231);
351. Absent specific submissions on this point by the Attorney General, this Court should not unilaterally determine the specific length of the overall period of suspension. This is precisely the conclusion arrived at by the Supreme Court in *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721. Indeed: “It is the government’s responsibility to make a case for the length of the suspension it seeks.”³⁶⁸
352. To this end, if no submissions are made by the Attorney General of Quebec, the Court can suspend the declaration and compel the Attorney General to return before the Court at a later, specified date in order to provide submissions and evidence as to the precise length of the period of suspension required; This is, once again, the approach adopted in the *Manitoba Language Rights Reference*;³⁶⁹

³⁶⁵ Campagnolo & Bontems, at 600 (Exhibit R-3).

³⁶⁶ Campagnolo & Bontems, at 600-601 (Exhibit R-3).

³⁶⁷ As stated by the Supreme Court of Canada in *Reference re Manitoba Language Rights*, [1992] 1 S.C.R. 212, at 228: “A clear example of a true incorporation [by reference] can be found in *Attorney General of Quebec v. Collier* (1985), 23 D.L.R. (4th) 339, [1985] C.A. 559 (upheld by this Court, [1990] 2 S.C.R. 260).

³⁶⁸ G, at para. 139.

³⁶⁹ *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721, at 769. The Court enjoined the Attorney General of Manitoba and the Attorney General of Canada to make a request within 120 days of its order

353. In any event, if submissions are provided at any stage and the suspension's specific length is set,³⁷⁰ any extension to the period of suspension would require an order from this Court justified on the basis of additional evidence and submissions as to why an extension is indeed required;³⁷¹
354. As the proposed remedy of a hybrid suspended declaration of invalidity is directly anchored in the jurisprudence of the Supreme Court of Canada, it is entirely consistent with democracy, the separation of powers, constitutionalism and the rule of law and the other written and unwritten foundational constitutional principles at the heart of Canada's liberal democratic constitutional monarchy;
355. Service of the present application to the Attorney General of Quebec in his capacity as respondent constitutes valid notice within the meaning of arts. 76-77 C.C.P.

CONCLUSIONS SOUGHT

356. The present application raises only pure questions of law and is well founded.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present application;

DECLARE that s. 45 of the *Constitution Act, 1982* does not authorize Quebec or any other province to unilaterally amend the text of the *Constitution Act, 1867*, but only to unilaterally amend their respective provincial constitutions;

DECLARE that abolishing the Oath of Allegiance required to be sworn by persons elected to the National Assembly pursuant to s. 128 of the *Constitution Act, 1867* directly affects the status and role of the monarchy and therefore relates to the "office of the Queen" such that it requires the unanimous consent of Parliament and the legislatures of all ten provinces pursuant to the amendment power in s. 41(a) of the *Constitution Act, 1982* and cannot lawfully be achieved by way of unilateral constitutional amendment enacted under s. 45 of the *Constitution Act, 1867*;

DECLARE that abolishing the Oath of Allegiance required to be sworn by persons elected to the National Assembly pursuant to s. 128 of the *Constitution Act, 1867* directly affects the status, role, and constitutional power of the Lieutenant Governor of Quebec and therefore relates to the "office of the Lieutenant Governor" such that it can only be constitutionally authorized with the unanimous consent of the Parliament of Canada and of the ten provincial legislatures pursuant to s. 41(a) of the *Constitution Act, 1982*;

for a special hearing to present submissions and evidence concerning the appropriate period of suspended invalidity. The Court's order setting the period of suspension is as follows: *Order: Manitoba Language Rights*, [1985] 2 S.C.R. 347.

³⁷⁰ *Order: Manitoba Language Rights*, [1985] 2 S.C.R. 347.

³⁷¹ *Re Manitoba Language Rights Order*, [1990] 3 S.C.R. 1417; Campagnolo & Bontems, at 601 (Exhibit R-3); *Carter v. Canada (Attorney General)*, 2016 SCC 4.

DECLARE that s. 128 of the *Constitution Act, 1867* is an indivisible part of Constitution of the Province of Quebec and of the Constitution of Canada, such that its amendment exceeds the scope of permissible unilateral constitutional amendments to provincial constitutions under s. 45 of the *Constitution Act, 1982*;

DECLARE that *An Act to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly*, S.Q. 2022, c. 30 was adopted pursuant to the unilateral constitutional amendment power enshrined in s. 45 of the *Constitution Act, 1982* – and without the unanimous consent required by s. 41 of that Act – and is therefore *ultra vires*, unconstitutional, and of no force or effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;

DECLARE that s. 128Q.1 of the *Constitution Act, 1867* was adopted pursuant to the unilateral constitutional amendment power enshrined in s. 45 of the *Constitution Act, 1982* – and without the unanimous consent required by s. 41(a) of that Act – and is therefore *ultra vires*, unconstitutional, and of no force or effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;

DECLARE that *An Act to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly*, S.Q. 2022, c. 30 and s. 128.Q1 of the *Constitution Act, 1867* each and both unjustifiably limit the right to vote held by Canadian citizens under s. 3 of the *Canadian Charter of Rights and Freedoms* and is therefore of no force or effect pursuant to s. 52(1) of the *Constitution Act, 1982*;

DECLARE that *An Act to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly*, S.Q. 2022, c. 30 and s. 128.Q1 of the *Constitution Act, 1867* each and both violate the right of a Canadian citizen to effective representation under s. 3 of the *Canadian Charter of Rights and Freedoms* and is therefore of no force or effect pursuant to s. 52(1) of the *Constitution Act, 1982*;

DECLARE that *An Act to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly*, S.Q. 2022, c. 30 and s. 128.Q1 of the *Constitution Act, 1867* each and both unjustifiably limit the rights of Canadian citizens under s. 3 of the *Canadian Charter of Rights and Freedoms* to qualify for membership and sit in the National Assembly, and is therefore of no force or effect pursuant to s. 52(1) of the *Constitution Act, 1982*;

DECLARE that *An Act to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly*, S.Q. 2022, c. 30 and s. 128.Q1 of the *Constitution Act, 1867* operate to amend s. 3 of the *Canadian Charter of Rights and Freedoms* and are therefore *ultra vires* the unilateral provincial constitutional amendment power entrenched in s. 45 of the *Constitution Act, 1982*;

SUSPEND the effects of the declaration of invalidity of the Act and s. 128Q.1 for laws adopted by the National Assembly between the date the new legislature is formed after the October 2026 election and the date on which this Court issues its declaratory

judgment, but only for the period of time the Attorney General of Quebec establishes is required for all Members of the National Assembly to take the Oath of Allegiance prescribed in s. 128 and for the said laws to be re-adopted by the National Assembly after all Members have taken the Oath;

DECLARE that the declaration of invalidity of the Act and s. 128Q.1 has immediate effect and is not suspended with regard to any laws yet to be passed by the National Assembly on the date of the declaratory judgment and that, as of that date, any laws yet to be passed by the National Assembly will not have any force or effect unless and until they have been adopted by a majority of Members of the National Assembly who took the Oath of Allegiance prior to voting in favour of the legislation and have received Royal Assent;

THE WHOLE WITHOUT COSTS ordered against the Applicants regardless of the outcome of the application;

THE WHOLE WITH COSTS in favour of the Applicants, regardless of the outcome of the application;

Respectfully submitted.

Montreal, September 4, 2026



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CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-17-139512-266

SUPERIOR COURT

PUBLIC INTEREST LITIGATION INSTITUTE

and

LAWRENCE DAVID

Applicants

v.

ATTORNEY GENERAL OF QUEBEC

Respondent

and

ATTORNEY GENERAL OF CANADA

Mis en cause

NOTICE OF DISCLOSURE OF EXHIBITS

TAKE NOTICE that the Applicants intend on producing the following exhibits at the hearing:

- EXHIBIT R-1:** Assemblée nationale de Québec, Journal des débats, 43rd Legislature, 1st Session, Tuesday, December 6, 2022, Vol. 47, No. 5
- EXHIBIT R-2:** Assemblée nationale de Québec, Journal des débats, 43rd Legislature, 1st Session, Friday, December 9, 2022, Vol. 47, No. 8
- EXHIBIT R-3:** Yan Campagnolo et Camille Bontems, “L’abolition unilatérale du serment au Roi par le Québec est-elle constitutionnelle?” (2026) 71:2 McGill LJ 549
- EXHIBIT R-4:** Public Interest Litigation Institute, “Mission Statement and Statement of Principles”
- EXHIBIT R-5:** Faculty Webpage for Professor Lawrence David at the University of Ottawa – Faculty of Law
- EXHIBIT R-6:** Extract from Elections Quebec’s webpage, titled “Current and upcoming elections,” taken July 28, 2026;

- EXHIBIT R-7:** Office of the Lieutenant-Governor of Quebec, “The Lieutenant-Governor of Quebec Assents Bill 4 – An Act to Recognize the Oath Provided in the Act Respecting the National Assembly as the Sole Oath Required in Order to Sit in the Assembly”, December 9, 2022
- EXHIBIT R-8:** *An Act to change the Constitution of the Legislative Council by rendering the same Elective*, Prov C, 1856, c 140
- EXHIBIT R-9:** Extracts from M. Bosc & A. Gagnon, eds., *House of Commons Procedure and Practice*, Third Edition, 2017 and E. Janse & J.LeBlanc, *House of Commons Procedure and Practice*, Fourth Edition, 2025 and M. Bonsaint, dir., *Parliamentary Procedure in Québec* (Quebec, Bibliothèque nationale du Québec, 2012) (en liasse)
- EXHIBIT R-10:** Print-outs from the Supreme Court of Canada’s electronic docket (en liasse)
- EXHIBIT R-11:** Assemblée nationale du Québec, Encyclopédie du parlementarisme québécoise, « Serment »
- EXHIBIT R-12:** *The Quebec Act, 1774*, 14 Geo III, c. 83 (U.K.), reprinted in R.S.C. 1985, App. II, No. 2
- EXHIBIT R-13:** *The Union Act, 1840* (UK), 3-4 Victoria, c. 35 (U.K.), reprinted in R.S.C. 1985, App. II, No. 4
- EXHIBIT R-14:** Élections Québec, “Results of October 3, 2022 general election”
- EXHIBIT R-15:** Assemblée nationale du Québec, « DÉCISION DE LA PRÉSIDENCE concernant le refus de prêter le serment d’allégeance », November 1, 2022
- EXHIBIT R-16:** National Assembly of Quebec, Votes and Proceedings of the Assembly, Tuesday, 29 November 2022 – No. 1, 43rd Legislature, 1st Session
- EXHIBIT R-17:** National Assembly of Quebec, Order Paper for November 29, 2022, 1st session of the 43rd Legislature
- EXHIBIT R-18:** CBC News, “PQ denied entry to Quebec’s National Assembly after refusing to swear oath to King”, December 1, 2022
- EXHIBIT R-19:** Screenshot of statement published on Paul St-Pierre Plamondon’s official X account on August 13, 2026

- EXHIBIT R-20:** La Presse article titled « Fin du serment au roi à l'Assemblée nationale – Un avocat dépose une contestation », dated August 13, 2026 and Journal de Québec article titled « Fin du serment au roi : la majorité québécoise bafoue les règles, selon l'avocat qui conteste la loi », dated August 13, 2026 (en liasse)
- EXHIBIT R-21 :** CBC News article titled “Quebec law ending mandatory oath to King faces constitutional challenge”, updated August 12, 2026
- EXHIBIT R-22 :** Press release issued by the Cabinet du ministre responsable des institutions démocratiques on December 6, 2022, entitled « Projet de loi no 4 – Un projet de loi pour abolir définitivement l'obligation de prêter serment au roi »
- EXHIBIT R-23 :** Aile parlementaire de Québec solidaire, « Québec solidaire siègera au Salon bleu et déposera un projet de loi pour rendre facultatif le serment au roi », dated November 3, 2022
- EXHIBIT R-24:** Decision of Speaker John Fraser, “Oath/affirmation of allegiance : Member’s right to sit in the House in the face of an alleged repudiation of oath; meaning and significance of the oath”, November 1, 1990, House of Commons Debates, 34th Parliament, 2nd Session, Vol. 1, at pp. 14969-70

These Exhibits are available upon request.

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**SUPERIOR COURT
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PUBLIC INTEREST LITIGATION INSTITUTE

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LAWRENCE DAVID

Applicants

v.

ATTORNEY GENERAL OF QUEBEC et al.

Respondent

**APPLICATION FOR JUDICIAL REVIEW ,
FOR DECLARATORY JUDGMENT UNDER
SECTION 52(1) OF THE CONSTITUTION
ACT, 1867 AND FOR NOTICE OF
CONSTITUTIONAL QUESTION
(ARTS. 34, 76, 96, 529, 530 C.C.P.)**

ORIGINAL

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