CANADIAN COURT OF JUSTICE
(On appeal from the Federal Court of Appeal)

B E T W E E N :

THE GOLDEN VOICE THEATRE / THÉÂTRE LA BELLE VOIX
Appellant

- and –

MINISTER OF CANADIAN HERITAGE AND OFFICIAL LANGUAGES
Respondent

FACTUM OF THE APPELLANT

SCHOOL NUMBER 10

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I. STATEMENT OF FACTS

1) Facts

[1] This case concerns The Golden Voice Theatre (the "**Appellant**"), a non-profit theatre group that fosters appreciation of French language theatre throughout British Columbia ("**BC**"). The Appellant has existed since 1995, and has built itself from the ground up. Struggling during the first ten years of its existence, the Appellant put on only one play per year. Yet, since those early days, the programming and reach of the Appellant have grown significantly. As a result, French language theatre in BC has also grown with the Appellant.

[2] In 2005, the Minister of Canadian Heritage and Official Languages (the "**Minister**") recognized the Appellant's contributions to the French linguistic minority communities in BC (the "**French Communities**"), by granting funding to the Appellant through the *Cooperation with the Community Sector* Program (the "**Program**"), mandated under section 43(1) of the *Official Languages Act* (the "***OLA***") and paragraphs 4(2)(g), 5(a) of the *Department of Canadian Heritage Act* (the "***Heritage Act***").[1] The 2005 funding, in the amount of $10,000, came in the form of unconditional transfer payments. Thanks to this funding, the Appellant greatly expanded its reach, expanding its performances from two (2) communities to seven (7) communities in BC by 2007, and reaching over 5,000 audience members. In 2010, the Appellant's Program funding increased to $100,000.

[3] In 2010, the Appellant applied to the Program for multi-year funding, seeking $100,000 for 2011, $110,000 for the years 2012 and 2013, and $140,000 for 2014 and 2015. The Minister decided to provide the Appellant with funding close to what it

[1] *Official Languages Act*, RSC 1985, c 31 (4th Supp), s 43(1) [*OLA*]; *Department of Canadian Heritage Act*, SC 1995, c 11, ss.4(2)(g), 5(a) [*Heritage Act*].

requested, granting $100,000 for 2011, $105,000 for 2012 and 2013, and $135,000 for 2014 and 2015. Funding was granted in the form of annual contributions subject to several conditions. The terms and amounts of these annual contributions were specified by the Minister in a Contribution Agreement (the "**Contribution Agreement**"). According to the terms, every year the Appellant now had to show a 10% increase in the following performance metrics (the "**Metrics**"): the number of performances it offered, the number of communities it visited, and the number of people who watched its performances. The Contribution Agreement would automatically terminate if the Appellant did not meet these targets. In addition, the Appellant's funding remained subject to the following criteria (the "**Criteria**"):

- Linkages with the objectives of the *Cooperation with the Community Sector* sub-component.
- Relevance of stated needs.
- Relevance of the proposed activities to the situation described in the application.
- Linkages with issues related to development of the community or the area being supported, if any.
- Contribution to increased inclusiveness of official-language minority communities, if applicable.
- Diversification of partnerships and quality of cooperation with other partners.
- Projected outcomes and impact on the community.
- Relevance of proposed performance measurements.
- Diversification of funding sources.
- Balance between budget and projected activities.[2]

[4] In 2011 and 2012, the Appellant fulfilled the conditions stipulated above and received its $100,000 and $105,000 contributions respectively from the Minister.

[2] *Golden Voice Theatre v Minister of Canadian Heritage and Official Languages* (2013), (FCC) at para 10 [*Golden Voice #1*].

[5] In 2012, the Appellant was featured prominently in a newspaper article. The publication complained about "the significant tax dollars that were being spent on its 'useless' activities, while government funding for other activities such as scientific research had been drastically reduced".[3] Following the article's publication, protesters began to target the Appellant's performances. Allegedly, the issues raised by the article and the protests caused tension between "arts-lovers and budget-cutters", and between English and French linguistic communities (the "**Linguistic Tension**").[4]

[6] In January 2013, the Appellant's artistic director (the "**Artistic Director**") attended a public and political demonstration (the "**Demonstration**") in his personal capacity. At the Demonstration, as one of three speakers, the Artistic Director expressed his personal views regarding Canadian foreign policy in Mali, stating that Canada should join France in helping Mali "restore security to the people"[5] (the "**Comments**").

[7] The Appellant supported the Demonstration. It sent out e-mail invitations to the Demonstration, and printed posters and flyers.

[8] All of a sudden, the Appellant saw 65% of its operating budget revoked. Following the Demonstration, the Minister abruptly advised the Appellant by letter on February 25th, 2013 that its funds were revoked for 2013 and beyond (the "**Letter**"). The only reason provided by the Minister for the revocation was that the Appellant's impact on the community was "negative—or at the very least, less than positive".[6]

[3] *Ibid* at para 28.
[4] *Ibid* at para 30.
[5] *Ibid* at para 46.
[6] *Ibid* at para 34.

[9] Shortly after this revocation, the Artistic Director met an employee at the Department of Canadian Heritage (the "**Department**"), and was informed that the Artistic Director's Comments at the Demonstration were the "real reason"[7] why the Appellant's funding was revoked.

[10] Between February 25th and March 12th, 2013, the Minister absolutely refused the Appellant's request for further details and a meeting. Despite the Minister's complete unavailability, the Appellant, on its own initiative, submitted detailed written submissions on March 12th, 2013 aimed at persuading the Minister to reconsider his decision. The Minister responded the next day, unsurprisingly stating that he had no intention of reversing his February 25th decision.

[11] The Appellant sought judicial review of the Minister's decision.

2) Judicial History

a) Federal Court

[12] At the Federal Court, Napoleon J ruled in favour of the Appellant. She found that the Artistic Director's Comments were one of the reasons behind the Minister's decision to stop funding the Appellant. She also held that the Minister exercised his discretion in a manner inconsistent with subsection 2(b) of the *Canadian Charter of Rights and Freedoms* (the "***Charter***").[8] Napoleon J found that any decision that contravenes the *Charter* is by definition unreasonable. In the result, the Minister's decision was set aside, and the Appellant's funding was restored to its promised levels for the duration of the Contribution Agreement.

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[7] *Ibid* at para 43.
[8] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

[13] The Respondent appealed the Federal Court's decision. At the same time, the Appellant made a motion for judicial review of procedural fairness.

b) Federal Court of Appeal

[14] The Federal Court of Appeal was divided, with the majority reinstating the Minister's decision, reversing the Federal Court's order, and dismissing the Appellant's motion for judicial review.

[15] On a reasonable standard of review, Molière JA concluded that the Minister delivered a reasonable decision well within his discretion, finding that the Artistic Director's political Comments "did nothing more than play into the Minister's decision".[9] He did not find anything wrong with the level of procedural protection offered to the Appellant. Hugo JA's concurring opinion stated that the Minister had offered adequate procedural protection. He found that the Appellant was "given a chance to make submissions"[10] and plead its case to the Minister in writing.

[16] In the dissent, Foucault JA would have left Napoleon J's order intact, finding that the Minister made an arbitrary and improper decision based upon an unjustifiably vague criterion. Foucault JA also found that the Appellant's legitimate expectations of a certain result precluded the Minister's decision.

II. OBJECTIONS BY THE APPELLANT TO JUDGMENT APPEALED FROM

[17] Conceding the standard of reasonableness, the Appellant objects to the findings of the majority of the Federal Court of Appeal and claims the following:

1. The Minister's decision to revoke the Appellant's funding was unreasonable.
2. The Minister owed the Appellant a duty of procedural fairness, and it was unmet.

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[9] *Golden Voice Theatre v Minister of Canadian Heritage and Official Languages* (2013), (FCA) at para 5 [*Golden Voice #2*].
[10] *Ibid* at para 14.

III. ARGUMENTS

1) Overview

[18] The decision under appeal sets a precedent for government to cancel funding to any entity that offends its political or ideological beliefs. The "real reason"[11] the Minister revoked the Appellant's funding was its dislike of the Artistic Director's Comments. The Minister's decision effectively punished the Appellant for associating itself with the Demonstration. The effects of this decision are tantamount to the government dictating the bounds of public discourse.

[19] In this case, we are also dealing with the repercussions of government not upholding its end of the bargain. When government undertakes to provide support, its constituents trust that such undertakings will be respected. In particular, the Minister's sudden revocation of funds and failure to give notice of his decision to the Appellant produce a situation in which a long-standing community theatre company is faced with uncertainty about its future without alternate funding for 65% of its budget.[12]

[20] Finally, the Appellant's programming holds value for more than just the Appellant itself, as it contributes to the vitality of the French Communities. There is no evidence that the Minister considered the needs of the French Communities in cancelling the Appellant's funding. More broadly, there is no evidence that the Minister considered the constitutional norm of protection for minorities in his egregious decision.

[21] Therefore, this Court is asked to rectify the deficiencies in this Minister's arbitrary and vengeful decision, and to hold decision makers accountable for the consequences of their unfulfilled undertakings. Further, this Court is asked to closely

[11] *Golden Voice #1*, *supra* note 2 at para 10.
[12] *Ibid* at para 3.

scrutinize this Minister's decision to ensure that all those who exercise a statutory grant of power do so in accordance with the purposes for which the power was granted.

2) Abuse of discretion

[22] The Minister overstepped the boundaries of his limited discretion. As the Court found in *Roncarelli v. Duplessis*, "[t]here is no such thing as absolute and untrammelled discretion".[13] The rule of law is defined as "the restriction of the arbitrary exercise of power by subordinating it to well-defined and established laws".[14] Such a limitation on discretion has been described by the Supreme Court of Canada as "a fundamental postulate of our constitutional structure".[15] In Canada, this means that no official, no matter how high ranking, possesses absolute discretion. Thus, a Minister's decision is reviewable for abuse of discretion, including improper purpose and neglect of relevant considerations. In this case, the Minister's decision was abusive on both of these grounds. Accordingly, it should be set aside.

a) The Minister's decision was motivated by an egregious improper purpose

[23] The Minister's decision to revoke the Appellant's funding is an abuse of legal power. The Supreme Court of Canada in *Smith & Rhuland v. Nova Scotia*, held that a Labour Relation Board could not reject an application for certification of a union as a bargaining unit simply because its secretary-treasurer held communist political views.[16] The Court explained that the secretary-treasurer's comments could only be a relevant consideration if it could be shown that the union was a façade for a group, the aim of which

[13] *Roncarelli v Duplessis*, [1959] SCR 121 at 140, 1959 CanLII 105 [*Roncarelli*].
[14] *Canadian Oxford Dictionary*, 2d ed, *sub verbo* "rule of law".
[15] *Roncarelli*, *supra* note 13 at 142. See also *Charter*, *supra* note 8 at Preamble.
[16] *Smith & Rhuland Ltd v Nova Scotia*, [1953] 2 SCR 95 at para 13, [1953] 3 DLR 690 [*Smith*].

was to "destroy the very power from which it [sought] privileges".[17] Since there is no evidence that the Appellant's purpose is to destroy the Program, the Minister was not entitled to base his decision on the Artistic Director's Comments. However, there is evidence that the Artistic Director's Comments constituted the Minister's "real reason"[18] for revoking the Appellant's funding. The revocation can be construed as an attempt to suppress the Artistic Director's political speech. Thus, the Minister's decision should be set aside for improper purpose.

[24] Punishment for political speech is an egregious improper purpose well beyond the bounds of the *OLA*. In *CUPE v. Ontario (Minister of Labour)*, the Supreme Court of Canada set aside a decision of a Minister made for purposes beyond the scope of his statute.[19] Similarly, in *Roncarelli*, it was found to be a "[g]ross abuse of legal power … to punish … for an act wholly irrelevant to the statute, a punishment which [was intended to inflict] the destruction of [the Appellant's] economic life".[20] The Artistic Director's political beliefs are wholly irrelevant to the intended purposes of a funding Program designed to promote the vitality of official-language minority communities. Therefore, this Minister's decision should be set aside for his wholly irrelevant and egregious purpose in revoking the Appellant's funding.

[25] The Appellant's association with the Demonstration and its Artistic Director's position within the Appellant's organization should not have been relevant to the Minister's decision making. In *Smith*, the Court held that the secretary-treasurer's views

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[17] *Ibid* at para 10.
[18] *Golden Voice #1*, *supra* note 2 at para 43.
[19] *CUPE v Ontario (Minister of Labour)*, 2003 SCC 29 at para 184, [2003] 1 SCR 539 [*CUPE*].
[20] *Roncarelli*, *supra* note 13 at 141.

could not come in the way of the union's certification, irrespective of the close association between the secretary-treasurer and the union, and the "strength and character of the [secretary-treasurer's] influence".[21] Accordingly, the Minister should have made a distinction between the Appellant and the Artistic Director in his decision making. As the Court stated in *Smith*, "to treat the personal subjective taint as ground for [revoking funding] is to evince a want of faith in the intelligence … of [the Appellant]".[22] Thus, neither the Artistic Director's position of influence, nor the Appellant's association with the Artistic Director's participation in the Demonstration, are relevant considerations in the Minister's decision making.

[26] Lastly, the Minister's reference to the Criteria in his reasons does not save his improper purpose in revoking the Appellant's funding. In *CUPE*, the Minister attempted to conceal his motivation by providing reasons rooted in his statute. Despite grounding his reasons in his statute, the Court recognized that the Minister's underlying motivation was ulterior to the statute, and rejected his decision. As in *CUPE*, the Minister used his reference to the Appellant's impact on the community, one of the Criteria, as an attempt to conceal a decision based on an improper purpose, namely his dislike for the Artistic Director's Comments. Such a thinly veiled exercise at justification should be dismissed.

b) The Minister neglected relevant considerations

[27] There is nothing on the record indicating that the Minister considered anything other than the Artistic Director's Comments in his revocation decision. Any discretionary administrative decision must "be based upon a weighing of considerations pertinent to the

[21] *Smith*, *supra* note 16 at para 13.
[22] *Ibid* at para 12.

object of the administration".[23] Where a decision maker comes to a decision by neglecting relevant considerations, he will be found to have acted unfairly. For example, in *Trinity Western University v. College of Teachers (British Columbia)*, the Supreme Court of Canada found that the British Columbia College of Teachers acted unfairly when it considered the religious precepts of Trinity Western University rather than the actual impact of these beliefs on the school environment.[24] Similarly, in ignoring the many positive impacts of the Appellant's activities on the French Communities, the Minister failed to consider relevant factors. Therefore, the Minister exercised his discretion unfairly.

[28] In particular, the Minister failed to put into evidence his consideration of the Appellant's primary role in enhancing the vitality of the French language in BC, as required by the *OLA*.[25] The importance of cultural industries to minority language communities is underlined by the Senate Standing Committee on Official Languages, which points out that "the [d]evelopment of the country's official language minority communities is difficult to envisage in isolation from support for the cultural industries".[26] Supporting this, the Program's *Applicant's Guide* (the "**Guide**") states that vitality in official language minority communities can be measured by the accessibility of minority communities' cultural products throughout Canada.[27] In 2007, the Appellant played for

[23] *Roncarelli*, *supra* note 13 at 140.
[24] *Trinity Western University v College of Teachers (British Columbia)*, 2001 SCC 31 at para 43, [2001] 1 SCR 772.
[25] *OLA*, *supra* note 1 at s 43(1)(a).
[26] Canada, Standing Senate Committee on Official Languages, *Study of the Action Plan for Official Languages and the Annual Reports of the Office of the Commissioner of Official Languages, Treasury Board and the Department of Canadian Heritage*, 37th Parl, 2nd Sess (October 2003) at 14, online: Government of Canada <http://www.parl.gc.ca/Content/SEN/Committee/372/offi/rep/rep04oct03-e.pdf>.
[27] Canadian Heritage, *Cooperation with the Community Sector Development of Official-Language Communities: Applicant's Guide* at 7, online: Canadian Heritage

audiences in seven (7) BC communities,[28] and, since that time, accessibility to its cultural products has only grown.[29] Thus, the Appellant fills a critical role in expanding accessibility to the French Communities' cultural products. The Minister does not appear to have weighed these relevant considerations.

[29] By failing to consider the Appellant's unique role in the French Communities' cultural industries, the Minister has effectively stunted the growth and appreciation of French theatre in BC. In fact, the sudden decision to revoke the Appellant's funding threatens the goodwill and appetite for French theatre in BC built through the ground-breaking work of the Appellant. Thus, the decision also undermines the very concept of French theatre in BC. This kind of decision goes against the principle of enhancing the vitality of French Communities, as mandated under the *OLA*, and is thus unfair.

3) <u>Substantive Review</u>

a) The applicable standard of review is reasonableness

[30] This Court is dealing with an appeal from a decision disposing of an application for judicial review, and should simply ask whether the lower court judges chose the correct standard of review and applied it properly.[30] In this case, Molière JA, speaking for the majority of the Federal Court of Appeal, chose and applied a standard of reasonableness.[31] The Appellant concedes that the Minister's decision to revoke funding ought to be reviewed on the reasonableness standard of review.

<http://www.pch.gc.ca/eng/1359748884175> [*Guide*].
[28] *Golden Voice #1*, *supra* note 2 at para 16.
[29] See *ibid* at paras 24, 26, 31.
[30] *Canada Revenue Agency v Telfer*, 2009 FCA 23 at para 18, 386 NR 212. See also *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 45 (available on CanLII).
[31] *Golden Voice #2*, *supra* note 9 at para 8.

[31] As stated in *Merck v. Canada (Health)*, the present Court's role is to step into the shoes of the lower court, such that "an appellate court's focus is, in effect, on the administrative decision",[32] not on the appellate standards of correctness or a palpable and overriding errors. Thus, the Appellant submits that this Court's focus should be on the substance of the Minister's administrative decision.

b) The Minister's decision was unreasonable

[32] The Minister's decision to revoke the Appellant's funding does not fall within a range of reasonable outcomes. As will be discussed below, the Minister failed to put into evidence his consideration of the fundamental value of freedom of expression, as well as the constitutional norm of protection of minorities, as embodied by the Minister's own statute. Further, while the Minister provided reasons for revoking the Appellant's funding, these were not transparent and intelligible. Accordingly, the Minister's decision is unjustified and cannot be found to fall within a range of reasonable outcomes.

(i) The Minister failed to consider freedom of expression in his decision making

[33] The Minister ought to have considered the Appellant's freedom of expression in making his decision to revoke funding. Administrative decision makers must always consider fundamental *Charter* values in arriving at their decisions.[33] The "real reason"[34] why the Minister revoked the Appellant's funding was because of the Artistic Director's Comments at the Demonstration. The Appellant supported and invited people to this

[32] *Merck Frosst Canada Ltd v Canada (Health)*, 2012 SCC 3 at para 247, [2012] 1 SCR 23 [emphasis in the original omitted].
[33] *Doré v Barreau du Québec*, 2012 SCC 12 at para 35, [2012] 1 SCR 395 [*Doré*]; *Baker v Minister of Citizenship and Immigration*, [1999] 2 SCR 817 at para 56, 174 DLR (4th) 193 [*Baker*].
[34] *Golden Voice #1*, *supra* note 2 at para 10.

Demonstration through the circulation of e-mails, posters and flyers. These means of supporting the Demonstration constituted expression as they fostered and encouraged "participation in social and political decision making",[35] and are therefore protected under subsection 2(b) of the *Charter*. Given that the Minister revoked the Appellant's funding in light of its support for the Demonstration, he ought to have considered whether the Appellant's freedom of expression would be affected by the revocation of funds.

[34] The Minister's revocation of the Appellant's funds violated its freedom of expression. Freedom of expression, in both content and form, is protected by subsection 2(b) of the *Charter*.[36] A violation of freedom of expression can occur in either purpose or effect.[37] Whether intended or not, the effect of the Minister's revocation of funding is a restriction on the Appellant's expression in the future. The Minister stated in his Letter that the Appellant could reapply for future funding rounds. However, having been punished for associating itself with the political Demonstration, it is unlikely that, if the Appellant were to receive funding from the Program again, it would ever again associate itself with political movements. The effect of the Minister's decision is, therefore, a *de facto* censorship of the Appellant. The Minister ought to have turned his mind to this kind of *Charter* implication in making his decision.

[35] The Minister should have also considered the downstream effects of *de facto* censoring the Appellant. Faced with the possibility of retaliatory funding cuts, other entities that receive funding from the Minister will likely refrain from supporting political events or engaging in political programming. Accordingly, the Minister would have

[35] *Irwin Toy v Quebec (Attorney General)*, [1989] 1 SCR 927 at 976, 58 DLR (4th) 577.
[36] *Ibid* at 977.
[37] *Ibid*.

effective control over the political or ideological expression or affiliation of entities that receive funding from the Department. This may lead to a widespread *de facto* censorship of "legitimate activities important to our society".[38] The Minister should have considered the possibility of *de facto* censorship of the entities funded by the Department in making his retaliatory decision to revoke the Appellant's funding.

[36] Due to his failure to consider the effects of his decision on freedom of expression, the Minister's decision is unreasonable. The Supreme Court of Canada in *Doré* explained that "on judicial review, the question becomes whether, in assessing the impact of the relevant *Charter* protection and given the nature of the decision and the statutory and factual contexts, the decision reflects a proportionate balancing of the *Charter* protections at play".[39] The Court then goes on to say that "if, in exercising its statutory discretion, the decision-maker has properly balanced the relevant *Charter* value with the statutory objectives, the decision will be found to be reasonable".[40] The facts of this case provide no indication that, in his decision making, the Minister took account of either the Appellant's freedom of expression or that of other entities who receive Program funding. Therefore, it is impossible to say that his decision reflects a proper and proportionate balancing. As found by Napoleon J, this utter lack of balance is fatal to the Minister's decision and renders it unreasonable.

(ii) The Minister failed to consider the unwritten constitutional principle of protection of minorities

[37] The Minister's discretion is fettered by the *OLA*. The *OLA* is a quasi-constitutional document and must be given a large and liberal interpretation. As stated by

[38] *R v Keegstra*, [1990] 3 SCR 697 at 850, 3 CRR (2d) 193 [*Keegstra*].
[39] *Doré*, *supra* note 33 at para 57.
[40] *Ibid* at para 58.

the Supreme Court of Canada in *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, the *OLA* "belongs to that privileged category of quasi-constitutional legislation which reflects 'certain basic goals of our society' and must be so interpreted as to advance the broad policy considerations underlying it".[41] As a result, in evaluating the reasonableness of the Minister's decision, the Court must look beyond the Minister's statutory grant of power. Specifically, the Court must assess whether the Minister was "alert, alive and sensitive"[42] to the broad policy considerations embedded in the *OLA.*

[38] For example, the Minister's failure to explicitly consider the unwritten constitutional norm of protection of minorities voids his decision. This norm is explicitly embedded in the Minister's own statute,[43] and therefore, the Minister must give proper weight to the protection of minorities in all of his actions and decisions. In *Lalonde v. Ontario (Health Services Restructuring Commission)*, the Ontario Court of Appeal's decision was founded on the unwritten principle of protection of minorities.[44] The Court overturned the province's decision to close a regional Francophone hospital because the government did not sufficiently consider the hospital's integral role in preserving the Francophone community. Similarly, here, the Minister's reasons appear to "invoke administrative convenience and vague … concerns"[45], and do not evidence his sensitivity to the protection of the Francophone minority. Therefore, it cannot be assumed that the Minister considered the Appellant's integral role in preserving the vitality of the French

[41] *Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 at para 23, [2002] 2 SCR 773.
[42] *Baker*, *supra* note 33 at para 75.
[43] *OLA*, *supra* note 1 at ss 2(b), 43(1).
[44] *Lalonde v Ontario (Health Services Restructuring Commission)*, 56 OR (3d) 577 at para 187, 208 DLR (4th) 577.
[45] *Ibid* at para 168.

Communities by fostering their cultural industries. This Court should refrain from reading into the Minister's decision a consideration of the protection of minorities. Thus, the Minister's decision should be found to be unreasonable.

(iii) The Minister's reasons for revoking funding do not justify his decision and are not transparent and intelligible

[39] The Minister's reasons are so terse as to be inadequate on their face, and therefore do not survive judicial review. When conducting judicial review, the Court's goal is to "find a line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which [the decision maker] arrived".[46] To survive judicial review, the reasons must therefore be transparent and intelligible.[47] Here, the Minister's reasons explaining his decision are given in three short paragraphs.[48] These paragraphs hinge on the notion that the Appellant had a negative—or at the very least, a less than positive—impact on the community. However, these words do not elucidate in a transparent and intelligible manner the Minister's motivation in revoking the Appellant's funding. Specifically, the Minister does not explain which community he refers to, how impact is measured, what constitutes a negative impact, or what constitutes a less than positive impact.

[40] Moreover, the Minister's reasons do not justify his decision. It is unclear if the Minister found a "negative impact" or a "less than positive" impact, as his reasons appear to straddle both findings. In *Jean v. Canada*, the Federal Court dealt with similarly inscrutable reasons given by an immigration officer as justification for rejecting an

[46] *Law Society of New Brunswick v Ryan*, 2003 SCC 20 at para 55, [2003] 1 SCR 247.
[47] *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190.
[48] *Golden Voice #1*, *supra* note 2 at para 34.

applicant's study permit. The immigration officer rejected the application "based on *bona fides*".[49] The Court found that, from this short statement, it was "impossible … to determine what the officer was thinking".[50] Here, too, it is impossible to establish what the Minister was thinking. Thus, the Minister's non-justificatory reasons cannot survive judicial review.

[41] The Minister ought to have produced fulsome reasons, given the importance of the Appellant's interest engaged by his decision. When an important interest is at stake, the reasons provided cannot be opaque, but rather must be responsive.[51] While the Minister retains the discretion to revoke funding for legitimate reasons, those reasons must provide justification and "allow the reviewing court to understand why the tribunal made its decision".[52] Here, the Minister's reasons provide no indication that the revocation of funds is justified in the face of the Appellant's important interests, as will be discussed below. Consequently, the Minister acted unreasonably in failing to provide responsive reasons.

[42] In fact, the Minister's reasons are *prima facie* so inscrutable that they serve as evidence that he decided to revoke the Appellant's funding for purposes outside the scope of the *OLA*, as discussed above. Had the Minister truly made his decision to revoke funding pursuant to the *OLA* based on the Criteria, such as impact on the community sector, he would have had no reason not to provide more transparent and fulsome reasons. The Minister's unwillingness to do so, when combined with the evidence of his subsequent

[49] *Jean v Canada (Citizenship and Immigration)*, 2013 FC 442 at para 7 (available on CanLII).
[50] *Ibid* at para 14.
[51] *Baker*, *supra* note 33 at paras 39, 43. See e.g. *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 127, [2002] 1 SCR 3.
[52] *Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708.

unwillingness to meet the Appellant or meaningfully consider the Appellant's submissions, as discussed below, should alert this Court to a breach of the good faith exercise of his duties.

[43] In an effort to retroactively justify his decision to revoke the Appellant's funding, the Minister may now cite the controversy between arts-lovers and budget-cutters as constituting a negative impact on the community.[53] However, the Contribution Agreement is pursuant to the *OLA*, which protects the vitality of linguistic minority communities.[54] A broad interpretation of community, as encompassing all those who are critical of funding for arts institutions, would thus fall beyond the scope of the *OLA*. The definition of community interpreted purposively under the *OLA* must refer to the French Communities. Accordingly, the controversy between arts-lovers and budget-cutters should not concern the Minister for the purposes of the *OLA*.

[44] Further, it would be improper for the Minister to revoke funding because of controversy and protests, for example, as between English and French linguistic communities in BC. Debate and strong disagreement between people are not stifled in a society such as Canada where the search of truth is valued and protected.[55] The Linguistic Tension could conceivably prompt an opportunity for deeper dialogue and understanding between the groups, with better cooperation emerging as a result. The Department's own frame of reference for the vitality of official-language minority communities includes a metric for increased cooperation between the official language groups.[56] Therefore, tensions leading to cooperation are not necessarily understood within the Department's

[53] *Golden Voice #1*, *supra* note 2 at paras 28-30.
[54] *OLA*, *supra* note 1 at s 2(b).
[55] *Charter*, *supra* note 8 at s 2(b). See also *Keegstra*, *supra* note 38 at 704.
[56] *Guide*, *supra* note 27 at 7.

own frame of reference as negative. Accordingly, the Minister would not be justified in citing the Linguistic Tension as a negative impact, either from the Department's own frame of reference or from a *Charter* perspective.

[45] Finally, the Minister should not be permitted to retroactively supplement the meaning of reasons originally lacking in transparency. As a matter of common sense, any new reasons offered by a decision maker after a challenge to her decision has been launched must be viewed with deep suspicion.[57] The Court should not be swayed by any such after-the-fact attempt to bootstrap the Minister's decision.[58]

4) Procedural fairness

a) The duty of fairness applies to the Minister's decision

(i) The Minister's decision is administrative and concerns an individual

[46] The Minister's decision is concerned with the implementation of legislation, a type of decision to which the duty of fairness applies. The limited exceptions to procedural fairness are decisions that are legislative in nature and based on broad policy issues.[59] In this instance, the Minister's decision concerns the revocation of funding under a Program mandated by the *OLA* and the *Heritage Act*, and is therefore better characterized as an administrative decision.[60] Administrative decisions are not subject to political scrutiny in

[57] See e.g. *R v Teskey*, 2007 SCC 25 at para 23, [2007] 2 SCR 267.
[58] *Stemijon Investments v Canada (Attorney General)*, 2011 FCA 299 at para 41 (available on CanLII).
[59] *Attorney General of Canada v Inuit Tapirisat*, [1980] 2 SCR 735 at 758 (available on CanLII) [*Tapirisat*].
[60] See e.g. *Furey v Conception Bay Centre Roman Catholic School Board*, 1993 CanLII 3371 (NL CA); *Alliance for Language Communities in Quebec v Quebec (Attorney General)*, [1990] RJQ 2622; *Re Rural Dignity of Canada v Canada Post*, 88 DLR (4th) 191.

the same way that legislative functions are, so there is no rationale for their exemption from judicial review. Thus, judicial review for procedural fairness should apply.

[47] The Minister owed the Appellant a duty of procedural fairness as his decision concerned the Appellant's individual interests. Decisions involving individuals are administrative and require procedural fairness.[61] When the Minister makes a decision to grant funding under the Program, it is a comparative exercise involving the multiple and competing interests of a pool of applicants. This type of decision could thus be characterized as policy.[62] However, the revocation decision cannot be thus characterized. Having already allocated funds to the Appellant through the Contribution Agreement, the Minister's consideration narrows to the individual performance of the Appellant. As such, the Minister must focus on the Appellant's performance relative to its Metrics and the Criteria, rather than its performance vis-à-vis other applicants under the Program. Therefore, the Minister's decision to revoke funding concerns an individual and procedural fairness is owed.

(ii) The Minister's discretion is bounded by explicit Criteria and the Appellant's legitimate expectations

[48] Further, although the Contribution Agreement contains a discretionary component, the Minister's decision was not made on the basis of wide and unfettered discretion. In *Mavi*, the discretionary component of a Minister's power to confer a benefit on a sponsor was bounded by the explicit criteria contained in his statute.[63] Like in *Mavi*, the Criteria guide this Minister's decision making. Also, in *Mavi* the discretionary

[61] *Baker*, *supra* note 33 at para 28.
[62] See e.g. *Tapirisat*, *supra* note 59 at 738.
[63] *Canada (Attorney General) v Mavi*, 2011 SCC 30 at para 58, [2011] 2 SCR 504 [*Mavi*].

component of the decision-making power did not defeat legitimate expectations arising from the criteria, and it should not in this case either. Legitimate expectations therefore constrain the level of discretion Ministers have in their decision making. Accordingly, procedural fairness is not precluded. Thus, the discretion exercised by this Minister as constrained by both the Criteria and the Appellant's legitimate expectations yields a duty procedural fairness.

(iii) Procedural fairness applies to decision making under the OLA

[49] The Minister has a duty to act fairly in making decisions under the *OLA*. Where the relevant Act is silent as to the procedure to be used in exercising a pursuant power, whether it be a discretionary power or the granting of a right or a privilege, the Court must infer that the Legislator intended that the power be exercised fairly.[64] The *OLA*, and the *Program Guidelines* (the "**Guidelines**")[65] for funding decisions administered under the Program, are silent as to the procedures the Minister must follow in revoking funding. Therefore, the Court should read in the Legislator's intention of according procedural fairness to decisions made under the *OLA*.

b) The Minister owed and failed to satisfy his duty of procedural fairness

[50] The Minister's decision to revoke the Appellant's funding was not accompanied by the appropriate level of procedural fairness. As will be discussed below, the Minister's decision to revoke the Appellant's funding puts its entire existence into jeopardy. Given the dire effects of Minister's decision on the Appellant's interests, the Appellant was entitled to a significant level of procedural fairness. This duty is bolstered by the fact that

[64] *Ocean Port Hotel v British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52 at para 21, [2001] 2 SCR 781.
[65] *Guidelines: Official Language Support Programs* (2010), online: Government of Canada <http://www.pch.gc.ca/pgm/lo-ol/pgm/pdf/rldp-eng.pdf> [*Guidelines*].

the Minister's representations and conduct have led to the legitimate expectation of the Appellant that it would continue to receive funding. This legitimate expectation alone should be sufficient to open the door to a significant duty of procedural fairness. The Minister, however, failed to provide any measure of procedural fairness to the Appellant. Because of this, his decision was unfair.

(i) Under the Baker analysis the Minister owed the Appellant a duty of procedural fairness

[51] Consideration of the factors set out in *Baker v. Minister of Citizenship and Immigration* suggests the Minister owed the Appellant significant procedural safeguards.

1. The Minister's decision was a final decision without appeal

[52] Although the Minister's decision is not adjudicative in nature, this does not mean that the Appellant should not be granted any procedural safeguards.[66] There is no direct right of appeal in the *OLA* and the *Heritage Act.* Further, the Minister's decision to revoke the Appellant's funding on February 25th, 2013 was final. In fact, the Minister definitively characterized his decision as one "not to fund" the Appellant, and later confirmed that he "[did] not have the intention of reversing" his decision. The absence of a statutory right of appeal and the finality of the Minister's decision to revoke funding militate in favour of greater procedural protections than were afforded to the Appellant.[67]

2. There are important interests at stake

[53] The Appellant has a strong interest in federal funding support in order to continue its operations. Since federal funding represented the majority of the Appellant's budget,

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[66] *Knight v Indian Head School Division No 19*, [1990] 1 SCR 653 at 669-70, 69 DLR (4th) 489*; Nicholson v Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 SCR 311 at 325 (available on CanLII).
[67] *Baker*, *supra* note 33 at para 24.

revocation of $375,000 over 2013, 2014 and 2015 constitutes a significant practical interest. Reliance was placed on the fact that the 2013 funding would be received, and the Appellant likely planned its affairs on this basis. The timing of the retraction has most certainly prevented the Appellant from reapplying for funding from the Program for the 2013 year.[68] Furthermore, since the 2013 year had already begun at the time of the revocation, it is highly unlikely that the Appellant would have been able to secure alternate funding for the remainder of 2013. This means that the Appellant would probably not have been able to meet its payroll and operating expenses. Its resultant inability to honour its programming commitments would have jeopardized its major sources of revenue. In short, left with only 35% of its operating budget and no opportunity for revenue, the Appellant's very existence is in doubt.

[54] Since the Minister's decision to revoke the Appellant's funding goes to the core of its interests, he owed the Appellant a significant duty of procedural fairness. The fact that a decision affects the rights, privileges, or interests of an individual is sufficient to trigger the application of the duty of fairness.[69] Taken as a whole, the concepts of rights, privileges, and interests are sufficiently broad in scope to cover most decisions made by public authorities that affect or have the potential to affect an individual in important ways. Although the factors set out in *Baker* speak to the interests of individuals, these principles can be abstracted to the commercial context, as companies and organizations are not precluded from enjoying procedural fairness.[70] Further, the more important the decision is

[68] See *Schedule of Submission Deadlines for Fiscal Year 2014-2015*, online: Canadian Heritage <http://www.pch.gc.ca/eng/1358890687846/1358890731962>.
[69] *Baker*, *supra* note 33 at para 28.
[70] Guy Régimbald, *Canadian Administrative Law* (Markham: LexisNexis, 2008) at 281 [*Canadian Administrative Law*].

to an individual's life, the more significant the procedural protections owed.[71] Since there is no more important interest to the Appellant than existence and the Minister's decision puts the Appellant's existence into jeopardy, he owed a significant duty of procedural fairness to the Appellant.

3. The Appellant had legitimate expectations

3.1. The Minister's representations as to procedure informed the Appellant's legitimate expectations

[55] The Appellant's legitimate expectations arise from the procedure set out in the Contribution Agreement and the Guidelines, as well as on the Department's website. The fact that a procedure has been spelled out will be critical in assessing whether an individual has a legitimate expectation.[72] As described by the Contribution Agreement, the Guidelines, and on the Department's website,[73] the normal procedure is to assess applications in light of *all* Criteria, including the applicant's linkages with the objectives of the Program, and diversification of partnerships and funding sources.[74] The Minister's Letter references only a single criterion and therefore represents an abrupt departure from the normal procedure. It is a "basic expectation … that the Minister would act in accordance with her own published Guide".[75] Therefore, the Appellant should be permitted to continue to benefit from a consideration of *all* Criteria until rational grounds for

[71] *Baker*, *supra* note 33 at para 25.
[72] *Mercier-Niron v Canada (Minister of National Health and Welfare)*, [1995] FCJ No 1024 at para 15 (available on QL).
[73] See Funding Decisions and Evaluation Criteria, online: Canadian Heritage <http://www.pch.gc.ca/eng/1267216296891/1253859384178#a3>.
[74] *Golden Voice #1*, *supra* note 2 at para 10.
[75] *Brunico Communications v Canada (Attorney General)*, 2004 FC 642 at para 20 (available on CanLII).

withdrawing from this regular practice have been communicated, and the Appellant has been given an opportunity to comment on such changes.[76]

3.2. The Minister is precluded from backtracking on his substantive promise

[56] The Minister arbitrarily backtracked on his substantive promise of funding to the Appellant without according it any procedural protections. Legitimate expectations reinforce an agency's past practice or non-statutory procedural guidelines, and "serve to preclude procedural arbitrariness".[77] In *Baker*, the Supreme Court of Canada found that "it will generally be unfair for [administrative decision makers] to backtrack on substantive promises without according significant procedural rights".[78] In this case, the Minister made a substantive promise to fund the Appellant until 2015, and then suddenly revoked that funding with a curt Letter. The Minister therefore failed to accord any procedural protections to the Appellant, as discussed in greater detail below. The Appellant's legitimate expectations should preclude this type of sudden and arbitrary action by the Minister.

3.3. The Minister owed procedural protections proportionate to its long-term relationship with the Appellant

[57] The Appellant's legitimate expectations arise from a long-term relationship with the Program. Since 2005, the Appellant's role in enhancing the vitality of French Communities has grown and developed. The Program represents itself as valuing such partners, and aims to "to support the *ongoing* commitment and actions of [these]

[76] *Smith v Canada (Attorney General)*, 2009 FC 228 at para 26, [2010] 1 FCR 3.
[77] *Apotex v Canada (Attorney General)*, [2000] 4 FC 264 at para 122 (available on CanLII).
[78] *Baker*, *supra* note 33 at para 26.

organizations".[79] Indeed, the title of the Program—*Cooperation with the Community Sector*—holds forth a representation of cooperation, defined by the *Canadian Oxford Dictionary* as "working together to the same end".[80] In the Appellant's case, the Minister has steadily increased its funding, most recently in the amounts and increments set out in the Contribution Agreement, in clear and unambiguous language.[81] Therefore, the Appellant's legitimate expectations are informed by its long-term and cooperative relationship with the Program. This kind of cooperative relationship demands a proportionate procedure that gives the Appellant a voice in the decision-making process. The Minister's sudden and unilateral revocation of the Appellant's funding is therefore contrary to the Appellant's legitimate expectations.

(ii) The Minister failed in his duty of procedural fairness

1. <u>The Minister failed to meet his duty to provide notice of reconsideration</u>

[58] The Minister was not entitled to withdraw funding without notice. In *Mavi*, the Supreme Court of Canada held that once a duty of procedural fairness is owed with respect to a discretionary funding decision, the decision maker has to provide notice of the decision to those affected, and has to provide them an opportunity to submit their positions.[82] Similarly then, the Minister should have notified the Appellant of his intent to revoke funding before it became final. However, on the facts, no such notice was given before the Appellant received a Letter dated February 25th that constituted a final decision. Therefore,

[79] *Guidelines*, *supra* note 65 at 4 [emphasis added].
[80] *Canadian Oxford Dictionary*, 2d ed, *sub verbo* "cooperation".
[81] *Mount Sinai Hospital Center v Quebec (Minister of Health and Social Services)*, 2001 SCC 41 at para 131, [2001] 2 SCR 281. See also *Mavi*, *supra* note 63 at para 68.
[82] *Ibid* at para 45.

the Appellant received no notice of reconsideration, as was owed by the Minister under the duty of fairness.

2. The Minister failed in his duty to provide disclosure to the Appellant

[59] The Minister owed the Appellant a full duty of disclosure. In *May v. Ferndale Institution*, the Supreme Court of Canada held that "in the administrative context, the duty of procedural fairness generally requires that the decision maker discloses the information that he or she relied upon".[83] Beyond this threshold level of disclosure, in *Sheriff v. Canada (Attorney General)* the Federal Court held that full disclosure may be warranted in cases where important interests, such as "livelihood and damage to professional reputation are at stake".[84] Here, the Minister's revocation of funding has a strong impact on the Appellant's very existence, as discussed above. With such an important interest at stake, the Minister owed the Appellant full disclosure of the evidence informing his decision. However, no such disclosure was provided as owed by the Minister under the duty of fairness.

3. The Minister failed in his duty to provide the Appellant an opportunity to reply

[60] The Minister further infringed the Appellant's rights to *audi alteram partem* by arriving at his decision without ever giving the Appellant the opportunity to respond. Upon being notified of the Minister's decision to revoke its funding, the Appellant requested a meeting with the Minister to explain and substantiate its position. The Minister denied this request. Accordingly, the Minister effectively denied the Appellant the right to put forward its case in person.[85]

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[83] *May v Ferndale Institution*, 2005 SCC 82 at para 92, [2005] 3 SCR 809.
[84] *Sheriff v Canada (Attorney General)*, 2006 FCA 139 at para 29, [2007] 1 FCR 3.
[85] *Canadian Administrative Law*, *supra* note 70 at 247.

[61] The Minister could have instituted procedures other than in person meetings through which to hear the Appellant. As stated by the Supreme Court of Canada in *Baker*, the duty of fairness is flexible, recognizing "that meaningful participation can occur in different ways".[86] As in *Baker,* meaningful participation could have been achieved by inviting the Appellant to submit its written views on any ground the Minister had to revoke the funding. However, the Minister did not make any effort to request such submissions.

[62] Further, when the Appellant proactively took steps of its own to enforce its rights by sending detailed written submissions to the Minister, the Minister appears to have failed to take these into account. The Appellant submitted its reasons on March 12th, 2013 and received an almost immediate reply on March 13th, 2013 stating, "[t]hank you for your written submissions".[87] These words demonstrate no consideration of the submissions themselves, beyond mere acknowledgement that they were received. In short, contrary to its rights to *audi alteram partem*, the Appellant was denied funding and never allowed to raise its case.

5) <u>Conclusion</u>

[63] The Minister's unpredictable and sudden revocation of the Appellant's funding was an outright abuse of discretion. The Minister's decision was abusive because it was based on improper purposes, neglected relevant considerations. While the Minister cited the Appellant's allegedly negative or less than positive impact on the community, the motivation for his revocation was not actually rooted in these considerations. The "real reason"[88] for the Minister's decision was his dislike for the Artistic Director's political

[86] *Baker*, *supra* note 33 at para 33.
[87] *Golden Voice #1*, *supra* note 2 at para 40.
[88] *Ibid* at para 43.

Comments. This is an improper ground for the Minister's decision making, as it is beyond the scope of the *OLA*. Further, the Minister should have considered relevant factors, such as the Appellant's key role in enhancing the vitality and reach of the French Communities' cultural industries. For his failure to consider relevant considerations and his improper purpose, the Minister's decision should be overturned.

[64] The Minister's decision was also plainly unreasonable. The Minister should have considered any and all fundamental freedoms that would be affected by his decision. Here, the effect of the Minister's decision was to stifle the Appellant's future participation in political and ideological discourse for fear of retaliatory funding revocation. More broadly, this fear could spread to all applicants applying for funding from the Department. The resulting effect could be *de facto* censorship of all the entities the Department funds. There is no evidence that the Minister considered how his decision to revoke the Appellant's funding would impact the fundamental freedoms of the Appellant and other funding applicants. This, in and of itself, renders the Minister's decision unreasonable. Further, the Minister also failed to consider the unwritten constitutional principle of protection of minorities in his decision making. Such an egregious error is inexcusable, as the protection of linguistic minorities is expressly contemplated by the Minister's empowering statute.

[65] The Minister's reasons for revocation are unreasonably insufficient. His reasons thinly state that the Appellant had a negative or less than positive impact on the community, without specifying what any of those terms mean. From the terse statement he offered, it is impossible to follow what the Minister was thinking to arrive at his conclusion. In fact, the Minister's reasons are so devoid of content that they should alert this Court to the Minister's abuse of discretion. That is to say, the Minister's reasons are unintelligible and opaque, and therefore unreasonable.

[66] Lastly, the Minister failed in all respects to provide the Appellant with any measure of procedural fairness. Given the eight (8) year long relationship between the Appellant and the Minister, and the clear and unambiguous language of the Contribution Agreement detailing the schedule of contributions, the Appellant rightfully expected its funding to continue at least until 2015. The ongoing and cooperative nature of the relationship between the Minister and the Appellant should have informed the kind of procedural protections the Minister owed the Appellant in revoking its finding. To meet his duty of fairness, the Minister owed the Appellant notice, full disclosure and consideration of the Appellant's submissions. The Minister, however, failed in all of these duties. The Minister's decision should be set aside for being procedurally unfair.

[67] In summary, the Court should be hesitant to condone such egregious behaviour on the part of the Minister. Although not all decisions found to be unreasonable are automatically voided, unfair results will attract Courts' discretion[89] in this respect. For the reasons stated above, the Minister's decision should be set aside and the Appellant's funding reinstated.

IV. ORDER SOUGHT AND NAMES OF COUNSEL

[68] The Appellant thus requests that the Canadian Court of Justice:

ALLOW the Appellant's application for judicial review;
SET ASIDE the decision to revoke funding made by the Minister;
RESTORE the order of the trial judge reinstating the Appellant's funding at promised levels until the end of 2015; and
AWARD costs throughout.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 21st day of January, 2014.

L Rhodes.

Counsel # 1
Laura Rhodes

Rachel Tonelli-Zasarsky

Counsel # 2
Rachel Tonelli-Zasarsky

[89] *Federal Courts Act*, RSC 1985, c F-7, s 18.1.

APPENDIX A – LIST OF AUTHORITIES REFERRED TO

1) Legislation

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
Department of Canadian Heritage Act, SC 1995, c 11.
Federal Courts Act, RSC 1985, c F-7.
Official Languages Act, RSC 1985, c 31 (4th Supp).

2) Jurisprudence

Agraira v Canada (Public Safety and Emergency Preparedness), 2013 SCC 36 (available on CanLII).
Alliance for Language Communities in Quebec v Quebec (Attorney General), [1990] RJQ 2622.
Apotex v Canada (Attorney General), [2000] 4 FC 264 (available on CanLII).
Attorney General of Canada v Inuit Tapirisat, [1980] 2 SCR 735 (available on CanLII).
Baker v Minister of Citizenship and Immigration, [1999] 2 SCR 817, 174 DLR (4th) 193.
Brunico Communications v Canada (Attorney General), 2004 FC 642 (available on CanLII).
CUPE v Ontario (Minister of Labour), 2003 SCC 29, [2003] 1 SCR 539.
Canada (Attorney General) v Mavi, 2011 SCC 30, [2011] 2 SCR 504.
Canada Revenue Agency v Telfer, 2009 FCA 23, 386 NR 212.
Doré v Barreau du Québec, 2012 SCC 12, [2012] 1 SCR 395.
Dunsmuir v New Brunswick, 2008 SCC 9, [2008] 1 SCR 190.
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Irwin Toy v Quebec (Attorney General), [1989] 1 SCR 927, 58 DLR (4th) 577.
Jean v Canada (Citizenship and Immigration), 2013 FC 442 (available on CanLII).
Knight v Indian Head School Division No 19, [1990] 1 SCR 653, 69 DLR (4th) 489.
Lalonde v Ontario (Health Services Restructuring Commission), 56 OR (3d) 577, 208 DLR (4th) 577.
Lavigne v Canada (Office of the Commissioner of Official Languages), 2002 SCC 53, [2002] 2 SCR 773.
Law Society of New Brunswick v Ryan, 2003 SCC 20, [2003] 1 SCR 247.
May v Ferndale Institution, 2005 SCC 82, [2005] 3 SCR 809.
Merck Frosst Canada Ltd v Canada (Health), 2012 SCC 3, [2012] 1 SCR 23.
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Mount Sinai Hospital Center v Quebec (Minister of Health and Social Services), 2001 SCC 41, [2001] 2 SCR 281.
Nicholson v Haldimand-Norfolk Regional Board of Commissioners of Police, [1979] 1 SCR 311 (available on CanLII).
Newfoundland and Labrador (Treasury Board), 2011 SCC 62, [2011] 3 SCR 708.
Ocean Port Hotel v British Columbia (General Manager, Liquor Control and Licensing Branch), 2001 SCC 52, [2001] 2 SCR 781.

R v Keegstra, [1990] 3 SCR 697, 3 CRR (2d) 193.
R v Teskey, 2007 SCC 25, [2007] 2 SCR 267.
Re Rural Dignity of Canada v Canada Post, 88 DLR (4th) 191.
Roncarelli v Duplessis, [1959] SCR 121, 1959 CanLII 105.
Sheriff v Canada (Attorney General), 2006 FCA 139, [2007] 1 FCR 3.
Smith v Canada (Attorney General), 2009 FC 228, [2010] 1 FCR 3.
Smith & Rhuland Ltd v Nova Scotia, [1953] 2 SCR 95
Stemijon Investments v Canada (Attorney General), 2011 FCA 299 (available on CanLII).
Suresh v Canada (Minister of Citizenship and Immigration), 2002 SCC 1, [2002] 1 SCR 3.
Trinity Western University v College of Teachers (British Columbia), 2001 SCC 31, [2001] 1 SCR 772.

3) <u>Secondary Sources</u>

Canadian Heritage, *Cooperation with the Community Sector Development of Official-Language Communities: Applicant's Guide*, online: Canadian Heritage <http://www.pch.gc.ca/eng/1359748884175>.
Guidelines: Official Language Support Programs (2010), online: Government of Canada <http://www.pch.gc.ca/pgm/lo-ol/pgm/pdf/rldp-eng.pdf>.
Guy Régimbald, *Canadian Administrative Law* (Markham: LexisNexis, 2008)
Standing Senate Committee on Official Languages, *Study of the Action Plan for Official Languages and the Annual Reports of the Office of the Commissioner of Official Languages, Treasury Board and the Department of Canadian Heritage*, online: Government of Canada <http://www.parl.gc.ca/Content/SEN/Committee/372/offi/rep/rep04oct03-e.pdf>.