Official English Translation

Québec (Procureur général) c. D'Amico **2015 QCCA 2138**

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

N° : 500-09-025747-155
(500-17-082567-143)

DATE: December 22, 2015

CORAM: THE HONOURABLE NICOLE DUVAL HESLER, C.J.Q.
ALLAN R. HILTON, J. A.
ROBERT M. MAINVILLE, J.A.

ATTORNEY GENERAL OF QUEBEC
APPELLANT – RESPONDENT ON CROSS APPEAL – Defendant
v.

LISA D'AMICO
PAUL J. SABA
RESPONDENTS / APPELLANTS ON CROSS-APPEAL – Plaintiffs
and
ATTORNEY GENERAL OF CANADA
IMPLEADED THIRD PARTY - Impleaded third party
and
CHRISTIAN LEGAL FELLOWSHIP
EUTHANASIA PREVENTION COALITION
IMPLEADED THIRD PARTIES – Interveners

JUDGMENT

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[1] The Attorney General of Quebec appeals, with leave, from a judgment of the Superior Court, District of Montreal (the Honourable Mr. Justice Michel A. Pinsonnault), rendered on December 1, 2015. The motions judge was asked to issue a 10-day renewable provisional injunction seeking to render unenforceable sections 26 to 32 of the *Act respecting End-of-Life Care*, C.Q.L.R., c. S-32.0001, respecting medical aid in dying, notwithstanding the coming into force of that legislation on December 10, 2015.

[2] The judge dismissed the motion for a provisional injunction, but nevertheless declared that until the declaration of invalidity issued by the Supreme Court of Canada in *Carter v. Canada (Attorney General)*[1] ("*Carter*") with respect to section 14 and paragraph 241(*b*) of the *Criminal Code* became effective, these provisions of the *Criminal Code* rendered inoperative sections 4 and 26 to 32 of the *Act respecting End-of-Life Care* insofar as they pertain to medical aid in dying.

[3] The respondents seek the dismissal of the Attorney General of Quebec's appeal. In addition, through their cross-appeals, they request that the Court issue the injunction sought from the motions judge prohibiting or suspending the application of the provisions of the *Act respecting End-of-Life Care* respecting medical aid in dying; alternatively, they seek a provisional injunction reiterating the motions judge's declaratory orders.

Background

Medical aid in dying under the *Act respecting End-of-Life Care*

[4] On June 5, 2014, after a long public consultation, the Quebec National Assembly enacted the *Act respecting End-of-Life Care*. Section 78 of the legislation decreed that it would come into force on December 10, 2015. For the first time in Canada, the legislation provides a regulatory framework for allowing medical aid in dying, which is treated as a form of end-of-life care.

[5] The legislation defines medical aid in dying as care consisting in the administration by a physician of medications or substances to an end-of-life patient, at the patient's request, in order to relieve the patient's suffering by hastening death.

[6] Under the legislation, only an individual who meets all of the following criteria may obtain medical aid in dying: (a) be an insured person within the meaning of the *Quebec Health Insurance Act*; (b) be of full age and capable of giving consent to care; (c) be at the end of life; (d) suffer from a serious and incurable illness; (e) be in an advanced state of irreversible decline in capability; (f) experience constant and unbearable physical or psychological suffering which cannot be relieved in a manner the patient deems tolerable; (g) the patient must request medical aid in dying himself, in a free and informed manner, by means of the form prescribed by the Minister, which must be dated and signed by the patient; and (h) the form must be signed in the presence of and countersigned by a health or social services professional, and if the professional is not the attending physician, the signed form is to be given by the professional to the attending physician. An individual may also, at all times and by any means, withdraw the request for physician-assisted dying or ask that it be postponed.

[7] Before administering medical aid in dying under the *Act respecting End-of-Life Care*, the physician must be of the opinion that the individual meets all the criteria described above, notably by (a) making sure that the request is being made freely, in

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[1] *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331.

particular by ascertaining that it is not being made as a result of external pressure; (b) making sure that the request is an informed one, in particular by informing the individual of the prognosis for the illness and of other therapeutic possibilities and their consequences; (c) verifying the persistence of suffering and that the wish to obtain medical aid in dying remains unchanged, by talking with the individual at reasonably spaced intervals given the progress of the individual's condition; (d) discussing the individual's request with any members of the care team who are in regular contact with the individual; (e) discussing the individual's request with his or her close relations, if the individual so wishes, (f) ensure that the individual has had the opportunity to discuss the request with the persons he wishes to contact; and (g) obtain the opinion of an independent second physician who must consult the individual's record, examine the individual, and confirm that the criteria for obtaining medical aid in dying set out in the *Act* have been met

[8] If the physician determines that medical aid in dying may be administered to an individual requesting it, the physician must administer such aid personally and take care of and stay with the patient until death ensues. If the physician determines that medical aid in dying cannot be administered, he must inform the individual of the reasons for that decision.

[9] A physician who refuses a request for medical aid in dying for a reason not based on the legislation must notify the executive director of the institution in which the physician practices or, if the physician practises in a private health facility, the executive director of the local authority that coordinates the services offered by the health and social service providers in the local health and social services network serving the territory in which the individual making the request resides. Steps are then taken to provide another physician willing to treat the request in accordance with the legislation.

[10] The legislation sets out several measures to control and circumscribe medical aid in dying: ministerial inspections, clinical protocols adopted by the council of physicians, dentists and pharmacists established for an institution, reports to this council by the physician administering medical aid in dying within an institution, reports to the *Collège des médecins du Québec* (the provincial medical board) by a physician who administers medical aid in dying within a private facility, assessments by this medical board of the quality of the care provided, which board must prepare an annual report on the matter, and the creation of a Commission on end-of-life care with the mandate of examining any matter relating to end-of-life care, and, to this end, notably refering to the Minister any matter relating to end-of-life care that needs the attention of or action by the Government of Quebec.

[11] The legislation also provides that a physician who administers medical aid in dying to an individual must, within the 10 days that follow, give notice thereof to the Commission on end-of-life care and provide the information set out in the regulatory framework. On receiving notice from the physician, the Commission assesses compliance with the legislative conditions for obtaining medical aid in dying in accordance with the procedure prescribed by regulation. If two-thirds of the Commission

members present are of the opinion that these conditions were not complied with, the Commission sends a summary of its conclusions either to the provincial medical board or to the concerned institution so that appropriate measures may be taken. A mechanism for complaints regarding end-of-life care is also established.

[12] Finally, the legislation provides that a physician may refuse to administer medical aid in dying because of personal convictions and that a health professional may refuse to take part in administering that aid for the same reason.

The decision of the Supreme Court of Canada in *Carter*

[13] On February 6, 2015, the Supreme Court rendered its decision in *Carter* on the subject of medical aid in dying. It issued a declaration whereby section 14 and paragraph 241(*b*) of the *Criminal Code* unjustifiably infringe section 7 of the *Canadian Charter of Rights and Freedoms* and are of no force or effect to the extent that they prohibit physician-assisted death for a competent adult person who (1) clearly consents to the termination of life and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition.

[14] The Supreme Court of Canada, however, suspended the declaration for 12 months to allow "Parliament and the provincial legislatures to respond, should they so choose, by enacting legislation consistent with the constitutional parameters set out in these reasons".[2]

[15] It is useful to reproduce here section 14 and paragraph 241(*b*) of the *Criminal Code*:

14. No person is entitled to consent to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given.	**14.** Nul n'a le droit de consentir à ce que la mort lui soit infligée, et un tel consentement n'atteint pas la responsabilité pénale d'une personne par qui la mort peut être infligée à celui qui a donné ce consentement.
241. Every one who	**241.** Est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans quiconque, selon le cas :
…	…
(b) aids or abets a person to commit suicide,	*b)* aide ou encourage quelqu'un à se donner la mort,
Whether suicide ensues or not, is guilty of an	que le suicide s'ensuive ou non..

[2] *Ibid.* at para. 126.

indictable offence and liable to imprisonment
for a term not exceeding fourteen years

[16] On December 3, 2015, the Attorney General of Canada asked the Supreme Court of Canada to extend the suspension of the declaration of invalidity for an additional 6 months. While not opposing this request, the Attorney General of Quebec has itself asked the Supreme Court of Canada to exempt Quebec from the suspension of the declaration of invalidity taking into account the provisions concerning medical aid in dying set out in the *Act respecting End-of-Life Care*. It should be noted that the Attorney General of Canada has not opposed Quebec's request. The Supreme Court of Canada, however, has not yet adjudicated these two applications.

The proceedings brought by the respondents

[17] Through a motion to institute proceedings dated May 26, 2014, and amended on November 12, 2015, the respondents Lisa D'Amico and Dr. Paul J. Saba ask the Superior Court to declare that the euthanasia of a human being by his or her physician is contrary to various laws, that medical aid in dying should not be deemed a form of medical care, that the protection of persons must prevail over personal autonomy and individual will, and that in the context of heath care in Quebec, euthanasia constitutes a violation of fundamental rights.

[18] The respondents request that the provisions of the *Act respecting End-of-Life Care* allowing for medical aid in dying be declared invalid or inapplicable for as long as the offer of appropriate health care enabling a real choice and actual free and informed consent is not available in Quebec. They maintain that Quebec's health care system is deficient — with respect to palliative care in particular — which deficiencies place into question the free and informed nature of the consent provided by persons who would avail themselves of medical aid in dying contemplated by the *Act respecting End-of-Life Care*.

[19] They also seek a provisional injunction, followed by an interlocutory and permanent injunction, ordering that the provisions of the *Act respecting End-of-Life Care* related to medical aid in dying do not apply when they come into force on December 10, 2015, on the ground that these provisions violate section 14 and paragraph 241(*b*) of the *Criminal Code*, which remain in force as long as the declaration of invalidity in *Carter* is suspended.

The judgment of the Superior Court

[20] The motions judge heard the respondent's motion for a provisional injunction, which was moreover supported by the Attorney General of Canada, an impleaded party in the litigation.

[21] The judge noted the position of the Attorney General of Canada, supporting that of the respondents, whereby medical aid in dying contemplated by the *Act respecting End-of-Life Care* allows a physician to assist an individual in committing suicide, and

that this is a prohibited act under paragraph 241(*b*) of the *Criminal Code*. The motions judge also noted the Attorney General of Canada's position that this encroaches directly on Parliament's jurisdiction over criminal matters. For the Attorney General of Canada, the federal paramountcy principle of constitutional law weighed in favour of issuing the injunction, especially since physicians authorized by the provincial legislation to provide medical aid in dying are exposing themselves to committing what are still criminal acts under the *Criminal Code*. It should be noted that the Attorney General of Canada did not repeat these submissions in the appeal before us.

[22] The motions judge recognized that it was not appropriate for him, at this stage of the proceedings, to adjudicate the issue raised by the Attorney General of Quebec according to whom medical aid in dying is a form of health care that is excluded from the scope of section 14 and paragraph 241(*b*) of the *Criminal Code*; the motions judge nevertheless found that, at first glance, medical aid in dying is a form of assisted suicide, an act prohibited by these provisions of the *Criminal Code*.

[23] The motions judge also acknowledged the so-called presumption of validity of laws upon which the Attorney General of Quebec relied and which the courts have affirmed on several occasions. Nevertheless, the motions judge found that he was facing a situation of clear legislative conflict that necessarily triggered the application of the doctrine of federal paramountcy given, in his view, the obvious inconsistency between the provisions of *the Act respecting End-of-Life Care* concerning medical aid in dying and the wording, purpose, and intent of section 14 and paragraph 241(*b*) of the *Criminal Code*.

[24] In the motions judge's view, the case involved provincial statutory provisions that are presumed to be valid but which are nevertheless flagrantly in conflict with federal criminal law provisions that are still valid and in force. Accordingly, in his view, it is appropriate to give precedence to the *Criminal Code* following the well-known federal paramountcy doctrine.

[25] In the motions judge's view, the fact that the *Criminal Code* provisions at issue were declared constitutionally invalid and of no force or effect in *Carter* is irrelevant since the Supreme Court of Canada could not have been unaware that the *Act respecting End-of-Life Care* was coming into force on December 10, 2015. Nevertheless, the Supreme Court of Canada refused to allow an exemption mechanism for the 12 months period during which its declaration of invalidity was suspended.

[26] The motions judge concluded that the provisional injunction which was being sought was moot in light of the incompatibility between medical aid in dying and the *Criminal Code* provisions. In the motions judge view, because of this incompatibility, medical aid in dying is *ipso facto* inoperative upon the coming into force of the *Act respecting End-of-Life Care*, and will remain so until the declaration of invalidity issued in *Carter* becomes effective with respect to section 14 and paragraph 241(*b*) of the *Criminal Code*. Given these findings of law, the motions judge dismissed the application

for a provisional injunction. These findings were then articulated through declaratory conclusions.

Analysis

[27] The judgment under appeal rests on the premise that the doctrine of federal paramountcy applies in this case. That premise is erroneous.

[28] It is useful to note that, within the context of provisional injunction proceedings, the impugned provincial legislation benefits from what is commonly, but erroneously, referred to as the presumption of constitutional validity. This presumption is rather a rule of procedure whereby the onus of establishing that legislation violates the Constitution lies with those who challenge it. By definition, this rule is essentially directed to the merits of the case.[3] It is therefore rare for the constitutional validity of legislation to be determined within the framework of a provisional or interlocutory proceeding, and courts will not lightly decide that a law that Parliament or a provincial legislature has duly enacted for the public good is inoperative before a complete constitutional review has been completed.[4]

[29] It is not impossible to do so, however. There may arise rare cases where the constitutional issue will present itself as a simple question of law alone which can be finally determined by a judge deciding a provisional or interlocutory proceeding.[5] There may also be rare cases where the situation requires that the merits of the case be dealt with immediately.[6]

[30] Nevertheless, generally speaking, at the provisional or interlocutory stage, courts must assume that the impugned legislative measure serves a valid purpose in the public interest and, to the extent possible, must avoid ruling on the merits of the issue unless exceptional circumstances are at play.

[31] The motions judge recognized that it was not appropriate for him to question the constitutional validity of the provisions relating to medical aid in dying set out in the *Act respecting End-of-Life Care* within the framework of the proceedings which were before him. At this stage of proceedings, it must be assumed that the *Act respecting End-of-Life Care* serves a valid public purpose.

[32] The question raised in this case is not whether the provisions of the *Act respecting End-of-Life Care* that concern medical aid in dying are valid, but rather whether these provisions are in such a clear conflict with federal legislation that the doctrine of federal paramountcy unavoidably applies. This is how the trial judge defined the question before him.

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3 *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 at 124–125.

4 *Harper v. Canada (Attorney General)*, 2000 SCC 57, [2000] 2 S.C.R. 764 at para. 9.

5 *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, *supra* note 3 at 133; *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 333–334 and 339–340.

6 *Tremblay v. Daigle*, [1989] 2 S.C.R. 530.

[33] When two otherwise valid federal and provincial statutes are in conflict, there must be a legal rule to resolve the impasse. The applicable rule is the following: where there is a real incompatibility between a valid federal statute and a valid provincial statute, the federal statute must prevail to the extent of the incompatibility. This is what is known as the doctrine of federal paramountcy. This doctrine applies not only to cases in which the provincial legislature has legislated pursuant to its ancillary power to trench on an area of federal jurisdiction, but also to situations in which the provincial legislature acts within its primary powers, and Parliament pursuant to its ancillary powers.[7]

[34] For the doctrine of federal paramountcy to apply, however, the provincial legislation must be incompatible with a valid federal statute. As Gascon J. of the Supreme Court of Canada recently noted in *Moloney*, the application of the doctrine of federal paramountcy requires that "both laws [be] independently valid"; "[i]f the legislation of one level of government is invalid, no conflict can ever arise, which puts an end to the inquiry".[8] Also, in *R. v. Edwards Books and Art Ltd.*, Dickson C.J. noted that an "unconstitutional [federal] statute cannot render provincial legislation inoperative under the paramountcy doctrine".[9]

[35] In light of *Carter*, there is no doubt that the provisions of section 14 and paragraph 241(*b*) of the *Criminal Code* are constitutionally invalid federal legislative provisions insofar as they prohibit medical aid in dying.

[36] It is true that the coming into effect of this declaration of invalidity has been suspended for 12 months. Nevertheless, as recognized by Lamer C.J., dissenting on the merits in *Rodriguez*, "during the period of a suspended declaration of invalidity...the provision is both struck down and temporarily upheld"[10] (emphasis in original), which makes constitutional exemptions possible where circumstances are amenable. Lamer C.J. also recognized that "the legislation subjected to a suspended declaration of invalidity will not necessarily be left operative in all of its violative aspects...during the period of the suspension".[11]

[37] As LeBel and Rothstein JJ. also pointed out in *Hislop*,[12] a declaration of constitutional invalidity is normally suspended to avoid a legal vacuum until Parliament or the concerned provincial legislature can replace the constitutionally invalid provisions: "[b]y suspending the declaration of invalidity, the Court allows the constitutional infirmity to continue temporarily so that the legislature can fix the problem". Medical aid in dying is an area of concurrent jurisdiction regarding which the provincial legislature may validly legislate and regarding which Quebec has in fact legislated. The legislative

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7 *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3 at para. 69; *Marine Services International Ltd. v Ryan (Succession)*, 2013 SCC 44, [2013] 3 S.C.R. 53 at para. 65.

8 *Alberta (Attorney General) v. Moloney*, 2015 SCC 51 ("*Moloney*") at para.17; see also *Marine Services International Ltd. v. Ryan (Succession)*, *supra* note 7 at para. 66.

9 *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713 at 734.

10 *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519 ("*Rodriguez*")at 577.

11 *Ibid.* at 571-572.

12 *Canada (Attorney General) v. Hislop*, 2007 SCC 10, [2007] 1 S.C.R. 429 at para. 90-91 ("*Hislop*"); *see also* Schachter v. Canada, [1992] 2 S.C.R. 679 at 719.

framework established by Quebec precisely makes it possible to fill the legal vacuum so as to allow individuals who meet all of the conditions set out in the *Act respecting End-of-Life Care* to exercise their constitutional rights recognized by the Supreme Court of Canada with respect to medical aid in dying .

[38] The principle of federalism, a constitutional principle with full legal effect, "recognizes the diversity of the component parts of Confederation, and the autonomy of provincial governments to develop their societies within their respective spheres of jurisdiction".[13] It would run contrary to this principle to claim that the doctrine of federal paramountcy could be applied in the case now before us so as to give precedence to invalid federal legislative provisions, merely because the declaration of invalidity was temporarily suspended to allow Parliament and the provincial legislatures to comply with the precepts set out in *Carter*.

[39] It seems to us that this would be giving a new, overly broad scope to the doctrine of federal paramountcy, a doctrine which must be narrowly construed by the courts so as to avoid legislative conflicts.[14]

[40] To apply the doctrine of federal paramountcy as though *Carter* had actually upheld the constitutional validity of the *Criminal Code* provisions prohibiting medical aid in dying and not found them to be invalid is the wrong approach to take in the circumstances of this case. The conflict here, if any, it is not between valid provincial legislation and valid federal legislation, but between valid provincial legislation, or presumed valid at this stage of proceedings, and a court order suspending the coming into effect of a declaration of constitutional invalidity with respect to the federal legislative provisions at issue. What must actually be determined is whether the effect of this court order, understood in light of its objectives, is to render inoperative the provisions of the *Act respecting End-of-Life Care* concerning medical aid in dying.

[41] In *Carter*, the Supreme Court of Canada, relying on earlier cases,[15] states that health is an area of concurrent jurisdiction with respect to which both Parliament and the provincial legislatures may validly legislate. Both levels of government may therefore legislate on aspects of medical aid in dying.[16] The Supreme Court also held that the prohibition against medical aid in dying deprived persons suffering from grievous and irremediable medical conditions of the right to life, liberty and security of the person.[17] It also recognized that the risks associated with medical aid in dying can be limited through a carefully designed and monitored system of safeguards.[18] It added that it was for both Parliament and the provincial legislatures to respond to the declaration of

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13 *Reference re Secession of Quebec,* [1998] 2 S.C.R. 217 at 251.
14 *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd*., 2015 SCC 53 at paras. 21 and 23.
15 *RJR-MacDonald Inc. v. Canada (Attorney General*), [1995] 3 S.C.R. 199 at para. 32; *Schneider v. The Quee*n, [1982] 2 .S.C.R. 112 at 142.
16 *Carter, supra* note 1 at para. 53.
17 *Ibid.*at para. 70.
18 *Ibid* at para. 117.

invalidity, should they so choose, "by enacting legislation consistent with the constitutional parameters set out in these reasons".[19]

[42] The *Act respecting End-of-Life Care* is legislation with respect to health which falls within Quebec's legislative jurisdiction. It allows medical aid in dying and provides a framework for this. It consequently allows individuals suffering from grievous and irremediable medical conditions to benefit from medical aid in dying, a form of assistance which, according to the Supreme Court of Canada, is part of the right to life, liberty and security of the person. The legislation provides a strong framework for controlling medical aid in dying, thereby limiting the risks involved.

[43] In this context, we are of the view that both the effect and the objectives of the order suspending the coming into effect of the declaration of invalidity of section 14 and paragraph 241(*b*) of the *Criminal Code* are not incompatible with the coming into force of the provisions of the *Act respecting End-of-Life Care* concerning medical aid in dying. We believe, on the contrary, that the purpose of this suspension order is precisely to allow Parliament and the provincial legislatures who are so inclined to legislate as soon as possible with respect to medical aid in dying within their respective legislative jurisdictions.

[44] This does not mean that the federal government and Parliament cannot continue their work on medical aid in dying so as to develop a federal legislative framework that would apply to Quebec as well as the rest of Canada. If Parliament eventually enacts valid federal legislation with respect to medical aid in dying that applies to Quebec, the provisions of the *Act respecting End-of-Life Care* that concern medical aid in dying will need to be re-examined to determine whether they are in conflict with that legislative framework. Until then, however, the invalid *Criminal Code* provisions prohibiting medical aid in dying cannot alone prevent the coming into force and the application of the *Act respecting End-of-Life Care*. Nor can the suspension of the declaration of invalidity in *Carter* have such an effect in the specific context at issue.

[45] Given this conclusion, it is not necessary to deal with the other grounds of appeal raised by the Attorney General of Quebec. It should also be noted that the respondents may continue to challenge on their merits before the Superior Court the constitutional validity of the provisions of the *Act respecting End-of-Life Care* that concern medical aid in dying with respect to the other grounds raised in their amended motion to institute proceedings.

[46] We also note that the trial judge was right to dismiss the respondents' motion for a provisional injunction. Indeed, the respondents do not satisfied the criteria for obtaining such an injunction. As the trial judge pointed out, the respondent Lisa D'Amico's personal situation does not meet the criteria that give rise to a provisional

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[19] *Ibid* at para. 126.

injunction. As for the respondent Dr. Paul J. Saba, given our conclusions on this appeal, it is clear that he also does not satisfy the criteria. The respondents' cross-appeals should therefore be dismissed.

FOR THESE REASONS, THE COURT:

[47] **ALLOWS** the appeal of the Attorney General of Quebec;

[48] **REVERSES**, in part, the rectified judgment of the Superior Court dated December 1, 2015, in file number 500-17-082567-143;

[49] **ANNULS** the conclusions set out in paragraphs 189, 190 and 191 of that judgment;

[50] **DISMISSES** the respondents' cross-appeals;

[51] **RESERVES** the jurisdiction of the Court to adjudicate the motion seeking provision for costs served and filed during deliberations;

[52] **THE WHOLE WITHOUT COSTS** in view of the circumstances.

NICOLE DUVAL HESLER, C.J.Q.

ALLAN R. HILTON, J. A.

ROBERT M. MAINVILLE, J.A.

Mtre Jean-Yves Bernard
Mtre Mario Normandin
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Date of hearing: December 18, 2015