Unofficial English Translation of the Judgment of the Court

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| Bricka c. Procureur général du Québec | | | | | 2022 QCCA 85 |
| COURT OF APPEAL | | | | | |
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| CANADA | | | | | |
| PROVINCE OF QUEBEC | | | | | |
| REGISTRY OF | | | MONTREAL | | |
| No.: | 500-09-029500-212 | | | | |
| (505-17-012101-202) | | | | | |
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| DATE: | January 21, 2022 | | | | |
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| CORAM: | | THE HONOURABLE | | YVES-MARIE MORISSETTE, J.A.  JULIE DUTIL J.A.  MARIE-JOSÉE HOGUE, J.A. | |
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| STANISLAS BRICKA | | | | | |
| APPELLANT – plaintiff | | | | | |
| v. | | | | | |
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| ATTORNEY GENERAL OF QUEBEC | | | | | |
| RESPONDENT – Defendant | | | | | |
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| JUDGMENT | | | | | |
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1. The appellant appeals against a judgment rendered on April 8, 2021, by the Superior Court, District of Montreal (the Honourable Brian Riordan), dismissing the application for judicial review seeking a declaration of invalidity of orders in council and a declaratory judgment.[[1]](#footnote-1)
2. The appeal mainly concerns the interpretation of section 119 of the *Public Health Act* (“*PHA*”)[[2]](#footnote-2) authorizing the Government to renew an emergency for periods of 10 days without obtaining the consent of the National Assembly even though these successive periods total more than 30 days. In the alternative, the appellant argues that the penal provisions of section 139 *PHA* do not apply to the measures adopted under section 123 *PHA*.
3. For the reasons set out more fully below, the Court dismisses the appeal. Section 119 *PHA* is clear and allows the Government to renew a public health emergency every 10 days, as long as there is a serious threat to the health of the population, whether real or imminent (section 118 *PHA*), without needing to obtain the prior consent of the National Assembly when the emergency continues for more than 30 days. The National Assembly, however, has an *a posteriori* power of review and can vote to disallow a public health emergency or any renewal thereof (section 122 *PHA*). As for section 139 *PHA*, it applies to measures taken pursuant to section 123 *PHA*.

#### Background

1. On March 13, 2020, the Government declared a public health emergency in all of the territory of Quebec for a period of 10 days, in accordance with section 118 of the *Public Health Act*[[3]](#footnote-3)(“*PHA*”). Since then, and to date, this public health emergency has been renewed every 6 to 10 days under section 119 *PHA*.
2. In August 2020, the appellant filed an application for judicial review [translation] “for a declaration of invalidity of the orders in council and a declaratory judgment”. The conclusions sought, as amended on March 11, 2021, were the following:

[translation]

DECLARE invalid and inoperative Order in Council 204-2021 of March 10, 2021, concerning the renewal of the public health emergency pursuant to section 119 of the *Public Health Act*;

IN THE ALTERNATIVE, DECLARE THAT the penal provisions under section 139 *PHA* do not apply to the regulatory measures concerning the renewal of the public health emergency adopted by the Government, the Minister of Health, or the Public Health Director and listed in the appended schedule.[[4]](#footnote-4)

#### The trial judgment

1. The judge noted at the outset that the parties agree on the application of the reasonableness standard.
2. After summarizing the appellant’s position, the judge noted that [translation] “the argument is imaginative, but unconvincing”. In support of this assertion, he stated that the language of section 119 *PHA* is clear and unassailable with respect to the Government’s right to renew the declaration of emergency for a maximum period of 10 days and does not impose any limitation or condition other than the maximum duration. He added that an amendment to the *PHA* removed the former obligation to lay before the National Assembly any order in council declaring a state of emergency made by the Government. He was also of the view that the orders in council to renew were consistent with the *PHA*, which is the enabling statute. Further, according to the judge, the appellant did not rebut the presumption of validity of Government decisions, which includes orders in council. He noted that, pursuant to section 122 *PHA*, the National Assembly may vote to disallow any renewal of a public health emergency. No attempt was made in this regard. Last, the judge considered that not only was there no evidence that the orders renewing the public health emergency were unreasonable, but the evidence had convinced him that they were reasonable.[[5]](#footnote-5)
3. The judge rejected the appellant’s argument that the penal provisions of section 139 *PHA* are inapplicable. Whereas the scope of the orders in council are general, social, normative, and personal, the appellant argued that section 139 *PHA* can apply only to individual orders. The judge, however, was of the view that the appellant’s reasoning was unsound, as it would allow the Government to prescribe rules without being able to sanction non-compliance by individuals, which [translation] “would deprive the regulations and orders in council of any real effect and lead to disaster”. The judge concluded that, despite their normative and impersonal nature, to achieve their objective, [translation] “the regulations must one way or another control or delineate the behaviour of individuals”.[[6]](#footnote-6)

#### The grounds of appeal

1. The appellant raises two grounds of appeal, which can be expressed as follows:

* Did the trial judge err in concluding that the orders in council renewing the public health emergency were valid?
* Did the judge err in concluding that the penal provisions of section 139 *PHA* apply to the measures adopted by orders in council?

#### Standard of review

1. As stated, the parties agree that the reasonableness standard applies, in accordance with the principles established in *Vavilov*.[[7]](#footnote-7)
2. In matters of judicial review, the Court of Appeal must ensure that the Superior Court chose the appropriate standard of review and applied it correctly.[[8]](#footnote-8) Its role is not merely to determine whether the judge committed a palpable and overriding error.[[9]](#footnote-9) Rather, it must step into the shoes of the lower court, and its “focus is, in effect, on the administrative decision”.[[10]](#footnote-10) This case does not concern an administrative tribunal decision; rather, it is the exercise of the statutory power delegated to the Government to renew the public health emergency for periods of 6 to 10 days since March 13, 2020, without the consent of the National Assembly, that must be reviewed.[[11]](#footnote-11)
3. **Did the trial judge err in concluding that the orders in council renewing the public health emergency were valid?**
4. The appellant argues that section 119 *PHA* is open to interpretation and that the intention of the legislature must therefore be sought. In his view, it should accordingly be concluded that the legislature did not want the Government to be able to renew the public health emergency by successive periods of a maximum of 10 days totalling more than 30 days without consulting the National Assembly, knowing that the situation would continue and that the necessary measures could be anticipated. The term “renew” points to a situation that starts again, rather than one that continues. Each renewal should therefore be subject to the same condition as the initial declaration of a public health emergency, that is, an emergency.
5. According to the appellant, the purposive construction approach leads to the conclusion that the legislature, by adding the terms “or, with the consent of the National Assembly, for a maximum period of 30 days”, wanted to subject the renewal of the public health emergency to the approval of the elected members whenever measures set out in section 123 *PHA* are adopted for more than 10 days.
6. The appellant understands from the parliamentary debates surrounding the adoption of the *Civil Protection Act* that a declaration of an emergency targets [translation] “rare and short-term situations”.[[12]](#footnote-12) He considers that this indicates an intention not to exclude the elected members when an emergency is to be renewed. He is also of the opinion that it is impossible that the legislative intent in adopting section 119 *PHA* was for powers as broad as those in section 123 *PHA* to be exercised secretively and outside parliamentary control for a term that exceeds what is strictly necessary. With the power to renew an emergency without the National Assembly’s approval, the Government could, for an unlimited period of time, suspend the application of any law and, without filing a budget, incur any expenses it deems necessary.
7. The appellant adds that section 119 *PHA* must be narrowly interpreted in order to promote human rights and freedoms.
8. The respondent argues that section 119 *PHA* is clear and that the judge’s interpretation is consistent with the legislative and regulatory history. Not only are the orders in council consistent with the objectives of the enabling statute, but they are reasonable, and the strong presumption of validity has not been rebutted.

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1. Sections 118 and 119 of the *PHA* allow the Government to declare a public health emergency by order in council and to subsequently renew it. Section 123 *PHA* also authorizes the Government to adopt measures to protect the health of the population. It is a delegated legislative power. The Supreme Court, in *Catalyst Paper*, stated that under the principle of the rule of law, superior courts can control its exercise:

[15] Unlike Parliament and provincial legislatures which possess inherent legislative power, regulatory bodies can exercise only those legislative powers that were delegated to them by the legislature. Their discretion is not unfettered. The rule of law insists on judicial review to ensure that delegated legislation complies with the rationale and purview of the statutory scheme under which it is adopted. The delegating legislator is presumed to intend that the authority be exercised in a reasonable manner. Numerous cases have accepted that courts can review the substance of bylaws to ensure the lawful exercise of the power conferred on municipal councils and other regulatory bodies.[[13]](#footnote-13)

[Citations omitted]

1. The impugned orders in council are normative instruments of a general and impersonal nature.[[14]](#footnote-14) The parties in fact recognized this in first instance.[[15]](#footnote-15) As with a regulation, this means that it applies to a category of citizens and not specifically to persons or individual situations.[[16]](#footnote-16) To successfully challenge an order in council, therefore, it must be shown to be inconsistent with the objective of the enabling statute, as the Supreme Court explained in *Katz*:

[24] A successful challenge to the *vires* of regulations requires that they be shown to be inconsistent with the objective of the enabling statute or the scope of the statutory mandate. This was succinctly explained by Lysyk J.:

In determining whether impugned subordinate legislation has been enacted in conformity with the terms of the parent statutory provision, it is essential to ascertain the scope of the mandate conferred by Parliament, having regard to the purpose(s) or objects(s) of the enactment as a whole. The test of conformity with the Act is not satisfied merely by showing that the delegate stayed within the literal (and often broad) terminology of the enabling provision when making subordinate legislation. The power-conferring language must be taken to be qualified by the overriding requirement that the subordinate legislation accord with the purposes and objects of the parent enactment read as a whole.[[17]](#footnote-17)

[Citations omitted.]

1. In addition, regulations enjoy a presumption of validity, as the trial judge noted.[[18]](#footnote-18) When a court examines them, it does not assess their soundness or the appropriateness of the executive’s policy choice:

[28] It is not an inquiry into the underlying “political, economic, social or partisan considerations”. Nor does the *vires* of regulations hinge on whether, in the court’s view, they will actually succeed at achieving the statutory objectives. They must be “irrelevant”, “extraneous” or “completely unrelated” to the statutory purpose to be found to be *ultra vires* on the basis of inconsistency with statutory purpose. In effect, although it is possible to strike down regulations as *ultra vires* on this basis, as Dickson J. observed, “it would take an egregious case to warrant such action”.[[19]](#footnote-19)

[Citations omitted.]

1. Therefore, in light of these principles, it must be determined whether the *PHA* authorizes the Government to issue orders in council every 10 days to renew a public health emergency arising from a serious threat to the health of the population, whether real or imminent, without needing to obtain the prior consent of the National Assembly. To that end, it is necessary to begin with an examination of the object of the *PHA*, as well as its enabling provisions.
2. The object of the *PHA* is “the protection of the health of the population and the establishment of conditions favourable to the maintenance and enhancement of the health and well-being of the general population.”[[20]](#footnote-20)
3. In addition, the *Act* specifies that public health actions must be “directed at protecting, maintaining or enhancing the health status and well-being of the general population and shall not focus on individuals except insofar as such actions are taken for the benefit of the community as a whole or a group of individuals”.[[21]](#footnote-21) It also states that an emergency is an exceptional measure applicable for the sole purpose of confronting a serious threat to the health of the population,[[22]](#footnote-22) whether real or imminent, that requires the immediate application of certain measures set out in section 123 *PHA* to protect the health of the population.
4. It appears clearly from the provisions dealing with public health emergencies that the legislature granted the Government a broad discretionary power to declare a public health emergency and to issue renewal orders. However, it goes without saying that the measures taken pursuant to these emergency powers must be connected to the serious threat to the health of the population, whether real or imminent, that justified the declaration of the emergency [translation] “to avoid and contain any aberrant use of the emergency power”. [[23]](#footnote-23)
5. With respect to the declaration of an emergency and its renewal, sections 118, 119, and 122 *PHA* govern the Government’s discretionary power. They are drafted as follows:

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| **DIVISION III**  PUBLIC HEALTH EMERGENCY  **118.** The Government may declare a public health emergency in all or part of the territory of Québec where a serious threat to the health of the population, whether real or imminent, requires the immediate application of certain measures provided for in section 123 to protect the health of the population.  **119.** A public health emergency declared by the Government is effective for a maximum period of 10 days at the expiry of which it may be renewed, as many times as necessary, for a maximum period of 10 days or, with the consent of the National Assembly, for a maximum period of 30 days.  If the Government is unable to meet immediately, the Minister may declare a public health emergency for a maximum period of 48 hours.  **122.**  The National Assembly may, in accordance with its rules of procedure, vote to disallow the declaration of a public health emergency or any renewal thereof.  The disallowance takes effect on the day the motion is passed.  Notice of the disallowance shall be promptly published and disseminated by the Secretary General of the National Assembly by the most efficient means available to ensure that the populations concerned are rapidly informed. It shall also be published by the Secretary General in the Gazette officielle du Québec. | **SECTION III**  DÉCLARATION D’ÉTAT D’URGENCE SANITAIRE  **118.** Le gouvernement peut déclarer un état d’urgence sanitaire dans tout ou partie du territoire québécois lorsqu’une menace grave à la santé de la population, réelle ou imminente, exige l’application immédiate de certaines mesures prévues à l’article 123 pour protéger la santé de la population.  **119**. L’état d’urgence sanitaire déclaré par le gouvernement vaut pour une période maximale de 10 jours à l’expiration de laquelle il peut être renouvelé pour d’autres périodes maximales de 10 jours ou, avec l’assentiment de l’Assemblée nationale, pour des périodes maximales de 30 jours.  Si le gouvernement ne peut se réunir en temps utile, le ministre peut déclarer l’état d’urgence sanitaire pour une période maximale de 48 heures.  **122**. L’Assemblée nationale peut, conformément à ses règles de procédure, désavouer par un vote la déclaration d’état d’urgence sanitaire et tout renouvellement.  Le désaveu prend effet le jour de l’adoption de la motion.  Le secrétaire général de l’Assemblée nationale doit promptement publier et diffuser un avis du désaveu avec les meilleurs moyens disponibles pour informer rapidement et efficacement la population concernée. Il doit, de plus, faire publier l’avis à la Gazette officielle du Québec.  [Emphasis added] |

1. In light of the object and the spirit of the *PHA*, as well as the language of the provisions, the Court finds that the trial judge correctly interpreted these provisions when he concluded that the Government may renew the orders in council as it did and, accordingly, that these orders in council are valid.
2. When a provision appears clear, the overall context of the provision must be reviewed.[[24]](#footnote-24) However, “[w]here the words of a statute are precise and unequivocal, those words will play a dominant role in the interpretive process.”[[25]](#footnote-25) The fundamental principle of statutory interpretation can be summarized as follows:[[26]](#footnote-26)

10 It has been long established as a matter of statutory interpretation that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.[[27]](#footnote-27)

[Citations omitted]

1. In this case, as the trial judge found, section 119 of the *PHA* is not ambiguous and allows for the renewal of the public health emergency orders in council every 6 to 10 days. Several arguments support his conclusion.
2. In section 119, the legislature states that the Government may declare a public health emergency “for a maximum period of 10 days at the expiry of which it may be renewed, as many times as necessary, for a maximum period of 10 days”. Aside from the existence of a serious threat to the health of the population, whether real or imminent, requiring the declaration of an emergency, the legislature imposed only one other condition, namely, a maximum duration of 10 days. If the legislature had wanted the Government to obtain the consent of the National Assembly as soon as the total duration of the orders in council reached 30 days, it would have expressly stated it. For example, it could have written that [translation] “the emergency ... is effective for a maximum period of 10 days at the expiry of which it may be renewed twice for a maximum period of 10 days”. This would have indicated that orders in council of a maximum duration of 10 days cannot be renewed without a time limit. Yet this is not what section 119 *PHA* says. It provides the Government with the alternative of making orders in council for a maximum period of 10 days or, at its discretion, for a longer period up to a maximum of 30 days, with the consent of the National Assembly.
3. It must also be noted, as the trial judge did, that on December 21, 2001, section 119 *PHA* replaced sections 17, 22, and 23 of the *Public Health Protection Act*,[[28]](#footnote-28) which were drafted as follows:

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| **17.** The Government may, upon a notice by the Minister, declare that the public health is endangered in all or part of Québec because of an epidemic or real or appre­hended danger and order the Minister to take charge of the emergency operations necessary, for a period not to exceed thirty days that it indicates.  … | **17.** Le gouvernement peut, sur avis du ministre, déclarer que la santé publique est en danger dans l’ensemble ou dans une partie du Québec à cause d’une épidémie ou d’une catastrophe réelle ou appréhendée et ordonner que le ministre prenne charge des opérations d’urgence nécessaires pour une période qu’il indique, mais qui ne doit pas excéder trente jours.  … |
| **22.** The Minister must lay before the Assemblée nationale any order in council made under section 17 not later than the third day during which the Assemblée is sitting, after the making of the order. | **22.** Le ministre doit déposer à l’Assemblée nationale tout arrêté en conseil adopté en vertu de l’article 17 au plus tard le troisième jour au cours duquel siège l’Assemblée, après l’adoption de l’arrêté. |
| **23.** As soon as an order in council is so laid, any member may, by a motion without notice, request the revocation of such order; such motion must be studied with urgency and its presentation shall interrupt any debate in progress; if it is adopted, the order in council shall cease to be in force. | **23.** Dès qu’un arrêté en conseil est ainsi déposé, tout député peut, par une motion non annoncée, demander la révocation de cet arrêté; cette motion doit être étudiée d’urgence et sa présentation interrompt tout débat en cours; si elle est adoptée, l’arrêté en conseil cesse d’être en vigueur.  [Emphasis added] |

1. In particular, section 22 provided that “[t]he Minister must lay before the Assemblée nationale any order in council made under section 17 not later than the third day during which the Assemblée is sitting, after the making of the order”. By not re-enacting the obligation to lay before the National Assembly any order in council renewing the public health emergency in section 119 *PHA*, the legislature clearly amended the way in which the National Assembly could review such orders.
2. As the respondent argues, we note in effect that the power to disallow that section 122 *PHA* confers on the National Assembly is consistent with the generally *a posteriori* nature of this review.[[29]](#footnote-29) In our democratic tradition, the exercise of executive power does not lie with the National Assembly, but it must nevertheless review its exercise. The decision to declare an emergency falls to the Government, which is accountable for its decision to the National Assembly. The National Assembly may “vote to disallow the declaration of a public health emergency or any renewal thereof” (s. 122 *PHA*).
3. The *PHA* creates an imbalance between the legislative and executive powers so that the Government may act quickly to combat the crisis effectively:

[translation]

In democratic States, a crisis of the magnitude of our current one caused by the emergence of COVID-19 does not abrogate the division of powers, but it does very significantly alter the balance of the division of responsibilities among the three branches [executive, legislative, and judicial]; accordingly, the executive is called upon to assume a much more significant role.[[30]](#footnote-30)

1. The reason for this imbalance in such a public health emergency situation is crisis management,[[31]](#footnote-31) but the National Assembly nevertheless preserves an *a posteriori* power of review whereby it may disallow both the declaration of a public health emergency and any renewal thereof (s. 122 *PHA*).
2. In addition, pursuant to the *Act respecting the National Assembly*,[[32]](#footnote-32) the Assembly establishes its rules of procedure, and it alone has authority to see that they are observed. The Standing Orders it adopted for this purpose set out the sessional periods, which includes two ordinary sessions established as follows:

Section 19. Sessional periods – During the life of a Legislature the Assembly shall ordinarily hold two sessional periods each year, as follows:

(1) from the second Tuesday in February for sixteen weeks during ordinary hours of meeting followed by two weeks during extended hours of meeting;

(2) from the third Tuesday in September for ten weeks during ordinary hours of meeting followed by two weeks during extended hours of meeting.[[33]](#footnote-33)

1. Only extraordinary sittings are called by the Prime Minister.[[34]](#footnote-34)
2. The National Assembly has sat many times since the public health emergency was declared on March 13, 2020, and no motion to disallow has been tabled.[[35]](#footnote-35) The Court is of the opinion that the trial judge did not commit a reviewable error by inferring from this evidence a form of indirect consent to the orders in council.[[36]](#footnote-36) Since the start of the public health emergency, the National Assembly could have initiated a debate and questioned the orders in council renewing the public health emergency through a simple motion to disallow. It decided not to exercise this power of review over the decisions of the executive.
3. The trial judge also noted that the respondent referred to the English version of section 119 *PHA* to support its interpretation that the Government can renew the public health emergency as many times as necessary for maximum periods of 10 days without the consent of the National Assembly. Indeed, the English version states that the public health emergency “...may be renewed as many times as necessary, for a maximum period of 10 days ...” He concluded from this that, were it necessary to seek a hidden meaning in section 119 *PHA*, this argument would support its position. However, he was of the opinion that the French version sufficed to dismiss the appellant’s argument.
4. The Court shares this point of view. The French version clearly reflects the legislature’s intention. The English version of the provision leads to the same conclusion, that the orders in council renewing the public health emergency for a maximum period of 10 days may be renewed as long as there is a serious threat to the health of the population, whether real or imminent (section 118 *PHA*).
5. In 2001, the *PHA* replaced the *Public Health Protection Act.*[[37]](#footnote-37) It should be noted that sections 118 and 123 *PHA* were used for the first time in March 2020 in the context of the fight against COVID-19.[[38]](#footnote-38)
6. In 2001, on the same day it enacted the *PHA*, the legislature also enacted the *Civil Protection Act*, which allows the Government to declare a national state of emergency in the event of an actual or imminent major disaster situation or other event that interferes with the life of the community to the point of compromising human safety.[[39]](#footnote-39)
7. The relevant provisions of the *Civil Protection Act*[[40]](#footnote-40) are drafted as follows:

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| **88**. The Government may declare a national state of emergency in all or part of the territory of Québec where, in an actual or imminent major disaster situation or other event that interferes with the life of the community to the point of compromising human safety, immediate action is required to protect human life, health or physical integrity which, in the Government’s opinion, cannot be taken within the scope of the normal operating rules of the civil protection authorities or government departments and government bodies concerned or within the scope of Québec’s national civil protection plan.  **89**. The state of emergency declared by the Government is effective for a maximum period of 10 days at the expiry of which it may be renewed, as many times as necessary, for a maximum period of 10 days or, with the consent of the National Assembly, for a maximum period of 30 days.  If the Government is unable to meet immediately, the Minister may declare a state of emergency for a maximum period of 48 hours.  …  **92**. The National Assembly may, in accordance with its rules of procedure, vote to disallow the declaration of a state of emergency or any renewal thereof.  The disallowance takes effect on the day the motion is passed.  Notice of the disallowance shall be promptly published and disseminated by the Secretary General of the National Assembly by the most efficient means available to ensure that the authorities and population concerned are rapidly informed. It also shall be published by the Secretary General in the Gazette officielle du Québec. | **88**. Le gouvernement peut déclarer l’état d’urgence national, dans tout ou partie du territoire québécois, lorsqu’un sinistre majeur, réel ou imminent, ou un autre événement qui perturbe le fonctionnement de la communauté au point de compromettre la sécurité des personnes exige, pour protéger la vie, la santé ou l’intégrité des personnes, une action immédiate qu’il estime ne pas pouvoir se réaliser adéquatement dans le cadre des règles de fonctionnement habituelles des autorités responsables de la sécurité civile ou des ministères et organismes gouvernementaux concernés ou dans le cadre du plan national de sécurité civile.  **89**. L’état d’urgence déclaré par le gouvernement vaut pour une période maximale de dix jours à l’expiration de laquelle il peut être renouvelé pour d’autres périodes maximales de dix jours ou, avec l’assentiment de l’Assemblée nationale, pour des périodes maximales de 30 jours.  Si le gouvernement ne peut se réunir en temps utile, le ministre peut déclarer l’état d’urgence pour une période maximale de 48 heures.  …  **92**. L’Assemblée nationale peut, conformément à ses règles de procédure, désavouer par un vote la déclaration d’état d’urgence et tout renouvellement.  Le désaveu prend effet le jour de l’adoption de la motion.  Le secrétaire général de l’Assemblée nationale doit promptement publier et diffuser un avis du désaveu avec les meilleurs moyens disponibles pour informer rapidement et efficacement les autorités et les populations concernées. Il doit, de plus, faire publier l’avis à la Gazette officielle du Québec.  [Emphasis added] |

1. Since the *PHA* was enacted without being debated, the parties agreed to refer to the discussions held in the parliamentary committee and in the house when the *Civil Protection Act* was enacted since both statutes contain similar provisions concerning the renewal of an emergency.
2. As the Court recently recalled,[[41]](#footnote-41) it is often useful to examine parliamentary proceedings, which supplement the usual principles of interpretation, to properly understand the context of a law’s enactment. In this case, the discussions did not focus on the conditions for the renewal of the emergency, but rather on the National Assembly’s *a posteriori* power to disallow. When the Committee on Institutions studied Bill 173 (*Civil Protection Act*), the Minister declared that the possibility to disallow a state of emergency was a constitutional protection of the Assembly’s power over an executive that seeks to abuse a declaration of an emergency:

[translation]

**President** (Mr. Bertrand, Portneuf): Very well. So, Minister, would you like to do the presentation on 92 as amended?

**Mr. Dupuis:** I can perhaps make my...

**Mr. Ménard**: All right, its very simple — yes, it’s clearly explained in the commentary: This provision subjects the declaration of a state of emergency to review by the National Assembly, even when there is no need to extend it.

I don’t expect this provision to be used very often, but, ultimately, it is one of the constitutional protections of the National Assembly’s power over an Executive that seeks to abuse a declaration of emergency in circumstances that are not... I do not expect to see such a thing in my lifetime, although we never know. …

…

**Mr. Dupuis**: ... The Rules of Procedure provide that only the Prime Minister can summon the Assembly to an extraordinary sitting, such that, for a declaration of emergency that occurs when the National Assembly is not in session, the National Assembly would not be summoned because you do not require the Minister to table the declaration of emergency before the National Assembly. So, the Assembly will not be summoned if the Prime Minister decides not to summon it. And there was an additional protection in the wording you tabled at the time of the draft bill, which provided that the Minister must table every declaration of a state of emergency before the National Assembly. And, it was provided that, when the Assembly was not in session, an extraordinary sitting was to be called. Now, the new provision means that if the Prime Minister decides that the Assembly will be summoned, it is summoned, but there might be a situation where the emergency is declared and the National Assembly does not sit.

I agree with you ... I’ll let you listen to what they’re saying to you, unless you’re listening to me. I'm speaking ...

**Mr. Ménard:** I’m listening. They’re talking to each other.

**Mr. Dupuis:** OK good, all right. So, I agree with you, these are probably not situations that will last very long, but this is, if you will, a matter of principle concerning the fundamental guarantee that the members of the National Assembly, whoever they are, not just the Prime Minister, but every member of the National Assembly, whether they are members of the opposition or of the ruling party, do not have their powers eroded by various statutes. And I respectfully submit that in this case the powers of the members of the National Assembly — all of them, whoever they are, whatever side they are on — are eroded by the fact that you replaced the provision in the draft bill with the one you are now tabling.[[42]](#footnote-42)

1. We note, therefore, that the members discussed the declaration of a state of emergency. However, section 88 of Bill 173, which deals with the renewal of the declaration of emergency by periods of 10 or 30 days, was enacted without debate. It is section 92 on the disallowance by the National Assembly that attracted the members’ attention. It is clear that the *PHA* enacted *a posteriori* review, except if the Government decides to declare a state of emergency for a period of more than 10 days, up to a maximum of 30 days.
2. A reading of these excepts from the parliamentary proceedings also suggests that no one expected a state of emergency to last as long as the one we are currently experiencing.
3. The appellant also correctly argues that the Government cannot renew the public health emergency for an unlimited period if the serious threat to the health of the population, whether real or imminent, no longer exists. The facts remains, however, that the public health emergency ends when the Government considers that it is no longer necessary. Section 128 *PHA* provides as follows:

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| **128**. The Government may terminate the public health emergency as soon as it considers that it is no longer necessary.  A notice must be published and disseminated by the most efficient means available to ensure that the population concerned is rapidly informed.  Moreover, the decision must be published in the Gazette officielle du Québec. | **128.** Le gouvernement peut mettre fin à l’état d’urgence sanitaire dès qu’il estime que celui-ci n’est plus nécessaire.  Un avis doit être publié et diffusé avec les meilleurs moyens disponibles pour informer rapidement et efficacement la population concernée.  La décision doit, de plus, être publiée à la Gazette officielle du Québec. |

1. Here again, the decision to terminate the emergency falls to the Government. It falls within its discretionary power, but it may not exercise it in an unreasonable manner.
2. Following World War I, the Privy Council of London had to decide a similar question in *Fort Frances and Paper Co. v. Manitoba Free Press Co*.[[43]](#footnote-43) In that case, Canadian newsprint paper manufacturers opposed measures taken by Canada to regulate newsprint paper prices pursuant to its extraordinary powers to control commerce in times of war. These measures were to be in place until December 1919. Viscount Haldane explained what circumstances could justify judicial intervention in the event of the *ultra vires* exercise of such powers:

The question of the extent to which provision for circumstances such as these may have to be maintained is one on which a Court of law is loathe to enter. No authority other than the central government is in a position to deal with a problem which is essentially one of statesmanship. It may be that it has become clear that the crisis which arose is wholly at an end and that there is no justification for the continued exercise of an exceptional interference which becomes ultra vires when it is no longer called for. In such a case the law as laid down for distribution of powers in the ruling instrument would have to be invoked. But very clear evidence that the crisis had wholly passed away would be required to justify the judiciary, even when the question raised was one of ultra vires which it had to decide, in overruling the decision of the Government that exceptional measures were still requisite.[[44]](#footnote-44)

1. Although the context is different, that case emphasizes that the period during which a public health emergency may be maintained is within the discretion of the executive and that the courts must show great deference towards this decision. Such an intervention requires clear proof that the state of emergency is no longer necessary and that the government is abusing its powers. The appellant, it must be noted, has not proved this. He has adduced no evidence establishing that the public health emergency no longer existed when he filed his application for judicial review in August 2020.
2. This ground of appeal is therefore rejected.
3. **Did the judge err in concluding that the penal provisions of section 139 *PHA* apply to the measures adopted by orders in council?**
4. In the alternative, the appellant argues that the penal provisions of section 139 *PHA* apply to individual orders only, not to regulatory measures adopted by orders in council or orders under section 123 *PHA*. It would be contrary to the principle of the predictability of the law if non-compliance with a regulatory provision resulted in a sanction without first giving an individual order to offenders.

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1. This ground of appeal must also fail.
2. Section 123 authorizes the Government to take measures to protect the health of the population where serious threats exist, whether real or imminent.

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| **123**. Notwithstanding any provision to the contrary, while the public health emergency is in effect, the Government or the Minister, if he or she has been so empowered, may, without delay and without further formality, to protect the health of the population,  (1)   order compulsory vaccination of the entire population or any part of it against smallpox or any other contagious disease seriously threatening the health of the population and, if necessary, prepare a list of persons or groups who require priority vaccination;  (2) order the closing of educational institutions or of any other place of assembly;  (3) order any person, government department or body to communicate or give to the Government or the Minister immediate access to any document or information held, even personal or confidential information or a confidential document;  (4) prohibit entry into all or part of the area concerned or allow access to an area only to certain persons and subject to certain conditions, or order, for the time necessary where there is no other means of protection, the evacuation of persons from all or any part of the area or their confinement and, if the persons affected have no other resources, provide for their lodging, feeding, clothing and security needs;  (5) order the construction of any work, the installation of sanitary facilities or the provision of health and social services;  (6) require the assistance of any government department or body capable of assisting the personnel deployed;  (7) incur such expenses and enter into such contracts as are considered necessary;  (8) order any other measure necessary to protect the health of the population. | **123**. Au cours de l’état d’urgence sanitaire, malgré toute disposition contraire, le gouvernement ou le ministre, s’il a été habilité, peut, sans délai et sans formalité, pour protéger la santé de la population:  1° ordonner la vaccination obligatoire de toute la population ou d’une certaine partie de celle-ci contre la variole ou contre une autre maladie contagieuse menaçant gravement la santé de la population et, s’il y a lieu, dresser une liste de personnes ou de groupes devant être prioritairement vaccinés;  2° ordonner la fermeture des établissements d’enseignement ou de tout autre lieu de rassemblement;  3°   ordonner à toute personne, ministère ou organisme de lui communiquer ou de lui donner accès immédiatement à tout document ou à tout renseignement en sa possession, même s’il s’agit d’un renseignement personnel, d’un document ou d’un renseignement confidentiel;  4° interdire l’accès à tout ou partie du territoire concerné ou n’en permettre l’accès qu’à certaines personnes et qu’à certaines conditions, ou ordonner, lorsqu’il n’y a pas d’autre moyen de protection, pour le temps nécessaire, l’évacuation des personnes de tout ou partie du territoire ou leur confinement et veiller, si les personnes touchées n’ont pas d’autres ressources, à leur hébergement, leur ravitaillement et leur habillement ainsi qu’à leur sécurité;  5° ordonner la construction de tout ouvrage ou la mise en place d’installations à des fins sanitaires ou de dispensation de services de santé et de services;  6° requérir l’aide de tout ministère ou organisme en mesure d’assister les effectifs déployés;  7° faire les dépenses et conclure les contrats qu’il juge nécessaires;  8°   ordonner toute autre mesure nécessaire pour protéger la santé de la population.  [Emphasis added] |

1. Since measures adopted by the government can be likened to a regulation, each public health order in council is a “normative instrument of a general and impersonal nature, made under an Act and having force of law when it is in effect”.[[45]](#footnote-45) In most cases, the enabling statute makes it an offence to violate its regulations.[[46]](#footnote-46) It also sets out the applicable sanction. That is the case under section 139 *PHA*:

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| **139**. Any person who, within the scope of application of Chapter XI, impedes or hinders the Minister, the national public health director, a public health director or a person authorized to act on their behalf, refuses to obey an order they are entitled to give, refuses to give access to or communicate the information or documents they are entitled to require, or conceals or destroys documents or other things relevant to the exercise of their functions is guilty of an offence and is liable to a fine of $1,000 to $6,000 . | **139**. Commet une infraction et est passible d’une amende de 1 000 $ à 6 000 $ quiconque, dans le cadre de l’application du chapitre XI, entrave ou gêne le ministre, le directeur national de santé publique, un directeur de santé publique ou une personne autorisée à agir en leur nom, refuse d’obéir à un ordre que l’un d’eux est en droit de donner, refuse de donner accès ou de communiquer un renseignement ou un document que l’un d’eux est en droit d’exiger ou cache ou détruit un document ou toute autre chose utile à l’exercice de leurs fonctions.  [Emphasis added] |

1. Since the term “order” used in section 139 is not defined in the *PHA*, its meaning must be sought by considering the overall context of the *Act* and its grammatical and ordinary sense, read harmoniously with the scheme and object of the *Act*, and the legislature’s intention.[[47]](#footnote-47)
2. This term is defined in the *Dictionnaire de droit québécois et canadien* as [translation] “an act by which a person in authority manifests his or her will and commands another person to submit to it and by extension the object of an order or the document that embodies it”.[[48]](#footnote-48) Moreover, the *Interpretation Act*[[49]](#footnote-49) states the following:

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| **54**. The singular number shall extend to more than one person or more than one thing of the same sort, whenever the context admits of such extension. The plural number can apply to one person only or to one thing only if the context so permits. | **54**. Le nombre singulier s’étend à plusieurs personnes ou à plusieurs choses de même espèce, chaque fois que le contexte se prête à cette extension. Le nombre pluriel peut ne s’appliquer qu’à une seule personne ou qu’à un seul objet si le contexte s’y prête. |

1. The term “order”, which is found section 139 *PHA*, may therefore be directed at the community as a whole. It must also be noted that the verb “order” is found in several paragraphs of section 123 *PHA*.
2. As previously stated, the object of the *PHA* is the protection of the health of the population and the establishment of conditions favourable to the maintenance and enhancement of the health and well-being of the general population (s. 1 *PHA*). To this end, the legislature conferred on government authorities vast powers to take action in cases where the health of the population is threatened (s. 2 *PHA*).
3. Chapter XI of the *PHA* sets out the powers of the public health authorities and the Government in the event of a health threat. Division I deals with epidemiological investigations, Division II with the powers of the Minister, and Division IV with vector-borne diseases, including the West Nile virus. It is in Division III, however, that we find the most important powers granted to Government authorities when a serious threat to the health of the population, whether real or imminent, requires the application of the measures set out in section 123 *PHA*. They may be taken by the Government or the Minister if he or she has been authorized to do so. The only penal provision applying to all of Chapter XI is section 139 *PHA*.
4. The trial judge was correct to reject the appellant’s argument, although section 139 *PHA* is not very well drafted. Indeed, as the respondent argues, in this regard, the judge’s interpretation is the only one consistent with the wording of the *PHA* and the achievement of its objectives. Accepting the appellant's position would neutralize the Government’s discretionary power pursuant to section 123 *PHA* to impose urgent measures to effectively fight a serious threat to public health, which justifies the public health emergency. Furthermore, the measures taken by the government are published in the *Gazette officielle du Québec* and widely publicized on its Internet sites, as well as by the media.

**FOR THESE REASONS, THE COURT:**

1. **DISMISSES** the appeal, with legal costs.

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|  | | YVES-MARIE MORISSETTE, J.C.A. |
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|  | | JULIE DUTIL, J.A. |
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|  | | MARIE-JOSÉE HOGUE, J.A. |
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| Stanislas Bricka | | |
| Unrepresented | | |
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| Mtre Lizann Demers  Mtre François-Alexandre Gagné | | |
| bernard, roy (justice – québec) | | |
| For the respondent | | |
|  | | |
| Date of hearing: | December 16, 2021 | |

1. *Bricka c. Procureur général du Québec*, 2021 QCCS 1245 [Judgment under appeal]. [↑](#footnote-ref-1)
2. *Public Health Act*,CQLR c. S-2.2. [↑](#footnote-ref-2)
3. Order in Council 117-2020, dated 13 March 2020. [↑](#footnote-ref-3)
4. Application for judicial review, 11 March 2021. [↑](#footnote-ref-4)
5. Judgment under appeal. [↑](#footnote-ref-5)
6. *Ibid.* atparas. 52–53. [↑](#footnote-ref-6)
7. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. [↑](#footnote-ref-7)
8. *Agraira v. Canada (Public Safety and Emergency Preparedness*), 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 47. See also *F.S. c. Commission des normes, de l'équité, de la santé et de la sécurité du travail*, 2020 QCCA 1625 at para. 32; *Procureur général du Québec c. Lamontagne*, 2020 QCCA 1137 at para. 23. [↑](#footnote-ref-8)
9. *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 45. [↑](#footnote-ref-9)
10. *Ibid.* at para. 46. [↑](#footnote-ref-10)
11. For example, see *Janssen inc. c. Ministre de la Santé et des Services sociaux*, 2019 QCCA 39 at paras. 33–35. [↑](#footnote-ref-11)
12. *Civil Protection Act*, CQLR c. S-2.3. [↑](#footnote-ref-12)
13. *Catalyst Paper Corp. v. North Cowichan (District),* 2012 SCC 2, [2012] 1 S.C.R. 5 at para. 15. [↑](#footnote-ref-13)
14. *Racicot c. Procureure générale du Québec*, 2020 QCCA 656 at para. 11; *Conseil des juifs hassidiques du Québec c. Procureur général du Québec,* 2021 QCCS 281 at para. 45; *Karounis c. Procureur général du Québec*, 2020 QCCS 2817 at para. 15. [↑](#footnote-ref-14)
15. Judgment under appeal at para. 48. [↑](#footnote-ref-15)
16. Patrice Garant, *Droit administratif*, 7th ed. (Montreal: Yvon Blais, 2017) at 271–272. [↑](#footnote-ref-16)
17. *Katz Group Canada Inc. v. Ontario (Health and Long‑Term Care),* 2013 SCC 64, [2013] 3 S.C.R. 810, at para. 24, cited in *Association des chirurgiens-dentistes du Québec c. Ministre de la Santé et des Services sociaux*, 2021 QCCA 170 at para. 45. See also *West Fraser Mills Ltd. v. British Columbia (Workers’ Compensation Appeal Tribunal),* 2018 SCC 22, [2018] 1 S.C.R. 635 at para. 12; *Groupe Maison Candiac Inc. v. Canada (Attorney General),* 2020 FCA 88, [2020] 3 F.C.R. 64 at para. 29. [↑](#footnote-ref-17)
18. Judgment under appeal at paras. 33–38; *Katz Group Canada Inc. v. Ontario (Health and Long‑Term Care),* 2013 SCC 64, [2013] 3 S.C.R. 810 at para. 25. [↑](#footnote-ref-18)
19. *Katz Group Canada Inc. v. Ontario (Health and Long‑Term Care),* 2013 SCC 64, [2013] 3 S.C.R. 810 at para. 28. See also *West Fraser Mills Ltd. v. British Columbia (Workers’ Compensation Appeal Tribunal),* 2018 SCC 22, [2018] 1 S.C.R. 635 at para. 12. [↑](#footnote-ref-19)
20. *Public Health Act,* CQLR c. S-2.2 s. 1. [↑](#footnote-ref-20)
21. *Ibid.*, s. 5. [↑](#footnote-ref-21)
22. See the definition of a “threat to the health of the population” at s. 2 para. 2 *PHA*. [↑](#footnote-ref-22)
23. Marie-Claude Prémont, Marie-Ève Couture-Ménard & Geneviève Brisson, “L’état d’urgence sanitaire au Québec : un régime de guerre ou de santé publique?” (2021) 55 R.J.T.U.M. 233 at 264. [↑](#footnote-ref-23)
24. *Pharmascience inc. v. Binet*, 2006 SCC 48, [2006] 2 S.C.R. 513 at para. 32; *Montréal (City) v. 2952‑1366 Québec Inc*., 2005 SCC 62, [2005] 3 S.C.R. 141 at para. 10; *Ouimet c. Commission des normes, de l'équité, de la santé et de la sécurité du travail*, 2018 QCCA 601 at para. 15. [↑](#footnote-ref-24)
25. *Placer Dome Canada Ltd. v. Ontario (Minister of Finance),* 2006 SCC 20, [2006] 1 S.C.R. 715 at para. 21. [↑](#footnote-ref-25)
26. *Québec (Procureur général) c. Paulin*, 2007 QCCA 1716 at para. 30, quoting Pierre-André Côté, *Interprétation des lois,* 3rd ed. (Cowansville: Yvon Blais, 1999) at 364. [↑](#footnote-ref-26)
27. *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 at para. 10. See also *Canada v.* *Loblaw Financial Holdings Inc.*, 2021 SCC 51 at para. 41; *9354-9186 Québec inc. v. Callidus Capital Corp*., 2020 SCC 10 at para. 60; *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65; Ruth Sullivan, *Statutory Interpretation*, 3rd ed. (Toronto: Irwin Law, 2016) at 46, 49, and 59. [↑](#footnote-ref-27)
28. R.S.Q. 1977, c. P-35 (repealed). [↑](#footnote-ref-28)
29. Section 4 of the *Act respecting the National Assembly*, CQLR c A-23.1, states: “The Assembly has the power of supervision over all the acts of the Government and of its departments and agencies”. [↑](#footnote-ref-29)
30. Louis-Philippe Lampron, “Les droits en temps de crise – première partie”, *Le Soleil* (16 April 2020), online: https://www.lesoleil.com/2020/04/16/les-droits-en-temps-de-crise--premiere-partie-2ab94679bd188756e77bbdd711855b15 (consulted on 10 November). [↑](#footnote-ref-30)
31. Victoria Carmichael & Grégoire Webber, “The Rule of Law in a Pandemic” (2021) 46:2 Queen’s L.J. 317 at 324. [↑](#footnote-ref-31)
32. CQLR, c. A-23.1. [↑](#footnote-ref-32)
33. National Assembly, *Standing Orders and Other Rules of Procedure of the National Assembly*, 42nd legislature, 18th edition (November 2018), online: https://www.assnat.qc.ca/en/abc-assemblee/fondements-procedure-parlementaire/reglement-assemblee.html (French-language page consulted on 21 December 2021). [↑](#footnote-ref-33)
34. *Ibid*. at S.O. 23. [↑](#footnote-ref-34)
35. Judgment under appeal at para. 41. [↑](#footnote-ref-35)
36. *Ibid*. at para. 42. [↑](#footnote-ref-36)
37. *Public Health Protection Act*, CQLR, c. A-23.1. [↑](#footnote-ref-37)
38. Marie-Claude Prémont, Marie-Ève Couture-Ménard & Geneviève Brisson, “L’état d’urgence sanitaire au Québec: un régime de guerre ou de santé publique?” (2021) 55 R.J.T.U.M. 233 at 250. [↑](#footnote-ref-38)
39. *Civil Protection Act*, CQLR c. S-2.3, s. 88. [↑](#footnote-ref-39)
40. *Civil Protection Act*, CQLR c. S-2.3. [↑](#footnote-ref-40)
41. *Association des chirurgiens-dentistes du Québec c. Ministre de la Santé et des Services sociaux*, 2021 QCCA 170 at para. 60, quoting Pierre-André Côté, *Interprétation des lois*, 4th ed., (Montreal: Thémis, 2009) at 506. [↑](#footnote-ref-41)
42. Quebec, National Assembly, *Journal des débats*, 36-2, vol. 37, No. 33 (29 August 2001) at 12–16. [↑](#footnote-ref-42)
43. *Fort Frances Pulp and Paper Co. v. Manitoba Free Press Co*., [1923] AC 695, 1923 CanLII 429 (UK JCPC). [↑](#footnote-ref-43)
44. *Ibid.* at 635. [↑](#footnote-ref-44)
45. *Regulations Act*,CQLR c. R-18.1, s. 1. [↑](#footnote-ref-45)
46. Pierre Issalys & Denis Lemieux, *L'action gouvernementale – Précis de droit des institutions administratives*, 4th ed. (Montreal: Yvon Blais, 2020) at 706. [↑](#footnote-ref-46)
47. Ruth Sullivan, *Statutory Interpretation*, 3rd ed. (Toronto: Irwin Law, 2016) at 49; Elmer A. Driedger, *The Construction of Statutes,* 2nd ed. (Toronto: Butterworths, 1983) at 87. [↑](#footnote-ref-47)
48. “Ordre” ([translaton]: Order) in *Dictionnaire de droit québécois et canadien*, online: https://dictionnairereid.caij.qc.ca/recherche#q=ordre&t=edictionnaire&sort=relevancy&m=search (page consulted on 15 November 2021). [↑](#footnote-ref-48)
49. *Interpretation Act,* CQLR c. I-16. [↑](#footnote-ref-49)