

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

S U P E R I O R C O U R T
(CIVIL DIVISION)

No. 500-____-_____-25__

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Plaintif

v.

Attorney General of Quebec, acting in his
capacity as legal representative of the
Province of Quebec, 1 Notre-Dame Street
East, Suite 8.00, in the City and District of
Montreal, H2Y 1B6

Defendant

and

Attorney General of Canada, acting in his
capacity as legal representative of
Canada, Department of Justice Canada,
284 Wellington Street, in the City and
District of Ottawa, K1A 0H8

Mis en Cause

ORIGINATING APPLICATION

Seeking to have declared unconstitutional
The Act establishing the Unified Family Court
within the Court of Québec, S.Q. 2025, c.9

(Articles 23, 85, 453, 468, 469, 529 et 532 C.p.c.)
(Article 52 of the *Constitution Act of 1982*)

(Articles 91(26), 92(14) and 96 of the *Constitution Act, 1867*)

(Articles 1, 7, 15, 24(1) de la *Canadian Charter of Rights and Freedoms*)

**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN
CIVIL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE
PLAINTIFF RESPECTFULLY SUBMITS THE FOLLOWING:**

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I - Introduction

1. The Plaintiff brings this proceeding to have declared unconstitutional, in whole or in part, the Act establishing the Unified Family Court within the Court of Québec (hereinafter, the “TUF Act”), which was assented to by the National Assembly of Québec on April 10, 2025.

2. Adopted as Bill 91, the TUF Act aims to create a “Unified Family Court” (hereinafter, the “TUF”) within the Court of Québec and to restructure the organization of courts in family matters.

3. According to its explanatory notes, the TUF Act seeks to “facilitate the judicial process for Québec families” by granting the Court of Québec exclusive jurisdiction over various family law matters, including those relating to parental unions, civil unions, and the filiation of children born through assisted reproduction.

4. The Plaintiff argues that this legislative reform violates several fundamental constitutional standards and principles.

5. Far from simplifying the judicial process, the TUF Act instead risks undermining access to sound and equitable family justice.

6. Furthermore, it infringes on judicial independence: by transferring powers traditionally exercised by federally appointed judges to judges appointed by the provincial executive, it weakens the constitutional guarantees of impartiality and independence.

7. The TUF Act also imposes procedural constraints that may hinder access to justice and deprive the most vulnerable litigants of their effective right to a competent court, contrary to the principles set out by the Supreme Court in *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59.

8. In addition, by assigning the majority of family disputes involving common-law spouses to a lower-level court where access, procedure, and remedies differ from those available to married couples, the TUF Act creates systemic inequality based on marital status, in violation of section 15 of the Charter. It also increases the obstacles faced by women survivors of domestic violence, who must apply to the Superior Court (notably to obtain a protection order) and are thereby forced to navigate a fragmented and more costly judicial path.

9. Finally, the creation of a parallel provincial court for part of the family law caseload violates the principles of the rule of law and the unity of the Canadian judicial system, which is based on a nationally integrated structure under the authority of the superior courts.

10. **This constitutional action therefore seeks the invalidation of the TUF Act due to its multiple violations of the Constitution of Canada.**

11. **The Québec Minister of Justice, Simon Jolin-Barrette, has himself publicly acknowledged the constitutional flaw in the Act** and “invited” Ottawa not to challenge it:

We should not, **for constitutional reasons**, make it harder for Québec families dealing with family disputes.

Press conference of Mr. Simon Jolin-Barrette, Minister of Justice, February 25, 2025

12. **This statement is inaccurate: it is precisely the TUF Act that will complicate the judicial process for Québec families. Moreover, it is unacceptable for a Minister of Justice to refuse to uphold the Constitution.**

13. The Plaintiff will therefore seek from this Honourable Court a declaration of invalidity, the suspension of the Act’s coming into force, the transitional inapplicability of certain provisions, and an award of solicitor-client costs.

14. The following paragraphs set out the identity of the parties, the relevant factual and legal context, the grounds of unconstitutionality alleged, the supporting evidence, and the remedies sought.

II – Identification of the Parties and Standing to Sue

15. The Plaintiff is a lawyer specializing in family law and youth protection law for nearly forty-four years.

16. She is the founder of the firm Goldwater Droit Inc., which currently has twenty-two lawyers, all practising in the same areas, as well as in criminal law.

17. The Plaintiff is directly affected by this reform, which alters the organization and operation of the courts and risks having a devastating impact on the legal services she provides. She therefore has a genuine, real, and serious interest in the constitutionality of the TUF Act.

18. The issues raised by this proceeding—namely, the division of legislative powers and the fundamental rights of litigants—give the Plaintiff public interest standing, as no other party is in a better position to bring these matters before the Court.

19. The Plaintiff has acted as lead counsel in numerous constitutional challenges related to family law, including: (i) the unconstitutionality of the three-year prescription on child support arrears; (ii) the right of same-sex couples to marry; (iii) the lack of economic rights for common-law spouses; (iv) Jewish religious divorce; (v) the publicity of judicial proceedings; and (vi) the unconstitutionality of Québec’s child support guidelines.

20. The harmonization between the fundamental rights of Québec families and the laws designed to meet their needs is at the core of the Plaintiff’s professional practice.

21. The Plaintiff also submits that she meets the criteria for **locus standi**: she is directly affected by the Act, raises serious questions, and there is no more reasonable or effective means to bring these issues before the Court. (*Minister of Justice of Canada v. Borowski*, [1981] 2 S.C.R. 575; *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, [2012] 2 S.C.R. 524; *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27).

22. The Defendant is the Attorney General of Québec (“AGQ”), representing His Majesty the King in right of Québec, duly designated to defend the validity of the contested provincial laws.

23. In accordance with sections 76 and 77 of the *Code of Civil Procedure* (CQLR, c. C-25.01), notice will be given to the Attorney General of Canada (“AGC”).

24. The Government of Canada plays a vital role in ensuring that Québec residents are afforded constitutional protections in family law, particularly with regard to disparities in treatment between provinces.

III – Historical Context: The Division of Family Law Powers Before and After Confederation

25. Before Confederation in 1867, family law in Canada was governed by disparate regimes; no single court handled all family-related matters.

26. In Lower Canada (now Québec), heavily influenced by French civil law and the Catholic tradition, divorce was prohibited; the Civil Code of 1866 treated marriage as indissoluble during the lifetime of the spouses.

27. Married couples could only obtain a legal separation; full dissolution of the marriage was unavailable to them.

28. This situation is explained by the historical context: the Civil Code of 1866 was largely inspired by the French Napoleonic Code. Although the Napoleonic Code of 1804 had allowed divorce, France abolished divorce in 1816 and did not reinstate it until 1884. In the meantime, in 1866, neither France nor Lower Canada permitted divorce, in line with the prevailing religious principles of the time. The Civil Code of Lower Canada, modelled on the French code, reflected this influence: the Catholic Church even praised the 1866 Code as consistent with canonical doctrine on marriage.

29. In certain English-speaking colonies, including New Brunswick and Nova Scotia, local laws or special courts could exceptionally grant divorces.

30. These possibilities, however, remained very limited: elsewhere, the dissolution of a marriage required a private act of the imperial or colonial Parliament—a rare and costly procedure.

31. On the eve of Confederation, the legal landscape of family law was fragmented, and no unified structure allowed for the resolution of all consequences of a marital breakdown within a single court.

32. The Constitution Act, 1867 established a division of legislative powers that would permanently shape the organization of courts in family matters.

33. Section 91(26) grants the federal Parliament exclusive jurisdiction over “marriage and divorce,” while the provinces are assigned jurisdiction over “property and civil rights” (s. 92(13)) and the “administration of justice” (s. 92(14)).

34. As early as 1867, the Superior Court recognized certain rights arising from common-law unions: in *Connolly v. Woolrich and Johnson et al.*, [1867] 17 R.J.R.Q. 75 (S.C.L.C.), such a union was even described as a “marriage according to the custom of the country.”

35. This division meant that only Parliament could legislate on divorce; no province could create its own rules for marital dissolution.

36. Consequently, only a court under federal authority—that is, the Superior Court of each province pursuant to section 96—was empowered to grant a divorce after 1867.

37. For nearly a century, Québec had no general divorce law. Only “religious”

marriage was permitted (celebrated by various religious ministers), and divorce remained unknown. Only wealthy couples could request a private act of the federal Parliament, a rare and expensive procedure.

38. The first federal Divorce Act, adopted in 1968, led to the authorization of civil marriage in Québec in 1969, thus breaking the exclusivity of religious marriage.

39. The Supreme Court confirmed that corollary relief measures to divorce—namely child custody and support—also fall under federal jurisdiction. In *Jackson v. Jackson*, [1973] S.C.R. 205, the Court held that a child support order for children of a marriage is “necessarily incidental” to the federal power over divorce and, therefore, valid under federal jurisdiction.

40. Along the same lines, in *Zacks v. Zacks*, [1973] S.C.R. 891, the Supreme Court reiterated that the Divorce Act may validly govern custody, care, and education of children in the context of divorce, as these issues are intrinsically linked to marital breakdown. The Court further clarified that incompatible provincial laws are inoperative to the extent of their inconsistency. It follows that any attempt to assign exclusive and parallel jurisdiction over such corollary relief to a provincial court would violate the primacy of the Divorce Act and the constitutional division of powers.

41. Most recently, in *Opsis Airport Services Inc. v. Quebec (Attorney General)*, 2025 SCC 17 (May 30, 2025), the Supreme Court reaffirmed that even a provincially valid law becomes inapplicable if it “substantially intrudes” on the core of an exclusive federal jurisdiction. This judgment confirms the strength of the principle that any provincial measure that hinders the effective exercise of a federal power must be set aside.

42. This federal law standardized the grounds for divorce and granted provincial superior courts exclusive authority to grant divorces and to issue related corollary orders (child custody, spousal and child support, etc.) within divorce proceedings—including at the interim stage—and subsequently at any time for the modification of such measures.

43. At the same time, the provinces retained jurisdiction over family matters that do not involve the dissolution of marriage.

44. In Québec, this jurisdiction includes, notably: legal separation, separation of property, annulment of marriage, filiation, custody of children of unmarried parents, and support obligations between spouses (absent a divorce) or between former common-law partners for the support of their children.

45. It also includes claims for unjust enrichment, compensatory allowance, annulment of gifts in marriage contracts, disputes regarding parental authority, termination of co-ownership, dissolution of a tacit partnership, and applications for advance cost awards.

46. These civil law matters have traditionally fallen within the jurisdiction of the Superior Court, a court of general jurisdiction empowered to hear any civil dispute not assigned to another court.

47. Until now, an unmarried parent or a former spouse who has not yet filed for divorce must apply to the Superior Court to obtain a custody or support order

48. Also, until now, the Court of Québec has not had the authority to grant such measures; its jurisdiction over custody and parental authority has been limited to situations involving the endangerment of a child’s safety or development under the Youth Protection Act (s. 37 C.C.P.).

49. The Superior Court has developed considerable institutional expertise in family

law, often in conjunction with other areas of civil law.

50. Its judges have made sustained contributions to the development of pan-Canadian jurisprudence, alongside their counterparts in other provinces who hold the same constitutional powers.

51. When a youth protection proceeding (before the Court of Québec, Youth Division) coincided with a custody application (before the Superior Court), the parties had to appear before two separate courts.

52. This procedural duplication led to delays, additional costs, and increased complexity for the families involved—a situation that, fortunately, remained marginal, as most families were not involved in abuse or neglect cases.

53. Despite being relatively rare, this judicial fragmentation has long been criticized as an obstacle to access to justice for vulnerable litigants.

54. As early as the 1970s, the idea of creating a Unified Family Court (“UFC”) combining all family law jurisdictions within a single court emerged as the preferred solution.

55. Several provinces have implemented Unified Family Courts, in collaboration with the federal government, which has allowed for a one-stop forum for family law disputes in those provinces since 1977.

56. In Québec, by contrast, despite numerous projects and studies, the creation of a UFC remained unfulfilled for decades, to the detriment of the public’s best interest.

57. Various expert reports dating back to 1970 recommended the establishment of a UFC, considering it the most effective means of improving access to family justice.

58. However, the realization of such a court has faced well-known political obstacles in Québec (described in more detail at paragraphs 281 and following).

59. Elsewhere in Canada, provinces collaborated with Ottawa to implement a UFC within their Superior Courts, thereby ensuring judicial unity and compliance with constitutional requirements for the benefit of their populations.

60. The debates held over the decades reveal that issues of constitutional jurisdiction often took precedence over goals of access to justice, thereby stalling proposed reforms to the detriment of ordinary Québec citizens for nearly 50 years.

61. To illustrate this divergence: when the federal government introduced a uniform child support guideline in the *Divorce Act*, it invited the provinces to apply this model to children of unmarried parents. All provinces complied—except Québec, which adopted a separate guideline, known to be significantly less generous.

62. This choice disadvantaged Québec women and children born outside of marriage, who were already deprived of protections equivalent to those provided under the *Divorce Act*.

63. Rather than impose a uniform standard, the federal government agreed to allow the Québec guideline to apply even in divorce cases. **This concession had the effect of unfairly diluting the guarantees set out in federal legislation, to the detriment of women and children residing in Québec.**

64. As for the UFC, it was not until the 21st century that Québec finally undertook legislative reforms to address, even partially, the absence of a unified family court.

65. In 2016, the coming into force of the new *Code of Civil Procedure* allowed the Court of Québec, Youth Division, to rule on certain related custody matters when it was already seized of a youth protection case, thereby avoiding duplicative proceedings with the Superior Court.

66. In practice, family law lawyers collaborate, when possible, with social workers to maintain the jurisdiction of the Superior Court over custody matters, given the lack of consistency and predictability between the two levels of jurisdiction.

67. It has also been observed that social workers are increasingly limiting their use of judicial proceedings: the case *Droit de la famille – 23935*, 2023 QCCA 816, illustrates this trend; the Court of Appeal saw no obstacle to the Superior Court exercising its concurrent jurisdiction and rendering the final judgment on custody.

68. In 2018, the Québec government announced its intention to create a UFC and began the necessary groundwork.

69. On February 25, 2025, this intention materialized with the tabling of Bill 91 before the National Assembly.

70. The Association des avocats et avocates en droit de la famille du Québec (AAADFQ) submitted a brief strongly criticizing the full transfer of family jurisdiction to the Court of Québec; **others denounced the proposed “disunification,” based on an artificial categorization of litigants.**

71. Despite these criticisms, Bill 91 was passed on April 8, 2025, and received Royal Assent on April 10, 2025.

72. What remains to be determined is whether the solution adopted by the Québec legislature complies with the Constitution of Canada—a point the Plaintiff contests.

IV – Summary Analysis of the Act Establishing the Unified Family Court

73. The TUF Act creates, within the Court of Québec, a new division called the “Unified Family Court” (UFC) and grants it exclusive jurisdiction over certain family law matters.

74. Specifically, section 1 amends the *Act Respecting the Courts of Justice* to authorize the UFC to hear, at first instance, any application relating to civil unions, parental unions, or the filiation of a child born through surrogacy.

75. The term “parental union” refers to common-law partners who become parents of a child born after June 29, 2025.

76. This regime, created by the *Act to Reform Family Law and Establish the Parental Union Regime* (Bill 56, 2024, chapter 22), subjects such couples to the UFC’s jurisdiction as of the child’s birth, unless they opt out by notarized declaration.

77. Married couples, common-law partners without children, common-law partners with children already born, and parents who are not in a common-law relationship may fall outside the scope of the UFC. The TUF Act does not empower the Court of Québec to grant divorces or hear family matters arising from marriage, divorce, or any pre-existing union or union without children.

78. **This is a so-called “unification” that claims to unify but succeeds only in dividing.**

79. Note that civil unions are also included, though rare: in 2023, there were 22,688 marriages compared to only 108 civil unions, according to the *Institut de la*

statistique du Québec.

80. Common-law partners may, by notarized declaration, opt out of parental union status and thereby avoid the effects of this regime, which in any case offers significantly fewer protections than marriage. This ability to opt out demonstrates that the parental union is not a public order institution on par with marriage or divorce.

81. The UFC has jurisdiction only over a narrow category of litigants: (i) common-law partners who are parents of a child born after June 2025 and have not signed an “opting-out” declaration; (ii) civil union couples; and (iii) persons linked by filiation arising from surrogacy. All other family law disputes remain under the jurisdiction of the Superior Court.

82. Over time, the Superior Court’s jurisdiction over family law will therefore be progressively reduced.

83. The TUF Act provides that only judges of the Court of Québec may sit on the UFC; under a parallel reform, these judges may now be appointed from among notaries and are not necessarily bilingual, unlike Superior Court judges.

84. Many of these judges will lack practice and in-depth experience in applying Superior Court jurisprudence on child and spousal support or in resolving financial disputes.

85. This creates a serious risk of jurisprudential inconsistency and of “de-institutionalizing” the body of knowledge built over decades by the Québec Superior Court in family law, both in legal reasoning and evidentiary assessment.

86. To encourage amicable resolution, the TUF Act introduces a mandatory pre-hearing mediation requirement: except in certain cases, parties to proceedings concerning parental or civil unions must demonstrate that they attempted mediation before a hearing.

87. Exemptions exist, notably in cases of domestic, spousal, or sexual violence, where a party may be exempted from mediation by simple declaration.

88. However, the court may penalize a party who falsely claims a reason other than violence to avoid mediation; they may be ordered to pay legal costs or face a financial penalty.

89. Under the current legal regime, individuals must attend a mandatory co-parenting and mediation information session—alone if necessary—and non-participation cannot be sanctioned (an exemption is granted upon simple declaration, without potential “punishment”).

90. **Now, the government is so intent on enforcing mediation that it wields the hammer of financial sanctions against the most vulnerable members of society—if they fail to convince the court that they had valid reasons not to comply with it in the aftermath of a separation. Such a situation borders on the outrageous.**

91. Moreover, the judicial process in family matters is restructured through the introduction of a “conciliation” session before a UFC judge, followed, if necessary, by a simplified hearing on the merits (referred to as a “summary hearing”), aimed at accelerating the resolution of family disputes while reducing their cost. The shortcomings of this approach will be examined in greater detail at paragraphs 145 and following.

92. This conciliation process violates article 163(3) *C.C.P.* (confidentiality of the case management conference) and article 165(2) *C.C.P.* (the conciliating judge may not

later hear the case), especially since it becomes coercive in nature when neither party is allowed to withdraw.

93. Yet, article 5 of the *Judicial Code of Ethics* requires that a judge remain—and appear—impartial and objective.

94. This impartiality, a cornerstone of judicial independence, assures the litigant that they will be heard without bias; as the Conseil de la magistrature reminds us (*Inquiry Report*, 2007 CMQC 96), a case must be judged not only fairly, but in a manner that appears fair.

95. Allowing a judge to hear the parties' confidential negotiations and then rule on the dispute if mediation fails seriously undermines the required impartiality.

96. The TUF Act does, however, provide for enhanced legal aid for low-income litigants who jointly submit a negotiated agreement, covering the services of a lawyer or notary.

97. Various statutes, including the *Code of Civil Procedure*, the *Youth Protection Act*, and the *Act Respecting the Courts of Justice*, are amended to coordinate the UFC with the rest of the judicial system.

98. According to the legislature, these measures aim to simplify families' judicial experience and avoid multiple proceedings before different courts.

99. **In reality, the framework creates an artificial stratification based not on coherent legal principles, but on a child's birthdate, the formal marital status of the parents, or their express choice to adhere—or not—to a legal regime. The result is a more confusing, not simpler, system.**

V – Relevant Constitutional Principles

100. The Constitution of Canada is the supreme law of the land. Under section 52(1) of the *Constitution Act, 1982*, any law that is inconsistent with the provisions of the Constitution—including those of the *Constitution Act, 1867* and the *Canadian Charter of Rights and Freedoms, 1982*—is, to the extent of the inconsistency, of no force or effect.

101. When assessing the validity of a law, the court must determine whether it respects both the division of powers and the protection of fundamental rights guaranteed by the Charter.

102. With respect to the division of powers, the Constitution establishes a balance between the federal Parliament and the provincial legislatures; each level of government legislates within the areas assigned to it by sections 91 to 95 of the *Constitution Act, 1867*.

103. Jurisprudence has developed several doctrines to preserve this balance, including the doctrine of exclusivity of powers, which flows from sections 91 and 92.

104. According to this doctrine, a province may not intrude upon an area of exclusive federal jurisdiction, and vice versa. For example, no province may validly enact a law dealing with divorce, as that matter falls under the exclusive authority of the Parliament of Canada.

105. **Section 96 of the *Constitution Act, 1867* plays a central role in the structure of the Canadian judiciary. It provides that “The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province.” The Supreme Court interprets this as protecting a “core jurisdiction” exclusive to the superior courts, which must remain free from provincial encroachment.**

106. This principle seeks to preserve a historical core of judicial authority that the Constitution reserves to superior courts, as they existed at the time of Confederation. Provinces therefore cannot remove fundamental judicial functions from these courts or assign them to statutory provincial courts exercising equivalent powers.

107. It thereby guarantees a unified judicial system, with superior courts—composed of federally appointed, independent judges—serving as its cornerstone.

108. The Supreme Court has reaffirmed that the unity of the judiciary and the rule of law are among the foundational principles underpinning section 96 and the structure of our Constitution. The Court, through the opinions of Justices Suzanne Côté and Sheilah Martin, both jurists from Québec, elaborated on this in *Reference re Code of Civil Procedure (Que.)*, Art. 35, as follows:

[4] ... To ensure that s. 96 fulfills its function, this Court has developed various tests over time, the most recent being the three-step test from *Re Residential Tenancies Act, 1979*, [1981 CanLII 24 \(SCC\)](#), [1981] 1 S.C.R. 714 (“*Residential Tenancies*”), and the core jurisdiction test adopted in *MacMillan Bloedel Ltd. v. Simpson*, [1995 CanLII 57 \(SCC\)](#), [1995] 4 S.C.R. 725.

[60] In *Residential Tenancies*, Dickson J. (as he then was) firmly reiterated the relationship between the prohibition against creating parallel courts and the role and purpose of s. 96:

Section 92(14) and ss. 96 to 100 represent one of the important compromises of the Fathers of Confederation. It is plain that what was sought to be achieved through this compromise, and the intended effect of s. 96, would be destroyed if a province could pass legislation creating a tribunal, appoint members thereto, and then confer on the tribunal the jurisdiction of the superior courts. What was conceived as a strong constitutional base for national unity, through a unitary judicial system, would be gravely undermined. [p. 728]

[61] In its jurisprudence subsequent to *Residential Tenancies*, this Court has consistently refused to allow the creation of parallel courts. In *McEvoy*, the Court held that the contemplated court could not be established, because it would “effectively be a s. 96 court” (pp. 718-19). The same fundamental concept was applied in *Sobeys*, in which Wilson J., writing for the majority, stated that “**s. 96 operates . . . to prevent the creation of provincial tribunals charged with exercising the jurisdiction of superior courts**” (p. 245).

[65] To preserve the essence of the superior courts, this Court therefore added a second test to the analysis of constitutionality under s. 96. It held that when the core jurisdiction of superior courts is affected, courts must ask whether the legislation has the effect of removing any of the attributes of the superior courts’ core jurisdiction (*MacMillan Bloedel*, at paras. 18 and 27). Core jurisdiction includes “critically important jurisdictions which are essential to the existence of a superior court of inherent jurisdiction and to the preservation of its foundational role within our legal system” (*Reference re Residential Tenancies Act (N.S.)*, at para. 56, per Lamer C.J., concurring).

[67] [...] **The content of the core jurisdiction is therefore not limited to what the superior courts exercised exclusively at the time of Confederation. It extends to whatever is needed in order to preserve the vigour and strength of those courts. The protected powers and jurisdiction are solidly anchored in the role the superior courts are called upon to play in the maintenance of the rule of law in our unitary justice system** (*MacMillan Bloedel*, at paras. 37-38 and 41).

[71] We will begin by applying the *Residential Tenancies* test to determine whether art. 35 para. 1 [C.C.P.](#) affects a jurisdiction that has historically been exercised by the superior courts and cannot be granted to a court with provincially appointed judges. Because we conclude that the application of that test does not enable us to answer the question before the Court, we will then turn to the core jurisdiction test. **As we will explain, that test must be adapted to better reflect the underlying purposes of the two tests, including that of prohibiting the creation of parallel courts. In this case, we find that the impugned provision is unconstitutional, because it impermissibly infringes on the superior courts' general private law jurisdiction, which forms part of their core jurisdiction. In its current form, art. 35 para. 1 C.C.P. has the effect of transforming the Court of Québec into a parallel court that undermines the constitutional role of the Superior Court of general jurisdiction. In other words, the Court of Québec's exclusive jurisdiction over civil claims for less than \$85,000 is unconstitutional.**

109. **The unconstitutionality of the TUF Act is all the more evident: claims relating to the “property of the parental union” and the “compensatory allowance” specific to parental unions, as well as classic unjust enrichment claims between civil union spouses, will often exceed the Court of Québec's \$75,000 monetary jurisdiction, thereby encroaching on federal jurisdiction.**

110. **It is clear that this law cannot withstand constitutional scrutiny, and the Minister of Justice is fully aware of it. As the Supreme Court reminded us in *Vriend v. Alberta*, [1998] 1 S.C.R. 493, a legislature may not knowingly enact a law that violates the Constitution.**

111. This “core jurisdiction” is all the more protected because access to the superior courts is essential to the rule of law and judicial independence: *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59.

112. The principle of judicial independence, rooted in section 96 and guaranteed by constitutional principles (including the preamble to the *Constitution Act, 1867*, and section 11(d) of the *Charter* in criminal matters), ensures that judges carry out their functions with impartiality, free from interference by the other branches of government.

113. This principle of judicial independence has several dimensions: security of tenure until age 75, removable only by joint address of Parliament; financial security established by Parliament; and administrative independence, which prevents the executive from deciding who sits where. It is a fundamental guarantee both for litigants and for the integrity of the judicial system.

114. However, under the *Act Respecting the Courts of Justice*, CQLR c. T-16, judges of the Court of Québec do not benefit from the same guarantees, and the TUF Act authorizes the Minister to select who will sit on it.

115. This constitutionally entrenched guarantee of judicial independence, especially for Superior Court judges, must not be downplayed. Executive interference in the operation of the Court of Québec has already led to serious consequences arising from the Québec government's refusal to respect the *Charter*: *Makoma c. Procureur général du Québec*, 2025 QCCS 1646, judgment of Justice Bisson, May 25, 2025.

116. The harsh reality that the executive dictates its policies to the Court of Québec—at the expense of individual rights guaranteed by the *Charter*—was not only firmly condemned by the Honourable Justice Donald Bisson in the above judgment, but also drew severe criticism in media commentary:

Il y a quelque chose de tragiquement ironique dans la condamnation du gouvernement du Québec à verser 164 M\$ aux personnes qui n'ont pas pu comparaître devant un juge dans les 24 heures suivant leur arrestation.

Tragique, parce que l'État québécois est fauché et que ces 164 millions auraient pu servir à d'autres fins, notamment aux services de santé.

Ironique, parce que c'est le ministère de la Justice lui-même qui a failli à respecter la loi! Le droit de comparaître devant un juge dans les 24 heures est un droit fondamental, absolu.

Une pratique administrative illégale a été instaurée au sein du ministère il y a une dizaine d'années. Pour économiser quelques centaines de milliers de dollars, on a choisi de priver les citoyens de leurs droits les plus élémentaires.

Cela va maintenant coûter des centaines de millions, une fois les intérêts et les frais inclus.

(...)

Le ministre Jolin-Barrette n'aime pas être remis en question. Il se réfugie souvent derrière des arguments simplistes, comme: «C'est le modèle québécois».

(...)

Mais c'est aussi ce même ministre qui a mené une guerre d'ego contre l'ancienne juge en chef de la Cour du Québec à propos de la planification du travail des juges. Il ne supporte pas d'être contredit, même par les tribunaux.

Un gouvernement hors la loi, Thomas Mulcair, Le Journal de Montréal, publié le 29 mai 2025

117. The reference was to a 2021 decision by former Chief Justice of the Court of Québec, Lucie Rondeau, to grant her judges one day of judgment writing time for every day spent in court. This prompted an impulsive reaction from the Minister, who refused to “authorize” the initiative. The Minister even threatened to amend the *Act Respecting the Courts of Justice* to impose his own schedule.

118. The Honourable Chief Justice Rondeau appropriately responded to the Minister’s obstruction by denouncing his interference in the administration of justice. Even though, in practice, the executive and the judiciary ultimately reached a compromise, **the message remains clear: the Government of Québec does not afford the same weight to judicial independence as the Government of Canada.**

119. The Charter also enshrines fundamental rights relevant to this case. Section 15(1) guarantees every individual the right to equality before and under the law, without discrimination based on sex, marital status, or national or ethnic origin.

120. The legislature cannot create distinctions that deny an identifiable group full equality in dignity and rights, unless those distinctions can be justified under the reasonable limits clause set out in section 1 of the Charter.

121. Access to justice—that is, the real, effective ability of individuals to have their rights recognized by a court—is an essential corollary of the rule of law. **Yet, what the TUF Act achieves with respect to access to justice is not an improvement—it is an impediment.** This law imposes mandatory procedural filters (mediation, conciliation), which act as barriers even before a person can be heard by a competent judge.

122. The Supreme Court has ruled that excessive barriers to access to the courts may violate the Constitution, especially if they restrict access to the superior courts protected under section 96 of the *Constitution Act, 1867*.

123. Thus, in *Trial Lawyers*, supra, high court fees were struck down because they limited access to superior courts.

124. In sum, the constitutional principles relevant to this challenge include:

(i) Respect for the division of legislative powers (notably, the federal government's exclusive jurisdiction over divorce and the protected role of superior courts in the judiciary);

(ii) Respect for the independence and authority of the judiciary;

(iii) The right to equality without discrimination, guaranteed by section 15 of the Charter;

(iv) The right of access to justice, which is essential to the constitutional role of the superior courts; and

(v) The fundamental principles of the rule of law and the unity of the judicial system.

VI – First Ground: Violation of Section 96 of the *Constitution Act, 1867*

125. **The Plaintiff argues that the TUF Act violates section 96 by removing judicial powers from the superior courts and conferring them on the Court of Québec, a court whose judges are appointed by the provincial government.**

126. Section 96, as interpreted by the case law, prohibits provinces from creating new courts that exercise powers equivalent in nature or scope to those exercised exclusively by superior courts at the time of Confederation.

127. **In 1867, disputes relating to child custody, child and spousal support, legal separation, and parental authority already fell under the jurisdiction of superior courts: in Lower Canada, the Superior Court heard matters of legal separation, filiation, and guardianship;** in Upper Canada, the Court of Chancery ruled in equity on custody and support matters. Divorce fell within the jurisdiction of imperial courts or was granted by private acts in colonies with legislative powers. No lower or statutory provincial court held general jurisdiction over these family law disputes.

128. By granting the Court of Québec exclusive jurisdiction over disputes arising from parental unions or civil unions—including custody, parental authority, and support between common-law spouses—the TUF Act removes these matters from the Superior Court, which has held jurisdiction over them since Confederation.

129. **This transfer of jurisdiction effectively assigns to a provincial statutory court judicial functions that, by their nature and importance, are part of the “core jurisdiction” protected by section 96.**

130. This constitutes a clear intrusion into the constitutionally protected “core” of superior court jurisdiction.

131. In *Reference re Code of Civil Procedure (Que.)*, art. 35, 2021 SCC 27, the Supreme Court confirmed that legislative expansions assigning historically superior court functions to a provincial court render those provisions inoperative.

132. The provisions assigning exclusive jurisdiction to the Court of Québec for civil

matters up to \$85,000 were declared unconstitutional, with the majority reaffirming that the jurisdiction of superior courts—an essential element of federalism—cannot be hollowed out.

133. By analogy, granting the Court of Québec exclusive jurisdiction over most family disputes between unmarried persons amounts to assigning it a function equivalent to that historically exercised by the Superior Court.

134. Such a measure therefore exceeds the constitutional authority of the provincial legislature.

135. Across Canada, constitutionally compliant Unified Family Courts operate within the superior courts, with support from the federal government for the appointment of additional judges.

136. Québec is the only province attempting to unify family law matters within a provincially constituted court, breaking with the nationwide judicial structure established by sections 96 to 100 of the *Constitution Act, 1867*.

137. The TUF Act thus encroaches on the exclusive role of superior courts and undermines the unity and coherence of Canada’s judicial system as envisioned by the Fathers (and Mothers) of Confederation.

138. It is the very essence of the Superior Court that it serves as a court of general jurisdiction, endowed with an inherent power of review and supervision over all lower courts, including the Court of Québec. This inherent power guarantees access to extraordinary remedies (the prerogative writs), including *certiorari*, *prohibition*, *mandamus*, *quo warranto*, and *habeas corpus*, which cannot be taken away.

139. **The Plaintiff respectfully submits that it constitutes a particularly grave affront to the Superior Court to attempt to deprive its judges of their historical jurisdiction in family law.**

140. The Québec Superior Court is the institutional successor to the King’s Bench, established in Lower Canada in 1791. **This superior court already held general jurisdiction over major civil matters at the time, including legal separation, filiation, child custody, and guardianship** (*Civil Code of Lower Canada*, 1866: arts. 242–245 [paternal authority], arts. 249–313 [guardianship], arts. 186–217 [legal separation and child custody], arts. 218–241 [filiation]).

141. **The Superior Court’s role as a superior court of general jurisdiction, with oversight and supervisory powers, was well established before Confederation; today’s Superior Court continues to hold this core jurisdiction, protected by section 96.**

VII – Second Ground: Infringement of Judicial Independence

142. The independence of the judiciary is a fundamental constitutional principle: it ensures that judges decide disputes impartially, free from undue influence, and guarantees litigants that they will be heard by a neutral tribunal.

143. The TUF Act infringes on this independence in two ways: first, by removing historically protected judicial powers from the Superior Court—whose judges benefit from the highest level of independence; and second, by imposing functions on judges of the new tribunal that are incompatible with the required impartiality.

144. Prior to the reform, matters of custody, parental authority, and support were handled almost exclusively by Superior Court judges, appointed by the federal

government and protected by section 96 of the *Constitution Act, 1867*.

145. The TUF Act now transfers this body of family litigation to the Court of Québec, whose judges are appointed, paid, and administered by the provincial government. This shift, though administrative in appearance, constitutes a constitutional rupture: a vital portion of family law is removed from judges specifically structured to resist local political influence.

146. The reform introduces an additional concern: it allows the same UFC judge to preside over a “conciliation” session and then rule on the case if the attempt fails.

147. **No litigant before the Superior Court is subject to such a coercive regime—whether in regard to mediation, let alone “conciliation” or a “settlement conference.”**

148. **This overlap blurs the line between the role of mediator and that of adjudicator, violating the principle that a judge must not be exposed to confidential information that could impair their impartiality. This principle is enshrined in articles 163 and 165 of the *Code of Civil Procedure*:**

Art. 163(3) C.p.c. *Tout ce qui est dit, écrit ou fait au cours de la conférence est confidentiel.*

Art. 165(2) C.p.c. *Si aucun règlement n'intervient, le juge peut prendre les mesures de gestion appropriées ou, avec le consentement des parties, convertir la conférence de règlement à l'amiable en conférence de gestion. Il ne peut cependant par la suite instruire l'affaire ou décider d'une demande incidente à celle-ci.*

149. In the case *Kosko v. Bijimine*, 2006 QCCA 671, the Court of Appeal emphatically stressed the need to preserve, at every stage, the confidentiality of any “judicial conciliation” in order not to compromise the integrity of this dispute resolution method; it also reiterated the ethical obligations incumbent on judges who preside over such meetings. Accordingly, a judge who has presided over a “judicial conciliation” cannot be compelled to testify in a trial held later.

150. The same principle applies in family law: *Droit de la famille - 092711*, 2009 QCCA 2158, confirms that a judge who presided over a settlement conference may not later hear the merits of the case:

[1] Dans *Kosko c. Bijimine* EYB 2006-106 265 (C.A.) une décision du 6 juin 2006, le juge Rochon expose les principes de confidentialité d'une séance de médiation et les conséquences qui en découlent pour tous les participants, y compris pour le juge qui préside la séance de médiation.

[2] Depuis le 1er janvier 2003 le principe de la confidentialité est consacré à l'article 151.21 C.p.c. Il en va de même pour les conséquences qui découlent de la participation d'un juge à une conférence de règlement à l'amiable (médiation); l'article 151.23 C.p.c. au premier alinéa énonce:

«Si aucun règlement n'intervient le juge ne peut par la suite entendre aucune demande relative au litige.»

(...)

[7] **Partant, s'agissant d'une conférence de règlement à l'amiable (médiation) le juge de première instance ne pouvait donc plus «par la suite entendre aucune demande relative au litige», y compris, bien évidemment, décider du fond du litige, et ce, en application de la règle énoncée à l'article 151.23 C.p.c.**

151. The Supreme Court endorsed *Kosko* in *Union Carbide Canada Inc. v. Bombardier Inc.*, [2014] 1 S.C.R. 800: even in the absence of legislative provisions, the “settlement privilege” exists in Québec and requires that the content of any negotiation be inadmissible in evidence.

152. In practice, in the Superior Court, settlement conferences are conducted by judges who will never hear the case on its merits. The TUF Act eliminates this safeguard without providing an equivalent alternative.

153. The Plaintiff does not question the personal integrity of judges of the Court of Québec, but the TUF Act imposes hybrid functions on them without adequate safeguards.

154. The Supreme Court of Canada has emphasized, notably in *Valente v. The Queen* ([1985] 2 S.C.R. 673), *Beauregard v. Canada* ([1986] 2 S.C.R. 56), and *Reference re Remuneration of Judges* ([1997] 3 S.C.R. 3), that **judicial independence requires a functional separation between facilitation and adjudication. A judge who has attempted to reconcile the parties may no longer appear neutral if the conciliation fails and they must rule on the case.**

155. This concern is especially warranted in family law, a field often involving matters of public order, power imbalances, or situations of domestic violence and coercive control. A confusion of roles risks undermining the appearance of impartiality required to meet constitutional guarantees.

156. Impartiality—and its appearance—is therefore at risk; this danger arises from the particular dynamics of family law disputes.

157. Even if one were to invoke the parties’ consent to allow a conciliating judge to later adjudicate the matter, two objections arise: first, such consent can only be truly informed after the failure of negotiations, which the TUF Act does not provide for; second, the protective public order governing family law limits the validity of such arrangements.

158. Article 2639 of the *Civil Code of Québec* further prohibits the submission of family matters or other issues of public order to arbitration:

Art. 2639 C.c.Q. *Disputes over the status and capacity of persons, family matters or other matters of public order may not be submitted to arbitration.*

159. Authorizing judicial conciliation followed by adjudication—even with consent—would contravene fundamental principles of impartiality and the public order nature of family law.

160. Additionally, there is a complete absence of transitional measures: no structured training program is in place to prepare judges of the Court of Québec for these new responsibilities.

161. Yet the areas affected by the reform require a high level of expertise that Superior Court judges already possess, but that their counterparts in the Court of Québec have not yet had the opportunity to acquire.

162. Judicial training cannot be improvised: it forms part of institutional knowledge built over decades through experience, peer exchange, and cumulative jurisprudence.

163. No transitional mechanism has been provided to allow judges of the Court of Québec to gain the necessary experience in handling complex family law matters they have, for the most part, never adjudicated.

164. The training provided for this purpose remains basic and theoretical. A few

accelerated courses cannot replace the human and jurisprudential expertise developed by the Superior Court.

165. The transfer of an entire category of important civil litigation to a provincially controlled court also raises structural concerns: section 96 exists precisely to protect a model in which superior court judges are federally appointed to shield them from local political pressures.

166. **This judicial structure ensures a functional separation between the power that makes the laws and the judge who interprets them. It prevents the concentration of judicial power in the hands of one level of government. The TUF Act departs radically from this model.**

167. By entrusting a partisan government with the power to create, fund, organize, and staff a tribunal charged with deciding deeply personal and socially sensitive matters, the TUF Act eliminates the historical counterbalance of the Superior Court.

168. **This wholesale transfer of judicial authority represents an instrumentalization of provincial courts by an executive that has already expressed its desire to curtail the role of the Superior Court. The constitutional implications are significant.**

169. **The federal judicial system cannot be circumvented under the pretext of local reorganization. The legitimacy of a court depends on its compliance with constitutional foundations. Any other claim is disingenuous.**

170. **It is paradoxical that a government struggling to adequately fund youth protection would allocate enormous sums to creating a new provincial tribunal requiring the appointment of 50 to 100 judges.**

171. Such an undertaking—when the Superior Court already handles these cases—constitutes both a circumvention of the Constitution and an unacceptable misuse of public funds.

172. The TUF Act also infringes fundamental rights: disputes concerning custody, filiation, or support affect life, liberty, and personal security within the meaning of section 7 of the Charter.

173. According to the principles of fundamental justice, such disputes must be adjudicated by a truly independent and impartial tribunal.

174. In *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46, the Supreme Court recognized that this type of dispute engages section 7 of the Charter and that the right to a fair and equitable hearing includes the requirement of an independent judge. Principles of due process must be scrupulously upheld.

175. It follows that the TUF Act must be declared inoperative under section 52(1) of the *Constitution Act, 1982*. It violates both the structural guarantees of section 96 and the principles of fundamental justice.

176. **From another perspective, the Plaintiff submits that the broad scope of powers conferred on the Superior Court is a direct corollary of its constitutional independence. This structural link is reflected in several provisions of the *Code of Civil Procedure*:**

DIVISION II

JURISDICTION OF SUPERIOR COURT

Art. 33 C.c.p. The Superior Court is the court of original general jurisdiction. It has jurisdiction in first instance to hear and determine any application not formally and exclusively assigned by law to another court or to an adjudicative body.

It has exclusive jurisdiction to hear and determine class actions and applications for an injunction.

Art. 34 C.c.p. *The Superior Court is vested with a general power of judicial review over all courts in Québec other than the Court of Appeal, over public bodies, over legal persons established in the public interest or for a private interest, and over partnerships and associations and other groups not endowed with juridical personality. (...)*

A matter is brought before the Court by means of an application for judicial review.

CHAPTER I INJUNCTION

Art. 509 C.c.p. *An injunction is an order of the Superior Court directing a person or, in the case of a legal person, a partnership or an association or another group not endowed with juridical personality, its officers or representatives to refrain from or cease doing something or to perform a specified act.*

Such an injunction may direct a natural person to refrain from or cease doing something or to perform a specified act in order to protect another natural person whose life, health or safety is threatened. Such an injunction, called a protection order, may be obtained, in particular, in a context of violence, such as violence based on a concept of honour. A protection order may only be issued for the time and on the conditions determined by the court, without however exceeding three year.

177. **A large number of family law decisions are injunctive in nature, and only the Superior Court has the authority to issue injunctions.** This power stems from its exclusive jurisdiction under the *Code of Civil Procedure*, particularly with respect to safeguard or protection orders, such as an injunction under article 509 C.C.P. Transferring family litigation to the Court of Québec therefore effectively deprives some litigants of access to an essential remedy and fractures the unified handling of family cases within a single judicial forum.

178. In family law matters, litigants are required to disclose any existing protection orders. Should a parent in a parental union obtain that order from the Superior Court, then return to the Court of Québec for custody or support? And go back to the Superior Court again for contempt proceedings? This fragmentation is costly, inefficient, and contrary to the right to coherent access to justice.

179. The TUF Act also grants the Court of Québec jurisdiction to hear applications under the *Hague Convention on the Civil Aspects of International Child Abduction*. This decision borders on the absurd: nearly every Hague case relies on a series of injunctions—passport seizures, travel bans, immediate return orders, interim custody orders—yet injunctive relief falls exclusively within the jurisdiction of the Superior Court. The legislator thus places judges and parties in a deadlock: the seized court lacks the necessary powers to issue the very orders required to ensure the child's prompt return, forcing the parents to return to the Superior Court and thereby exacerbating the very delays the Convention aims to prevent.

180. **When the Court of Québec renders an interlocutory judgment regarding custody, parental authority, or support, any application for judicial review must be filed... before the Superior Court. Potential access to the Court of Appeal will only occur later. Why this procedural detour? Because the Superior Court remains hierarchically superior to the Court of Québec. Why, then, condemn common-law spouses in a parental union to a lower court for matters of such significance?**

181. **In youth protection cases, appeals from decisions or orders of the tribunal fall exclusively... under the jurisdiction of the Superior Court, in accordance with the *Youth Protection Act* (YPA), thereby ensuring review by a federally appointed judge, consistent with the framework established under section 96. Why should common-law spouses be denied the same treatment when the best interests of the child and public order are at stake?**

DIVISION II

APPEAL TO THE SUPERIOR COURT

Art. 99. For the purposes of this division, the word “Court” means the Superior Court.

Art. 100. An appeal lies to the Court from any decision or order of the tribunal rendered under the authority of this Act.

The appeal shall be brought to the Court sitting in the judicial district where the decision or the order of the tribunal was rendered, unless, given the circumstances, the Court decides it would be preferable to hear it in another district.

Art. 101. The appeal may be brought by the child, his parents, the director, the Commission, the Public Curator, the Attorney General or any party in first instance, and each of them may, in addition, if not a party to the appeal, take part ex officio in the hearing as if a party thereto. Notice of at least one clear day to the parties in appeal is required.

Art. 102. The Court shall try the appeal on the transmission of the record and, if applicable, the depositions of the witnesses; it may, however, hear witnesses, if it so wishes, and even receive any additional evidence.

182. It should also be noted that for final judgments rendered by the Court of Québec, access to the Court of Appeal is variable—even discretionary—except where the value of the dispute falls between \$60,000 and \$75,000. If the judgment concerns both issues of endangerment, custody, and support, some parts of the judgment will be appealable to the Superior Court, others to the Court of Appeal.

183. **This fragmented system creates confusion. It multiplies recourses, lengthens delays, undermines the coherence of decisions, and threatens judicial independence by allowing the provincial legislature to “balkanize” the jurisdiction of the Superior Court.**

184. As noted by the Honourable Jacques Chamberland, retired judge of the Québec Court of Appeal and former Minister of Justice of Canada, in *La Presse*, March 6, 2025

Ailleurs au Canada, ces tribunaux unifiés existent déjà, et, pour éviter tout écueil constitutionnel, ce sont des juges de cours supérieures (au sens de l'article 96 de la *Loi constitutionnelle de 1867*) qui y tranchent les litiges. Il semble toutefois que cette option doive d'emblée être écartée au Québec, et ce, pour des raisons qui ont bien peu à voir avec le bien-être des familles québécoises aux prises avec des problèmes qui requièrent l'intervention

d'une cour de justice.

VIII – Third Ground: Obstruction to Access to Justice

185. True access to the courts is a constitutional imperative tied to the rule of law and to the core jurisdiction of the superior courts (s. 96). A law that substantially impedes this access may be struck down.

186. The TUF Act, far from “facilitating the judicial process for families,” creates new obstacles to access to justice in family matters.

187. First, the requirement of mandatory family mediation risks unduly delaying the issuance of a judicial decision.

188. Furthermore, once the free hours are exhausted, additional sessions will result in added costs and delays.

189. For vulnerable individuals—particularly victims of domestic violence—this procedural detour can become an unbearable burden.

190. While an exemption is provided in cases of violence, it is up to the victim to self-identify in order to benefit from it.

191. However, many victims hesitate to disclose abuse for fear of not being believed or of facing retaliation.

192. In this context, some women may feel compelled to participate in mandatory mediation despite the power imbalance and associated dangers.

193. Thus, the requirement of mandatory mediation, even if well-intentioned, can deprive the most vulnerable of prompt access to a judge.

194. Moreover, the current shortage of mediators suggests further delays—even before mediation becomes mandatory.

195. No married, separated, or divorced person faces such a barrier: for them, mediation remains voluntary.

196. The same applies to the so-called “conciliation” procedure, which partners must agree to—but then cannot withdraw from, even if they change their minds. It shows a profound misunderstanding of family law realities to assume that all remaining cases, once those involving domestic violence are excluded, are automatically suited to “conciliation.”

197. Second, by removing from the Superior Court all jurisdiction over parental and civil unions, the TUF Act deprives litigants of the court best suited to the nature of their disputes.

198. The Court of Québec thus becomes a compulsory forum for ONE category of partners, regardless of the stakes or complexity of the case.

199. First-instance decisions will be harder to appeal, since automatic access to the Court of Appeal depends on the monetary threshold.

200. Many litigants therefore risk being denied automatic appeal in cases that are critical to their family lives, which marks a step backward from the current situation.

201. On the other hand, the value of the property in a parental union (family residence, furnishings) will, in most cases, exceed the monetary jurisdiction limit of the

Court of Québec, as established and restricted by the *Reference re Code of Civil Procedure (Que.)*, supra.

202. The same applies to compensatory allowances in parental unions and unjust enrichment claims in civil unions, whereas unjust enrichment between common-law partners outside a parental or civil union will always fall under the jurisdiction of the Superior Court.

203. What will happen to common-law partners in a parental or civil union who later marry? In the event of separation or divorce, will they have to split their litigation between two courts? This defies logic.

204. The wording of the new provisions suggests that partners in a parental union must, in all cases, apply to the Court of Québec—even when the relief sought is unrelated to economic disadvantage resulting from parenthood. Yet the Minister plans to adopt a “scale” to calculate such relief. It is unimaginable that a single formula could account for the full range of economic disparities that may arise between partners.

205. Only common-law partners without children will retain direct access to the Superior Court, which will continue to apply more flexible case law not bound by a fixed scale.

206. Another question arises: common-law partners who have signed a cohabitation agreement may include a provision for spousal support not arising from a “parental union.” The Court of Québec is not a court of general jurisdiction and can only exercise powers explicitly granted by law—which does not include spousal support between partners. As such, such a couple would need to apply to the Superior Court for claims under their cohabitation contract... and to the UFC for custody and child support.

207. This multiplication of proceedings—the Court of Québec for certain matters, the Superior Court for others—adds complexity to the system rather than reducing it.

208. In practical terms, a family with legal issues falling under both federal and provincial jurisdiction will still have to navigate between two courts, in a far more complicated way than currently.

209. Contrary to the stated goal of simplification, the reform is thus likely to make the judicial process more convoluted for certain litigants.

210. Even the Family Law Lawyers’ Association has expressed concern that the proposed tribunal “does not serve the interests of litigants” while being costly for the state.

211. These barriers violate the constitutional principles reaffirmed in *Trial Lawyers*, supra, which prohibits measures that deprive litigants of real access to the courts.

212. In family law, access to justice goes beyond the mere existence of a court: it requires a fair legal framework, consistent treatment, and the ability to obtain effective orders from qualified, independent judges within a reasonable timeframe.

213. In this regard, the TUF Act cannot be maintained without violating the Constitution.

IX – Fourth Ground: Are Common-Law Spouses Second-Class Citizens?

214. **Québec stands out not only in terms of its institutional model of family justice but also by a significantly impoverished normative content—particularly regarding child support and the economic rights of common-law spouses. It is**

important to situate this reality within the broader context of the evolution of Canadian family law.

215. In 1997, Order-in-Council SOR/97-237 (P.C. 1997-644 of April 22, 1997) authorized the application of Québec's child support guidelines to divorces granted in Québec, thus derogating from the general *Divorce Act* regime and subjecting Québec litigants to a separate scale.

216. This Québec model has proven less advantageous for children than the federal model, especially in shared custody situations or where the mother is employed. For example, in a typical case (mother earning \$30,000, father earning \$100,000, 33% access), **the child support payment is \$1,005/month in Québec versus \$1,397 under the federal guidelines. This disparity arises because, under the Québec model, the mother's income directly reduces the father's obligation, and his access time mechanically lowers the presumed cost of the child.**

217. Several Québec mothers have challenged this order under section 15 of the *Charter*. However, the Court of Appeal refused to recognize province of residence as a prohibited ground of distinction under section 15, concluding that the difference in treatment between divorced families in Québec and those elsewhere in Canada did not constitute prohibited discrimination, thereby upholding the validity of the Québec regime despite its generally much less generous outcomes.

218. Everywhere else in Canada, common-law spouses benefit in practice from protections almost equivalent to those of married couples. In every province, a parent who separates from a common-law union can assert the same rights regarding child custody and support, and most provincial legislation provides for the division of family property—before a federally appointed judge. **Except in Québec, unmarried partners in Canada generally have the same remedies as if they were legally married.**

219. In Québec, no comparable right is currently recognized. Yet, 60% of children are born to unmarried parents. Despite this social reality, a couple living together without marrying in Québec remains excluded from the protections offered by marriage or civil union in terms of financial support and property sharing. The constitutionality of this discriminatory treatment has already been brought before the courts. **A majority of Supreme Court judges recognized the discriminatory effect of this lack of protection, but former Chief Justice McLachlin called on the Québec legislature to address the issue** (see: *Québec (Attorney General) v. A.*, 2013 SCC 5).

220. That appeal has gone unanswered.

221. **Ten years later, Québec's recent legislative response to this structural inequity took the form of a new legal institution: the parental union**, which will come into force on June 30, 2025, and will automatically apply to common-law partners who have a child after that date, unless they opt out via notarized declaration. The vast majority of existing families will therefore remain excluded from the regime.

222. Moreover, the content of the parental union is strikingly limited: no spousal support between former partners; family property sharing is restricted to narrowly defined household items, excluding retirement and savings plans.

223. The proposed “compensatory allowance” is less generous than classic unjust enrichment, and the Minister plans to subject it to a formula likely as stingy as that used for child support; one might be better off not having children to retain access to the classic remedy before the Superior Court, which—under recent case law—has become relatively predictable.

224. The parental union thus establishes a downgraded conjugal status, lacking a real foundation in public order and unsupported by any compelling public policy rationale.

225. **The adoption of Bill 91 exacerbates this marginalization by creating the UFC for common-law spouses under parental or civil unions. Married couples, meanwhile, will continue to appear before the Superior Court. The result is a dual court system based on conjugal status: married spouses retain access to a constitutionally protected court with the inherent powers and experience of the Superior Court, while unmarried parents are routed to a statutory court perceived to have more limited powers and resources.**

226. This institutional separation based on conjugal status sends an implicit message of litigant hierarchy. As the U.S. Supreme Court recognized in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), the mere existence of a separate system based on statutory classification—no matter how neutral in appearance—conveys structural stigma. One cannot create a “separate but equal” court for a particular category of citizens without signaling that they are valued less in the eyes of the legislature. The Court stated:

41. We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. **Separate educational facilities are inherently unequal.** Therefore, we hold that the plaintiffs and others similarly situated ... are ... deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

227. The reasoning in *Brown* applies here: separate courts for citizens of equal dignity violate the principle of substantive equality.

228. The Québec regime thereby institutionalizes second-class treatment for women and children from common-law unions, both in terms of their substantive rights and their access to fair justice. Nothing can justify treating some Québec families as inferior to others—whether in the substance of their rights or the mechanisms protecting those rights.

229. The facts set out above form the basis of the discrimination addressed in the fifth ground.

X – Fifth Ground: Discrimination and Systemic Inequality (Section 15 of the Charter)

230. The TUF Act creates distinctions contrary to section 15(1) of the *Charter*, perpetuating systemic inequalities to the detriment of protected groups.

231. Section 15(1) guarantees everyone equality before and under the law, without discrimination based, among other things, on sex or marital status. A law violates it if it imposes, either expressly or in effect, a differential treatment that devalues or harms an identifiable group.

232. Though seemingly neutral, the TUF Act risks producing two forms of indirect discrimination.

233. This parallel regime targets individuals who are already historically disadvantaged: women, mothers, victims of domestic violence, and common-law spouses—often those with limited financial means. Statistics show that the people most affected by separation outside of marriage are women—often young, economically vulnerable, and frequently from immigrant or marginalized communities.

234. The requirement of prior mediation places these women in a precarious position: when facing a dominant partner, they struggle to benefit from a negotiation-based process and risk agreeing to unfair compromises.

235. Even with the violence exemption, many hesitate to disclose abuse out of fear or shame, and end up forced to negotiate with their abuser—endangering both their safety and that of their children.

236. Thus, although the TUF Act applies to all, it creates a specific disadvantage for survivors of domestic violence, thereby perpetuating systemic gender-based inequalities.

237. This discriminatory effect is sufficient to contravene section 15, as case law recognizes that a law can be substantively unfair even if formally neutral. It is enough that it results in adverse effects on a group protected under section 15.

238. The TUF Act also creates a distinction based on marital status.

239. Married couples remain under the federal *Divorce Act* regime, with no mandatory mediation or imposed conciliation, and their disputes are heard by the Superior Court, within a more comprehensive legal framework.

240. **The result is that, in comparable family situations (a separation with children), procedural treatment differs based on whether the couple is legally married.** The TUF replaces procedural uniformity with a discriminatory dual system that deprives unmarried parents of access to a superior court, a tested procedure, and clear appeal routes.

241. This disparity, based on marital status—an analogous ground of discrimination recognized by the Supreme Court—imposes additional burdens on former common-law partners.

242. The legislature cannot impose lesser treatment on a group based on their marital choices without a compelling justification; none is provided here. It is already troubling that the Quebec legislator is responsible for the notoriously low child support amounts in the province.

243. The TUF Act also creates a temporal inequality: parents who separate before June 30, 2025, retain direct access to the Superior Court, while those who separate after must go through mandatory mediation and the UFC, thus being assigned a legally inferior status without constitutional justification.

244. This arbitrary distinction, based on a child's date of birth, ignores the best interests of the child and the principle of substantive equality.

245. Taken together, these effects deepen the marginalization of survivors of domestic violence, common-law spouses, and more broadly, all those who—due to socio-economic or cultural factors—are already underserved by the justice system.

246. The absence of a truly unified court creates two legal pathways likely to yield inequitable outcomes.

247. These distinctions impose additional burdens on vulnerable groups, violating section 15 of the *Charter*.

248. **Finally, ministerial discourse presents the UFC as a solution to issues involving domestic violence, youth protection, and criminal charges; this framing relies on a reductive stereotype presuming male violence, which stigmatizes fathers and perpetuates sex-based inequality. A truly “unified” court should serve**

all families without systemic bias and without sacrificing the presumption of innocence.

XI – Sixth Ground: Infringement of the Principles of the Rule of Law and the Unity of the Judicial System

249. The Constitution of Canada is underpinned by unwritten principles, including the rule of law and the unity of the judicial system. The TUF Act, in its overall effect, contravenes these foundational principles.

250. The rule of law requires uniform and predictable application of legal rules. It relies on an integrated judicial network, anchored by the superior courts and the Supreme Court, which ensure national consistency.

251. The creation of a Unified Family Court within the Court of Québec effectively establishes a parallel system for part of the family law docket.

252. This provincial court remains distinct from the superior courts, thereby breaking jurisdictional unity in family matters.

253. A distinct (and potentially divergent) justice stream is emerging for unmarried couples, leading to a fragmented application of family law.

254. Key legal criteria—such as the best interests of the child—may be interpreted differently by the TUF and the Superior Court in divorce matters, due to the absence of an effective harmonization mechanism.

255. Without such a mechanism, jurisdictional unity is undermined, to the detriment of legal coherence and decision-making predictability.

256. The Government repeatedly misleads the public with the fictional case of little “William,” claiming that a “labyrinthine” legal path justifies the reform, when in fact it merely reflects the legitimate diversity of civil, child protection, and criminal legal regimes.

257. This diversity is not a dysfunction but a necessary feature of distinct legal missions. The Superior Court applies the *Civil Code*; the Youth Division applies youth protection law; the Criminal Division applies the *Criminal Code*. Their separation reflects distinct legal purposes. Merging them in the name of simplicity would erase these essential distinctions.

258. The Minister also claims that a unified court would allow a single judge to follow a family “from start to finish,” reducing procedural repetition. This is a dangerous proposition. **It implies that a single judge could hear a criminal case, rule on custody, and decide a youth protection matter—without regard to the need for judicial impartiality and specialization. Coherence cannot come at the expense of role confusion. This line of reasoning trivializes the legitimate complexity of our judicial system.**

259. It is difficult to understand how the Minister of Justice could overlook that conjugal recourses fall under private law between parties, whereas youth protection and criminal cases fall under public law. In youth protection matters, one lawyer represents the Director of Youth Protection, and another is appointed for the child. In criminal matters, the public prosecutor (the Crown) acts on behalf of the state.

260. Private recourses between parties, youth protection proceedings, and criminal prosecutions follow distinct legal logics that no “unified court” can merge without infringing rights.

261. The TUF Act does not eliminate this plurality. Even “William” would still have to pass through the family, youth, and criminal divisions.

262. Even in this fictional case, several remedies remain beyond the reach of a unified court. If the father requests a trial by judge and jury, the matter proceeds... before the Superior Court. If the mother unlawfully retains the child, a *habeas corpus* application must be heard... by the Superior Court. If a parent wishes to contest a youth protection decision, the appeal or judicial review must be filed... in the Superior Court. **This coexistence of jurisdictions arises from constitutional requirements—not from any dysfunction.**

263. Furthermore, if decisions from the TUF are less frequently appealed to the Court of Appeal or the Supreme Court, the superior courts’ ability to ensure coherence and uniformity in the law will be diminished. This restriction weakens their harmonizing function and jeopardizes the unity of the judicial system.

264. The Supreme Court has affirmed that section 96 provides a constitutional foundation for national judicial unity. Fragmenting family jurisdiction at the provincial level runs counter to that constitutional architecture.

265. **In the *Reference re Senate Reform*, 2014 SCC 32, the Supreme Court affirmed that certain components of the Canadian regime are part of the “constitutional architecture” and cannot be altered without undergoing the formal amendment process. The existence of a superior court judiciary, federally appointed and vested with general jurisdiction, is clearly among those protected components.**

266. **Given that all other provinces respect this “constitutional architecture,” it would be surprising for Québec to garner the broad support required to amend our Constitution. This fact does not justify circumventing it; on the contrary, it underscores that the reform undertaken through provincial legislation amounts to an improper workaround that is incompatible with the demands of our federal system.**

267. Restricting access to superior courts—guardians of legality—undermines the rule of law.

268. As demonstrated, the TUF Act limits litigants’ ability to bring their cases before a superior court, thereby weakening the protective function these courts serve against abuses of power and judicial error, and eroding public confidence in the uniform administration of justice.

269. In sum, by creating a two-tier system and weakening the integration of Québec’s judiciary into the Canadian framework, the TUF Act contravenes the principles of the rule of law and judicial unity.

270. These principles, though unwritten, have constitutional force; their violation by provincial legislation warrants intervention by this Honourable Court.

XII – Partial or Total Unconstitutionality?

271. In light of the invalidity established under the first ground for violation of section 96 (paras. 124 to 140), this section examines whether the unconstitutionality warrants striking down the entire Act or merely specific provisions.

272. The challenge does not target a few isolated articles; it rejects any “surgical operation” aimed at salvaging individually valid provisions.

273. A superficial reading must be avoided. While some measures in the TUF Act—such as article 37.1 *C.C.P.* on the filiation of a child born through surrogacy, or the new provisions on mandatory mediation or judicial conciliation—may appear, at first glance, not to infringe upon federal jurisdiction or violate sections 96 or 91(26) of the Constitution Act, 1867, a thorough analysis reveals that these provisions are not truly severable from the legislative framework. They are not merely ancillary to the structure of the Unified Family Court; they are its functional expression.

274. Mandatory mediation, far from being a neutral judicial management tool, becomes—under the structure imposed by the TUF Act—a genuine instrument of coercion. It unduly delays access to a competent court, needlessly burdens proceedings for often vulnerable litigants, and lends unwarranted legitimacy to judicial conciliation. **Without genuine, informed, and voluntary consent from the parties, it constitutes an abbreviated form of justice that betrays fundamental guarantees of impartiality and procedural fairness.** It is illusory to believe the legislator would have imposed such a procedural constraint without the simultaneous creation of a specialized tribunal to absorb it.

275. The provisions on surrogacy, filiation and legal aid are organically tied to the TUF; retaining them in isolation would create an incoherent regime not contemplated by the legislator and would generate confusion. **Filiation-related rules have become increasingly complex since 1991, and it is the Superior Court that has developed the expertise to address them.**

276. According to *Schachter v. Canada*, [1992] 2 S.C.R. 679, an entire statute must be invalidated if what remains—after severing the unconstitutional provisions—no longer reflects the legislative intent. Everything suggests that the TUF Act constitutes an indivisible normative block, designed to operate as a unified whole.

277. **Far from being ancillary, the infringement of superior court jurisdiction, access to justice, and the rule of law lies at the very heart of the TUF Act. It reflects a deliberate intent to erect a two-tier judicial system within Quebec, reserving diminished treatment for certain litigants, in a parallel tribunal governed by provincially appointed judges, without the same guarantees of competence, experience, or independence.**

278. The declaration of unconstitutionality must therefore apply to the TUF Act as a whole: any partial preservation would distort the legislative architecture and compromise the integrity of the statute.

XIII – Section 1 of the Charter Cannot Justify the TUF Act

279. Should this Honourable Court conclude that the TUF Act infringes *Charter*-protected rights, the Attorney General may attempt to invoke section 1 to justify its validity. Such a justification cannot succeed.

280. Under the test established in *R. v. Oakes*, [1986] 1 S.C.R. 103, a rights infringement can only be justified where the legislative objective is pressing and substantial, and the means chosen are proportionate. Proportionality requires: (1) a rational connection between the measures and the objective; (2) minimal impairment of the rights; and (3) a balance between the benefits and the harmful effects of the measures.

281. Even assuming that streamlining the family justice process is a “pressing” or “substantial” objective, the TUF Act fails the proportionality test: it imposes a discriminatory regime on unmarried families, burdens proceedings, and hinders access

to the competent court.

282. The infringement is not minimal: mandatory mediation, imposed conciliation, and restricted access to the Superior Court constitute substantial constraints, whereas a unified tribunal integrated within the Superior Court could have achieved legitimate objectives without infringing constitutional guarantees.

283. The negative effects of the TUF Act—including the fragmentation of family justice, the weakening of judicial unity, and infringements on equality and the rule of law—far outweigh any alleged benefits. Section 1 of the Charter cannot salvage the TUF Act.

XIV – Contempt for the Constitution of Canada

284. As early as 1975, the Civil Code Revision Office warned that only a “Family Court” within the Superior Court would respect the constitutional order; establishing an autonomous court within the Court of Québec would usurp the federal power of judicial appointment:

La création d’une division spéciale au sein d’une cour déjà existante permettrait probablement de réaliser la plupart des résultats recherchés.

[...]

A cet égard, il y a lieu de noter que le Québec ne possède qu’une cour de justice de première instance dont les juges sont assujettis aux articles 96 à 100 de l’AANB: la Cour supérieure. On trouve dans les autres provinces du Canada des cours de comté ou de district dont les juges sont nommés et rémunérés par les autorités fédérales. C’est dire que, dans ces provinces, la création d’un Tribunal de la famille jouissant d’une juridiction intégrée se présente sous un jour différent; les autorités concernées peuvent songer à utiliser non seulement les services de leur Cour supérieure (qui porte souvent un nom différent) mais aussi de leur Cour de comté ou de district, et cela, sans enfreindre les dispositions des articles 96 à 100 de l’AANB.

[...]

Le législateur québécois aurait aussi toute liberté de donner le nom de «Tribunal de la famille» à la division spéciale de la Cour supérieure qui serait chargée de s’occuper du contentieux du droit de la famille; les justiciables sauraient donc, le cas échéant, à qui s’adresser.

L’établissement d’une division spéciale au sein de la Cour supérieure permettrait, si les textes législatifs appropriés étaient édictés, d’éliminer le plus possible les délicats problèmes relatifs à la délimitation de l’étendue précise de la juridiction confiée au Tribunal de la famille, la Cour supérieure étant au Québec, du moins en matières civiles, le tribunal de droit commun, qui connaît de toute matière non expressément confiée à un autre tribunal....

La création d’une division de la Cour supérieure, dénommée Tribunal de la famille, éviterait bien entendu d’ajouter à la multiplicité des tribunaux déjà existants.

Par ailleurs, le problème du statut juridique du Tribunal poserait apparemment moins de difficultés que dans l’hypothèse du Tribunal «autonome». Il s’agirait d’une cour supérieure, déjà visée par les articles 96 à 100 de l’AANB et non assujettie au pouvoir de surveillance en matière civile et pénale.

[...]

La création d'une division de la Cour supérieure permettrait par ailleurs de recourir facilement aux services de certains juges de cette Cour, déjà compétente en plusieurs matières familiales.

Rapport de l'ORCC, Le tribunal de la famille, rédigé par Denyse Fortin Caron, 1975

285. Unlike other provinces, which established their unified family courts within their superior courts to ensure immediate, coherent, and comprehensive access to family justice as early as 1977, **Quebec has, for nearly fifty years, chosen to maintain the current system rather than adopt the constitutionally valid solution—thus sacrificing the needs of its own population to a persistent institutional dispute with the federal government.**

286. On May 1, 2024, during a parliamentary committee on the “parental union” bill, the representative of the FAFMRQ delivered a harsh critique of the framework, highlighting the insufficient protection afforded to de facto spouses in a “parental union.” She also added a comment foreshadowing the possibility of a TUF:

Mme Riendeau (Marie-Pier) : ...à fait. Après ça, on partage aussi les craintes des gens qui sont passés avant nous. Est-ce qu'il va y avoir assez de juges? Est-ce que ça va allonger les délais? Puis, tant qu'à faire ça, on pourrait aussi se questionner sur un tribunal unifié de la famille. Là, on aurait tout à la même place, puis ça simplifierait beaucoup le parcours des familles.

M. Jolin-Barrette : Bien, écoutez, moi, je suis d'accord avec vous pour le tribunal unifié, je pense que ça pourrait être une avenue intéressante, mais ce tribunal-là doit se faire à la Cour du Québec, s'il y a tribunal unifié. Alors, j'ai déjà eu des discussions avec mon homologue fédéral à ce niveau-là puis je pense que ce serait intéressant pour le gouvernement fédéral de prendre une entente avec l'État québécois pour faire en sorte que, justement, les... le droit de la jeunesse, notamment, et le droit de la famille soient regroupés au sein d'un même tribunal, justement parce que, si on a une approche en fonction des besoins des justiciables, en fonction des familles, quand les dossiers se retrouvent, supposons, en matière de DPJ, en matière familiale, puis parfois il y a des dossiers judiciairisés, supposons, à la Cour du Québec aussi, où ils traitent... plus que 99 % des dossiers en matière criminelle lorsqu'il y a de la... supposons de la violence, le fait que ce soit regroupé à la Cour du Québec, ça pourrait être une avenue qui est intéressante. On a certains enjeux pour l'instant constitutionnels, mais je pense qu'il y aurait tout de même une volonté de l'Assemblée nationale dans un terme de... de souci d'efficacité pour les justiciables, peut-être, de travailler là-dessus ensemble...

Journal des débats de la Commission des institutions, 43^{ème} législature, 1^{er} mai 2024.

287. Thus, even before the introduction of the TUF Act, the Minister publicly acknowledged the constitutional obstacle and announced his intention to circumvent it.

288. On February 25, 2025, he stated: “We should not, **for constitutional reasons**, make things harder for Quebec families,” while continuing down the same path.

289. This attitude fits within a pattern already sanctioned: on May 20, 2025, the Honourable Donald Bisson, J.S.C., ordered the Attorney General of Québec to pay \$164 million in damages for knowingly maintaining an illegal practice of detention beyond twenty-four hours before appearance, calling it an “institutional casualness” toward fundamental rights. This was the judgment in *Makoma v. Attorney General of Québec*, *supra*.

290. The Plaintiff urges the Court to intervene before another blatant violation causes irreparable harm, thereby avoiding similar financial condemnations.

291. It is also essential to deter the repetition of such infringements, already exemplified by Laws 21, 94, and 96, in order to preserve the integrity of the Constitution of Canada.

XV - Documentary Evidence in Support of the Application

292. In support of her constitutional challenge, the Applicant intends to submit, notably, the following documentary evidence:

1. *Act establishing the Unified Family Court within the Court of Québec* (2025, c. 9). Official text of the enacted legislation, to ascertain its exact content and the legislative amendments made to the current regime.

2. *Parliamentary Committee Debates* (March 2025). Excerpts from the legislative proceedings that led to the adoption of the TUF Act, which remain unavailable despite the Act's passage and imminent entry into force.

3. *Brief by the Quebec Association of Family Law Lawyers on Bill No. 91* (March 2025). Submitted during public consultations, this brief outlines the concerns of the association's members regarding the TUF proposal, including the risk of an ineffective reform for litigants and possible constitutional pitfalls (such as the inability to transfer divorce matters to the Court of Québec).

4. *Brief by Valérie P. Costanzo, "Reflections on the 'Unified' 'Family' 'Court'"* (2025). A legal analysis by a law professor pointing out that the proposed TUF model in Québec does not fully meet its access-to-justice objectives and could exacerbate certain issues. The author recommended caution and a postponement of the reform. This brief contradicts the Minister of Justice's claim that the bill was based on Me Costanzo's recommendations.

5. *Brief by the Canadian Bar Association – Québec Division* (March 2025). Submitted to the Committee on Institutions, this brief emphasizes risks to judicial independence, concerns related to section 96, and the discriminatory effects of the proposed regime.

6. *Excerpt from the Final Report of the Special Commission on the Rights of the Child and Youth Protection (Laurent Commission)*, April 2021, pp. 234–235. This passage features the hypothetical case study of "William," later used by the Minister of Justice.

7. *Press Conference by Mr. Simon Jolin-Barrette, Minister of Justice*, February 25, 2025.

8. *Anne Binette Charbonneau, Sociodemographic Bulletin, Marriages in Québec in 2023*, Volume 28, Number 3, September 2024.

9. *Report by the Civil Code Revision Office, The Family Court*, written by Denyse Fortin Caron, 1975.

10. *Parliamentary Committee Debates on the Act reforming family law and establishing the parental union regime* (May 1, 2024), including exchanges relating to constitutional issues raised by the creation of a TUF.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

DECLARE that the *Act establishing the Unified Family Court within the Court of Québec* (2025, chapter 9) is invalid, inoperative, and of no force or effect, as it contravenes sections 91(26) and 96 of the *Constitution Act, 1867*, as well as the constitutional principles of judicial independence, access to justice, equality, and the rule of law, all protected by the *Constitution of Canada*;

DECLARE that the *Act establishing the Unified Family Court within the Court of Québec* (2025, chapter 9) is also invalid, inoperative, and of no force or effect, as it violates, in particular, section 15 of the *Canadian Charter of Rights and Freedoms* by depriving families and women of equal treatment under the law, creating two classes of families and of women solely on the basis of marital status, whereby married (or divorced) women and their children benefit from substantially broader substantive and procedural rights than unmarried women and their children;

DECLARE that all provisions of the TUF Act are invalid, with no need to preserve any portion thereof, given the structural indivisibility of the Act and the impossibility of severing any constitutionally valid elements without distorting the legislation’s overall operation;

DECLARE, for greater certainty, that this unconstitutionality includes, in particular, the provisions relating to mandatory mediation, judicial conciliation, the allocation of judicial powers, and the rules concerning surrogacy and legal aid, all of which are inextricably linked to the general architecture of the TUF Act;

ORDER that this Court shall retain jurisdiction to oversee the implementation of the present judgment, including with respect to the cessation of the application of the TUF Act and its collateral effects on affected litigants;

GRANT any further relief the Court may deem just and appropriate in the circumstances;

AWARD costs to the Plaintiff, including appropriate legal fees on a solicitor-client basis, given the constitutional nature of the application and the manifest public interest at stake.

MONTREAL, June 02 2025

Goldwater Droit inc.
Attorneys for Plaintiff

LIST OF AUTHORITIES

A. Supreme Court of Canada Jurisprudence

1. *Trial Lawyers Association of British Columbia c. Colombie-Britannique (Procureur général)* [2014] 3 R.C.S. 31
2. *Renvoi relatif au Code de procédure civile (Qc), art. 35*, 2021 CSC 27
3. *Zacks c. Zacks*, [1973] R.C.S. 891
4. *Jackson c. Jackson*, [1973] R.C.S. 205
5. *Valente c. La Reine*, [1985] 2 R.C.S. 673
6. *Beauregard c. Canada*, [1986] 2 R.C.S. 56
7. *Renvoi relatif à la rémunération des juges de la Cour provinciale de l'Île-du-Prince-Édouard; Renvoi relatif à l'indépendance et à l'impartialité des juges de la Cour provinciale de l'Île-du-Prince-Édouard*, [1997] 3 R.C.S. 3
8. *Renvoi relatif à la réforme du Sénat*, [2014] 1 R.C.S. 704
9. *Renvoi sur la Loi de 1979 sur la location résidentielle*, [1981] 1 R.C.S. 714
10. *Nouveau-Brunswick (Ministre de la Santé et des Services communautaires) c. G. (J.)*, [1999] 3 R.C.S. 46
11. *MacMillan Bloedel Ltd. c. Simpson*, [1995] 4 R.C.S. 725
12. *Sobeys Stores Ltd. c. Yeomans et Labour Standards Tribunal (N.-É.)*, [1989] 1 R.C.S. 238
13. *Renvoi relatif à certaines modifications à la Residential Tenancies Act (N.-É.)*, [1996] 1 R.C.S. 186
14. *Vriend c. Alberta*, [1998] 1 R.C.S. 493
15. *Schachter c. Canada*, [1992] 2 R.C.S. 679
16. *R. c. Oakes*, [1986] 1 R.C.S. 103
17. *Ministre de la Justice du Canada c. Borowski*, [1981] 2 R.C.S. 575
18. *Canada (Procureur général) c. Downtown Eastside Sex Workers United Against Violence Society*, [2012] 2 R.C.S. 524
19. *McEvoy c. Procureur général du Nouveau-Brunswick et autre*, [1983] 1 R.C.S. 704
20. *Union Carbide Canada Inc. c. Bombardier Inc.*, [2014] 1 R.C.S. 800
21. *Québec (Procureur général) c. A*, 2013 CSC 5
22. *Colombie-Britannique (Procureur général) c. Conseil des Canadiens avec des déficiences*, 2022 CSC 27
23. *Opsis Services aéroportuaires inc. c. Québec (Procureur général)*, 2025 CSC 17

B. Comparative Jurisprudence

24. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954)

C. Quebec Jurisprudence

25. *Droit de la famille - 23935*, 2023 QCCA 816

26. *Connolly v. Woolrich and Johnson et al.*, [1867] 17 R.J.R.Q. 75 (S.C.L.C.).

27. *Kosko c. Bijimine*, 2006 QCCA 671

28. *Makoma c. Procureur général du Québec*, 2025 QCCS 1646

29. *Rapport d'enquête*, 2007 CMCQ 96

30. *Droit de la famille – 092711*, 2009 QCCA 2158

D. Legislative and Constitutional Texts

31. *Loi constitutionnelle de 1867*, art. 91(26), 92 (13), 92(14), 91-95, 96-100

32. *Loi constitutionnelle de 1982*, art. 15(1), 52(1)

33. *Charte canadienne des droits et libertés*, art. 1, 7, 11(d), 15

34. *Loi sur le divorce*, L.R.C. (1985), ch. 3 (2e suppl.), notamment art. 15.1 et 16

35. *Code civil du Québec*, art. 521.6, 522

36. *Code civil du Bas-Canada (1866)*, art. 242 à 245. (puissance paternelle), art. 249 à 313. (tutelle), art. 186 à 217 (séparation de corps et garde des enfants), et art. 218 à 241(filiation).

37. *Code de procédure civile du Québec*, art. 30, 33, 34, 35, 37(3), 49, 76, 77, 163, 165, 509

38. *Loi instaurant le Tribunal unifié de la famille au sein de la Cour du Québec*, (2025, chapitre 9)

39. *Loi sur l'aide juridique et sur la prestation de certains autres services juridiques*, RLRQ, c. A-14

40. *Décret fédéral établissant l'adoption des lignes directrices québécoises en matière de pensions alimentaires pour enfants*, DORS/97-237 (C.P. 1997-644 du 22 avril 1997)

41. *Loi sur la protection de la jeunesse*, RLRQ, c. P-34.1

42. *Loi sur les tribunaux judiciaires*, RLRQ c. t-16

43. *Loi portant sur la réforme du droit de la famille et instituant le régime d'union parentale*, (Projet de loi 56, 2024, chapitre 22)

44. *Code de déontologie de la magistrature*, RLRQ c. T-16, r. 1

45. *Convention sur les aspects civils de l'enlèvement international d'enfants*, 25 octobre 1980, entrée en vigueur le 1^{er} décembre 1983), Recueil des traités du Canada 1983, no 35

E. Doctrine and Briefs

46. Valérie P. Costanzo, *Réflexions sur le «tribunal» «unifié» de «la famille»*, mémoire déposé à l'Assemblée nationale, 2025
47. Association des avocats et avocates en droit familial du Québec, *Mémoire sur le projet de loi n° 91*, mars 2025
48. Association du Barreau canadien - Division Québec, *Mémoire sur le projet de loi n° 91 - Loi instituant le Tribunal unifié de la famille au sein de la Cour du Québec*, présenté à la Commission des institutions, mars 2025
49. *Commission spéciale sur les droits des enfants et la protection de la jeunesse*, [la «Commission Laurent»] avril 2021, p. 234–235

F. Parliamentary Debates and Publications

50. Débats de la Commission parlementaire sur la *Loi instaurant le Tribunal unifié de la famille au sein de la Cour du Québec* (février à avril 2025).
51. *Conférence de presse de M. Simon Jolin-Barrette, ministre de la Justice, du 25 février 2025.*
52. L'honorable Jacques Chamberland, j.c.a. (à la retraite), *Un tribunal unifié de la famille: une fausse bonne idée*, La Presse, 6 mars 2025
53. Anne Binette Charbonneau, Bulletin sociodémographique, *Les mariages au Québec en 2023*, Volume 28, numéro 3, Septembre 2024
54. *Rapport de l'ORCC, Le tribunal de la famille*, rédigé par Denyse Fortin Caron, 1975
55. Débats de la Commission parlementaire sur la *Loi portant sur la réforme du droit de la famille et instituant le régime d'union parentale* (1 mai 2024)
56. Thomas Mulcair, *Un gouvernement hors la loi*, Le Journal de Montréal, publié le 29 mai 2025

G. Authorities in Support of the Motion for a Stay

57. *RJR-MacDonald inc. c. Canada*, [1994] 1 R.C.S. 311
58. *Hak c. Procureure générale du Québec*, 2019 QCCA 2145
59. *Société de développement de la Baie James c. Kanatewat*, [1975] 1 R.C.S. 48
60. *Mitchell c. Procureure générale du Québec*, 2022 QCCS 2983
61. *Renvoi relatif à la réforme du Sénat*, [2014] 1 R.C.S. 704 (voir onglet 8)
62. *Trial Lawyers Association c. Colombie-Britannique (Procureur général)*, 2014 CSC 59, [2014] 3 R.C.S. 31 (voir onglet 1)
63. *Renvoi relatif à l'article 35 du Code de procédure civile (Québec)*, 2021 CSC 27 (voir onglet 2)
64. *MacMillan Bloedel Ltd. c. Simpson*, [1995] 4 R.C.S. 725 (voir onglet 11)
65. *Procureur général du Québec et al. c. Gaspé Énergies inc. et al.*, 2025 QCCA 629
66. *Manitoba (Procureur général) c. Metropolitan Stores Ltd.*, [1987] 1 R.C.S. 110

SWORN DECLARATION

I, the undersigned, Anne-France Goldwater, practising at 3500 De Maisonneuve Blvd West, Suite 2310, in the City and District of Montréal, solemnly declare the following:

1. I am the Plaintiff in the present proceedings;
2. I have read the facts alleged in the Application to Institute Proceedings seeking to have the Act Establishing the Unified Family Court declared unconstitutional, and they are true;
3. **AND I HAVE SIGNED:**

Anne-France Goldwater
Plaintiff

Solemnly declared in Montreal
on this 2nd day of June 2025

Commissioner for Oaths
for the Judicial District of Montreal

No. 500-____-_____-25__

Anne-France Goldwater,

Plaintif

v.

Attorney General of Quebec,

Defendant

and

Attorney General of Canada,

Mis en Cause

**NOTICE OF PRESENTATION
CIVIL (ROOM 2.16)**

1. PRESENTATION OF THE APPLICATION

TAKE NOTICE at the Application to Institute Proceedings seeking to have the Act Establishing the Unified Family Court declared unconstitutional will be presented in the Practice Division of the Civil Chamber of the Superior Court, in **room 2.16 of the Montreal Courthouse**, located at 1 Notre-Dame Street East, Montreal, on **June 16, 2025, at 9:00 a.m.**, or as soon thereafter as counsel may be heard.

2. HOW TO JOIN THE VIRTUAL PRACTICE ROLL CALL

The access details for joining the virtual roll call of courtroom 2.16 are as follows:

a) Via Microsoft Teams:

Click the link corresponding to courtroom 2.16 available [here](#).¹

You will be asked to enter your name and click "Join now." To facilitate the hearing and identification of participants, please enter your name as follows:

- Lawyers: Me First Name, Last Name (name of the party represented)
- Self-represented parties: First Name, Last Name (indicate: plaintiff, defendant, or other)
- Members of the public attending a public hearing: simply write "public"

b) By telephone:

- Canada (Toll-free): (833) 450-1741

¹ The TEAMS links to join the virtual courtrooms of the Montreal Courthouse for commercial, civil, and family matters are published under the "Virtual Hearings" section available on the website of the Superior Court at the following address: <https://coursuperieureduquebec.ca/roles-de-la-cour/audiences-virtuelles>.

- Canada, Quebec (Toll): +1 581-319-2194
- Conference ID: 470 980 973#

c) By videoconference:

- Email: teams@teams.justice.gouv.qc.ca
- VTC Conference ID: 1197347661

d) In person, only if you do not have access to the other means listed above.

3. FAILURE TO ATTEND THE PRACTICE ROLL CALL

TAKE NOTICE that if you fail to attend the roll call, a default judgment may be rendered against you without further notice or delay.

4. OBLIGATIONS

4.1 Cooperation

TAKE NOTICE that you are obligated to cooperate with the other party, including by keeping each other informed at all times of facts and elements likely to promote a fair hearing, and by ensuring that relevant evidence is preserved (Code of Civil Procedure, art. 20).

4.2 Dispute Prevention and Resolution Methods

TAKE NOTICE that before addressing the Court, you must consider using private methods of dispute prevention and resolution, such as negotiation between the parties, as well as mediation or arbitration, in which the parties seek the assistance of a third party (Code of Civil Procedure, art. 1 and 2).

GOVERN YOURSELVES ACCORDINGLY.

Montreal, June 02 2025

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