



QUEBEC SUPERIOR COURT TOSSES THE BALL BACK INTO PARLIAMENT'S COURT: JUSTICE MASSE RELIES ON ASSUMPTION THE GOVERNMENT WILL COMPLY WITH THE CONSTITUTION

Montreal, 20 June 2017 – The Québec Superior Court today dismissed a motion to extend Parliament's deadline for eliminating sex discrimination from the registration provisions in the *Indian Act*, however Justice Chantal Masse emphasized that she remains available to hear another motion for an extension before the deadline expires on July 3rd, effectively giving the government and the Senate time to reach agreement on a contentious bill

Last month, the Senate amended a bill put forward by Minister of Indigenous and Northern Affairs, Carolyn Bennett, on the grounds it did not put an end to all discrimination. However, on Bennett's recommendation, the House of Commons Standing Committee on Indigenous and Northern Affairs stripped the changes from the bill last week. With the House due to adjourn for the summer on June 23rd and the Senate due to rise on June 30th, the two houses of Parliament are close to an impasse.

In a decision rendered from the bench, Madam Justice Chantal Masse ruled it was out of the question for the Court to become involved in a dispute between the House of Commons and the Senate.

In 2015, Justice Masse ruled in the *Descheneaux* case – brought by three members of the Abenaki of Odanak – that the registration rules adopted in 1985 to bring the *Indian Act* into

conformity with the *Canadian Charter of Rights and Freedoms* actually discriminate against those whose trace their First Nations ancestry to a female rather than a male ancestor. She declared the rules are invalid under the *Charter*, but gave the government until February 3, 2017, to amend them.

After the government introduced Bill S-3 in October 2016, the Senate Committee on Aboriginal Peoples suspended debate and asked the Minister of Indigenous and Northern Affairs to consult with First Nations and to address gender-based discrimination the bill did not correct. As a result, the government had to ask the court for an extension and the deadline was extended to July 3rd, though Justice Masse noted that nothing would stop the government from acting sooner.

After telling the court that the bill would be back before Parliament in early spring and passed by June 23rd, the Department of Indigenous and Northern Affairs waited until May 8th to bring Bill S-3 back before the Senate. In today's judgment, Justice Masse noted it is impossible for Bill S-3 to become law by June 23rd.

Last week, the government told the court it had no immediate plans to seek an extension, though it might to do so later, if needed. As a result, Justice Masse noted, the Abenaki parties "had to resign themselves" to bringing a motion themselves.

In today's decision, Justice Masse recalled that after the government lost the *McIvor* case in 2009 and had to amend the registration rules in 2010, its lawyers told the Supreme Court of Canada that Parliament would amend the *Indian Act* "in a manner that complies with the Constitution." Instead, she noted, the limited scope of those amendments lead to the *Descheneaux* judgment and to the current disagreement between the Senate and House of Commons over whether Bill S-3 goes far enough.

Justice Masse specifically reserved its jurisdiction to hear another motion to extend the deadline before it expires on July 3rd.

Information:

David Schulze, lawyer dschulze@dionneschulze.ca, off. 514-842-0748, cell. 514-235-8860