

D'accord, c'est bon, c'est compris.

390 **Mme MARYSE ALCINDOR, coprésidente :**

C'est un petit pouvoir qu'on a, c'est un plaisir qu'on a.

Mme EDLINE HENRI :

395

Bien mérité.

Mme ARIANE ÉMOND, coprésidente :

400

Merci! Yes, we are waiting! You're not in...

M. DEEPAK AWASTI :

I'm not late.

405

Mme ARIANE ÉMOND, coprésidente :

You're not late. Good evening.

410

M. DEEPAK AWASTI :

Good evening, how are you?

415

Mme ARIANE ÉMOND, coprésidente :

I'm fine, and you?

MR. DEEPAK AWASTI :

420

Not too bad. I apologize for the length of my memoir; I didn't have the opportunity to edit it. I did as much as I could in the time that I had. Essentially, the memoir that I have put before you is a survey of all the various judgments related specifically to discrimination, systemic discrimination, and what I would like to do is I would like to start with the premise.

425

The Supreme Court has said, on various occasions, that systemic discrimination is a matter of difference. Discrimination, generally, is a matter of difference, but specifically the... describing systemic discrimination is a matter of... it is a matter of the institution having a particular culture, a particular way of doing things, and essentially the policies that it has, they might be - appear neutral, but because there are tests within those institutions for - for example, there was the case of BC GSU.

430

Essentially what happened in that case was - there was a neutral policy, a neutral policy of firefighters who everyone was required to do a particular test, and it was an aerobics test, and the women were unable to complete the test, and so the Supreme Court said that the length of the test essentially indicated, even though it was - everyone was - it was applicable to everyone, it was still discrimination because the women were unable to do it, and the standard was so high that, in fact, it kept people out.

435

And the Supreme Court's, the Federal Court of Appeal actually in an interesting case of - called TD, essentially focused on a policy that the TD Bank had regarding drug testing. TD Bank essentially said that we will test you to ensure that you don't have - that you are not drug-dependent. You can still apply, for example, to - what do you call them - you can - you can, if we have a drug dependency programme you can go to them anonymously and you can avail yourself of the programme, but we will still test you for drug dependence.

440

445

450 The Federal Court of Appeal said on the face of it, it is discriminatory because you are, first of all, distinguishing between illicit and licit drugs, and on top of that you are saying that this is dependent upon, or their use is depend - it causes a lowering of performance. The Federal Court of Appeal said there is no correlation; this is, on the face of it, it is discriminatory.

455 So I take the example in the case of the City of Montreal, and I don't want to pick on anyone, but I take the example of the City's policy, its linguistic policy, and the OCPM is following that policy, and I can appreciate that. It is actually the... on the website of the OCPM it is very clearly stated that we will offer... we offer services in English merely as a courtesy, and that's... I mean, it's not your policy, it's the City's policy and you are following it, and I can appreciate that, but it is systemically discriminatory because it creates a difference. Furthermore, in the case of Blaikie, Supreme Court in 1979, it talked about adopt... or bilingualism, Section 133 of the BNA Act, and afterwards in our Charter we have Sections 16 to 23, which are related to linguistic rights.

460 The Supreme Court said that Section 133 is applicable to all Tribunals, and Courts within Quebec, provincially and federally, and that back then, in 1867, they didn't know anything about Administrative Tribunals. Well, in 1979 there were Administrative Tribunals, and so the Supreme Court said that we cannot simply say that the - that what was in 1867 cannot be changed, or that is the scope cannot be changed today.

470 And so the Supreme Court said that the law of the Courts is now expanded to include Administrative Tribunals established by the provinces.

475 So I take the example of your body; it is not an adjudicative body per se but it is a consultative body, and in that regard you are obliged, generally, not specifically but generally to... and even in the Charter of the French Language it is generally clear that you are obliged to offer services in the English language because - let us remember one thing. As a matter of access to justice, people are not going to be tested regarding their language skills because...

480 before they are receiving those language services in one language or the other. That is what Lucien Bouchard said, because a principle, an essential principle of administrative law is that government is there to facilitate, our institutions are there to facilitate, they are not there to bar, and those administrators, those civil servants are there to - they are there to act - they are there to act fairly, they are there to act responsibly or ethically, and in good faith.

485 Good faith, or ethical behaviour and fairness are the core central principles of our democracy. We cannot simply say well, we are going to act arbitrarily, and this was the case in the case of Roncarelli vs. Duplessis. The Supreme Court said we all must act within our mandate. We are cordoned by our mandate, so if someone says I choose, I as a civil servant might decide to speak with you in your language, I am sorry, you are not there to do that, because in administrative law there is an inverse relationship between the authority to interpret something and the duty to act. So the higher the authority to interpret the lower the duty to act, and vice-versa.

490 So if someone goes to a clerk, or stands before a clerk at City Hall, that clerk is merely there not to interpret the document or to add conditions; he or she is there merely to say do you have the requisite documents, are they valid, and we will therefore move forward, not to say well, you know, I am going to add another condition. They are not there to do that, but that particular article, for you to say to me, we might decide, it's a courtesy, adds a level of arbitrariness.

500 It undermines the rule of law, and in the case of Jones, Jones... in the case of Manitoba Language Rights, rule of law was essential. It is foundational, and what I am saying to you is that our laws and regulations, the people who actually stand as their caretakers, they must respect the balance. They are not there to bar. They are not simply there to say well, you know, we might, we might consider it possibly.

505 And I come back to the policies of the City of Montreal, and this is not specifically... because the City of Montreal is also subject to the rule... to laws.

510 The problem, unfortunately, and I say this unfortunately, is that the City is subject to laws that themselves might be promoting systemic discrimination. The City of Montreal, for example, and in Section 1 - I will repeat what I have said previously. Section 1 of the City of Montreal's Charter says that Montreal is a French-speaking city. In the case of Baie-d'Urfé, which was a Superior Court decision and subsequently was a Court of Appeal decision in Westmount, the Superior Court asked that very question - why is it so important for you to say « oh, Quebec City, that Montreal is a French-speaking city »? Why is this important? It's, it's belligerent.

515 The Court of Appeal said it has no weight, it has no legal weight, but essentially, you know, what is the objective? Why are you not recognizing that Baie-d'Urfé has, or that the Superior Court asks why aren't you recognizing what the reality of Montreal is, that it is multicultural?

520 And this is, again, it is our institutional identity, and we are creating a difference. The institutional identity; if the institutional identity as articulated in Section 1 of the City of Montreal's Charter is that Montreal is a French-speaking city, the fact is the city is not. It is... French is, the French language and culture are part of our culture; they are not separate from it, but there is more to our culture and our identity than just the French language and culture, and we have to recognize that, and I ask the question why is it that to date the City of Montreal has not applied for bilingual status?

525 You know, under Section 29.1 of the Charter of the French Language, we can apply, the City of Montreal can apply for bilingual status, and yet it has never done so.

530 The STM could, the SPVM could, but they never have. It's a matter of institutional identity. We don't want to, we don't need to, because we are a French-speaking city. Well, yes and no.

535 **Mme ARIANE ÉMOND, coprésidente :**

Do you know, Mr. Awasti, that we prefer to engage a communication, a dialogue with you. After ten minutes...

MR. DEEPAK AWASTI:

540

I appreciate it.

Mme ARIANE ÉMOND, coprésidente :

545

...but I want you to conclude, or maybe to have a word about your recommendations, or...

MR. DEEPAK AWASTI:

550

The recommendations are not exhaustive, and I will not pretend them to be exhaustive. I am focusing on - there are several at the end.

Mme ARIANE ÉMOND, coprésidente :

555

Yes.

MR. DEEPAK AWASTI:

560

They are, as I said, they are not exhaustive and they might not be pertinent either to the City of Montreal, but I tried my level best, and I apologize.

Mme ARIANE ÉMOND, coprésidente :

565

Page 72.

MR. DEEPAK AWASTI:

570

Yes, here we are. So what I have... first and foremost, I have suggested that the City of Montreal reconsider its identity, its institutional identity, and bring it in line with its popular identity as a bilingual, multicultural society, and I hope that the City of Montreal will actually consider this, and that it will say we, we are more than this. Quebec City, hello, could you please amend this? It is really up to the City of Montreal to do that.

575

And again, that it will, it and its various island-wide service providers, will apply for bilingual status, because yes, you know, you are - you are offering services to a wide variety of people.

580

The language policy, I didn't see it. Unfortunately, it's not on the City of Montreal's website, and therefore I presumed that you were applying the linguistic policy of the Government of Quebec, and therefore I used that.

585

I think it is a matter of negotiations and how Montreal actually fits into that, because, again, Montreal is not Quebec City, it is not the Chaudière, it's different.

590

And the same holds true for our hiring policies, and before I get to the hiring policy, it's the documents that we produced. To simply say that we translate them, we don't translate everything. We translate something, and that is, again, it's a matter of courtesy. Once again, as a matter of access to justice, because most people, I mean I am, I am...

Mme ARIANE ÉMOND, coprésidente :

595

A lawyer.

MR. DEEPAK AWASTI:

600

I am not a lawyer, but I am exceptional in that regard, that I can speak in various languages so I am not barred, but there are many people who have difficulty communicating in French or in English. They might be more comfortable in one language or the other, but then there are others who are not comfortable in either language. I am not saying that we should publish with pamphlets or documents in various languages, that is not economical, but certainly if we can at least see fit to publish important documents in various languages, in English and in French at least, it would be much helpful.

605

Mme ARIANE ÉMOND, coprésidente :

610

Okay, can I ask you to conclude?

MR. DEEPAK AWASTI:

615

Yes. I will focus only on the hiring policy, and I raise this because, once again, I go back to what I was saying earlier, and that was systemic discrimination is based upon characteristics, and if we are saying, for example, it is normal for you to have mastered the French language, it is not always possible, and I say that because people who come from the English-speaking community, especially those who have gone through the English-language school system, they are not obliged to master the French language, and it is unfortunate, and I wish it were better, but they are taught French as a second language.

620

They may be taught French as a second language 80 percent of the day but they are still taught French as a second language. So the criteria and the level demanded for success is lower.

625

630 The exams for professional orders, and the exams - I presume the exams that the City of Montreal has, language exams, are also geared towards French mother tongue speakers; they are not geared towards second-language speakers. So, for example, you might ask what is an anglicisme, is this an anglicisme? I don't know.

Mme ARIANE ÉMOND, coprésidente :

635 Okay.

MR. DEEPAK AWASTI:

640 So the question, the language exams, should be reconsidered. If a second language version of the language exam can be offered, better, because we want to promote people. We want to bring them in, not keep them out because they might seem - I haven't mastered the French language, I can't apply. So, I will leave it there.

645 **Mme ARIANE ÉMOND, coprésidente :**

Okay. Just to be sure, we received this version this morning.

MR. DEEPAK AWASTI:

650 Yes.

Mme ARIANE ÉMOND, coprésidente :

655 75 pages.

MR. DEEPAK AWASTI:

77.

660

Mme ARIANE ÉMOND, coprésidente :

And what I saw in difference of the first one, it was the recommendations.

665

MR. DEEPAK AWASTI:

Yes.

670

Mme ARIANE ÉMOND, coprésidente :

And a lot of exhaustive, difficult content for a non-jurist.

675

MR. DEEPAK AWASTI:

Sure. No, I appreciate that.

680

Mme ARIANE ÉMOND, coprésidente :

N'est-ce pas? Okay, so I want to be sure that it was the good version, with the...

685

MR. DEEPAK AWASTI:

Yes.

Mme ARIANE ÉMOND, coprésidente :

690 Even recommendations. We don't have much time, maybe we will take five minutes, not more. Okay, Judy wants to ask a question.

MR. DEEPAK AWASTI:

695 Sure.

Mme JUDY GOLD, commissaire :

700 Yes, I actually have two questions, two questions and one comment. I understand that your basic, your basic belief is that Article 1 of the Montreal Charter, which states that Montreal is a French-speaking city, this article results in systemic discrimination...

MR. DEEPAK AWASTI:

705 Yes.

Mme JUDY GOLD, commissaire :

... to the Anglophone and Allophone populations.

710 **MR. DEEPAK AWASTI:**

It does.

Mme JUDY GOLD, commissaire :

715 That is your basis...

MR. DEEPAK AWASTI:

Yes.

720

Mme JUDY GOLD, commissaire :

I am just wondering, are you aware of people who request municipal services in English, whether or not they received them? In actual fact, are you aware of the state of things in that regard?

725

MR. DEEPAK AWASTI:

I am not. I am not.

730

Mme JUDY GOLD, commissaire :

You are not, okay.

735

MR. DEEPAK AWASTI:

But if I may give you an example, I am - there's a City, an organization called CLAM. It receives, it helps immigrants in the Park Extension area.

740

Mme JUDY GOLD, commissaire :

I know.

MR. DEEPAK AWASTI:

745 And they do offer some services in various languages, and they do - well, for francization
services. I went there with a client, and my clients didn't speak any - don't speak any French. So
I chose to speak in English with the gentleman so that my clients would know what I was talking
about, and the gentleman proceeded to ask me where I was from, in French, and I said I am from
750 Montreal. 'No, where are you really from?' I said 'What do you mean?' He said 'You have been
here so long you don't speak any French?' I said 'No, I do, but for my client's sake I need to
speak in English so they understand what is going on.' 'Oh'. So there's this sort of indifference
that happens.

Mme JUDY GOLD, commissaire :

755 I understand. My second question is this: you have made a substantive effort to produce
this document.

MR. DEEPAK AWASTI:

760 I tried. It's not the best.

Mme JUDY GOLD, commissaire :

765 Well, yes, which...

MR. DEEPAK AWASTI:

770 It is not the best, but it could be better.

Mme JUDY GOLD, commissaire :

775 Which includes an extensive review of jurisprudence...

MR. DEEPAK AWASTI:

Yes.

780

Mme JUDY GOLD, commissaire :

785

...with regards to discrimination, with regards to systemic discrimination, as well as issues relating to the Charter of the French Language, the Act Regarding Administrative Justice, the Charter of Human Rights and Freedoms, as well as Constitutional issues as well. I am just wondering, do you think that perhaps this debate should take place on a judicial level? What do you think?

MR. DEEPAK AWASTI:

790

I think before...

Mme JUDY GOLD, commissaire :

795

You are very well... you started...

MR. DEEPAK AWASTI:

800

I think before it gets there, I mean we have so many points of law that we can focus on, or that is we have so many judicial decisions that there is a guide. Before we get there, I think we should be able to discuss matters openly, rather than denying. I mean, take for example the fact that the City endlessly denied that there was some semblance of systemic discrimination in the Police force, and now suddenly we find out there is, and what does the City do? So instead of denying, instead of hiding behind possibilities, let's come out and say

805 you know, it is possible, we would like to discuss it. We are not going to deny, we would like to work with you. I think that would help towards gaining credibility. Our institutions are lacking, are losing credibility because we are denying, automatically.

Mme JUDY GOLD, commissaire :

810

Okay, thank you.

Mme ARIANE ÉMOND, coprésidente :

815

Une autre question?

Mme JUDY GOLD, commissaire :

820

Non, c'est...

Mme ARIANE ÉMOND, coprésidente :

Ça va? Ça va? Well, thank you for being with us tonight.

825

MR. DEEPAK AWASTI:

Thank you very much. Thank you.

830

Mme MARYSE ALCINDOR, coprésidente :