Other Federal Laws and Regulations

Access to Information Act, R.S.C. 1985, c. A-1

12. (2) Language of access

12. (2) Where access to a record or a part thereof is to be given under this Act and the person to whom access is to be given requests that access be given in a particular official language, a copy of the record or part thereof shall be given to the person in that language

> **(a) forthwith, if the record or part thereof already exists under the control of a government institution in that language; or**
>
> **(b) within a reasonable period of time, if the head of the government institution that has control of the record considers it to be in the public interest to cause a translation to be prepared.**

R.S. 1985, c. A-1, s. 12; R.S. 1985, c. 31 (4th Supp.), s. 100(E); 1992, c. 21, s. 3.

ANNOTATIONS

R. v. Rodrigue, 1994 CanLII 5249 (YK SC)

[pp. 16-17] In cases where the evidence actually does come from a federal institution, such as the R.C.M.P., strictly speaking the documents are not specifically intended for the public, since they are prepared and compiled for internal use (*i.e.*, to prepare the Crown's case). The fact that the Crown has an obligation to disclose these documents to the accused, under *R. v. Stinchcombe* (1991), 68 C.C.C. (3d) 1, [1991] 3 S.C.R. 326, 9 C.R. (4th) 277, does not mean that these documents are specifically intended for the public as understood from s. 20(1) of the *Charter*. An appropriate analogy to illustrate my point would be the fact that citizens can obtain information under the *Access to Information Act*, R.S.C. 1985, c. A-1, but this information does not have to be made available in both official languages simply because it is made available to the public; once again, the documents in question are generally prepared for internal use and are not mainly intended for the public.

N.B. – The appeal of this judgment was dismissed on other grounds by the Yukon Court of Appeal and the application for leave to appeal to the Supreme Court of Canada was dismissed.

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30. (1) Receipt and investigation of complaints

30. (1) Subject to this Act, the Information Commissioner shall receive and investigate complaints

> **[...]**
>
> **(d) from persons who have not been given access to a record or a part thereof in the official language requested by the person under subsection 12(2), or have not been given access in that language within a period of time that they consider appropriate;**

Aeronautics Act, R.S.C. 1985, c. A-2

4.71. (1) Aviation security regulations

4.71. (1) The Governor in Council may make regulations respecting aviation security. [...]

Canadian Aviation Security Regulations, 2012 – Aeronautics Act, SOR/2011-318

6. Official languages

6. At the airports that are listed in Schedule 1 and at all aerodromes where there is a significant demand for services in either official language within the meaning of the *Official Languages (Communications with and Services to the Public) Regulations,* a screening authority must

> **(a) carry out screening by means that allow effective communication with members of the public in the official language of their choice; and**
>
> **(b) provide in both official languages any printed or pre-recorded material that is used in respect of screening.**

Canada Agricultural Products Act, R.S.C. 1985, c. 20 (4th Supp.)

8. (3) Rules

8. (3) The Board and, subject to the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, the Tribunal may, with the approval of the Governor in Council, each make rules governing

> **(a) the practice and procedure in respect of hearings;**
>
> **(b) the time and manner in which applications and notices must be made or given; and**
>
> **(c) the work of the Board or the Tribunal, as the case may be.**

Rules of the Review Tribunal (Canada Agricultural Review Tribunal) – Canada Agricultural Products Act, SOR/2015-103

7. Official languages – Tribunal proceedings

7. All tribunal proceedings are conducted in English or French, depending on the language chosen by the applicant.

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8. (1) Communications with Tribunal

8. (1) A party may use English or French in any oral or written communication with the Tribunal. However, once the applicant has selected a language, all oral and written communications, including in documents and exhibits, must be made in that language, unless the parties consent to do otherwise.

8. (2) Default language selection

8. (2) If the applicant does not indicate their choice of official language in their request, all oral and written communications, including in documents and exhibits, must be made in the language in which the request to the Tribunal is made. That language is deemed to be the language for the proceeding.

8. (3) Oral interpretation

8. (3) If a party requires interpretation services in order to participate in or have a witness testify at a hearing in the official language in which the proceeding is conducted, the party must, at least seven days before the hearing,

> **(a) notify the Tribunal of the requirement in writing; and**
>
> **(b) indicate whether the party requires interpretation services from a language other than English or French.**

8. (4) Costs

8. (4) A party who requires interpretation services from a language other than English or French must pay for the costs of those services.

ANNOTATIONS

Gebru v. Canada (Canada Border Services Agency), 2013 CART 2 (CanLII)

[30] […] The Tribunal considers that, in the absence of a specific expression as to the language of preference (limited to the two Official Languages of Canada), the preferred language shall be deemed to be the Official Language in which the representations for review were made, which in this case was English.

SEE ALSO:

Mak v. Canada (Canada Border Services Agency), 2013 CART 11 (CanLII)

Roelands v. Canada (Canadian Food Inspection Agency), 2013 CART 8 (CanLII)

Agriculture and Agri-Food Administrative Monetary Penalties Act, S.C. 1995, c. 40

18. (1) Certain defences not available

18. (1) A person named in a notice of violation does not have a defence by reason that the person

> **(a) exercised due diligence to prevent the violation; or**

(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

18. (2) Common law principles

18. (2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under an agri-food Act applies in respect of a violation to the extent that it is not inconsistent with this Act.

ANNOTATIONS

Cikotic v. Canada (Canada Border Services Agency), 2017, CART 11 (CanLII)

[27] Cependant, quand on invoque des difficultés linguistiques dans le contexte de la détermination de ce qu'un demandeur a réellement déclaré, ces difficultés ne sont pas liées à un moyen de défense qu'envisage l'article 18 de la LSAP; il s'agit plutôt d'un élément de la preuve concernant les informations qui ont été entendues, comprises et échangées au moment de faire une déclaration ou de présenter une marchandise pour inspection, et cet aspect pourrait donc avoir une incidence sur l'issue d'une demande de révision présentée en vertu de la LSAP (voir *Gavryushenko c. Canada (Agence des services frontalier du Canada),* 2016 CRAC 33 (CanLII), au paragraphe 34). Par exemple, un sérieux obstacle linguistique à l'inspection primaire entre un agent des services frontaliers et un demandeur pourrait empêcher d'atteindre le point de finalité, pour ce qui est de la déclaration de ce que le demandeur importe. Là encore, un sérieux obstacle linguistique entre un agent des services frontaliers maraudant les carrousels de bagages ou à un agent à la sortie pourrait rouvrir la déclaration faite au primaire. De plus, la Commission a également conclu qu'un demandeur peut faire état d'obstacles linguistiques dans les cas où il y a une réelle confusion quant au fait de savoir si la réponse « Oui » qu'il coche sur sa carte de déclaration s'applique à tous les produits importés ou seulement à certains d'entre eux *(Hemeng c. Canada (Agence des services frontaliers du Canada*), 2017 CRAC 5 (CanLII), aux paragraphes 37 et 41).

[…]

[32] Comme il a été mentionné plus tôt, il est possible d'imaginer de rares circonstances dans lesquelles l'incapacité d'un demandeur de lire ou d'écrire dans les deux langues officielles du Canada ou de comprendre celles-ci pourrait faire obstacle à une déclaration écrite ou verbale d'importation de marchandises ou l'embrouiller, de sorte qu'un demandeur pourrait ne pas atteindre le point de finalité du processus d'importation. Cependant, les faits dont il est question en l'espèce ne révèlent pas de telles circonstances.

[33] Les éléments de preuve présentés ne permettent pas de conclure que les limites linguistiques de Mme Cikotic ont empêché celle-ci de commettre l'acte consistant à omettre de déclarer ou de présenter ses quatre boîtes de pâté de poulet. Autrement dit, je suis persuadé que ses capacités linguistiques en anglais ne l'empêchaient pas de déclarer le pâté de poulet avant d'atteindre le point de finalité du processus d'importation.

Taleb v. Canada (Canada Border Services Agency), 2016 CART 26 (CanLII)

[25] What is unclear is whether a language barrier, if established, may be viewed as a form of common law defence going to lack of volition. At present, there does not appear to be a strong judicial direction supporting a view that a lack of understanding the language relating to the violation may be regarded as a common law defence. What is recognized as a defence is a lack of volition due to a mental impairment or compulsion through external circumstances. Since ignorance of the law is not recognized, of itself, as a common law defence, ignorance of the law

due to language impediment would appear to fall within the same category. This was referenced by the Tribunal in *Gebru v. Canada (Canada Border Services Agency),* 2013 CART 2 (CanLII), at paragraph 52:

> [52] The Tribunal holds that the defences advanced by Ms. Gebru, primarily relating to her lack of understanding of English, have been successfully rebutted by the Agency, through contrary facts advanced by the Agency. The Tribunal further holds that, even if facts as alleged by Ms. Gebru were established to the satisfaction of the Tribunal, they are irrelevant as defences to the violation in question. This is because, as has been noted, and as is provided in the legislation, the offences are absolute liability offences. It is the fact of finding butter in Ms. Gebru's luggage that gives rise to the violation. Her understanding of the circumstances when food products are or are not permitted to be transported into Canada is irrelevant. Ms. Gebru has advanced none of the recognized defences to an absolute liability offence, such as necessity, duress, or coercion.

[26] In the absence of a judicial determination that a language impediment may be categorized as a common law defence to the commission of an absolute violation, the Tribunal is not prepared to so hold of its own volition. In "Common Law Defences" a 1992 paper published by the Canadian Bar Association (accessible at http://www.lareau-law.ca/CBA16--Ferguson.pdf), the nature of the subsection 8(3) *Criminal Code* provision is discussed by Professor Gerry Ferguson, of the University of Victoria law school, as follows, in part:

1. Section 8(3) of the *Criminal Code* states:

> Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of proceedings for an offence under this Act or any other Act of Parliament except insofar as they are altered by or are inconsistent with this Act or any other Act of Parliament.

2. Section 8(3) has been in the *Criminal Code* since its enactment in 1892. This provision was necessary since the Canadian codifiers made no pretense to attempting to comprehensively codify all existing common law defences. The Canadian codifiers relied upon the view of the English Draft Criminal Code Commissioners of 1880 who were of the view that it would be exceedingly difficult to anticipate every future defence with acceptable precision.

3. Sir James Fitzjames Stephen favoured this approach for the following reasons:

> [Quoted in G.L. Williams, "Necessity" (1978) Crim. L. Rev. at 129-130] (*quotation edited by the Tribunal*)
>
> …we are surely in a position to say the power of declaring new offences shall henceforth be vested in Parliament only. The power which has at times been claimed for the judges of declaring new offences cannot be useful now, whatever may have been its value in earlier times.
>
> On the other hand, it is hardly possible to foresee all the circumstances which might possibly justify or excuse acts which might otherwise be crimes. A long series of authorities have settled certain rules which can be put into a distinct and convenient form…but is it therefore wise or safe to go so far as to say that no other circumstances than those expressly enumerated shall operate by way of excuse or justification for what would otherwise be a crime…
>
> …the reason why the common law definitions of offences should be taken away, while the common law principles as to justification and excuse are kept alive, is like the reason why the benefit of a doubt should be given to a prisoner.

> 4. Section 8(3) has been relied upon in Canada for uncodified defences such as intoxication, automatism, mistake of fact, officially induced error, necessity, entrapment, de minimis, due diligence for strict liability offences, and the common law defence of duress for parties to an offence other than the principal offender.
>
> 5. The advantage of section 8(3) is that it has facilitated a certain degree of growth in the area of common law defences…

[27] It remains to be seen whether a linguistic impediment of a particular degree will come to be regarded as a common law defence under subsection 18(2) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. This question need not be addressed further here, though the Tribunal notes in passing that the common law defence of mistake of fact, which would appear to be associated with or a consequence of a linguistic impediment, is specifically eliminated as a defence by paragraph 18(1)(b). Thus, an underlying question remains whether, at this point in time, an allegation of linguistic impediment is an admissible reason in support of a Request for Review. On one reflection of matters, if language comprehension impediments are considered to relate to mistake of fact, the Request for Review in this case perhaps should not have been considered admissible at the outset.

[28] From another perspective, if language comprehension impediments go to the issue of volition, where a mistake cannot be said to have been voluntarily made, the matter may require further reflection. In *Abou-Latif v. Canada (Canada Border Services Agency),* 2013 CART 35 (CanLII), involving an oral hearing, the Applicant was represented in English by his wife, and did not speak at the hearing. Through his representative, the Applicant asserted, for the first time at the hearing, that he had a minimal understanding of English and no understanding of French. In paragraphs 34 to 37 of *Abou-Latif*, Tribunal addressed impediment to language comprehension as a potential impairment of volition, as follows:

> [34] The Tribunal has noted…that certain common law defences remain available to the applicant, on the basis that such defences are not inconsistent with the governing legislation. Such defences primarily relate to impairment of volition. It may be that a complete lack of understanding of either Official Language of Canada could be viewed as an impairment of volition, though that need not be determined in the present case. In the agreed statement of facts, Mr. Abou-Latif was asked if he had anything to declare and was able to answer "sweets" and "peanuts". Furthermore, in cross-examination, he acknowledged that he received help in completing the declaration form on the plane from someone whose understanding of English was superior to his own. It may be reasonably assumed that any points of concern that Mr. Abou-Latif had in understanding the form would have been addressed through conversation in Arabic between Mr. Abou-Latif and his fellow passenger.
>
> [35] In the recent Tribunal decision of *Dao v. Canada (CBSA),* 2013 CART 31 (CanLII), Mr. Dao asserted that he did not understand English, and was represented at the hearing by another family member. At the hearing, there was refutational evidence provided by an inspector, detailed in paragraph 14 of the decision, as follows:
>
> > [14] In cross-examination, Inspector 14984 told the Tribunal that she believed that Dao did understand English well enough to understand the questions she was asking him and indicated that she simplified her questions to ensure that he would understand. She added that if she had been convinced that Dao was not understanding her questions she would have called for an interpreter to come and assist them. The fact that Dao argued with her to have all the documentation in his name convinced her that Dao understood and spoke English…

> [36] Similar refutational evidence, as found in *Dao*, was not available in the current case, as the Agency personnel involved with the discovery and seizure of the prohibited meat product were not in attendance at the hearing… In fairness to the Agency representative, there was no information provided by Mr. Abou-Latif in advance of the hearing that his language limitations would be part of his defence. In more usual circumstances, where the elements of an applicant's defence are communicated in advance, the Agency would have been in a position to seek to submit written representations current or former Agency personnel, in circumstances where such persons were not available to testify at the hearing.
>
> [37] In the present case, the Tribunal finds that Mr. Abou-Latif's impediments to understanding the English language, both generally and in circumstances where he requested translation assistance on the airplane, were not such as to be considered to be an impediment to volition. In this regard, Mr. Abou-Latif is in a similar position to that of the applicant in *Dao*. Mr. Abou-Latif may have difficulties understanding English, but his difficulties in understanding did not extend to a complete inability to appreciate the nature and consequences of his actions.

[29] In the present case, as previously noted, any alleged language impediment of the Applicant is not supported by evidence. Thus, issues relating to mistake of fact or impairment of volition need not be considered further.

Shaikh v. Canada (Minister of Public Safety and Emergency Preparedness), 2016 CART 10 (CanLII)

[25] This Tribunal has considered the issue of an applicant's lack of understanding of an official language of Canada and its possible effect in mounting a defence under subsection 18(2) of the *AMP Act* (see *Abou-Latif v. Canada (Canada Border Services Agency)*, 2013 CART 35 (CanLII), at paragraphs 34 to 37).

[26] It may be that Mr. Shaikh does indeed struggle in English. However, apart from a reference made in his written submission to the Tribunal and in his submissions relayed to the Tribunal by Mr. Pathak, there is little on the record to indicate that Mr. Shaikh so fundamentally failed to understand English that he has established a permissible defence under subsection 18(2) of the *AMP Act*. The evidence provided by the Agency that Mr. Shaikh had a sufficient knowledge of English is strong; he filled out his Declaration Card; he answered questions in English at secondary inspection; and presumably he also answered questions at primary inspection on March 24, 2014. There is also evidence by way of correspondence from Mr. Shaikh that he had at least a rudimentary proficiency in English; he submitted documentation to the Minister and to the Tribunal in English, and before his letter to the Tribunal on August 6, 2015, there is absolutely no mention made by him or by the Agency with respect to any difficulties by Mr. Shaikh in English. I find this evidence more convincing than the later submissions from Mr. Shaikh that he had "severe difficulty in comprehending the English language".

[27] On the basis of the record, I find that Mr. Shaikh's language proficiency in English on March 24, 2014, was not so inadequate as to convince me, on a balance of probabilities, that he has made out any defence to the violation permitted under subsection 18(2) of the *AMP Act*.

Air Canada Public Participation Act, R.S.C. 1985, c. 35 (4th Supp.)

10. (1) *Official Languages Act*

10. (1) The *Official Languages Act* applies to the Corporation.

10. (2) Duty re subsidiaries

10. (2) Subject to subsection (5), if air services, including incidental services, are provided or made available by a subsidiary of the Corporation, the Corporation has the duty to ensure that any of the subsidiary's customers can communicate with the subsidiary in respect of those services, and obtain those services from the subsidiary, in either official language in any case where those services, if provided by the Corporation, would be required under Part IV of the *Official Languages Act* to be provided in either official language.

[…]

10. (7) Duties of replacements

10. (7) If Canadian Airlines International Ltd., Canadian Regional Airlines Ltd. or a subsidiary of the Corporation replaces the Corporation or one of its subsidiaries in providing an air service, including incidental services, that the Corporation or the subsidiary provided on or after December 21, 1999, the Corporation has the duty to ensure that any of the customers of the person who replaces the Corporation or the subsidiary can communicate with that person in respect of those services, and obtain those services from that person, in either official language in any case where those services, if provided by the Corporation or the subsidiary, would be required under Part IV of the *Official Languages Act* or under subsection (2) to be provided in either official language.

10. (8) For greater certainty

10. (8) For greater certainty, subsections (2) and (7) do not affect any duty that the Corporation may have under section 25 of the *Official Languages Act*.

10. (9) Deemed duty

10. (9) For the purposes of Parts VIII, IX and X of the *Official Languages Act*, the duties referred to in subsections (2) and (7) are deemed to be duties under Part IV of that Act.

R.S., 1985, c. 35 (4th Supp.), s. 10; 2000, c. 15, s. 18.

ANNOTATIONS

Air Canada c. Québec (procureure Générale), 2015 QCCA 1789 (CanLII) [decision available in French only]

[141] Concédons qu'à première vue, la méthode choisie par le législateur pour exprimer son intention suscite l'interrogation : si le législateur entendait bel et bien contraindre Air Canada à préserver ses centres de Montréal et de Winnipeg, que ne l'y a-t-il obligée directement, plutôt qu'en prescrivant l'inclusion de cette obligation (avec d'autres) dans les statuts de la société? Après tout, c'est par voie d'imposition directe qu'il a procédé lorsqu'il a assujetti Air Canada à la *Loi sur les langues officielles* : comme on l'a vu plus tôt, l'article 10 de la Loi prévoit en effet que « [l]a *Loi sur les langues officielles* s'applique à la Société » (« *The* Official Languages Act *applies to the Corporation* »), ce qui est sans détour et sans ambiguïté. Pourquoi n'a-t-il pas fait de même en ce qui concerne les restrictions énumérées au paragraphe 6(1), et notamment celle de l'alinéa *d*)? Air Canada nous invite à voir dans cette différence l'indication que les deux dispositions n'ont pas la même portée obligationnelle.

[142] À vrai dire, il y a pourtant peu à tirer de cette différence et l'on peut aisément comprendre que le législateur ait choisi de rédiger l'article 10 comme il l'a fait, et non à la manière du paragraphe 6(1). On ne voit guère comment il aurait pu en aller autrement, vu la teneur de la *Loi sur les langues officielles*. Celle-ci s'applique au Parlement, aux tribunaux fédéraux et aux institutions fédérales définies par l'article 3, qu'elle soumet aussi à l'autorité du commissaire aux langues officielles, investi d'un pouvoir d'enquête qu'il exerce de sa propre initiative ou sur plainte. Elle instaure également une voie de recours devant la Cour fédérale. Pour assujettir une société désormais privée à cette loi, il fallait bien que la Loi l'édicte : une mention aux statuts de la société n'aurait évidemment pas suffi. Cela étant, le fait que l'article 10 soit rédigé comme il l'est ne nous renseigne pas sur l'intention qu'exprime le législateur au paragraphe 6(1) de la Loi et n'emporte aucunement que les obligations consacrées par cette disposition soient « purement corporatives » ou que leur mise en œuvre soit laissée au pouvoir d'appréciation discrétionnaire des administrateurs de la société.

Thibodeau v. Air Canada, [2014] 3 SCR 340, 2014 SCC 67 (CanLII)

[13] Air Canada and its affiliate Jazz are subject to the *OLA* [*Official Languages Act*]: see Air Canada Public Participation Act, R.S.C. 1985, c. 35 (4th Supp.), s. 10. (For convenience, I will refer to either or both of them as “Air Canada” in these reasons.) The *OLA* requires Air Canada to supply services in French or English where there is “significant demand” for them: see s. 22(b).

Air Canada v. Thibodeau, 2007 FCA 115 (CanLII)

[1] This is an appeal against two decisions of Mr. Justice Beaudry (judge) of the Federal Court, dated August 24, 2005 (2005 FC 1156 (CanLII)), and December 1, 2005 (2005 FC 1621 (CanLII)).

[2] In these decisions, Beaudry J. allowed the respondent’s application for remedy against the appellant under subsection 77(1) of the *Official Languages Act*, R.S.C. 1985 (4th Supp.) (OLA).

[3] In Federal Court, the respondent, representing himself, alleged an infringement of his language rights insofar as, contrary to section 10 of the *Air Canada Public Participation Act*, R.S.C. 1985 (4th Supp.) (ACPPA), Air Ontario, a subsidiary of Air Canada, was unable to serve him in French on a flight from Montréal to Ottawa. The flight took place on August 14, 2000. The fact that the lone flight attendant on duty was a unilingual Anglophone is not contested.

[…]

[13] No matter what the nature and intensity of the obligation under subsection 10(2) of the ACPPA may be, and assuming, without deciding the point, that the appellant is entitled to a due diligence defence, there is no evidence on record giving rise to such a defence.

[14] In fact, nothing in the affidavit of Chantal Dugas in support of the appellant’s submissions allows me to infer, much less conclude, that the appellant acted with diligence so as to comply with the ACPPA and the obligations imposed on it under subsection 10(2).

[15] The amendment adding the second subsection to section 10 of the ACPPA came into force on July 7, 2000. However, the appellant and Air Ontario had known since February 2000, when the bill to amend the SCPPA was tabled, that language obligations would soon be imposed on Air Ontario, although I realize that they did not know what the final content of those obligations would be: Appeal Record, volume 1, page 196. However, the evidence on record does not show that the appellant took any steps between February to June 2000 (when the bill was passed) to comply with or enforce the language obligations imposed by the ACPPA.

[16] Moreover, when the bill was passed in June 2000, only 9 of Air Ontario’s 179 flight attendants had working knowledge of French. In spite of that and the fact that subsection 10(2) of

the ACPPA came into force at the beginning of July, it was only on some unspecified date in September 2000, after the incident involving the respondent, that the appellant began offering intensive language training courses to its flight attendants.

[17] As far as the courses are concerned, the record does not contain any evidence about their duration, frequency or availability or about how many participants registered for them.

[18] Finally, there is no evidence on record to the effect that efforts were made to assign the nine persons who had working knowledge of French to routes where the use of French was required.

[19] The due diligence defence, which is well known in the context of regulatory offences under penal law, requires more than passivity: see *Lévis (City of) v. Tétreault*, 2006 SCC 12 (CanLII), [2006] 1 S.C.R. 420. At paragraph 30 of this unanimous judgment of the Supreme Court, Lebel J. wrote, “The concept of diligence is based on the acceptance of a citizen’s civic duty to take action to find out what his or her obligations are”. Once those obligations are known, they must be respected or precautions must be taken which a reasonable person would have taken to respect them under the circumstances: *ibidem*, at paragraph 15, *R. v.Chapin* 1979 CanLII 33 (SCC), [1979] 2 S.C.R. 121.

[20] The appellant has the burden of proving due diligence. Assuming without deciding that such a defence was available, the appellant did not discharge that burden.

Air Canada (Re), 2004 CanLII 73244 (ON SC)

[TRANSLATION]

[24] It seems clear to me that Mr. Boudreault considered the evidence regarding the many complaints made against Air Canada and its subsidiaries. He noted that Mr. Thibodeau's complaint covered Air Canada's language obligations towards its subsidiaries and not on Air Canada's own language obligations. Therefore the complaints against Air Canada were not relevant. With respect to complaints made against the subsidiaries, Mr. Boudreault stressed that before the amendment of the *ACPPA* [*Air Canada Public Participation Act*] in 2000, Air Canada maintained its subsidiaries were not subject to the *OLA* [*Official Languages Act*]. As the courts or the legislature had not decided this issue, the complaint alleging non-compliance with the *OLA* by Air Canada's subsidiaries was not an indication of a systemic failure, by Air Canada, of its linguistic obligations. Even the documentation filed by the Commissioner of Official Languages suggested it was reasonable to conclude it was only after the amendments *ACPPA* in 2000 that Air Canada was required to ensure its subsidiaries complied with the *OLA* (*Boudreault* decision at paragraph 37).

SEE ALSO:

Fédération Franco-Ténoise v. Canada (Attorney General), 2006 NWTSC 20 (CanLII)

Air Travellers Security Charge Act, SC 2002, c 9

37. (3) Language and location of record

37. (3) Unless otherwise authorized by the Minister, a record shall be kept in Canada in English or French.

Airport Transfer (Miscellaneous Matters) Act, SC 1992, c 5

4. (1) Application of *Official Languages Act*

4. (1) Where the Minister has leased an airport to a designated airport authority, on and after the transfer date Parts IV, V, VI, VIII, IX and X of the *Official Languages Act* apply, with such modifications as the circumstances require, to the authority in relation to the airport as if

(a) the authority were a federal institution; and

(b) the airport were an office or facility of that institution, other than its head or central office.

4. (1.1) Idem

4. (1.1) Where the Minister has sold or otherwise transferred an airport to a designated airport authority, on and after the transfer date Parts IV, VIII, IX and X of the *Official Languages Act* apply, with such modifications as the circumstances require, to the authority in relation to the airport as if

(a) the authority were a federal institution; and

(b) the airport were an office or facility of that institution, other than its head or central office.

4. (2) Construction

4. (2) Nothing in subsection 23(2) of the *Official Languages Act* shall, in relation to an airport transferred to a designated airport authority by the Minister, be construed or applied so as to impose a duty on any institution other than that authority.

1992, c. 5, s. 4, c. 42, s. 2.

Assisted Human Reproduction Act, SC 2004, c 2

65. (3) Documents in one language

65. (3) Where a document that is available in both official languages has been incorporated by reference as amended from time to time, an amendment to one language version of that document is not incorporated until the corresponding amendment is made to the other language version.

Bank Act, SC 1991, c 46

2. Definitions

2. *foreign bank*, subject to section 12, means an entity incorporated or formed by or under the laws of a country other than Canada that

[...]

> **(c) engages, directly or indirectly, in the business of providing financial services and employs, to identify or describe its business, a name that includes the word "bank", "banque", "banking" or "bancaire", either alone or in combination with other words, or any word or words in any language other than English or French corresponding generally thereto,**
>
> **[…]**

French or English form of name

42. (1) The name of a bank may be set out in its letters patent in an English form, a French form, an English form and a French form or in a combined English and French form, and the bank may use and be legally designated by any such form.

1991, c. 46, s. 42; 1996, c. 6, s. 2.

Bank of Canada Act, RSC 1985, c B-2

25. (4) Form and material

25. (4) The form and material of the notes of the Bank shall be subject to approval by the Minister, but each note shall be printed in both the English and French languages.

R.S. c. B-2, s. 21; 1980-81-82-83, c. 40, s. 49.

Broadcasting Act, SC 1991, c 11

3. (1) Declaration

3. (1) It is hereby declared as the broadcasting policy for Canada that

> **[...]**
>
> **(b) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;**
>
> **(c) English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;**
>
> **[...]**
>
> **(f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the**

undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources; [...]

(k) a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available;

[...]

(m) the programming provided by the Corporation should

[...]

(iv) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,

(v) strive to be of equivalent quality in English and in French,

[...]

(q) without limiting any obligation of a broadcasting undertaking to provide the programming contemplated by paragraph (i), alternative television programming services in English and in French should be provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;

[…]

ANNOTATIONS

CBC/Radio-Canada v. Canada (Commissioner of Official Languages), [2016] 3 FCR 55, 2015 FCA 251 (CanLII)

I. Overview

[1] This is an appeal brought by the Canadian Broadcasting Corporation (“CBC”) from a decision of Martineau J. (the “Judge”) of the Federal Court dated September 8, 2014 (2014 FC 849 (CanLII))(sometimes referred to as the second decision). In this decision, the Judge confirmed his findings from an earlier decision dated May 29, 2012 (2012 FC 650 (CanLII)) (sometimes referred to as the first decision) in which he found that the Commissioner of Official Languages (the “Commissioner”) and the Canadian Radio-television and Telecommunications Commission (the “CRTC”) had concurrent jurisdiction to investigate complaints related to the *Official Languages Act* (R.S.C., 1985, c. 31 (4th Supp.)) (the “OLA”) against CBC.

[…]

II. Facts and Decisions Below

[4] In 2009, CBC was forced to make substantial nationwide budget cuts. In response, it adopted a recovery plan which, *inter alia*, involved financial cuts to the amount of local and regional content developed by CBEF Windsor, the only French-language radio station in southwestern Ontario. The cuts reduced CBEF Windsor's employees from ten to three, eliminated three programs produced locally and reduced the local and regional content in programming from 36.5 hours to 5 hours per week.

[5] The French-speaking OLMC in southwestern Ontario (of which Dr. Amellal, one of the Respondents, is a member) objected to these cuts. They formed a volunteer association, the Comité SOS CBEF (the “Comité”), and lodged complaints with both the Commissioner and the CRTC regarding the negative impact these cuts would have upon the French-speaking minority in this region. When the CRTC failed to act quickly enough, the Commissioner began an investigation pursuant to section 56 of the *OLA*.

[6] CBC refused to cooperate with the Commissioner's investigation. In its view, the Commissioner did not have jurisdiction to review its programming activities and those activities were not subject to *OLA*-related obligations. Instead, it argued that those matters were properly within the CRTC's jurisdiction.

[…]

[49] What is also clear is that the CRTC does not have the power under the *BA* [*Broadcasting Act*] to determine whether there has been a breach of the provisions of the *OLA*. The CRTC’s mandate under the *BA* is otherwise. Although it is empowered, pursuant to subsection 46(4) of the *BA*, to “have regard to the principles and purposes of the *OLA*” in determining whether broadcasting services should be renewed and/or extended, the CRTC cannot reach any conclusion regarding breaches of the *OLA*. That, in my respectful view, is an entirely different matter.

LaRoque v. Société Radio-Canada, 2009 CanLII 35736 (ON SC)

[42] All of that said, the underlying issue is whether I have the jurisdiction to grant the remedy sought by the applicants. In my view, I do not.

[43] As Mr. Justice Sharpe as he then was observed in *Mahar v. Rogers Cablesystems Ltd*. the *Broadcasting Act* sets out in s. 3(1) in “some considerable detail a broadcasting policy for Canada as mandated by Parliament. That policy includes the role of the Canadian Broadcasting system in safeguarding, enriching, strengthening the cultural, political, social and economic fabric of Canada. It also provides that the programming provided by the Corporation should be predominantly and distinctively Canadian, reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions, actively contribute to the flow and exchange of cultural expression, be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities, strive to be of equivalent quality in English and in French, contribute to shared national consciousness and identity, be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and reflect the multicultural and multiracial nature of Canada. Clearly then the Broadcasting Act addresses issues of programming and meeting the needs and circumstances of French linguistic minorities.

[44] Section 3 of the Act sets out the broadcasting policy for Canada, including objectives such as the provision of a national radio broadcasting service in the French and English languages; covering all regions of Canada, in as much as public funds are available, contributing to the enhancement of national unity and always reflecting a Canadian point of view. Section 3 also provides that “[translation] the best way to meet the objectives of the broadcasting policy consists in entrusting its regulation and supervision to an independent public authority”.

[45] As observed by Mr. Justice Sharpe, a central provision to this application is s. 3(2) of the Act which provides as follows:

> It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by

providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

[46] I adopt Mr. Justice Sharpe's opinion with respect to the ambit of this section:

> I referred earlier to s. 3(2) of the Act which is central to the issue of jurisdiction. In my view, that section establishes, in effect, a principle of exclusivity. It clearly states Parliament's determination that the policies of the Act will best be achieved if a single independent public authority, namely, the C.R.T.C., is established to deal with all matters relating to those policies. The C.R.T.C. is a specialized body with particular expertise in the area. In my view, if this court were to assume jurisdiction, it would violate the spirit, if not the letter, of s. 3(2). The statutory mandate of the C.R.T.C. is fortified by the case-law which has consistently given a broad and generous interpretation to its powers and authority.

[…]

[51] In the case before me, the issues raised by the applicants are matters of concern arising from the implementation of policy in conjunction with matters of fiscal restraint by the SRC. This dispute requires the adjudicator deciding the case to both understand the objectives of the Canadian Broadcasting system and its mandate pursuant to s. 3 of the Act and assess the impact of financial constraints on those objectives.

SEE ALSO:

Bell ExpressVu Limited Partnership v. Rex, [2002] 2 SCR 559, 2002 SCC 42 (CanLII), at para. 47

Société Radio-Canada v. Métromédia Cmr Montréal Inc., 1999 CanLII 8947 (FCA), at para. 9

Mahar v. Rogers Cablesystems Ltd., 1995 CanLII 7129 (ON SC)

Radio Regulations, 1986, SOR/86-982

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5. (2) Regulatory policy

5. (2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

> **(a) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate; […]**

SEE ALSO:

LaRoque v. Société Radio-Canada, 2009 CanLII 35736 (ON SC)

Mahar v. Rogers Cablesystems Ltd., 1995 CanLII 7129 (ON SC)

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45. (1) English and French language broadcasting committees

45. (1) The Board shall establish a standing committee of directors on English language broadcasting and a standing committee of directors on French language broadcasting, each consisting of the Chairperson, the President and such other directors as the Board may appoint.

45. (4) Duties of committees

45. (4) The standing committee on English language broadcasting shall perform such duties in relation to English language broadcasting, and the standing committee on French language broadcasting shall perform such duties in relation to French language broadcasting, as are delegated to the committee by the by-laws of the Corporation.

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46. (4) Extension of services

46. (4) In planning extensions of broadcasting services, the Corporation shall have regard to the principles and purposes of the *Official Languages Act*.

ANNOTATIONS

CBC/Radio-Canada v. Canada (Commissioner of Official Languages), [2016] 3 FCR 55, 2015 FCA 251 (CanLII)

[49] What is also clear is that the CRTC does not have the power under the *BA* to determine whether there has been a breach of the provisions of the *OLA*. The CRTC's mandate under the *BA* is otherwise. Although it is empowered, pursuant to subsection 46(4) of the *BA*, to "have regard to the principles and purposes of the *OLA*" in determining whether broadcasting services should be renewed and/or extended, the CRTC cannot reach any conclusion regarding breaches of the *OLA*. That, in my respectful view, is an entirely different matter.

Canada Business Corporations Act, RSC 1985, c C-44

10. (1) Name of corporation

10. (1) The word or expression "Limited", "Limitée", "Incorporated", "Incorporée", "Corporation" or "Société par actions de régime fédéral" or the corresponding abbreviation "Ltd.", "Ltée", "Inc.", "Corp." or "S.A.R.F." shall be part, other than only in a figurative or descriptive sense, of the name of every corporation, but a corporation may use and be legally designated by either the full or the corresponding abbreviated form.

10. (3) Alternate name

10. (3) Subject to subsection 12(1), the name of a corporation may be set out in its articles in an English form, a French form, an English form and a French form, or a combined English and French form, so long as the combined form meets the prescribed criteria. The corporation may use and may be legally designated by any such form.

10. (4) Alternative name outside Canada

10. (4) Subject to subsection 12(1), a corporation may, for use outside Canada, set out its name in its articles in any language form and it may use and may be legally designated by any such form outside Canada.

Canada Cooperatives Act, SC 1998, c 1

20. (1) Required name

20. (1) A cooperative must have the word “cooperative”, “co-operative”, “coop”, “co-op”, “coopérative”, “united” or “pool”, or another grammatical form of any of those words, as part of its name.

20. (4) Alternate form

20. (4) The name of a cooperative may be set out in its articles in an English form, a French form, an English form and a French form, or a combined English and French form, so long as the combined form meets the prescribed criteria. The cooperative may use and be legally designated by any such form.

20. (6) Identification outside Canada

20. (6) A cooperative may set out in its articles its name in any language form and, if it does, it may use and be legally designated outside Canada by its name in that form.

Canada Elections Act, SC 2000, c 9

Notice of Confirmation of Registration

95. (3) Particular needs

95. (3) The notice of confirmation of registration shall invite the elector to contact the returning officer if he or she

(a) requires a language or sign language interpreter;

[…]

2000, c. 9, s. 95; 2007, c. 21, s. 14.

Special Voting Procedures

156. Use of interpreter

156. A deputy returning officer may appoint and swear a language or sign language interpreter to assist the officer in communicating to an elector any information that is necessary to enable him or her to vote.

Canada Marine Act, SC 1998, c 10

54. *Official Languages Act*

54. The *Official Languages Act* applies to a port authority as a federal institution within the meaning of that Act.

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95. *Official Languages Act*

95. The *Official Languages Act* applies, in respect of the management of properties and undertakings that are the subject of an agreement entered into under subsection 80(5), to the person who has entered into the agreement as if the person were a federal institution within the meaning of that Act.

Canada Not-for-profit Corporations Act, SC 2009, c 23

11. (1) Alternate name

11. (1) Subject to subsection 13(1), the name of a corporation may be set out in its articles in an English form, a French form, an English form and a French form, or a combined English and French form, so long as the combined form meets any prescribed criteria. The corporation may use and may be legally designated by any such form.

11. (2) Alternate name outside Canada

11. (2) Subject to subsection 13(1), a corporation may, for use outside Canada, set out its name in its articles in any language form and it may use and may be legally designated by any such form outside Canada.

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296. (1) Change of name

296. (1) A body corporate may send to the Director notice of a change of its name that complies with subsections (4) and (5) and that has been approved by special resolution of the members.

296 (4) Alternate name

296. (4) The name of a body corporate may be in an English form, a French form, an English form and a French form, or a combined English and French form, so long as the combined form meets any prescribed criteria. The body corporate may use and may be legally designated by any such form.

Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, SC 1988, c 28

30. (1) Annual report

30. (1) The Board shall, in respect of each fiscal year, prepare a report in both official languages of Canada and submit it to the Federal Minister and the Provincial Minister not later than ninety days after the expiration of that fiscal year.

Canada Revenue Agency Act, SC 1999, c 17

89.1 *Official Languages Act* applies

89.1 For greater certainty, the *Official Languages Act* applies to the Agency and the Agency has the duty, under section 25 of that Act, to ensure that, where services are provided or made available by another person or organization on its behalf, any member of the public in Canada or elsewhere can communicate with and obtain those services from that person or organization in either official language, in any case where those services, if provided by the Agency, would be required under Part IV of that Act to be provided in either official language.

Canada Shipping Act 2001, SC 2001, c 26

Schedule 3, Part I, Chapter V – International Convention on Salvage, 1989.

Languages

Article 34. This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

Canada-United Kingdom Civil and Commercial Judgments Convention Act, RSC 1985, c C-30

Schedule, Part IV – Procedures

Article VI

4. The registering court may require that an application for registration be accompanied by

[...]

(b) a certified translation of the judgment, if given in a language other than the language of the territory of the registering court;

Canadian Bill of Rights 1960, SC c 44.

1. Recognition and declaration of rights and freedoms

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

[…]

(b) the right of the individual to equality before the law and the protection of the law;

[…]

(d) freedom of speech;

[…]

---

2. Construction of law

2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

[…]

(g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted.

ANNOTATIONS

Sadjade v. The Queen, [1983] 2 SCR 361, 1983 CanLII 163 (SCC)

Appellant's request to be provided with the services of an interpreter was categorically rejected, which amounted to an error of law.

Canadian Javelin Ltd. v. Canada (Restrictive Trade Practices Commission), 1980 CanLII 2631 (FC)

[5] The language of paragraph 2(g) is, in its ordinary meaning, very broad. When, as here, someone is entitled by law to be represented by counsel at a hearing, that counsel is "a person...involved...before a court, commission, board or other tribunal". The paragraph is express that "person" is not limited to a party or witness. Excepting them, who could be more involved than counsel, assuming the tribunal would not deprive itself of needed assistance and has, therefore, no real need to be protected from itself? Canadian Javelin's counsel has a right to the assistance of an interpreter at any interrogation conducted in a language he does not understand. To cloak that right with substance he also has the right to reasonable notice that the interrogation will be conducted in that language or to a reasonable adjournment to permit him to get an interpreter if the notice is not forthcoming.

Canadian Environmental Protection Act, 1999, SC 1999, c 33

161. (1) Definition of "technical standards document"

161. (1) In this section, "technical standards document" means a document, published in the prescribed manner by authority of the Minister, that reproduces in the official languages of Canada an enactment of a foreign government with any adaptations of form and reference that will facilitate the incorporation of the enactment under this section.

Canadian Human Rights Act, RSC 1985, c H-6

2. Purpose

2. The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

R.S., 1985, c. H-6, s. 2; 1996, c. 14, s. 1; 1998, c. 9, s. 9; 2012, c. 1, s. 137(E); 2017, c. 3, ss. 9, 11, c. 13, s. 1.

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3. (1) Prohibited grounds of discrimination

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for which a pardon has been granted or in respect of which a record suspension has been ordered.

R.S. 1985, c. H-6, s. 3; 1996, c. 14, s. 2; 2012, c. 1, s. 138(E); 2017, c. 3, ss. 10, 11, c. 13, s. 2.

ANNOTATIONS

Denny v. Deputy Minister of National Defence, 2016 PSLREB 33 (CanLII)

Issue 4 - Was there discrimination in the appointment process?

[41] The complainant stated that he had been discriminated against because of his ethnic origin. English is his second language; because of it, he submits greater scrutiny was applied to his exams than to the appointee's exams. According to the complainant, discrimination was obvious in the treatment he received. The first test had been scrutinized more closely because his writing skills were doubted; for the same reason, more severe criteria were applied to him in the second written test.

[42] Discrimination can be considered a form of abuse of authority. Section 80 of the PSEA [*Public Service Employment Act*] provides that "in considering whether a complaint under section 77 is substantiated, the Board may interpret and apply the *Canadian Human Rights Act*" [R.S.C., 1985, c. H-6, "*CHRA*"]. National or ethnic origin is one of the prohibited grounds of discrimination set out in s. 3(1) of the *CHRA*.

[43] To establish discrimination, the complainant first must establish prima facie discrimination. Some adverse treatment must be shown, linked to a prohibited ground of discrimination (see *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 (CanLII)).

[44] The respondent argued that the complainant had not established a *prima facie* case of discrimination. English as a second language is not a ground of discrimination under the *CHRA*.

[45] I think the complainant's allegation can be construed a little more generously. I understand his discrimination claim to be grounded on his ethnic origin, which is east European. According to his reasoning, because of his ethnic origin, English is his second language; and because English is his second language, he was unfairly treated.

[46] I can accept that in certain cases, it would be possible to show discrimination based on the fact that a person belongs to a group whose first language is not English, and that that could properly be considered discrimination based on national or ethnic origin. Some evidence would be needed that not speaking English as a first language played a role in the assessment, which is not the same as an objective assessment of language skills.

[47] The respondent also argued that nothing in its behaviour showed prejudice towards the complainant. He had been given the same opportunities and had been assessed in the same way as all the other candidates.

[48] In this case, I have found no evidence of adverse treatment based on ethnic origin. According to the complainant, his first test was singled out for copying because the respondent was looking specifically for mistakes. I see it otherwise. From the email exchanges, it seems to me the respondent sought to be as fair as possible when it realized that the instructions in the first test did not specifically preclude copying.

[49] The complainant was awarded full marks for knowledge on the first test but failing marks for the mistakes he made in the few sentences he wrote. True, the appointee also copied some material and made mistakes. But he copied less and could therefore be assessed more completely on his writing. The respondent carefully weighted the scores of the first and second tests to ensure a comprehensive assessment.

[50] No evidence was presented for any type of discriminatory practice on the part of the assessment board, other than the fact that the complainant feels unfairly assessed. As stated in *Nash v. Commissioner of the Correctional Service of Canada*, 2014 PSST 10 (CanLII) at para 54, a simple assertion that a prohibited ground played a role in the assessment is not sufficient; there must be some evidence to support the assertion. The Canadian Human Rights Tribunal stated it thus in *Filgueira v. Garfield Container Transport Inc*., 2005 CHRT 32 (CanLII) at para. 41: "… an abstract belief that a person is discriminated against, without some fact to confirm that belief, is not enough". (Decision affirmed, 2006 FC 785 (CanLII)).

[51] The complainant's oral skills were given a pass mark. The complainant has not established a *prima facie* case of discrimination, as there was no evidence of adverse treatment linked to his ethnic origin. The fact that he failed the writing ability component of the assessment can be objectively justified. As stated, I believe the assessment was fair.

SEE ALSO:

McKenzie v. Canada (Canadian Human Rights Commission), [1985] F.C.J. No. 529 [hyperlink not available]

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7. Employment

7. It is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any individual, or

(b) in the course of employment, to differentiate adversely in relation to an employee,

on a prohibited ground of discrimination.

ANNOTATIONS

Canada (Attorney General) v. Montreuil, 2009 FC 60 (CanLII)

[18] Section 7 of the Act [*Canadian Human Rights Act*] provides that it is a discriminatory practice, directly or indirectly, to refuse to employ an individual on a prohibited ground of discrimination, including sex or national or ethnic origin. The burden of proof is first on the complainant, who must establish a prima facie case of discrimination (*Israeli v. C.H.R.C. and Public Service Commission* (1983), 4 C.H.R.R. D/1616; *Premakumar v. Air Canada*, [2002] C.H.R.D. No. 3 (QL)). The evidence must substantiate allegations that must be complete and sufficient to warrant a finding in the complainant's favour if they are believed, in the absence of a response from the opposing party (*Ontario (Human Rights Commission) v. Etobicoke (Borough)*, 1982 CanLII 15 (SCC), [1982] 1 S.C.R. 202 at page 8; *Ontario (Human Rights Commission) v. Simpsons Sears Ltd.*,[1985] 2 S.C.R. 536 (hereafter *O'Malley*)).

[19] In the context of employment, prima facie evidence comprises the following:

a) The complainant was qualified for the employment at issue;

b) The complainant was not hired;

c) Someone no better qualified but lacking the distinguishing feature, which is the gravamen of the human rights complaint, subsequently obtained the position.

[...]

[23] The Tribunal noted that the respondent insisted on pointing out that the argument based on language only served to support her complaint based on sex. She alleged that the language ground had only been a pretext for not giving her the desired position because of her "sex". The Tribunal therefore addressed only the discrimination complaint based on sex. However, it noted that it had to address the language aspect of the complainant's argument in its reasons.

[24] Firstly, following an analysis of the facts, the Tribunal found that the respondent had the necessary competencies or qualifications to work as a grievance officer.

[25] Secondly, the Tribunal determined that the respondent's application had been rejected. The Tribunal explained that the letter dated December 30, 2002, said that the respondent had qualified for the competition and that her name would be placed on an eligibility list that would be effective until March 30, 2003.

[26] In response to two requests for information, the respondent received a letter on December 18, 2003, informing her that the Board did not have an operational need for unilingual French grievance officers at the time. The letter pointed out, however, that the Board was extending the validity of the eligibility list for unilingual French grievance officer positions (the respondent being the only unilingual French candidate on the list) until March 2004 and assured the respondent that the Board would call on her services should it need a unilingual French grievance officer. The Tribunal then raised the following question (paragraph 45 of the decision):

> . . . Indeed, I am wondering why the Board decided to extend this eligibility list when it seemed clear . . . that the Board would never need a unilingual French grievance officer since there were enough bilingual officers to handle this task.

[27] The Tribunal eventually found that the respondent's application had been rejected on the ground that the Board had placed her on an eligibility list for which there was never any need. The Board had thus imposed a condition that was impossible to fulfill; hence she would never be hired by the Board. There would have to be such an increase in files to process in French that there would no longer be enough bilingual officers to get the work done; only then would the respondent have to be hired. The Board could simply increase the number of bilingual officers, making it unnecessary to hire a unilingual French grievance officer.

[28] The Tribunal then noted that the respondent was ranked third of the four candidates that qualified for the eligibility list. The three other candidates, unilingual Anglophones, were all hired. Nothing in the evidence suggests that the hired candidates were more qualified to work as grievance officers than the respondent. The Tribunal accepted the respondent's argument that the only difference between her and the other candidates was that she was transgendered. Language was not the cause of the discrimination but rather a pretext for concealing it.

[29] The Tribunal therefore determined that the respondent had established a *prima facie* case of discrimination. The burden was now on the Board to provide a reasonable explanation for the alleged conduct.

[30] The Board's explanation for not hiring the respondent was that there was no operational need for a unilingual French grievance officer. There were enough bilingual grievance officers to handle the processing of the French-language files. The Tribunal noted, however, that the advertisement for the competition indicated that the majority of the positions were bilingual imperative "CCC" but that "some [were] unilingual English or French" (page 1379, Volume VI, Applicant's Record). If the Board had been of the opinion that there were not enough French language files to warrant hiring a grievance officer with this profile, it would not have advertised that some positions were "unilingual French".

[31] The Tribunal noted that no evidence was offered to explain how many French-language files would suffice for there to be an operational need to justify hiring a unilingual Francophone grievance officer. Even with 35% of files being French in 2005, the Board considered that it did not have the operational need for a unilingual French grievance officer. Based on that evidence, the Tribunal found that the Board would never need a "unilingual French" grievance officer, unless there was an exceptional change in the linguistic composition of the files.

[32] In support of its decision, the Board also relied on the *Policy on the Staffing of Bilingual Positions* issued by the Treasury Board of Canada Secretariat, which provides for imperative staffing of specified term positions, meaning that only those candidates who meet all the language requirements of the position at the time of appointment can be accepted. Even though this policy explains why the respondent could not get one of the bilingual positions, it does not explain why the Board did not create a "unilingual Francophone" position, given the job application and the competition notice (pages 1378 and 1379, Volume VI, Applicant's Record).

[33] The Tribunal pointed out that it was not concerned with determining whether the Board refused to hire the respondent because she was Francophone, but rather whether the Board refused to hire her because she was transgendered, using her language profile as a pretext. It recognized that it was not within the Tribunal's jurisdiction to determine whether a federal institution had considered OLA requirements when staffing a position. It was also not within its jurisdiction to determine whether a language requirement was simultaneously discriminatory. It did, however, assume jurisdiction to verify whether a language requirement for staffing was only a pretext for discrimination within the meaning of the Act, so the Tribunal did not exceed its

mandate. The fact that an activity is subject to the OLA does not preclude the application of the Act (see subsection 82(2) of the OLA and *Canada (Attorney General) v. Uzoaba*, 1995 CanLII 3589 (FC), [1995] 2 F.C. 569 (T.D.). Even though the OLA may provide a remedy, this does not strip the Tribunal of its jurisdiction to address the issue of discrimination.

[34] The Tribunal also pointed out that intent is not a precedent condition to a finding of discrimination (*O'Malley*). It is therefore not necessary to demonstrate that the Board members intended to discriminate against the respondent. The Tribunal was of the opinion that simply saying that bilingual officers could handle the French-language files if needed was not a satisfactory answer.

Canadian Multiculturalism Act, RSC 1985, c 24 (4th Supp.)

Preamble

WHEREAS the Constitution of Canada provides that every individual is equal before and under the law and has the right to the equal protection and benefit of the law without discrimination and that everyone has the freedom of conscience, religion, thought, belief, opinion, expression, peaceful assembly and association and guarantees those rights and freedoms equally to male and female persons;

AND WHEREAS the Constitution of Canada recognizes the importance of preserving and enhancing the multicultural heritage of Canadians;

AND WHEREAS the Constitution of Canada recognizes rights of the aboriginal peoples of Canada;

AND WHEREAS the Constitution of Canada and the *Official Languages Act* provide that English and French are the official languages of Canada and neither abrogates nor derogates from any rights or privileges acquired or enjoyed with respect to any other language;

[...]

AND WHEREAS the *Canadian Human Rights Act* provides that every individual should have an equal opportunity with other individuals to make the life that the individual is able and wishes to have, consistent with the duties and obligations of that individual as a member of society, and, in order to secure that opportunity, establishes the Canadian Human Rights Commission to redress any proscribed discrimination, including discrimination on the basis of race, national or ethnic origin or colour;

AND WHEREAS Canada is a party to the International Convention on the Elimination of All Forms of Racial Discrimination, which Convention recognizes that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination, and to the International Covenant on Civil and Political Rights, which Covenant provides that persons belonging to ethnic, religious or linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practise their own religion or to use their own language;

[…]

3. (1) Multiculturalism policy

3. (1) It is hereby declared to be the policy of the Government of Canada to

[...]

> **(i) preserve and enhance the use of languages other than English and French, while strengthening the status and use of the official languages of Canada; and**
>
> **(j) advance multiculturalism throughout Canada in harmony with the national commitment to the official languages of Canada.**

3. (2) Federal institutions

3. (2) It is further declared to be the policy of the Government of Canada that all federal institutions shall

[...]

> **(e) make use, as appropriate, of the language skills and cultural understanding of individuals of all origins;**
>
> **[…]**

SEE ALSO:

Commissioner of the Northwest Territories v. Canada, [2001] 3 FCR 641, 2001 FCA 220 (CanLII)

---

5. (1) Specific mandate

5. (1) The Minister shall take such measures as the Minister considers appropriate to implement the multiculturalism policy of Canada and, without limiting the generality of the foregoing, may

> **[...]**
>
> **(f) facilitate the acquisition, retention and use of all languages that contribute to the multicultural heritage of Canada;**

Carriage by Air Act, RSC 1985, c C-26

Schedule III

Article XXVII.

Done at The Hague on the twenty-eighth day of the month of September of the year One Thousand Nine Hundred and Fifty-five, in three authentic texts in the English, French and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Convention was drawn up, shall prevail. R.S. c. C-14, Sch. III.

Citizenship Act, RSC 1985, c C-29

5. (1) Grant of citizenship

5. (1) The Minister shall grant citizenship to any person who

> **[...]**
>
> **(d) if 18 years of age or more but less than 55 years of age at the date of his or her application, has an adequate knowledge of one of the official languages of Canada;**
>
> **(e) if 18 years of age or more but less than 55 years of age at the date of his or her application, demonstrates in one of the official languages of Canada that he or she has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and**
>
> **[…]**

R.S., 1985, c. C-29, s. 5; R.S., 1985, c. 44 (3rd Supp.), s. 1; 1992, c. 21, s. 7; 2000, c. 12, s. 75; 2001, c. 27, s. 228; 2003, c. 22, s. 149(E); 2008, c. 14, s. 4; 2014, c. 22, s. 3; 2017, c. 14, s. 1.

ANNOTATIONS

Gyatso v. Canada (Citizenship and Immigration), 2015 FC 280 (CanLII)

[1] This is an application for judicial review of the March 25, 2014 decision of a Citizenship Judge denying the citizenship application of the Applicant, Tsering Gyatso, on the basis that he did not have adequate knowledge of one of the official languages of Canada as required by s. 5(1)(*d*) of the *Citizenship Act*, RSC 1985, c C-29 ("*Citizenship Act*").

Background

[2] The Applicant was born in rural Tibet in 1964. There he lived a nomadic life and received no formal education. At age 38, he fled to Canada where he was accepted as a Convention refugee in 2002. In 2004, he became a permanent resident.

[3] He has, in total, applied for citizenship on four occasions. On each occasion his application was refused because he was unable to pass the required knowledge and language tests. When making his last application, which is the subject of this judicial review, he sought a waiver of those requirements pursuant to ss. 5(3) and (4) of the *Citizenship Act* on the basis of his inability to learn a language and to retain knowledge. In support of this request he submitted, amongst other things, a Request for Medical Opinion prepared by his family doctor and a psychological assessment prepared by a psychologist (the "medical evidence").

[4] The Citizenship Judge, through an interpreter, administered the knowledge test, which the Applicant passed. However, as he demonstrated absolutely no command of English he failed the language requirement. The Citizenship Judge declined to recommend the requested s. 5(3)(*a*) waiver of the s. 5(1)(*d*) language requirement, on compassionate grounds, or, on the basis of special or unusual hardship (s. 5(4)). She felt that the Applicant, who had passed the knowledge test contrary to the medical evidence, should also, with some effort, also be able to meet the language requirements. Nor did she believe that he qualified for a s. 5(4) waiver.

[…]

Medical Evidence and Conclusions

[16] In his written submissions the Applicant conducted a detailed review of the psychologist's report. On that basis, he submits that the Citizenship Judge committed an erroneous and unreasonable misapprehension of the medical evidence in concluding that the Applicant's demonstration of some knowledge of Canada proves that he would be able to learn some English with proper training.

[17] However, the medical opinion states that the Applicant's permanent condition, identified only as "Learing [sic] difficulties – trouble retaining learned information" prevented him both from acquiring enough knowledge of English or French in order to be understood in the community and from acquiring a general understanding of Canada's political system, geography and history and of the responsibilities and privileges of citizenship.

[18] The psychological report identified the Applicant's impaired memory function and stated that it is likely that his lack of early education meant that he missed certain critical development periods making learning more difficult for him now. It concluded that the Applicant will never likely learn the English language to any level of proficiency and that it was even less likely that he would be able to master any reading or writing skills. The psychologist was of the opinion that the Applicant's efforts should be directed at learning simple, spoken English and, in light of his significant memory deficits, that he would need an inordinate amount of daily repetition and rehearsal to learn the basics. She suggested that recourse to a computer and individual guidance might be the best avenue for him to gain practical language for daily life. She concluded with her belief that he should be considered for an exemption from the language and knowledge requirements of the citizenship test.

[19] I note first that both the Applicant's physician and the psychologist recommended exemption from both the language and knowledge requirements of the citizenship test. While the Applicant attempts to dissect the psychologist's report to separately address his ability to retain knowledge and to learn language, its conclusion does not make such a distinction. Indeed, the psychologist appears to suggest that despite his difficulties the Applicant may be able to acquire basic spoken language skills.

[20] While the Applicant offers another interpretation of the medical evidence, based on the foregoing I cannot conclude that the Citizenship Judge misapprehended the medical evidence and came to an unfounded conclusion. Faced with a clear medical opinion that the Applicant could neither pass the knowledge or language tests and the conflicting result that he did, in fact, pass the knowledge test, it was open to the Citizenship Judge to reach the conclusion that she did.

[21] The Applicant also submits that the evidence before the Citizenship Judge showed that the Applicant has taken English as a Second Language ("ESL") classes for four years without success. This, combined with his three prior failed tests and the medical evidence, directly contradicted the Citizenship Judge's conclusion that the Applicant could succeed and gain the necessary language ability.

[22] In that regard, the evidence before the Citizenship Judge as to ESL was a November 7, 2010 letter from his ESL teacher confirming that he studied with her during the period of January 8 to June 2007. She noted that he experienced difficulty in learning, while he did learn to speak a little, reading and writing skills were beyond his capacity. The only other evidence on the record before the Citizenship Judge concerning ESL is a Student Registration Form dated May 24, 2011 which states that it is not proof of attendance. This does not support the Applicant's submission.

[23] Thus, based on the record before her, the Citizenship Judge had evidence of only five or six months of ESL classes attended many years earlier. It was, therefore, reasonable for her to

conclude that the Applicant had not demonstrated an inability to learn English with effort and appropriate training.

Gill v. Canada (Citizenship and Immigration), 2014 FC 916 (CanLII)

[10] Section 5(1)(d) of the *Citizenship Act*, R.S.C. 1985, c. C-29, requires individuals to have adequate knowledge of at least one of Canada's official languages. Section 14 of the *Citizenship Regulations*, *S.O.R./93-246*, explains that an"adequate" knowledge of an official language means that an applicant can comprehend basic spoken statements and questions and can convey orally or in writing basic information or answers to questions.

[11] In accordance with section 14 of the Regulations, the determination of the adequacy of an applicant's language skills is to be made by a Citizenship Judge, "based on questions prepared by the Minister".

[12] Citizenship Judges are in the best position to assess the adequacy of an applicant's language abilities. The Citizenship Judge's notes and Mr. Gill's affidavit both confirm that Mr. Gill was asked a series of questions designed to test his language ability, and that he was indeed able to answer a number of them.

[…]

[15] […] [P]erfection is not the standard by which reasons are judged, and an inadequacy in the reasons is not a stand-alone basis for judicial review. In determining whether a decision is reasonable, a reviewing Court must pay attention to the reasons offered by the decision-maker and to the record as a whole: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, at paras. 14-15, [2011] 3 S.C.R. 708.

Liu v. Canada (Citizenship and Immigration), 2008 FC 836 (CanLII)

[12] In my view, the citizenship judge had jurisdiction to conduct an oral hearing after Ms Liu had successfully completed the written test of her "knowledge of Canada and of the responsibilities and privileges of citizenship." Subsection 5(1) of the Act sets out knowledge of an official language of Canada and knowledge of Canada as separate requirements, which permits, in my view, an independent assessment of each by the citizenship judge.

[13] This conclusion is also supported by the fact that the *Regulations* also contemplate separate analyses, setting out the criteria for assessing an applicant's knowledge of French or English in section 14 and prescribing the relevant factors for determining an applicant's knowledge of Canada in section 15. While both provisions are grounded in questions prepared by the Minister, the manner in which those questions are used is different.

[14] Further, the plain meaning of section 14 of the *Regulations* is that a person has an adequate knowledge of English where he or she: (a) understands basic spoken statements and questions; and (b) can convey orally or in writing basic information or answers to questions. Subsection 14(a) of the *Regulations* clearly includes an oral component. A citizenship judge must be satisfied than an applicant can understand basic spoken statements and questions in English.

Nuur (Re), 1998 CanLII 8756 (FC)

[2] […] The Act requires an "adequate" knowledge of one of the two official languages. It requires an "adequate" knowledge of Canada and of the responsibilities and privileges of citizenship. That is, both should be adequate to allow the appellant to participate in an independent manner in the political-governmental process, as a citizen, in a meaningful way (e.g. by voting). Indeed in *Re Adolfo d'Intino*, [1978] F.C.J. No. 600, T-819-78 (July 5, 1998), this Court refused to allow the use of an interpreter by an appellant, in an appeal from a decision of a citizenship judge that had found the appellant lacked knowledge of the responsibilities and privileges of citizenship. A

different approach was taken in *Re Abdul-Hamid* [1979] 1 F.C. 600 (T.D.), and the use of an interpreter was allowed. At the very least, in my view, an applicant should possess a sufficient comprehension of one of the two official languages, in either its written or spoken form, to enable him or her to exercise the privileges of citizenship.

SEE ALSO:

Canada (Citizenship and Immigration) v. Lee, 2010 FC 700 (CanLII)

Rage, Re, 1998 CanLII 8944 (FC)

Ovcina (Re), 1998 CanLII 8939 (FC)

Sabbaghe (Re), 1998 CanLII 8734 (FC)Chiu, Re, [1996] F.C.J. No. 592 (F.C.T.D.) [hyperlink not available]

Dia, Re, [1992] F.C.J. No. 217 (F.C.T.D.), [hyperlink not available]

Azzi, Re (1992), 52 F.T.R. 159 (F.C.T.D.), [hyperlink not available]

Abdul-Hamid, Re, [1979] 1 F.C. 600, at para. 6 (F.C.T.D.), [hyperlink not available]

---

27. Regulations

27. The Governor in Council may make regulations

[...]

(d) providing for various criteria that may be applied to determine whether a person

(i) has an adequate knowledge of one of the official languages of Canada,

[…]

Citizenship Regulations – Citizenship Act, SOR/93-246

14. Official languages criteria

14. A person is considered to have an adequate knowledge of one of the official languages of Canada if they demonstrate that they have competence in basic communication in that language such that they are able to

(a) take part in short, routine conversations about everyday topics;

(b) understand simple instructions and directions;

(c) use basic grammar, including simple structures and tenses, in oral communication; and

(d) use vocabulary that is adequate for routine oral communication.

SOR/94-442, s. 2; SOR/2012-178, s. 2.

ANNOTATIONS

Canada (Citizenship and Immigration) v. Lee, 2010 FC 700 (CanLII)

[18] While it is possible in certain communities in Canada to conduct one's life in a language other than French or English, and without any substantial knowledge of Canada, the citizens of Canada, through Parliament, have chosen to make a certain level of language and knowledge abilities a requirement to obtain a grant of Canadian citizenship. Thus, the *Citizenship Act* requires an adequate knowledge of French or English and an adequate knowledge of Canada before a grant of Canadian citizenship will be given.

[19] In this case, the Citizenship Judge determined that the respondent possessed an adequate knowledge of English and an adequate knowledge of Canada to entitle him to a grant of citizenship. The Citizenship Judge's additional reasons beyond the check-box form are comprised of the single sentence: "English weak – but enough (+knowledge)." In the circumstances of this case, the Citizenship Judge's determination was insufficiently justified and is therefore unreasonable.

[20] Less than six months before the Citizenship Judge interviewed the respondent the respondent was unable to answer the most basic of questions in English, such as "what is your name?" The respondent was only able to answer correctly thirty percent of the questions on the knowledge of Canada test. He was referred to the Citizenship Judge precisely because his English language ability and knowledge of Canada were so poor, with the express instruction of why he was being referred.

[21] In this context, the Citizenship Judge was required to provide some explanation of how an applicant, who less than six months earlier, had barely a basic knowledge of English and Canada, let alone an "adequate" knowledge of either, had suddenly obtained the levels necessary for a grant of citizenship. The Citizenship Judge provided no such explanation. It is not enough to implore applicants for citizenship to practice their official language abilities, and/or to gain further knowledge of Canada, after they have obtained citizenship; the *Citizenship Act* requires the possession of adequate knowledge before a grant of citizenship is given.

Bhatti v. Canada (Minister of Citizenship and Immigration), 2010 FC 25 (CanLII)

[29] The Citizenship Judge stated Ms. Bhatti could not "verify" information on her application. Verification is not necessarily a language test since to verify is to establish truth or validity of something: *Canadian Oxford Dictionary* (2d Edition). The criteria established by section 14 of the [Citizenship] Regulations for determining a person has an adequate knowledge of one of the official languages are that a person comprehends basic spoken statements and questions and can answer orally or in writing basic information. This criteria does not require verification of information.

Liu v. Canada (Minister of Citizenship and Immigration), 2008 FC 836 (CanLII)

[12] In my view, the citizenship judge had jurisdiction to conduct an oral hearing after Ms Liu had successfully completed the written test of her "knowledge of Canada and of the responsibilities and privileges of citizenship." Subsection 5(1) of the [Citizenship] Act sets out knowledge of an official language of Canada and knowledge of Canada as separate requirements, which permits, in my view, an independent assessment of each by the citizenship judge.

[13] This conclusion is also supported by the fact that the [Citizenship] *Regulations* also contemplate separate analyses, setting out the criteria for assessing an applicant's knowledge of French or English in section 14 and prescribing the relevant factors for determining an applicant's

knowledge of Canada in section 15. While both provisions are grounded in questions prepared by the Minister, the manner in which those questions are used is different.

[14] Further, the plain meaning of section 14 of the *Regulations* is that a person has an adequate knowledge of English where he or she: (a) understands basic spoken statements and questions; and (b) can convey orally or in writing basic information or answers to questions. Subsection 14(a) of the *Regulations* clearly includes an oral component. A citizenship judge must be satisfied than an applicant can understand basic spoken statements and questions in English.

SEE ALSO:

Ali Khan v. Canada (Citizenship and Immigration), 2009 FC 1178 (CanLII)

Civil Air Navigation Services Commercialization Act, SC 1996, c 20

96. *Official Languages Act* applies

96. The *Official Languages Act* applies to the Corporation as if it were a federal institution.

CN Commercialization Act, SC 1995, c 24

15. Application of *Official Languages Act*

15. The *Official Languages Act* continues to apply to CN as if it continued to be a federal institution within the meaning of that Act.

Commercial Arbitration Act, RSC 1985, c 17 (2nd Supp.)

Annex 1

Article 22

Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 35

Recognition and Enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of Canada, the party shall supply a duly certified translation thereof into such language.

Consumer Packaging and Labelling Act, RSC 1985, c C-38

18. (1) Regulations

18. (1) The Governor in Council may make regulations

[...]

(f) prescribing the form and manner in which, including the language or languages in which, any information or representation required to be declared or shown in any label, on any container or in any advertisement shall be declared or shown;

[…]

1970-71-72, c. 41, s. 18.

Consumer Packaging and Labelling Regulations – Consumer Packaging and Labelling Act, CRC, c 417

6. Bilingual Requirements and Exemptions

6. (1) In this section,

[...]

"mother tongue" means the language first learned in childhood by persons in any area of Canada and still understood by them as ascertained by the decennial census taken immediately preceding the date on which the prepackaged product referred to in subsection (3) is sold to the consumer; (*langue maternelle*)

"official languages" means the English language and the French language; (*langues officielles*) [...]

6. (2) All information required by the Act and these Regulations to be shown on the label of a prepackaged product shall be shown in both official languages except that the identity and principal place of business of the person by or for whom the prepackaged product was manufactured, processed, produced or packaged for resale may be shown in one of the official languages.

6. (3) Subject to subsections (4) to (6), a local product or test market product is exempt from subsection (2) if

(a) it is sold in a local government unit in which one of the official languages is the mother tongue of less than 10 per cent of the total number of persons residing in the local government unit; and

(b) the information required by the Act and these Regulations to be shown on the label of a prepackaged product is shown in the official language that is the mother tongue of at least 10 per cent of the total number of persons residing in the local government unit.

6. (4) Where one of the official languages is the mother tongue of less than 10 per cent of the total number of persons residing in a local government unit and the other official language is the mother tongue of less than 10 per cent of the total number of persons residing in the same local government unit, subsection (3) does not apply.

[...]

6. (7) A specialty product is exempt from subsection (2) if the information required by the Act and these Regulations to be shown on the label of a prepackaged product is shown in one of the official languages.

6. (8) Where there are one or more surfaces on the label of a prepackaged product that are of at least the same size and prominence as the principal display panel, the information required by the Act and these Regulations to be shown on the principal display panel may be shown in one official language if such information is shown in the other official language on one of those other surfaces.

6. (9) A prepackaged product that is within one of the following classes of prepackaged products is exempt from subsection (2) if the information required by the Act and these Regulations to be shown on the label of a prepackaged product is shown in the language that is appropriate to the product:

(a) greeting cards;

(b) books;

(c) talking toys;

(d) games in which a knowledge of the language used is a basic factor essential to the use of the game.

ANNOTATIONS

88766 Canada Inc. v. Kabushiki Kaisha Kibun Shokuhin, 2008 CanLII 88378 (CA COMC) [judgment available in French only]

[10] At the outset, I wish to address the requesting party's submissions with respect to the packaging. First, the requesting party argues that the packaging could not have been used in Canada because it is not bilingual as required by s. 6(2) of the *Consumer Packaging and Labelling Regulations* (C.R.C., c. 417). Suffice it to say that it has been held in many instances that compliance with statutes other than the [Trademarks] Act is not a relevant consideration in proceedings under s. 45 of the Act. [...]

SEE ALSO:

Desjardins Ducharme Stein Monast v. Baird-Neece Packing Corporation, 2005 CanLII 77613 (CA TMOB)

Cooperative Credit Associations Act, SC 1991, c 48

35. (2) Use of “cooperative”

35. (2) Notwithstanding the *Canada Cooperatives Act*, an association may use the word “cooperative” or “coopérative”, or any abbreviation of that word, in its name.

1991, c. 48, s. 35; 1996, c. 6, s. 49; 1997, c. 15, s. 117; 1998, c. 1, s. 383.

---

36. Name

36. The name of an association shall include

> **(a) the phrase “federal cooperative” or “co-opérative fédérale”, along with another word or expression indicating the financial nature of the association;**
>
> **(b) the phrase “federal central credit union”, “federal credit union central” or “fédération de caisses populaires fédérale”;**
>
> **(c) any combination or derivative of words and phrases referred to in paragraphs (a) and (b); or**
>
> **(d) any word or phrase specified by the Minister.**

1991, c. 48, s. 36; 2001, c. 9, s. 260; 2007, c. 6, s. 143; 2014, c. 39, s. 282.

---

38. (1) English or French form of name

38. (1) The name of an association may be set out in its letters patent in an English form, a French form, an English form and a French form or in a combined English and French form, and the association may use and be legally designated by any such form.

38. (2) Alternate name

38. (2) An association may identify itself outside Canada by its name in any language and the association may use and be legally designated by any such form of its name outside Canada.

Corrections and Conditional Release Act, SC 1992, c 20

27. (4) Right to interpreter

27. (4) An offender who does not have an adequate understanding of at least one of Canada's official languages is entitled to the assistance of an interpreter

(a) at any hearing provided for by this Part or the regulations; and

(b) for the purposes of understanding materials provided to the offender pursuant to this section.

1992, c. 20, s. 27; 1995, c. 42, s. 10(F).

---

140. (1) Mandatory Hearings

140. (1) The Board shall conduct the review of the case of an offender by way of a hearing, conducted in whichever of the two official languages of Canada is requested by the offender, unless the offender waives the right to a hearing in writing or refuses to attend the hearing, in the following classes of cases:

[...]

140. (9) Right to interpreter

140. (9) An offender who does not have an adequate understanding of at least one of Canada's official languages is entitled to the assistance of an interpreter at the hearing and for the purpose of understanding materials provided to the offender pursuant to subsection 141(1) and paragraph 143(2)(b).

1992, c. 20, s. 140; 1995, c. 42, ss. 55, 69(E); 2011, c. 11, s. 6; 2012, c. 1, s. 96, c. 19, s. 527; 2015, c. 11, s. 4, c. 13, s. 49.

---

141. (1) Disclosure to offender

141. (1) At least fifteen days before the day set for the review of the case of an offender, the Board shall provide or cause to be provided to the offender, in writing, in whichever of the two official languages of Canada is requested by the offender, the information that is to be considered in the review of the case or a summary of that information.

1992, c. 20, s. 141; 1995, c. 42, s. 56(F); 2012, c. 1, s. 97.

---

143. (2) Decisions to be recorded and communicated

143. (2) Where the Board renders a decision with respect to an offender following a review of the offender's case, it shall

[...]

(b) provide the offender with a copy of the decision and the reasons for the decision, in whichever of the two official languages of Canada is requested by the offender, within the period prescribed by the regulations.

12. (2) Names of incorporated Cree bands

12. (2) The bands incorporated by subsection (1) may, respectively, be legally designated by any of their English, French or Cree names, as follows: […]

---

16. (1) Change of band name

16. (1) A band may, by by-law approved by the electors of the band at a special band meeting or referendum at which at least five per cent of the electors voted on the matter, change its English, French or Cree or Naskapi name, but no such by-law is valid unless approved by the Governor in Council.

---

31. Use of Cree or Naskapi language at council meetings

31. In addition to any other rights relating to the use of the Cree or Naskapi language, a Cree band may conduct its council meetings in the Cree language and the Naskapi band may conduct its council meetings in the Naskapi language.

---

32. (1) Language of by-laws and resolutions

32. (1) A by-law or resolution of a Cree band or the Naskapi band shall be enacted or adopted in either the English or the French language, and may also be enacted or adopted in the Cree language or the Naskapi language, as the case may be.

32. (2) Where versions two or more languages

32. (2) Where a by-law is enacted or a resolution is adopted in more than one of the English, French, Cree or Naskapi languages, all versions in which it is enacted or adopted are equally authoritative and, where there is any inconsistency between the different versions, subsection 8(2) of the *Official Languages Act* applies, with such modifications as the circumstances require.*

---

80. Use of Cree or Naskapi language

80. In addition to any other rights relating to the use of the Cree or Naskapi language, a Cree band may conduct ordinary band meetings, special band meetings and referenda in the Cree language and the Naskapi band may conduct ordinary band meetings, special band meetings and referenda in the Naskapi language.

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171. (1) Commission's biennial report to Parliament

171. (1) Within two years after the coming into force of this Part and thereafter within six months of every second anniversary of the coming into force of this Part, the Commission shall prepare and submit to the Minister a report, in English, French, Cree and Naskapi, on the implementation of this Act, and the Minister shall cause the report to be laid before each House of Parliament on any of the first ten days on which that House is sitting after the day the Minister receives it.

Department of Canadian Heritage Act, SC 1995, c 11

4. (1) Minister's powers, duties and functions

4. (1) The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not by law assigned to any other department, board or agency of the Government of Canada, relating to Canadian identity and values, cultural development, and heritage.

4. (2) Idem

4. (2) The Minister's jurisdiction referred to in subsection (1) encompasses, but is not limited to, jurisdiction over

> **[...]**
>
> **(g) the advancement of the equality of status and use of English and French and the enhancement and development of the English and French linguistic minority communities in Canada;**

1995, c. 11, s. 4; 2002, c. 18, s. 32(F); 2003, c. 2, s. 37; 2005, c. 2, s. 1; 2013, c. 33, s. 214.

Employment Insurance Act, SC 1996, c 23

57. (1) Guidelines

57. (1) Employment benefits and support measures under this Part shall be established in accordance with the following guidelines:

> **[...]**
>
> **(d.1) availability of assistance under the benefits and measures in either official language where there is significant demand for that assistance in that language;**

European Bank for Reconstruction and Development Agreement Act, SC 1991, c 12

Schedule (section 2) – Chapter X

Article 63

Done at Paris on 29 May 1990 in a single original, whose English, French, German and Russian texts are equally authentic, which shall be deposited in the archives of the Depository which shall transmit a duly certified copy to each of the other prospective members whose names are set forth in Annex A.

Excise Act 2001, SC 2002, c 22

Records and Information

206. (4) Language and location of record

206. (4) Unless otherwise authorized by the Minister, a record shall be kept in Canada in English or French.

Excise Tax Act, RSC 1985, c E-15

98. (1) Books and records

98. (1) Every person who

> **(a) is required, by or pursuant to this Act, to pay or collect taxes or other sums or to affix or cancel stamps, or**
>
> **(b) makes an application under any of sections 68 to 70,**

shall keep records and books of account in English or French at that person's place of business in Canada in such form and containing such information as will enable the amount of taxes or other sums that should have been paid or collected, the amount of stamps that should have been affixed or cancelled or the amount, if any, of any drawback, payment or deduction that has been made or that may be made to or by that person, to be determined.

R.S. 1985, c. E-15, s. 98; R.S. 1985, c. 15 (1st Supp.), s. 36, c. 7 (2nd Supp.), s. 45; 1998, c. 19, s. 278; 1999, c. 17, s. 156.

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286. (1) Keeping books and records

286. (1) Every person who carries on a business or is engaged in a commercial activity in Canada, every person who is required under this Part to file a return and every person who makes an application for a rebate or refund shall keep records in English or in French in Canada, or at such other place and on such terms and conditions as the Minister may specify in writing, in such form and containing such information as will enable the determination of the person's liabilities and obligations under this Part or the amount of any rebate or refund to which the person is entitled.

1990, c. 45, s. 12; 1998, c. 19, s. 282.

Schedule III – Part III

4. Educational, technical, cultural, religious and literary

4. Phonograph records and audio tapes authorized by the Department of Education of any province for instruction in the English or French language, and materials for use exclusively in the manufacture thereof.

Schedule V – Part III

11. Educational services

11. A supply of a service of instructing individuals in, or administering examinations in respect of, language courses that form part of a program of second-language instruction in either English or French, if the supply is made by a school authority, a vocational school, a public college or a university or in the course of a business established and operated primarily to provide instruction in languages.

Extradition Act, SC 1999, c 18

36. Translated documents

36. A translation of a document into one of Canada's official languages shall be admitted without any further formality.

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44. (1) When order not to be made

44. (1) The Minister shall refuse to make a surrender order if the Minister is satisfied that

> **(a) the surrender would be unjust or oppressive having regard to all the relevant circumstances; or**
>
> **(b) the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person's position may be prejudiced for any of those reasons.**

ANNOTATION

Yamba v. Canada (Minister of Justice), 2016 BCCA 219 (CanLII)

INTRODUCTION

[1] Lasaba Yamba, a Canadian citizen, applies for judicial review of the decision of the Minister of Justice, the Honourable Peter MacKay, surrendering Mr. Yamba to the United States of America

for trial on charges related to Mr. Yamba's involvement in an alleged telemarketing lottery fraud. A judge of the Supreme Court of British Columbia committed Mr. Yamba for extradition.

[…]

[3] The principal issue on this application is whether the Minister gave sufficient consideration to Mr. Yamba's language rights and abilities, having regard to the fact that Mr. Yamba speaks French and, if tried in Canada, would have the right to a trial conducted in French.

[…]

ANALYSIS

[10] Mr. Yamba raises his linguistic abilities as an issue that renders his surrender unjust and oppressive under s. 44(1)(a) of the *Extradition Act*, SC 1999, c 18, and as a factor that the Minister was obliged to weigh in considering Mr. Yamba's right to remain in Canada under s. 6(1) of the Charter. I will first consider Mr. Yamba's submissions concerning s. 44(1)(a).

[…]

Mr. Yamba's Linguistic Abilities

[17] Mr. Yamba submits that the Minister failed to properly consider his language rights and abilities. In light of his speech impediment and the fact that English is his third language, Mr. Yamba says he will not have a fair trial in the United States as he will not have access to a trial conducted in French. As the right to a fair trial is a principle of fundamental justice, Mr. Yamba says his surrender would violate that principle.

[18] Mr. Yamba takes the position that the right to a French trial provided for in s. 530 of the *Criminal Code*, combined with the official language rights in s. 16 of the *Charter*, elevates the right to a French trial in Canada to the equivalent of a constitutional right. Mr. Yamba argues that the Minister's conclusion that access to a certified translator will address concerns regarding trial fairness in the United States does not give "due consideration" to the language rights Mr. Yamba has in Canada.

[19] The Minister submits that the information he received from the United States Department of Justice with respect to the availability of a certified translator and a public defender addresses Mr. Yamba's concerns regarding trial fairness. The Minister says Mr. Yamba's argument that his trial will be unfair because he does not have a right to a French trial in the United States cannot succeed as extradition respects differences—even substantial differences—in other jurisdictions' criminal justice systems. In *Canada v. Schmidt*, 1987 CanLII 48 (SCC), [1987] 1 S.C.R. 500 at 522-523, the Court held that it is not always unjust to surrender a person to stand trial in accordance with the criminal procedures of another country, even though those procedures may not meet specific constitutional requirements—such as a presumption of innocence—for trial in Canada. The *Charter* cannot be given extraterritorial effect to govern the conduct of criminal proceedings in a foreign state (*Schmidt* at 518). Also, there is an assumption that an accused will receive a fair trial in a foreign state (*Argentina v. Mellino*, 1987 CanLII 49 (SCC), [1987] 1 S.C.R. 536 at 558). Mr. Yamba's assertion that his trial will be unfair in the United States simply because it will not be conducted in French does not displace this assumption.

[20] In my view, the Minister's conclusion that Mr. Yamba's language abilities and personal circumstances do not render Mr. Yamba's surrender unjust or oppressive or contrary to the principles of fundamental justice is a reasonable one.

[21] To begin, it is not at all clear that the right to a trial in one of our two official languages, provided for in s. 530 of the *Criminal Code*, is the equivalent of a constitutional right. Although, by virtue of s. 16(1) of the *Charter*, English and French are the "official languages of Canada", the *Charter* right to use either language in court proceedings extends only to the courts of New Brunswick and those established by Parliament (*Charter*, s. 19). In *R. v. MacKenzie*, 2004 NSCA 10 (CanLII), 181 C.C.C. (3d) 485, leave to appeal ref'd [2005] 1 S.C.R. xii, the court held that a breach of the rights established under s. 530 did not give rise to a constitutional remedy. Mr. Justice Fichaud said:

> [60] The quasi-constitutional status of s. 530 invokes a broad and purposive interpretation of the statutory language. But s. 530 is not entrenched as a provision of the Charter. Its breach does not invoke s. 24(1) of the *Charter*.

See also: *R. v. Schneider*, 2004 NSCA 151 (CanLII) at para. 19, 192 C.C.C. (3d) 1, leave to appeal ref'd [2005] 2 S.C.R. xi.

[22] Mr. Yamba's concern that his limited proficiency in English will prevent him from receiving a fair trial in the United States raises his right to make full answer and defence and engages the principles of fundamental justice under s. 7 of the *Charter*. In the extradition context, those principles recognize the reality that it is not unjust to surrender a person to a state that has criminal procedures that do not meet Canada's constitutional requirements. In such circumstances, the Supreme Court of Canada has stated that the correct question is "whether or not, in the particular circumstances of the case, surrender of a fugitive for a trial offends against the basic demands of justice" (Schmidt at 523).

[…]

[40] At the hearing of this application Mr. Yamba's argument focused on what he contended was the Minister's failure to address the fact that Mr. Yamba would have the right to a French trial if prosecuted in Canada. Mr. Yamba does not assert that every person sought for extradition who speaks French cannot be surrendered to a state or entity where a French trial is not available. Rather, Mr. Yamba submits that the Minister failed to consider his right to a French trial in the context of s. 6(1) of the *Charter*. Mr. Yamba submits that while the Cotroni factors weighing for and against his prosecution in Canada were "relatively equal" his right to a French trial in Canada ought to tip the balance in favour of prosecution in Canada.

[41] Although in his factum Mr. Yamba took issue with the fact that the British Columbia and federal prosecution services had not provided reasons for their respective decisions, at the hearing he accepted that absent evidence of bad faith—of which there is none here—there is no obligation on those authorities to disclose the reasons for their decisions.

[42] The Minister's position is that he considered all the relevant factors and came to a reasonable decision. I agree.

[43] The Minister's reasons evince that he conducted a proper Cotroni analysis. There was no need for him to consider Mr. Yamba's linguistic abilities again in the context of that analysis. Section 530 of the *Criminal Code* affords every accused with sufficient knowledge of an official language to instruct counsel the right to a trial in that language (*R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768 at paras. 28, 34). That right is not dependent on the accused being a Canadian citizen or resident of Canada.

Conclusion

[44] I would not accede to Mr. Yamba's argument that surrender would unjustifiably violate his s. 6(1) *Charter* rights

Federal Courts Act, RSC1985, c F-7

58. (4) Official languages

58. (4) Each decision reported in the official reports shall be published therein in both official languages.

R.S., 1985, c. F-7, s. 58; 2002, c. 8, s. 56.

Federal Courts Rules – Federal Courts Act, SOR/98-106

31. Interpreter

31. A request by a party under the *Official Languages Act* for an interpreter at a hearing shall be made in writing and be sent to the Administrator as soon as is practicable before the hearing begins.

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70. (2) Enactments in both official languages

70. (2) Extracts of federal statutes and regulations in Appendix A to a memorandum of fact and law shall be reproduced in both official languages.

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80. (1) Form of affidavits

80. (1) Affidavits shall be drawn in the first person, in Form 80A. [...]

80. (2.1) Affidavit by deponent who does not understand an official language

80. (2.1) Where an affidavit is written in an official language for a deponent who does not understand that official language, the affidavit shall

> **(a) be translated orally for the deponent in the language of the deponent by a competent and independent interpreter who has taken an oath, in Form 80B, as to the performance of his or her duties; and**
>
> **(b) contain a jurat in Form 80C.**

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93. (1) Examining party to provide interpreter

93. (1) Where a person to be examined on an oral examination understands neither French nor English or is deaf or mute, the examining party shall arrange for the attendance and pay the fees and disbursements of an independent and competent person to accurately interpret everything said during the examination, other than statements that the attending parties agree to exclude from the record.

93. (2) Administrator to provide interpreter

93. (2) Where an interpreter is required because the examining party wishes to conduct an oral examination in one official language and the person to be examined wishes to be examined in the other official language, on the request of the examining party made at least six days before the examination, the Administrator shall arrange for the attendance and pay the fees and disbursements of an independent and competent interpreter.

ANNOTATIONS

Uwadia v. Canada (Public Safety and Emergency Preparadness), 2010 FC 576 (CanLII)

[43] This dispute is essentially about which party should bear the financial responsibility for the costs of an interpreter when an affiant is cross-examined. It is useful to note that the Applicant submitted an affidavit drafted in the English language in support of her application for leave and for judicial review. The Respondents consequently wished to cross-examine her, but a few days before the day set for the cross-examination, the Applicant insisted that an Edo interpreter be made available. The Respondents considered this request abusive, while the Applicant believed she was entitled to an interpreter. The Respondents finally secured the services of an Edo interpreter, but under protest as to an eventual claim for costs.

[...]

[49] [...] In my opinion, if the Applicant's preference was to be assisted by an interpreter for her cross examination, in the particular circumstances of this case, it was her responsibility to secure these services.

[...]

[51] Costs are therefore exceptional in judicial review applications under the [Immigration and Refugee Protection] Act, and may only be awarded for special reasons. I do not find that special reasons have been established here justifying such an award.

[52] In this case, the Respondents could have submitted a motion to this Court to decide the matter of interpretation prior to proceeding with the cross-examination of the Applicant. The Respondents decided instead to proceed with the cross-examination of the Applicant with an interpreter retained at their own expense. In such circumstances, I am not inclined to now grant them costs for expenses which could have been avoided had a motion to adjudicate the issue been submitted prior to the expense being incurred.

SEE ALSO:

Singh v. Canada (Minister of Citizenship and Immigration), 2006 FC 315 (CanLII)

Tkachenko v. Canada (Minister of Citizenship and Immigration), 2005 FC 1652 (CanLII)

Liu v. Canada (Minister of Citizenship and Immigration), 2003 FCT 375 (CanLII)

Momcilovic v. Canada (Minister of Citizenship and Immigration), 2001 FCT 998 (CanLII)

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314. (2) Contents of requisition

314. (2) A requisition referred to in subsection (1) shall

[...]

(f) indicate whether the hearing will be in English or French, or partly in English and partly in French.

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333. Service of order for registration

333. Unless the Court orders otherwise, a foreign judgment creditor who obtains an order for registration of a foreign judgment shall personally serve the order on the foreign judgment debtor, together with a translation thereof in the language of the foreign judgment and an affidavit attesting to its accuracy.

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348. (3) Enactments in both official languages

348. (3) Extracts of federal statutes and regulations in a book of statutes, regulations and authorities shall be reproduced in both official languages.

SEE ALSO:

Jonik Hospitality Group Ltd. v. Atlas Conti Travel & Tourism Inc., [1996] F.C.J. No. 564 (FC)

Federal Law-Civil Law Harmonization Act, no. 1, SC 2001, c 4

Preamble

[...]

WHEREAS the objective of the Government of Canada is to facilitate access to federal legislation that takes into account the common law and civil law traditions, in its English and French versions;

AND WHEREAS the Government of Canada has established a harmonization program of federal legislation with the civil law of the Province of Quebec to ensure that each language version takes into account the common law and civil law traditions;

Federal Law-Civil Law Harmonization Act, no. 2, SC 2004, c 25

Preamble

A second Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law.

Financial Administration Act, RSC 1985, c F-11

6. (4.1) Delegation to President of Agency

6. (4.1) The Treasury Board may, subject to any terms and conditions that it considers appropriate, delegate to the Chief Human Resources Officer

> **(a) any of the powers or functions in relation to human resources management, official languages, employment equity, and values and ethics that it is authorized to exercise under any Act of Parliament or by any order made by the Governor in Council. […]**

R.S., 1985, c. F-11, s. 6; 1991, c. 24, s. 50(F); 2003, c. 22, s. 5; 2005, c. 15, s. 4; 2010, c. 12, s. 1675.

SEE ALSO:

Consular Fees (Specialized Services) Regulations – Financial Administration Act, SOR/2003-30

Financial Consumer Agency of Canada Act, SC 2001, c 9

12. *Official Languages Act*

12. For greater certainty, the *Official Languages Act* applies to the Agency.

First Nations Fiscal Management Act, SC 2005, c 9

139. (1) Official languages

139. (1) For greater certainty, the provisions of the *Official Languages Act* applicable to federal institutions apply to the First Nations Tax Commission.

139. (2) Where there is a significant demand for services in a particular official language, the First Nations Financial Management Board and First Nations Finance Authority shall offer services in that language.

2005, ch. 9 art 139; 2012, c. 19, s. 664.

First Nations Jurisdiction over Education in British Columbia Act, SC 2006, c 10

19. (2) Education standards

19. (2) The Authority shall, as provided for by a co-management agreement,

(a) establish standards that are applicable to education provided by a participating First Nation on First Nation land for curriculum and examinations for courses necessary to meet graduation requirements;

(b) provide a teacher certification process for teachers providing educational instruction in schools operated by a participating First Nation on First Nation land, other than teachers who teach only the language and culture of the participating First Nation;

(c) provide, upon request by a participating First Nation, a teacher certification process for teachers who teach only the language and culture of the participating First Nation in schools operated by the participating First Nation on First Nation land; […]

Food and Agriculture Organization of the United Nations Act, RSC 1985, c F-26

Schedule

Article XXIII. Languages

Pending the adoption by the Conference of any rules regarding languages, the business of the Conference shall be transacted in English.

Annex II

Done at Quebec, Canada, this sixteenth day of October, one thousand nine hundred and forty-five, in the English language, in a single copy which will be deposited in the archives of the Food and Agriculture Organization of the United Nations and of which authenticated copies will be transmitted by the Director-General to the governments of the nations enumerated in Annex I to this Constitution and of Members admitted to the Organization by the Conference in accordance with the provisions of Article II.

Foreign Missions and International Organizations Act, SC 1991, c 41

Schedule I – Article 53

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 48.

Schedule II – Article 79

Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 74.

Immigration and Refugee Protection Act, SC 2001, c 27

Objectives and Application

3. (1) Objectives — immigration

3. (1) The objectives of this Act with respect to immigration are

> **[…]**
>
> **(b) to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual and multicultural character of Canada;**
>
> **(b.1) to support and assist the development of minority official languages communities in Canada;**
>
> **[…]**

3. (3) Application

3. (3) This Act is to be construed and applied in a manner that

> **[…]**
>
> **(d) ensures that decisions taken under this Act are consistent with the *Canadian Charter of Rights and Freedoms*, including its principles of equality and freedom from discrimination and of the equality of English and French as the official languages of Canada;**
>
> **(e) supports the commitment of the Government of Canada to enhance the vitality of the English and French linguistic minority communities in Canada;**

2001, c. 27, s. 3; 2012, c. 1, s. 205.

ANNOTATIONS

Grewal v. Canada (Citizenship and Immigration), 2011 FC 167 (CanLII)

[12] Evidently, the Language Proficiency requirement is central to the linguistic objectives of *IRPA* (see paragraphs 3(b) and 3(b.1) of the *IRPA*). This Court's Judgment should not be interpreted to lessen the value of linguistic factors in assessing permanent residency requirements, all the contrary. In this respect, the Court does not retain the Applicant's argument that her arranged employment required other languages in which she was proficient in, namely Hindi and Punjabi, and that this was to be considered. The Language Proficiency criterion pertains to Canada's official languages (see subparagraph 76(1)(a)(ii) of the *IRPR*). Proficiency in other languages, while laudable, is simply not relevant within the requirements for permanent residency under the skilled worker class.

Saggu v. Canada (Minister of Citizenship and Immigration), [1994] F.C.J. No. 1823 (F.C.T.D.), Muldoon J. [hyperlink not available]

[19] A person who can barely, if at all, speak and converse in an official language, and who reads it aloud but without comprehension can surely be found to be unable to initiate any written expression, even if he could perhaps [not so found] copy some passage. Such a poor, if not non-existent, command of an official language of Canada surely does not merit even 2 points, absent the visa officer's apparent generosity.

SEE ALSO:

Ting v. Canada (Minister of Citizenship and Immigration), [1996] F.C.J. No. 1530, at paras. 7-8 (F.C.T.D.), Dubé J. [hyperlink not available]

Lin v. Canada (Minister of Citizenship and Immigration), [1996] F.C.J. No. 196 (F.C.T.D.), Denault J. [hyperlink not available]

Covrig v. Canada (Minister of Citizenship and Immigration), [1995] F.C.J. No. 1413 (F.C.T.D.), Muldoon J. [hyperlink not available]

Nassrat v. Canada (Minister of Citizenship and Immigration), [1995] F.C.J. No. 1192 (F.C.T.D.), Wetston J. [hyperlink not available]

Zeng v. Canada (Minister of Employment and Immigration), [1991] F.C.J. No. 4 (F.C.A.), Mahoney, Stone, Desjardins JJ.A. [hyperlink not available]

Adjudication Division Rules – Immigration and Refugee Protection Act, SOR/93-47

Immigration and Refugee Protection Regulations – Immigration and Refugee Protection Act, SOR/2002-227

76. (1) Selection criteria

76. (1) For the purpose of determining whether a skilled worker, as a member of the federal skilled worker class, will be able to become economically established in Canada, they must be assessed on the basis of the following criteria:

> **(a) the skilled worker must be awarded not less than the minimum number of required points referred to in subsection (2) on the basis of the following factors, namely,**
>
> > **[…]**
> >
> > **(ii) proficiency in the official languages of Canada, in accordance with section 79,**

SOR/2004-167, s. 28; SOR/2010-195, s. 4(F); SOR/2012-274, s. 6.

---

79. (1) Official languages

79. (1) A skilled worker must identify in their application for a permanent resident visa which language — English or French — is to be considered their first official language in Canada. They must have their proficiency in that language evaluated by an organization or institution that is designated under subsection 74(3) using a language test that is approved under that subsection.

79. (2) Proficiency in second language

79. (2) If the skilled worker wishes to claim points for proficiency in their second official language, they must submit, in support of the application for a permanent resident visa, the results of a language test that is approved under subsection 74(3) , which results must be provided by an organization or institution that is designated under that subsection and must be less than two years old on the date on which their application is made.

79. (3) Proficiency in English and French (28 points)

79. (3) Points for proficiency in the official languages of Canada shall be awarded up to a maximum of 24 points for the skilled worker's first official language and a maximum of 4 points for the applicant's second official language based on benchmarks set out in *Canadian Language Benchmarks* and the *Niveaux de compétence linguistique canadiens*, as follows:

(a) for the four language skill areas in the skilled worker's first official language,

(i) 4 points per language skill area if the skilled worker's proficiency meets the threshold fixed by the Minister under subsection 74(1) for that language skill area,

(ii) 5 points per language skill area if the skilled worker's proficiency exceeds the threshold fixed by the Minister under subsection 74(1) for that language skill area by one benchmark level, and

(iii) 6 points per language skill area if the skilled worker's proficiency exceeds the threshold fixed by the Minister under subsection 74(1) for that language skill area by at least two benchmark levels; and

(b) for the four language skill areas in the skilled worker's second official language, 4 points if the skilled worker's proficiency in that language meets or exceeds benchmark level 5 in each of the four language skill areas.

SOR/2004-167, s. 29; SOR/2008-253, s. 7; SOR/2010-195, s. 6(F); SOR/2011-54, s. 1; SOR/2012-274, ss. 7, 8; SOR/2016-298, s. 5.

ANNOTATIONS

Yaseen v. Canada (Citizenship and Immigration), 2011 FC 985 (CanLII)

[34] Paragraph 79(1)(b) of the [Immigration and Refugee Protection] *Regulations* requires that an officer consider other evidence in writing language proficiency as an alternative to a language test result As evidence of his English proficiency, the Applicant submitted a curriculum vitae where he described his language capabilities as being "very good in English (reading, writing, and speaking)". The Applicant also submitted a certified transcript from the University of Jordan which listed that he had passed an English course in the 1994-1995 year, as well as a Ministry of Education General Secondary Study Certificate Examination of 1993 showing that he had passed "English Language" with a score of 155 out of 200.

[…]

[40] In my view it is unreasonable for the Officer to award zero points for the Applicant's official language proficiency concluding there was "no basis" and "no evidence" when the Applicant had clearly provided some evidence of his English proficiency. While the evidence provided may be considered insufficient, subsection 79(1)(b) requires assessment of that evidence as an alternative to the IELT's test results and it was not open to the Officer to ignore it altogether.

Lee v. Canada (Citizenship and Immigration), 2011 FC 617 (CanLII)

[40] Language skills are assessed pursuant to s. 79 of the [Immigration and Refugee Protection] *Regulations*. A maximum of 24 points, "based on the benchmarks referred to in Canadian Language Benchmarks", may be awarded (*Regulations*, s. 79(2)). Of particular importance to this application, the Minister may designate organizations or institutions to assess language proficiency and "shall, for the purposes of correlating the results of such assessment by a particular designated organization or institution …, establish the minimum test result required for each ability and each level of proficiency" (*Regulations*, s. 79(3)).

[...]

[43] While the Applicant may disagree with the policy underlying the regulatory language requirements, he has presented no reviewable error in the language assessment.

Pourgomari v. Canada (Citizenship and Immigration), 2010 FC 649 (CanLII)

[19] While visa officers are not required to provide reasons with any degree of detail or length, the reasons given by the officer for assessing zero points for French proficiency were clearly deficient and ultimately prejudiced the applicant's right to judicial review. The letter of rejection simply stated:

> In your application you stated that you demonstrated a basic proficiency in French. However, upon review of the information on your file, I concluded that you demonstrated no proficiency in French and was therefore unable to award you any points under this factor.

[20] The CAIPS notes provide no further insight as they read in relevant part:

> FRENCH: 0 – STATED BASIC, BUT NO EVIDENCE ON FILE.

[21] Provided with these reasons, the applicant had no way of knowing whether the certificate that she submitted had been received or any indication of why it was rejected. A very short statement could have potentially addressed the situation. If the officer concluded that the certificate simply did not provide sufficient or reliable evidence of any proficiency, the officer needed to only state that and no more. However, because this was not done, the duty of fairness was breached.

Bagheri-Sadr v. Canada (Citizenship and Immigration), 2009 FC 1143 (CanLII)

[5] In order to be scored points for language proficiency, applicants must either file the results of a test from a designated body or provide other written evidence of their proficiency (*Immigration and Refugee Protection Regulations,* SOR/2002-227, s. 79(1)). Applicants are informed that test results from non-designated bodies will not be considered. However, immigration officers must consider other written evidence of proficiency, such as "official documentation of education and work experience in English, an explanation of how the applicant commonly uses English and a description detailing [his or] her training in English" (*Bellido v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 452). For example, an officer must consider an applicant's high school diploma showing high grades in English courses and a diploma from a language school indicating

successful completion of a course of study in English (*Gidikova v. Canada (Minister of Citizenship and Immigration)*,2007 FC 1178).

[6] Mr. Bagheri-Sadr submits that the officer erred by not considering his Berlitz test and by failing to explain why he should not be scored any points for his proficiency in French. In addition, he suggests that the officer should have considered his extensive experience as a pilot and inferred that he must have some level of proficiency in French enabling him to take off from, and land in, airports around the world.

[7] Mr. Bagheri-Sadr was specifically requested to provide official language test results to support his application. He failed to do so. As I read the Regulations, he had the option of obtaining official results (as he had done for his English skills) or providing some other written evidence of proficiency. The officer informed Mr. Bagheri-Sadr of the tests that were required as proof of language proficiency, yet he failed to obtain the necessary documentation.

[8] The officer stated that she reviewed the evidence on file but found that it was “insufficient to demonstrate that you meet the Canadian language benchmarks at the levels stated”. In the circumstances, this is an adequate explanation for not scoring Mr. Bagheri-Sadr any points for his French skills.

[9] Finally, Mr. Bagheri-Sadr had to provide official test results or other written evidence. It was not open to the officer merely to infer a level of proficiency in French based on Mr. Bagheri-Sadr’s flying experience.

Al Turk v. Canada (Citizenship and Immigration), 2008 FC 1396 (CanLII)

[21] The applicant takes the position that it is absurd for the visa officer to conclude that he only possesses a basic level of English language ability considering that he studied at UJ for 4 years and received all of his course instruction in the English language. But this does not conclusively establish that the applicant had either a moderate or high level of abilities in the English language. He might very well have been able to pass all of his course work with only a basic level of English language abilities.

[22] In addition, it is clear from the visa officer’s affidavit that he did take the applicant’s experience at UJ into account but found it to be insufficient for the purposes of demonstrating a moderate to high level of English language abilities. The officer noted that although the applicant may have studied in English, she was still not satisfied that he had studied in an English-speaking environment such as a person having studied in the UK or the USA. And this was quite reasonable for the visa officer to arrive at such a conclusion.

[23] In brief, the visa officer based her assessment of the applicant’s English language proficiency on his written submission as well as the information on file, but did not retain self-serving or unverifiable evidence provided by the applicant and required him to complete the IELTS test that he agreed to pass, and the visa officer was not informed before her decision that those tests had been rescheduled and that the results would be delayed.

[24] The Court recognizes that subsection 79(2) of the [*Immigration and Refugee Protection*] *Regulations* states that the assessment of points for proficiency of the official languages is to be awarded based on the Canadian Language Benchmarks (CLB). The CAIPS notes state only that the visa officer is “not satisfied that the applicant has demonstrated English language ability at benchmark 8”. True, this conclusion contains no reference to the applicant’s writing sample, which was part of his submissions. But the writing samples provided by the applicant do not prove as such that he wrote these samples and that they could not have been written instead by somebody else.

[25] Reading however the refusal letter in conjunction with the CAIPS notes and the officer's unchallenged affidavit, it becomes clear that the officer's assessment of the applicant's English language abilities was made having regard to the written submissions in the file of the applicant, his educational experience and the CLB.

[26] Considering all the circumstances of the case in issue, including the applicant's failure to produce his IELTS test results on time and to make sure that the officer had been made aware of the rescheduling of the IELTS test, the Court cannot see that the visa officer's failure to assess the applicant's writing sample in accordance with the CLB can be sufficiently important in itself as to render the officer's discretionary decision unreasonable.

[27] In brief and for all these reasons, the Court finds that the impugned decision falls within a range of possible and acceptable outcomes which are defensible in respect of the facts and the law, the assessment therein contained appears to have been carried out in good faith, in accordance with the principle of natural justice, and without relying on irrelevant or extraneous considerations. It therefore deserves the deference of the Court. As a consequence, this Court concludes that the visa officer did not commit a reviewable error and that her decision as a whole is reasonable. Therefore, the judicial review application will be dismissed.

Al-Kassous v. Canada (Citizenship and Immigration), 2007 FC 541 (CanLII)

[23] The decision letter stated that the Officer's assessment of points for the applicant's French ability was based on his written submissions, as well as the information on file; however, the CAIPS notes contain no analysis of the applicant's writing sample, nor any analysis as to the issue of only 6 points being awarded for speaking, listening, reading and writing.

[24] Subsection 79(2) of the [Immigration and Refugee Protection] *Regulations* states that the assessment of points for proficiency of the official languages are to be awarded based on the Canadian Language Benchmarks (Standards linguistiques Canadiens for French). The CAIPS notes state only that "I am not satisfied that subj has demonstrated French language ability at benchmark 8". This conclusion appears to be based entirely on the fact that the applicant's studies in France were concluded 17 years ago as the CAIPS notes contain no reference to the applicant's writing sample. The applicant's writing sample was an important part of his submissions. The Officer was required to assess the applicant's French language ability with reference to the information about the applicant's experience with French as well as on the writing sample provided. In my opinion, the failure to assess the writing sample in accordance with the Canadian Language Benchmarks makes the decision unreasonable.

Islam v. Canada (Minister of Citizenship and Immigration), 2006 FC 424 (CanLII)

[4] Rather than have his language proficiency assessed as provided by s.79(1)(a) [of the Immigration and Refugee Protection Regulations], the Applicant opted to submit written evidence of his proficiency in the English language under s.79(1)(b). The Applicant was notified in a letter dated July 7, 2004, that the written submissions he provided did not support the level of proficiency he claimed in his application for permanent residency, and that further written submissions would not be accepted. However, he was given the option of submitting language test results from an approved organization within 180 days of the date of the letter. The Applicant was also informed that his failure to submit the language test results would result in his application being assessed on the basis of the information on file at that time, namely, the written submissions that had been found to be inadequate. The Applicant did not provide the test results requested.

[...]

[9] Although the written evidence initially submitted by the Applicant was found to be unacceptable, the Visa Officer provided the Applicant with a second chance to meet the

requirements of s.79; that is, he could either submit to the prescribed test or submit written evidence. The fact that the Applicant was precluded from exercising one of the options in this second attempt, in my opinion, is a denial of due process.

[...]

[12] [...] The Visa Officer's CAIPS notes indicate that she took the "writing test" into consideration despite the fact that she did not have the statutory authority to do so. The Visa Officer is not a "designated organization" as referred to in s.79(3) of the *IRP Regulations* and, in my opinion, she should have made the determination regarding the Applicant's proficiency in English as prescribed in the *IRP Regulations*; that is, by using the written evidence previously submitted by the Applicant, and by not taking into consideration an extraneous factor, namely, the "writing test".

Shaker v. Canada (Minister of Citizenship and Immigration), 2006 FC 185 (CanLII)

[40] Furthermore, while test results may have been preferable to establish the applicant's level of proficiency in English, the six manuscript pages submitted by the applicant should have enabled the Officer to measure his proficiency against the standards set out in the Canada Language Benchmark.

[41] The Officer's CAIPS notes regarding the applicant's evidence relating to his English proficiency reveal that she considered the evidence submitted by the applicant regarding his use of English at school and in the workplace, and found grammatical mistakes in his manuscript submissions.

[42] While the presence of many mistakes in the applicant's manuscript and the relatively poor grades he obtained while studying English certainly would not warrant the attribution of full marks, I find that it was patently unreasonable for the Officer to attribute him a score of zero. The applicant's evidence reveals that he has considerable experience working in English, and though his mastery of the language is certainly less than perfect, he clearly has the ability to communicate in English at some level.

Bellido v. Canada (Minister of Citizenship and Immigration), 2005 FC 452 (CanLII)

[11] In the absence of test results, the Applicant had the option to provide other evidence in writing of her proficiency. The object of the documentation is to demonstrate objectively that the Applicant can speak, read and write English. The type of information to be provided includes such things as official documentation of education and work experience in English, an explanation of how the Applicant commonly uses English and a description detailing her training in English. To ensure objectivity, the assessment of language skill - even oral skill - is to be done on the basis of written representations and not on the basis of an interview with the Visa Officer. The Regulations do not permit an assessment of oral skills by the Visa Officer during the interview. Nor is the Visa Officer to judge the Applicant's written ability on the basis of letters submitted during the application process; these could easily be written for an applicant. This procedure ensures fairness and equal treatment for all applicants.

[12] Since the Applicant failed to submit either the test results or the documentation necessary to substantiate her claimed proficiency in English, she was not entitled to receive any points. The Visa Officer did not err in assessing the Applicant as having 0 points in language proficiency.

SEE ALSO:

Grewal v. Canada (Citizenship and Immigration), 2011 FC 167 (CanLII)

Khan v. Canada (Citizenship and Immigration), 2009 FC 1312 (CanLII)

Alam v. Canada (Citizenship and Immigration), 2008 FC 419 (CanLII)

Gidikova v. Canada (Citizenship and Immigration), 2007 FC 1178 (CanLII)

87.1 (2) Member of the class

87.1 (2) A foreign national is a member of the Canadian experience class if

> **[…]**
>
> **(d) they have had their proficiency in the English or French language evaluated by an organization or institution that is designated under subsection 74(3) using a language test that is approved under that subsection, the results of which must indicate that the foreign national has met the applicable threshold that is fixed by the Minister under subsection 74(1) for each of the four language skill areas; and**
>
> **[…]**

SOR/2008-254, s. 3; SOR/2011-54, s. 2; SOR/2012-274, s. 13; SOR/2016-298, s. 8.

---

102. (1) Criteria

102. (1) For the purpose of determining whether a foreign national, as a member of the self-employed persons class, and their family members will be able to become economically established in Canada, an officer shall assess the foreign national on the basis of the following factors:

> **[…]**
>
> **(c) proficiency in the official languages of Canada, in accordance with section 102.3;**
>
> **[…]**

SOR/2004-167, s. 37; SOR/2012-274, s. 16; SOR/2016-316, s. 8.

102.3 (1) Official languages

102.3 (1) A foreign national must specify in their application for a permanent resident visa which language — English or French — is to be considered their first official language in Canada.They must have their proficiency in that language evaluated by an organization or institution designated under subsection (4).

102.3 (2) Proficiency in second language

102.3 (2) If the foreign national wishes to claim points for proficiency in their second official language they must, with the application for a permanent resident visa, submit the results of an evaluation — which must be less than two years old on the date on which

their application is made — of their proficiency by an organization or institution designated under subsection (4).

102.3 (3) Proficiency in English and French (24 points)

102.3 (3) Points for proficiency in the official languages of Canada shall be awarded up to a maximum of 24 points based on the benchmarks referred to in the Canadian Language Benchmarks and the Niveaux de compétence linguistique canadiens, as follows:

(a) for high proficiency

(i) in the first official language, 4 points for each language skill area if the foreign national's proficiency corresponds to a benchmark of 8 or higher, and

(ii) in the second official language, 2 points for each language skill area if the foreign national's proficiency corresponds to a benchmark of 8 or higher;

(b) for moderate proficiency

(i) in the first official language, 2 points for each language skill area if the foreign national's proficiency corresponds to a benchmark of 6 or 7, and

(ii) in the second official language, 2 points for each language skill area if the foreign national's proficiency corresponds to a benchmark of 6 or 7;

(c) for basic proficiency in either official language, 1 point for each language skill area, up to a maximum of 2 points, if the foreign national's proficiency corresponds to a benchmark of 4 or 5; and

(d) for no proficiency in either official language, 0 points if the foreign national's proficiency corresponds to a benchmark of 3 or lower.

102.3 (4) Designation for evaluating language proficiency

102.3 (4) The Minister may designate, for any period specified by the Minister, any organization or institution to be responsible for evaluating language proficiency if the organization or institution has expertise in evaluating language proficiency and if the organization or institution has provided a correlation of its evaluation results to the benchmarks set out in the Canadian Language Benchmarks and the Niveaux de compétence linguistique canadiens.

102.3 (5) Public notice

102.3 (5) The Minister shall make available to the public a list of the designated organizations or institutions.

SOR/2012-274, s. 17.

---

139. (1) General requirements

139. (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that

> **[…]**
>
> **(g) if the foreign national intends to reside in a province other than the Province of Quebec, the foreign national and their family members included in the application for protection will be able to become successfully established in Canada, taking into account the following factors:**
>
> > **[…]**
> >
> > **(iv) their ability to learn to communicate in one of the official languages of Canada;**

SOR/2004-167, s. 80(F); SOR/2011-222, s. 4; SOR/2012-225, s. 4; SOR/2014-140, s. 13(F).

Immigration Appeal Division Rules – Immigration and Refugee Protection Act, SOR/2002-230

17. (1) Choice of language

17. (1) A person who is the subject of an appeal must choose English or French as the language of the appeal. If the person is appealing, the person must indicate their choice in the notice of appeal. If the Minister is appealing, the person must notify the Division and the Minister of their choice in writing. The notice must be received by the Division and by the Minister no later than 20 days after the person received the notice of appeal.

17. (2) Changing the choice of language

17. (2) A person who is the subject of an appeal may change the choice of language by notifying the Division and the Minister in writing. The notice must be received by the Division and the Minister no later than 20 days before the next proceeding.

---

18. (1) Need for an interpreter

18. (1) If a party or a party's witness needs an interpreter for a proceeding, the party must notify the Division in writing and specify the language or dialect of the interpreter. The notice must be received by the Division no later than 20 days before the proceeding.

18. (2) Interpreter's oath

18. (2) The interpreter must take an oath or make a solemn affirmation to interpret accurately.

ANNOTATIONS

Fournier v. Canada (Citizenship and Immigration), 2016 FC 1045 (CanLII)

[26] The applicant has not indicated which principle of procedural fairness has allegedly been violated in this case. It seems that she is complaining that the insufficient participation at the hearing was due to the translation. Thus, this issue is raised for two reasons: to explain the performance at the hearing and to allege a breach of procedural fairness. No case law was presented to establish the standard sought, whereas the case law states that the duty of fairness is flexible and variable (*Baker v. Canada (Minister of Citizenship and Immigration),* 1999 CanLII 699 (SCC), [1999] 2 SCR 817). Obviously, someone who does not understand the proceedings because he or she does not speak the language would not be able to participate. This lack of participation would violate procedural fairness. Hence, the *Immigration Appeal Division Rules*, SOR/2002-230 expressly provide for the services of an interpreter (section 18). Mr. Aakki speaks French. He has proven this. So then, what level of comprehension is necessary to satisfy the duty of fairness?

[27] An interpreter must offer continuous, precise, impartial and contemporaneous interpretation (*Lamme v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1336 (CanLII)), as this also seems to be the standard required to satisfy section 14 of the *Canadian Charter of Rights and Freedoms*, part I of the *Constitution Act, 1982*, which constitutes Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (R. v. Tran, 1994 CanLII 56 (SCC), [1994] 2 SCR 951). Here, the right to the services of an interpreter was not denied. Quite the contrary.

[28] It was never clear exactly what the applicant's argument was with regard to interpretation. On the one hand, the interpretation was claimed to be lacking. Yet, when reading the transcript, one can see that the translation was most difficult at times when the witness spoke too fast or when several people were speaking at the same time. Each time, the chairperson of the panel had the individuals repeat themselves for clarity. On the other hand, it was claimed that the quality of French the witness used when speaking in that language affected his credibility. If this were true, which was not demonstrated to be the case, this second argument would not be a matter of procedural fairness unless the witness had been forced to use this language. The applicant's counsel had alleged that such was the case, but had to withdraw this claim at the hearing because the evidence was to the contrary: the chairperson intervened to point out that the witness could use his mother tongue.

[29] I have read the transcript of the hearing before the IAD. I am far from convinced that the hearing was flawed. The witness chose to speak in French during the hearing. At times, he chose not to use the services of an interpreter, as was his prerogative. Given that he exercised his prerogative, I fail to see how he can make a valid complaint now. In any case, as Mr. Justice de Montigny wrote as part of our Court:

> [...C]omplaints about the quality of interpretation must be made at the first opportunity (*Mohammadian v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 17118 (FC), [2000] 3 FCR 371, [2000] FCJ No 309 (QL) [*Mohammadian*], at paragraph 27). By choosing to abstain, the applicant is therefore presumed to have waived his right to object to the quality of the interpretation through judicial review.(*Bal v. Canada (Citizenship and Immigration)*, 2008 FC 1178 (CanLII), [2008] FCJ No 1460 (QL), at paragraph 31).

I cannot detect any pressure that might have been put on the witness to speak in French, a language of which he seemed to have a good mastery. Not only did the witness not complain, but he chose to speak in French.

[30] In my view, the communication difficulties in no way violated procedural fairness. The majority decision is also reasonable. It is not necessary to qualify the dissenting decision. It may also fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. Dissenting opinions are common in our law. This does not make minority or majority decisions irrational. I admit nonetheless some surprise in reading that the minority member found that the witness' testimony "was clear and consistent, that it corroborated the

appellant's testimony and that it was, more likely than not, credible" (paragraph 11). His legal counsel even had to intervene at the hearing to get him to cooperate. Even the applicant did not go this far, choosing instead to explain the witness' vague and unclear testimony as resulting from a limited knowledge of French.

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29. (1) Language of documents — subject of the appeal

29. (1) All documents used at a proceeding by a person who is the subject of an appeal must be in English or French or, if in another language, be provided with an English or French translation and a translator's declaration.

29. (2) Language of documents — Minister

29. (2) All documents used by the Minister at a proceeding must be in the language of the appeal, or be provided with a translation and the translator's declaration.

29. (3) Translator's declaration

29. (3) A translator's declaration must include the translator's name, the language translated and a statement signed by the translator that the translation is accurate.

Immigration Division Rules – Immigration and Refugee Protection Act, SOR/2002-229

16. (1) Changing the language of proceedings

16. (1) A permanent resident or foreign national may make an application to the Division to change the language of the proceedings to English or French

> **(a) orally or in writing in the case of a forty-eight hour or seven-day review or an admissibility hearing held at the same time; and**
>
> **(b) in writing in all other cases.**

16. (2) Time limit

16. (2) A written application must be received by the Division

> **(a) as soon as possible, in the case of a forty-eight hour or seven-day review or an admissibility hearing held at the same time; and**
>
> **(b) in all other cases, at least five days before the hearing.**

SEE ALSO:

Bolanos Blanco v. Canada (Citizenship and Immigration), 2010 FC 280 (CanLII)

Djalabi v. Canada (Citizenship and Immigration), 2007 FC 684 (CanLII)

Canada (Minister of Citizenship and Immigration) v. Phan, 2003 FC 1194 (CanLII)

25. (1) Language of documents

25. (1) All documents used at a proceeding must be in English or French or, if in another language, be provided with an English or French translation and a translator's declaration.

25. (2) Language of Minister's documents

25. (2) If the Minister provides a document that is not in the language of the proceedings, the Minister must provide a translation and a translator's declaration.

25. (3) Translator's declaration

25. (3) A translator's declaration must include the translator's name, the language translated and a statement signed by the translator that the translation is accurate.

ANNOTATIONS

Bolanos Blanco v. Canada (Citizenship and Immigration), 2010 FC 280 (CanLII)

[17] Section 25 of the Rules is a provision that regulates the disclosure of evidence so that the parties are not taken by surprise at the hearing. A breach of section 25 of the Rules can only result in a postponement of the hearing. It is clear that when the documents in question were provided by the respondents, the language of the proceedings was English, precluding the need for a French translation. It must be acknowledged that there is a difference between providing Minister's documents to an applicant and filing the documents as evidence the day of the hearing. It is therefore impossible for me to interpret this particular provision of the Immigration Division in a way other than that which the respondents suggested and the panel agreed to.

SEE ALSO:

Canada (Public Safety and Emergency Preparedness) v. Hong, 2012 FC 84 (CanLII)

Refugee Appeal Division Rules – Immigration and Refugee Protection Act, SOR/2012-257

2. (3) Content of notice of appeal

2. (3) In the notice of appeal, the appellant must indicate

[...]

(e) the language – English or French – chosen by them as the language of the appeal

[...].

---

10. (2) Content of notice of intent to respond

10. (2) In the notice of intent to respond, the respondent must indicate

[...]

(e) the language – English or French – chosen by them as the language of the appeal

[...].

---

22. (1) Choice of language

22. (1) A person who is the subject of an appeal must choose English or French as the language of the appeal. The person must indicate that choice in the notice of appeal if they are the appellant or in the notice of intent to respond if they are the respondent.

22. (2) Language — Minister's appeals

22. (2) If the appellant is the Minister, the language of the appeal is the language chosen by the person who is the subject of the appeal in the proceedings relating to the decision being appealed.

22. (3) Changing language

22. (3) A person who is the subject of an appeal may change the language of the appeal that they chose under subrule (1) by notifying the Division and the Minister in writing without delay and, if a date for a proceeding has been fixed, the notice must be received by their recipients no later than 20 days before that date.

Refugee Protection Division Rules – Immigration and Refugee Protection Act, SOR/2012-256

17. (1) Language of proceedings

17. (1) A claimant must choose English or French as the language of the proceedings at the time of the referral of their claim for refugee protection to the Division.

17. (2) Changing language

17. (2) A claimant may change the language of the proceedings that they chose under subrule (1) by notifying the Division and the Minister in writing. The notice must be received by the Division and the Minister no later than 10 days before the date fixed for the next proceeding.

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18. (1) Choice of language — application to vacate or cease refugee protection

18. (1) The language that is chosen under rule 17 is to be the language of the proceedings in any application made by the Minister to vacate or to cease refugee protection with respect to that claim.

18. (2) Changing language

18. (2) A protected person may change the language of the proceedings by notifying the Division and the Minister in writing. The notice must be received by the Division and the Minister no later than 10 days before the date fixed for the next proceeding.

---

19. (1) Need for interpreter — claimant

19. (1) If a claimant needs an interpreter for the proceedings, the claimant must notify an officer at the time of the referral of the claim to the Division and specify the language and dialect, if any, to be interpreted.

19. (2) Changing language of interpretation

19. (2) A claimant may change the language and dialect, if any, that they specified under subrule (1), or if they had not indicated that an interpreter was needed, they may indicate that they need an interpreter, by notifying the Division in writing and indicating the language and dialect, if any, to be interpreted. The notice must be received by the Division no later than 10 days before the date fixed for the next proceeding.

19. (3) Need for interpreter — protected person

19. (3) If a protected person needs an interpreter for the proceedings, the protected person must notify the Division in writing and specify the language and dialect, if any, to be interpreted. The notice must be received by the Division no later than 10 days before the date fixed for the next proceeding.

19. (4) Need for interpreter — witness

19. (4) If any party's witness needs an interpreter for the proceedings, the party must notify the Division in writing and specify the language and dialect, if any, to be interpreted. The notice must be received by the Division no later than 10 days before the date fixed for the next proceeding.

19. (5) Interpreter's oath

19. (5) The interpreter must take an oath or make a solemn affirmation to interpret accurately.

---

32. (1) Language of documents – claimant or protected person

32. (1) All documents used by a claimant or protected person in a proceeding must be in English or French or, if in another language, be provided together with an English or French translation and a declaration signed by the translator.

32. (2) Language of Minister's documents

32. (2) All documents used by the Minister in a proceeding must be in the language of the proceeding or be provided together with a translation in the language of the proceeding and a declaration signed by the translator.

32. (3) Translator's declaration

32. (3) A translator's declaration must include translator's name, the language and dialect, if any, translated and a statement that the translation is accurate.

Income Tax Act, RSC 1985, c 1 (5th Supp.)

6. (1) Amounts to be included as income from office or employment

6. (1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:

[...]

Personal or living expenses

(b) all amounts received for personal or living expenses or as an allowance for any other purpose, except

[...]

(ix) allowances (not in excess of reasonable amounts) received by an employee from the employee's employer in respect of any child of the employee living away from the employee's domestic establishment in the place where the employee is required by reason of the employee's employment to live in full-time attendance at a school in which the language primarily used for instruction is the official language of Canada primarily used by the employee if:

(A) a school suitable for that child primarily using that language of instruction is not available in the place where the employee is so required to live, and

(B) the school the child attends primarily uses that language for instruction and is not farther from that place than the community nearest to that place in which there is such a school having suitable boarding facilities

and, for the purposes of subparagraph (v), (vi) and (vii.1), an allowance received in a taxation year by a taxpayer for the use of a motor vehicle in connection with or in the course of the taxpayer's office or employment shall deemed not to be a reasonable allowance

(x) where the measurement of the use of the vehicle for the purpose of the allowance is not based solely of the number of kilometres for which the vehicle is used in connection with or in the course of the office or employment, or

(xi) where the taxpayer both receives an allowance in respect of that use and is reimbursed in whole or in part for expenses in respect of that use (except where the reimbursement is in respect of supplementary business insurance or toll or ferry charges and the amount of the allowance was determined without reference to those reimbursed expenses);

ANNOTATIONS

Guay v. The Queen, 2003 CanLII 614 (TCC)

[21] I believe that it is appropriate to compare […] Mr. Guay's situation with that of other persons staying in the same location as he, that is, in the Dominican Republic. As a point of comparison, one could use the case of Canadians living in the Dominican Republic who also want their children to be educated in French but who are not entitled to a reimbursement for tuition fees. Such persons would then be forced to pay their tuition fees with after-tax money. If it were to be concluded that Mr. Guay is not required to include in his income the reimbursement for the tuition fees, he would be obtaining a benefit that other Canadians living in Santo Domingo do not have. In my opinion, the reimbursement for the tuition fees enabled him to enrich himself in comparison with these other Canadians.

SEE ALSO:

Guay v. Canada, 1997 CanLII 5012 (FCA)

Income Tax Conventions Implementation Act, SC 1995, c 37

Schedule I. Article 30 Termination

DONE in duplicate at Ottawa, this 26th day of April 1995, in the English, French and Latvian languages, each version being equally authentic.

Schedule II. Article 30 Termination

DONE in duplicate at Tallinn, this 2nd day of June 1995, in the English, French and Estonian languages, each version being equally authentic.

Schedule III. Article 29 Termination

DONE in duplicate at Toronto, this 11th day of September 1995, in the English and French languages, each version being equally authentic.

Insurance Companies Act, SC 1991, c 47

44. (1) French or English form of name

44. (1) The name of a company or society may be set out in its letters patent in an English form, a French form, an English form and a French form or in a combined English and French form, and the company or society may use and be legally designated by any such form.

44. (2) Alternate name

44. (2) A company or society may identify itself outside Canada by its name in any language and the company or society may use and be legally designated by any such form of its name outside Canada.

1991, c. 47, s. 44; 1996, c. 6, s. 69.

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578. (1) French, English or foreign form of name

578. (1) The name under which a foreign company is authorized to insure risks, as set out in the order made under subsection 574(1), may be in an English form, a French form, an English form and a French form, a combined English and French form or a form combining words in a language other than English or French with one of the forms specified in this subsection.

International Interests in Mobile Equipment (aircraft equipment) Act, SC 2005, c 3

Schedule 1, Article 62

1. Depositary and its Functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

International Sale of Goods Contracts Convention Act, SC 1991, c 13

Schedule, Article 101

DONE at Vienna, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

Interpretation Act, RSC 1985 c I-21

21. (1) Powers vested in corporations

21. (1) Words establishing a corporation shall be construed

[…]

(b) in the case of a corporation having a name consisting of an English and a French form or a combined English and French form, as vesting in the corporation power to use either the English or the French form of its name or both forms and to show on its seal both the English and French forms of its name or have two seals, one showing the English and the other showing the French form of its name;

21. (2) Corporate name

21. (2) Where an enactment establishes a corporation and in each of the English and French versions of the enactment the name of the corporation is in the form only of the language of that version, the name of the corporation shall consist of the form of its name in each of the versions of the enactment.

R.S. c. I-23, s. 20.

Language Skills Act, SC 2013, c 36

Language skills

2. Requirements

2. Any person appointed to any of the following offices must, at the time of his or her appointment, be able to speak and understand clearly both official languages:

(a) the Auditor General of Canada, appointed pursuant to subsection 3(1) of the *Auditor General Act*;

(b) the Chief Electoral Officer, appointed pursuant to subsection 13(1) of the *Canada Elections Act*;

(c) the Commissioner of Official Languages for Canada, appointed pursuant to subsection 49(1) of the *Official Languages Act*;

(d) the Privacy Commissioner, appointed pursuant to subsection 53(1) of the *Privacy Act*;

(e) the Information Commissioner, appointed pursuant to subsection 54(1) of the *Access to Information Act*;

(f) the Senate Ethics Officer, appointed pursuant to section 20.1 of the *Parliament of Canada Act*;

(g) the Conflict of Interest and Ethics Commissioner, appointed pursuant to subsection 81(1) of the *Parliament of Canada Act*;

(h) the Commissioner of Lobbying, appointed pursuant to subsection 4.1(1) of the *Lobbying Act*;

(i) the Public Sector Integrity Commissioner, appointed pursuant to subsection 39(1) of the *Public Servants Disclosure Protection Act*;

(j) the President of the Public Service Commission, appointed pursuant to subsection 4(5) of the *Public Service Employment Act*.

Legislation Revision and Consolidation Act, RSC 1985, c S-20

6. Powers of Commission

6. In preparing a revision, the Commission may

> **[…]**
>
> **(f) make such minor improvements in the language of the statutes as may be required to bring out more clearly the intention of Parliament, or make the form of expression of the statute in one of the official languages more compatible with its expression in the other official language, without changing the substance of any enactment;**

Legislative Instruments Re-enactment Act, SC 2002, c 20

2. Definitions

2. The following definitions apply in this Act:

[…]

"legislative instrument" means

> **(a) an instrument enacted before the coming into force of section 7 of the *Official Languages Act* on September 15, 1988 by, or with the approval of, the Governor in Council or a minister of the Crown in the execution of a legislative power conferred by or under an Act of Parliament; or**
>
> **(b) an instrument that amends or repeals an instrument referred to in paragraph (a). (*texte législatif*)**

---

3. (1) Instruments published in both languages

3. (1) Every legislative instrument that was originally enacted in only one official language and was, at the time of its enactment, published in both official languages in a government publication is hereby re-enacted in both official languages in the same form as that in which the legislative instrument was published.

3. (2) Re-enactment retroactive

3. (2) The provisions of an instrument re-enacted under subsection (1) are retroactive to, and are deemed to have come into force on, the day or days on which the corresponding provisions of the legislative instrument it replaces came into force, and those corresponding provisions are deemed to be repealed as at that time.

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4. (1) Instruments not published or published in one language

4. (1) Where a legislative instrument was originally enacted in only one official language and, at the time of its enactment, was published in only one official language or was exempted by law from the requirement to be published in a government publication, the Governor in Council may, by regulation, repeal the legislative instrument and re-enact it in both official languages, without change to the version of the legislative instrument in the language in which it was originally enacted.

4. (2) Regulation retroactive

4. (2) A regulation made under subsection (1) shall provide that the provisions of the re-enacted instrument are retroactive to, and are deemed to have come into force on, the day or days on which the corresponding provisions of the legislative instrument it replaces came into force.

4. (3) Offences

4. (3) No person shall be convicted of an offence consisting of a contravention of a provision of an instrument re-enacted under subsection (1) unless the contravention occurred after the instrument was re-enacted and published in both official languages.

4. (7) Repeal of legislative instruments

4. (7) Upon the expiration of six years after this Act comes into force, any legislative instrument described in subsection (1) that has not been re-enacted in both official languages is repealed.

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5. (1) Deeming and citation

5. (1) An instrument re-enacted under section 3 or 4 is deemed to be, and to have always been, the legislative instrument it replaces and, subject to subsection (3), shall be cited in the same manner as that legislative instrument.

5. (2) Power to amend or repeal

5. (2) For greater certainty, the holder of an office, or a body, that has the power to amend or repeal a legislative instrument that was re-enacted under section 3 or 4 may use that power to amend or repeal the re-enacted instrument.

5. (3) Reference to title

5. (3) Where a legislative instrument was not published at the time of its enactment or was at that time published in only one official language, the re-enacted instrument that replaces it may be referred to by its title in either official language.

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6. Both versions equally authoritative

6. The English and French versions of an instrument re-enacted under section 3 or 4 are equally authoritative.

Marine Transportation Security Act, SC 1994, c 40

21. (2) Placement and languages of notices

21. (2) The notices must be posted in prominent places where authorized screening is carried out and they must be written in both of the official languages of Canada and may, in addition, be written in any other language.

Marine Transportation Security Regulations – Marine Transportation Security Act, SOR/2004-144

12. General

MARSEC Level, Official Languages and Prescribed Grounds

12. The operator of a vessel that is entitled to fly the Canadian flag and to which Part 2 applies, and the operator of a marine facility to which Part 3 applies, other than the operator of a marine facility that is referred to in paragraph (a) of the definition *port administration* in subsection 1(1) or the security officer referred to in paragraph (b) of that definition, shall ensure that, where there is a significant demand from at least 5 per cent of the travelling public for services in either official language within the meaning of the *Official Languages (Communications with and Services to the Public) Regulations*,

> **(a) authorized screening is carried out by means that effectively enable communication with members of the public in the official language of their choice; and**
>
> **(b) printed or pre-recorded material is provided in both official languages if the material is used in respect of authorized screening.**

SOR/2014-162, s. 5.

Motor Vehicle Safety Act, SC 1993, c 16

12. (1) Definition of *technical standards document*

12. (1) In this section, *technical standards document* means a document that is published by the Minister, as provided for in the regulations, that adapts, or that reproduces in whole or in part in the official languages of Canada an enactment of a foreign government or material produced by an international organization. The adaptations may include amendments to the content of the originating enactment or material.

SEE ALSO:

Motor Vehicle Safety Regulations – Motor Vehicle Safety Act, CRC c 1038

Museums Act, SC 1990, c 3

3. Declaration

3. It is hereby declared that the heritage of Canada and all its peoples is an important part of the world heritage and must be preserved for present and future generations and that each museum established by this Act

> **[...]**
>
> **(b) is a source of inspiration, research, learning and entertainment that belongs to all Canadians and provides, in both official languages, a service that is essential to Canadian culture and available to all.**

National Cemetery of Canada Act, SC 2009, c 5

Preamble

[…] Whereas Beechwood Cemetery has demonstrated commitment to respecting the linguistic duality of Canada by means of a consistent and balanced approach to the use and display of Canada's two official languages; […]

Northern Pipeline Act, RSC 1985, c N-26

Schedule I

15. DONE in duplicate at Ottawa in the English and French languages, both versions being equally authentic, this twentieth day of September 1977.

Northwest Territories Act, RSC 2014, c 2, s 2

32. (1) *Official Languages Act*

32. (1) The ordinance entitled the *Official Languages Act* — made on June 28, 1984 by the Commissioner in Council, as amended on June 26, 1986 or by an Act referred to in section 33 — must not be amended, repealed or rendered inoperable by the Legislature without the concurrence of Parliament by way of an amendment to this Act.

32. (2) Additional rights and services

32. (2) Nothing in subsection (1) is to be construed as preventing the Commissioner, the Legislature or the Government of the Northwest Territories from granting rights in respect of, or providing services in, English, French or a language of an Aboriginal people of Canada — in addition to the rights and services provided for in the *Official Languages Act* referred to in subsection (1) — whether by amendment, without the concurrence of Parliament, or by any other means.

33. (1) Amendments concurred in

33. (1) Parliament concurs in An Act to amend the *Official Languages Act*, made on October 29, 1990 by the Commissioner in Council.

33. (2) March 12, 1992

33. (2) Parliament concurs in An Act to amend the *Official Languages Act*, made on March 12, 1992 by the Commissioner in Council.

Nunavut Act, SC 1993, c 28

38. Official languages ordinance

38. The law of the Legislature that, under subsection 29(1), is the duplicate of the ordinance of the Northwest Territories entitled the *Official Languages Act* may not be repealed, amended or otherwise rendered inoperable by the Legislature without the concurrence of Parliament by way of a resolution, if that repeal, amendment or measure that otherwise renders that law inoperable would have the effect of diminishing the rights and services provided for in that ordinance as enacted on June 28, 1984 and amended on June 26, 1986.

1993, c. 28, s. 38; 1998, c. 15, s. 7.

Nunavut Waters and Nunavut Surface Rights Tribunal Act, SC 2002, c 10

2. (1) Definitions

2. (1) The definitions in this subsection apply in this Act.

***Inuktitut* means the Inuktitut language and includes Inuinaqtuun. (*inuktitut*)**

---

14. (1) Establishment of Board

14. (1) There is hereby established the Nunavut Water Board, the members of which are to be appointed by the Minister.

---

25. (1) Language of business

25. (1) The Board shall conduct its business in both of the official languages of Canada in accordance with the *Official Languages Act* and any directives of the Minister and, on request by a member, in Inuktitut.

25. (2) Public hearings

25. (2) The Board shall conduct public hearings in both of the official languages of Canada in accordance with the *Official Languages Act* and any directives of the Minister and, on request by a member, an applicant or an intervenor, in Inuktitut.

25. (3) Translation or interpretation

25. (3) Nothing in subsection (1) or (2) shall be construed to prevent the use of translation or interpretation services where a member is otherwise unable to conduct business in Inuktitut or in either official language.

Witnesses

25. (4) The Board has, in any proceedings before it, the duty to ensure that any person giving evidence before it may be heard in Inuktitut or in either official language, and that in being so heard the person will not be placed at a disadvantage by not being heard in another of those languages.

---

99. (1) Establishment

99. (1) There is hereby established the Nunavut Surface Rights Tribunal consisting of a Chairperson and not fewer than two nor more than ten other members to be appointed by the Minister.

---

106. (1) Language of business

106. (1) The Tribunal shall conduct its business in both of the official languages of Canada in accordance with the *Official Languages Act* and any directives of the Minister and, on request by any designated Inuit organization, in Inuktitut.

106. (2) Translation or interpretation

106. (2) Subject to subsections 16(1) and (2) of the *Official Languages Act*, nothing in subsection (1) shall be construed to prevent the use of translation or interpretation services where a member of the Tribunal is otherwise unable to conduct business in Inuktitut or in either official language.

106. (3) Witnesses

106. (3) The Tribunal has, in any proceedings before it, the duty to ensure that any person giving evidence before it may be heard in Inuktitut or in either official language, and that in being so heard the person will not be placed at a disadvantage by not being heard in another of those languages.

106. (4) Duty to provide simultaneous interpretation

106. (4) The Tribunal has, in any proceedings before it, the duty to ensure that, at the request of any party to the proceedings, facilities are made available for the simultaneous interpretation of the proceedings, including the evidence given and taken, from Inuktitut into one of the official languages, from one of the official languages into Inuktitut or from one of the official languages into the other.

106. (5) Translation of documents

106. (5) The Tribunal has, in any proceedings before it, the duty to provide a translation of any document prepared in Inuktitut or in one of the official languages for the purpose of the proceedings by a party to the proceedings into one or both of the official languages or into Inuktitut or the other official language where necessary to enable another party to the proceedings to understand and deal with the document.

106. (6) Translation of orders

106. (6) The Tribunal shall, on the request of a party to any proceedings before it, provide a translation into Inuktitut of any order made in the proceedings, including any reasons given for the order.

Oceans Act, SC 1996, c 31

38. Contravention of unpublished order

38. No person may be convicted of an offence consisting of a contravention of an order made under subsection 36(1) in the exercise of a power under paragraph 35(3)(b) that, at the time of the alleged contravention, had not been published in the Canada Gazette in both official languages unless it is proved that reasonable steps had been taken before that time to bring the purport of the order to the attention of those persons likely to be affected by it.

Parks Canada Agency Act, SC 1998, c 31

36.1 *Official Languages Act* applies

36.1 For greater certainty, the *Official Languages Act* applies to the Agency and the Agency has the duty, under section 25 of that Act, to ensure that, where services are provided or made available by another person or organization on its behalf, any member of the public in Canada or elsewhere can communicate with and obtain those services from that person or organization in either official language, in any case where those services, if provided by the Agency, would be required under Part IV of the *Official Languages Act* to be provided in either official language.

Petro-Canada Public Participation Act, SC 1991, c 10

9. (1) Mandatory provisions in articles of amendment

9. (1) The articles of amendment for Petro-Canada shall contain

[...]

(e) provisions requiring Petro-Canada to ensure that any member of the public can, in either official language, communicate with and obtain available services from

(i) its head office, and

(ii) any of its other offices or facilities, and the head office and any other office or facility of any of its wholly-owned subsidiaries, where Petro-Canada determines that there is significant demand for communications with and services from that office or facility in that language having regard to the public served and the location of the office or facility.

1991, c. 10, s. 9; 1993, c. 34, s. 101; 1994, c. 47, s. 220; 2001, ch. 18, art. 2.

Physical Activity and Sport Act, SC 2003, c 2

Preamble

WHEREAS the Government of Canada recognizes that physical activity and sport are integral parts of Canadian culture and society and produce benefits in terms of health, social cohesion, linguistic duality, economic activity, cultural diversity and quality of life;

[...]

WHEREAS the Government of Canada is committed to promoting physical activity and sport, having regard to the principles set out in the *Official Languages Act*;

---

6. Financial assistance

6. For the purposes of this Act, the Minister may provide financial assistance in the form of grants and contributions to any person, in accordance with Parts IV and VII of the *Official Languages Act*.

---

9. (1) Centre established

9. (1) A not-for-profit corporation is hereby established to be called the Sport Dispute Resolution Centre of Canada, in this Act referred to as "the Centre", which shall include a dispute resolution secretariat and a resource centre

9. (5) Both official languages to be used

9. (5) The Centre shall offer its services to, and communicate with, the public in both official languages of Canada.

---

17. (1) By-laws

17. (1) The board of directors may make by-laws with respect to the conduct and management of the affairs of the Centre and the carrying out of the duties and functions of the board under this Act, including by-laws providing for

[...]

(g) the establishment of a policy respecting the official languages of Canada that includes

(i) principles governing the use of English and French by the staff of the Centre in their communications, provision of services and daily work, and

(ii) a mechanism for resolving disputes related to the application of the policy;

[…]

(i) the establishment of mediation and arbitration procedures for resolving sport disputes, including a mechanism for determining the manner in which the parties may select an arbitrator or mediator and the language, according to the needs of the parties, in which the parties may be heard and the decision rendered;

---

29. Responsibilities of the Centre

29. The Centre shall ensure that arbitrators and mediators who provide dispute resolution services under the auspices of the Centre

(a) meet the qualifications established by its by-laws;

(b) are independent of the Centre; and

(c) are, as a group, able to provide services in one or the other of the official languages of Canada or in both, according to the needs of the parties.

Pilotage Act, RSC 1985, c P-14

20. (1) Regulations

20. (1) An Authority may, with the approval of the Governor in Council, make regulations necessary for the attainment of its objects, including, without restricting the generality of the foregoing, regulations

[...]

(f) prescribing the qualifications that a holder of any class of licence or any class of pilotage certificate shall meet, including the degree of local knowledge, skill, experience and proficiency in one or both of the official languages of Canada required, in addition to the minimum qualifications prescribed by the Governor in Council under section 52.

1970-71-72, c. 52, s. 14.

Plant Breeders' Rights Act, SC 1990, c 20

11. (2) Confirmation of claim to priority

11. (2) A claim respecting priority based on a preceding application made in a country of the Union or an agreement country shall not be allowed unless, within three months after the date on which the claim is submitted to the Commissioner, it is confirmed by filing with the Commissioner a copy, certified as correct by the appropriate authority in that country and accompanied by an English or French translation of the certified copy, if made in any other language, of each document that constituted the preceding application.

Privacy Act, RSC 1985, c P-21

2. Purpose of Act

2. The purpose of this Act is to extend the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to that information.

ANNOTATIONS

Lavigne v. Canada (Office of the Commissioner of Official Languages), [2002] 2 SCR 773, 2002 SCC 53 (CanLII)

[40] Parliament has made it plain that the *Privacy Act* applies to the Office of the Commissioner of Official Languages: the latter is listed in the schedule to the Act as a government institution that is subject to the *Privacy Act*. As well, s. 2 of the *Privacy Act* provides that its purpose is to extend the present laws of Canada, and this includes the *Official Languages Act*, although s. 82 of the *Official Languages Act* provides that the provisions of Parts I to V prevail over any other Act of Parliament or regulation thereunder. None of the sections relied on by the appellant is found in those parts: ss. 60(1), 72, 73 and 74 are in Part IX of the Act. The meanings of the provisions in issue in these appeals must therefore be reconciled, and they must be read together.

[…]

[44] […] The *Privacy Act* must be applied to the Office of the Commissioner of Official Languages in such a way as to recognize the unique context in which the Commissioner's investigations are conducted. In ss. 60, 62 and 72, Parliament clearly recognized the delicate situation involved in the use of an official language at work by a minority group, by requiring that investigations be conducted in private and be kept confidential, to protect complainants and witnesses from any prejudice that might result from their involvement in the complaints and the investigation process, and by giving the Commissioner the power to report the belief that a complainant or witness has been threatened, intimidated or made the object of discrimination, and the grounds therefor, to the President of the Treasury Board. If Parliament had not enacted those provisions, it might have been difficult to achieve the objectives of the *Official Languages Act*. The participation of witnesses and complainants is central to the effectiveness of the Act. Because the purpose of the investigation is to determine the truth and understand the individuals' experience of the situation, the investigators must be circumspect in collecting information and assessing the information obtained.

[45] Both the respondent and the Privacy Commissioner, who is an intervener in this case, argue that it is not necessary that interviews be confidential in order to secure the participation of witnesses, because the Commissioner of Official Languages has broad powers that include the power to summon and enforce the attendance of witnesses (s. 62 of the *Official Languages Act*). That argument cannot succeed, because using the procedure for compelling attendance compromises the ombudsman role of the Commissioner. It is the responsibility of the Commissioner to investigate complaints that are submitted to him impartially, and to resolve them

using flexible mechanisms that are based on discussion and persuasion. The Commissioner must protect witnesses and assist victims in exercising their rights. Requiring the Commissioner to have regular recourse to the procedure for enforcing the attendance of individuals before him is inconsistent with the role of an ombudsman. In addition, enforcing the attendance of witnesses would needlessly complicate the investigations, and would be injurious to them. A person who is compelled to testify may be recalcitrant and less inclined to cooperate. The way in which the *Official Languages Act* is interpreted must not be injurious to activities undertaken by the Commissioner that are intended to resolve conflicts in an informal manner.

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15. Extension of time limits

15. The head of a government institution may extend the time limit set out in section 14 in respect of a request for

(a) a maximum of thirty days if

(i) meeting the original time limit would unreasonably interfere with the operations of the government institution, or

(ii) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or

(b) such period of time as is reasonable, if additional time is necessary for translation purposes or for the purposes of converting the personal information into an alternative format,

[…]

R.S., 1985, c. P-21, s. 15; 1992, c. 21, s. 35.

---

17. (2) Language of access

17. (2) Where access to personal information is to be given under this Act and the individual to whom access is to be given requests that access be given in a particular one of the official languages of Canada,

(a) access shall be given in that language, if the personal information already exists under the control of a government institution in that language; and

(b) where the personal information does not exist in that language, the head of the government institution that has control of the personal information shall cause it to be translated or interpreted for the individual if the head of the institution considers a translation or interpretation to be necessary to enable the individual to understand the information.

R.S. 1985, c. P-21, s. 17; 1992, c. 21, s. 36.

---

29. (1) Receipt and investigation of complaints

29. (1) Subject to this Act, the Privacy Commissioner shall receive and investigate complaints.

> **[…]**
>
> **(e) from individuals who have not been given access to personal information in the official language requested by the individuals under subsection 17(2);**
>
> **[…]**

R.S. 1985, c. P-21, s. 29; 1992, c. 21, s. 37.

Privileges and Immunities (North Atlantic Treaty Organisation) Act, RSC 1985, c P-24

Schedule

Article 27. Done in Ottawa this twentieth day of September, 1951, in French and in English, both texts being equally authoritative, in a single copy which shall be deposited in the archives of the Government of the United States of America which will transmit a certified copy to each of the signatory States.

Public Service Employment Act, SC 2003, c 22, ss 12, 13

Preamble

Whereas: […]

Canada will also continue to gain from a public service that strives for excellence, that is representative of Canada's diversity and that is able to serve the public with integrity and in their official language of choice; […]

---

30. (1) Appointment on basis of merit

30. (1) Appointments by the Commission to or from within the public service shall be made on the basis of merit and must be free from political influence.

30. (2) Meaning of merit

30. (2) An appointment is made on the basis of merit when

> **(a) the Commission is satisfied that the person to be appointed meets the essential qualifications for the work to be performed, as established by the deputy head, including official language proficiency; and**
>
> **(b) the Commission has regard to**

(i) any additional qualifications that the deputy head may consider to be an asset for the work to be performed, or for the organization, currently or in the future,

[…]

ANNOTATIONS

Boulanger v. Commissioner of the Correctional Service of Canada et al., 2008 PSST 31 (CanLII)

[40] Under paragraph 77(1)(a) and subsection 30(2) of the *PSEA* [Public Servant Employment Act], the Tribunal can examine the allegations relating to the establishment of essential qualifications. […]

[41] The issues before the OCOL [Office of the Commissioner of Official Languages] and the Tribunal are different. In this case, the "Bilingual imperative BBB/BBB" official language proficiency is an essential qualification. The Tribunal will therefore examine whether the respondent abused its authority when it established this essential qualification. The Tribunal's analysis will address a different aspect, namely, abuse of authority under the provisions of the *PSEA*. The complainant alleges that the respondent abused its authority with regard to the imperative staffing requirement of the position in question. He also alleges that, in the past, the respondent did not take into account the fact that the bilingual position had to be staffed imperatively. The criteria that will be used to determine whether the abuse of authority is founded are different from the criteria used by the OCOL to determine whether the decision was consistent with the Directives and the Official Languages Regulations.

[42] It is true that the OCOL determined that the language requirement had been objectively required in accordance with section 91 of the *OLA* [Official Languages Act]; however, the Tribunal's mandate is broader than the OCOL's. The Tribunal must go beyond the fact that the *OLA* was complied with and go further in its analysis to determine whether there was an abuse of authority, such as bad faith, personal favouritism or discrimination, for example, when the respondent decided to establish the linguistic qualification. In addition, if the complaint is founded, the Tribunal may revoke the appointment; take any corrective action that it considers appropriate or both. The *OLA* does not grant this authority to the OCOL with regard to staffing.

[43] In addition, the fact that Parliament expressly referred to official languages in subsection 30(2) of the *PSEA* shows that it intended to grant the Tribunal the power to decide all abuse of authority matters concerning official languages.

Vani v. Chief Statistitian of Canada et al., 2008 PSST 29 (CanLII)

[51] It is clear from a reading of subsection 30(2) of the *PSEA* [Public Servant Employment Act] that official language proficiency constitutes an essential qualification to be established by the deputy head. In order for the complainant to succeed on this allegation, he must establish that the deputy head abused his authority in establishing language proficiency of bilingual imperative (CBC) for Director-level positions. The Tribunal has not been presented with any evidence to support a finding that the decision to require bilingual imperative (CBC) language proficiency constitutes an abuse of authority. The respondent's Official Language Policy requires such a proficiency. The complainant has not satisfactorily linked his statements about the dates of various appointments to his allegation regarding the establishment of imperative staffing qualification. Accordingly, the second allegation of abuse of authority raised by the complainant is not substantiated.

SEE ALSO:

Shakov v. Canada (Attorney General), 2015 FC 1416 (CanLII) [waiting on the decision of the Federal Court of Appeal]

Lablack v. Deputy Minsiter of Health Canada, 2013 PSST 7 (CanLII)

Desaulniers v. Deputy Minister of Environment Canada, 2011 PSST 18 (CanLII)

---

37. (1) Language of examination

37. (1) An examination or interview, when conducted for the purpose of assessing qualifications referred to in paragraph 30(2)(a) and subparagraph 30(2)(b)(i), other than language proficiency, shall be conducted in English or French or both at the option of the candidate.

37. (2) Testing for language skills

37. (2) An examination or interview, when conducted for the purpose of assessing the qualifications of the candidate in the knowledge and use of English or French or both, or of a third language, shall be conducted in that language or those languages.

---

38. Exceptions to merit

38. Paragraph 30(2)(b) does not apply in relation to any appointment made under subsection 15(6) (re-appointment on revocation by deputy head), section 39.1 (priority – members of the Canadian Forces) or 40 (priorities — surplus employees), subsection 41(1) or (4) (other priorities) or section 73 (re-appointment on revocation by Commission) or 86 (re-appointment following Tribunal order), or under any regulations made under paragraph 22(2)(a).

---

77. (1) Grounds of complaint

77. (1) When the Commission has made or proposed an appointment in an internal appointment process, a person in the area of recourse referred to in subsection (2) may — in the manner and within the period provided by the Board's regulations — make a complaint to the Board that he or she was not appointed or proposed for appointment by reason of

> **(a) an abuse of authority by the Commission or the deputy head in the exercise of its or his or her authority under subsection 30(2);**
>
> **(b) an abuse of authority by the Commission in choosing between an advertised and a non-advertised internal appointment process; or**
>
> **(c) the failure of the Commission to assess the complainant in the official language of his or her choice as required by subsection 37(1).**

ANNOTATIONS

Boulanger v. Commissioner of the Correctional Service of Canada et al., 2008 PSST 31 (CanLII)

[40] Under paragraph 77(1)(a) and subsection 30(2) of the *PSEA* [Public Servant Employment Act], the Tribunal can examine the allegations relating to the establishment of essential qualifications. […]

[41] The issues before the OCOL [Office of the Commissioner of Official Languages] and the Tribunal are different. In this case, the "Bilingual imperative BBB/BBB" official language proficiency is an essential qualification. The Tribunal will therefore examine whether the respondent abused its authority when it established this essential qualification. The Tribunal's analysis will address a different aspect, namely, abuse of authority under the provisions of the *PSEA*. The complainant alleges that the respondent abused its authority with regard to the imperative staffing requirement of the position in question. He also alleges that, in the past, the respondent did not take into account the fact that the bilingual position had to be staffed imperatively. The criteria that will be used to determine whether the abuse of authority is founded are different from the criteria used by the OCOL to determine whether the decision was consistent with the Directives and the Official Languages Regulations.

[42] It is true that the OCOL determined that the language requirement had been objectively required in accordance with section 91 of the *OLA* [Official Languages Act]; however, the Tribunal's mandate is broader than the OCOL's. The Tribunal must go beyond the fact that the *OLA* was complied with and go further in its analysis to determine whether there was an abuse of authority, such as bad faith, personal favouritism or discrimination, for example, when the respondent decided to establish the linguistic qualification. In addition, if the complaint is founded, the Tribunal may revoke the appointment; take any corrective action that it considers appropriate or both. The *OLA* does not grant this authority to the OCOL with regard to staffing.

SEE ALSO:

Caselaw under current PSEA

Champagne v. Deputy Minister of Public Works and Government Services, 2017 FPSLREB 29 (CanLII)

Lablack v. Deputy Minsiter of Health Canada, 2013 PSST 7 (CanLII)

Taticek v. President of the Canada Border Services Agency, 2012 PSST 15 (CanLII)

Walker-McTaggart v. Chief Executive Officer of Passport Canada, 2011 PSST 39 (CanLII)

Jalal v. Deputy Minister of Human Resources and Skills Development Canada, 2011 PSST 38 (CanLII)

Caselaw under former PSEA

Rogers v. Canada (Department of National Defence), 2001 FCT 90 (CanLII)

Schreiber v. Canada, 2000 CanLII 16703 (FCA)

Canada (Attorney General) v. Asselin, 1999 CanLII 8951 (FCA)

Pfahl et al. v. The Queen, [1993] F.C.J. No. 1324 (F.C.T.D.), McGillis J. [hyperlink not available]

Bauer v. Canada (Public Service Commission – Appeal Board), [1973] F.C. 626 (F.C.A.) Jackett C.J.A., St.-Germain, Bastin, JJ.A. [hyperlink not available]

Canada (A.G.) v. Viola, [1991] 1 F.C. 373 (F.C.A.), Pratte, MacGuigan, Décary JJ.A. [hyperlink not available]

McKinnon v. Canada (Public Service Commission Appeal Board), [1990] F.C.J. No. 455 (F.C.A.), Pratte, Hugessen, Décary, JJ.A. [hyperlink not available]

Headley v. Canada (Public Service Commission Appeal Board), [1987] 2 FCR 235, 1987 CanLII 5362 (FCA)

Guy v. Canada (Public Service Commission Appeal Board), 1984 CanLII 2899 (FCA)

Kelso v. The Queen, [1981] 1 SCR 199, 1981 CanLII 171 (SCC)

Public Service Employment Regulations – Public Service Employment Act, SOR/2005-334

15. (1) Exemption from official language proficiency — encumbered position

15. (1) Subject to subsection (2), an acting appointment of four months or more but not more than twelve months to an encumbered bilingual position that the Commission cannot fill with an acting appointment of a person who meets the language proficiency qualification under paragraph 30(2)(*a*) of the Act is excluded from the application of that paragraph respecting official language proficiency.

15. (2) Exception

15. (2) Subsection (1) does not apply to an acting appointment to the same position if the cumulative period of the acting appointments of all persons in that position is more than twelve months.

ANNOTATIONS

Robert and Sabourin v. Deputy Minister of Citizenship and Immigration et al., 2008 PSST 24 (CanLII)

[79] Under the scheme of the *PSER* [Public Servant Employment Regulations], merit and recourse do not apply to acting appointments under four months, except that the official language proficiency qualification applies to a vacant bilingual position under certain circumstances. Subsection 15(1) prescribes an exception in the case of an encumbered bilingual position; that is, a unilingual person may be appointed for a period that does not exceed twelve months, when the position cannot be filled with a bilingual employee.

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16. (1) Exemption from official language proficiency — language training

16. (1) Subject to subsection (2), an acting appointment of four months or more but not more than eighteen months to a bilingual position, while the incumbent is on language training, that the Commission cannot fill with an acting appointment of a person who

meets the language proficiency qualification under paragraph 30(2)(*a*) of the Act is excluded from the application of that paragraph respecting official language proficiency.

16. (2) Exception

16. (2) Subsection (1) does not apply to an acting appointment to the same position if the cumulative period of the acting appointments of all persons in that position is more than eighteen months.

Public Service Official Languages Exclusion Approval Order – Public Service Employment Act, SI/2005-118

Whereas the Public Service Commission has decided that it is neither practicable nor in the best interests of the public service to apply the provisions of the Public Service Employment Act respecting official language proficiency to certain persons described in the annexed Order;

S.C. 2003, c. 22, s. 12 and 13

Therefore, the Public Service Commission, pursuant to section 20 of the Public Service Employment Act, hereby makes the annexed Public Service Official Languages Exclusion Approval Order.

Ottawa, October 14, 2005

Her Excellency the Governor General in Council, on the recommendation of the Minister of Canadian Heritage, pursuant to section 20 of the Public Service Employment Act, hereby approves the annexed Public Service Official Languages Exclusion Approval Order made by the Public Service Commission.

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1. Definitions

1. The following definitions apply in this Order.

“Act”

« *Loi* »

“Act” means the Public Service Employment Act.

“agreement to become bilingual”

« engagement de devenir bilingue »

“agreement to become bilingual” means an agreement in writing by which a person

> **(a) undertakes to attain the level of official language proficiency required for a bilingual position, through language training at public expense, within a period of two years beginning on the later of the date of the written agreement of appointment to the bilingual position and the effective date of the appointment; and**

(b) agrees that if, at the end of the two-year period, the person has not attained the level of language proficiency required for the bilingual position, the person will be appointed or deployed on an indeterminate basis to a position for which the person meets the essential qualifications referred to in paragraph 30(2)(a) of the Act and that is of a similar level and salary as the bilingual position.

"bilingual position"

« poste bilingue »

"bilingual position" means a position identified by the deputy head as one for which the work to be performed requires proficiency in both official languages.

"non-imperative"

« nomination non impérative »

"non-imperative" , in relation to an appointment to a bilingual position, means that the appointment is for an indeterminate period and the bilingual position has been identified by the deputy head as not requiring, at the time of the appointment, occupation by a person who meets the required level of proficiency in both official languages.

"unilingual person"

« personne unilingue »

"unilingual person" means, in relation to a bilingual position, a person who meets the required level of proficiency in only one of the official languages.

---

2. Non-application

2. No person is excluded by this Order from any requirement to meet any qualifications with respect to shorthand, typing, translation, editing, proofreading, revising, writing or interpretation or to meet any specialized or expert proficiency requirements in one or both official languages.

---

3. Exclusion from paragraph 30(2)(a) of the Act with respect to official language proficiency

3. A unilingual person who enters into an agreement to become bilingual in order to be appointed on a non-imperative basis to a bilingual position is excluded from the operation of paragraph 30(2)(a) of the Act with respect to the official language proficiency required for the appointment.

---

4. Exclusion from paragraph 30(2)(a) of the Act with respect to official language proficiency

4. If a unilingual person has a long-term or recurring physical, mental or learning impairment that makes the person unable to attain, through language training, the official language proficiency required for a bilingual position, the person is excluded from the operation of paragraph 30(2)(a) of the Act with respect to that requirement for a non-imperative appointment to that position.

---

5. Exclusion from paragraph 30(2)(a) of the Act with respect to official language proficiency

5. If a unilingual person is eligible for an immediate annuity under the Public Service Superannuation Act within two years after a non-imperative appointment to a bilingual position and the person submits an irrevocable resignation to take effect no later than the end of that two-year period, the person is excluded from the operation of paragraph 30(2)(a) of the Act with respect to the official language proficiency required for that appointment.

SEE ALSO:

Caselaw under former PSEA

Schreiber v. Canada, 2000 CanLII 16703 (FCA)

Public Service Official Languages Appointment Regulations – Public Service Employment Act, SOR/2005-347

1. (1) Definition of “Order”

1. (1) In these Regulations, “Order” means the Public Service Official Languages Exclusion Approval Order.

1. (2) Other terms

1. (2) The other terms used in these Regulations have the same meaning as in the Order.

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2. Interpretation

2. For the purposes of these Regulations, any period of leave of more than 60 consecutive days is not included in computing the two-year period referred to in any agreement to become bilingual or any extension of that period under section 7.

---

3. Non-imperative appointments

3. A person excluded under section 3, 4 or 5 of the Order may be appointed on a non-imperative basis to a bilingual position if the appointment would be on the basis of merit except that the person does not meet the qualifications of the position with respect to official language proficiency.

4. Duty to provide language training

4. If a person is appointed on a non-imperative basis to a bilingual position after the person enters into an agreement to become bilingual, the deputy head must ensure that the person is provided with the language training that is necessary for the person to attain the level of official language proficiency required for the position within the two-year period referred to in the agreement to become bilingual.

5. Duty to appoint or deploy to another position

5. If a person who accepts a non-imperative appointment to a bilingual position after entering into an agreement to become bilingual does not meet the level of official language proficiency required for the position during the two-year period referred to in the agreement, the deputy head must, within two months after the end of that period, appoint or deploy the person on an indeterminate basis to a position that is one for which the person meets the essential qualifications referred to in paragraph 30(2)(a) of the Act and that is of a similar level and salary as the bilingual position.

6. Appointment to another position

6. If, during the two-year period referred to in a person's agreement to become bilingual, the person accepts, after entering into a new agreement to become bilingual, any other non-imperative appointment to a bilingual position requiring the same or a lower level of official language proficiency, sections 4 and 5 apply in respect of that subsequent appointment as if the references in those sections to the two-year period referred to in the agreement to become bilingual were references to the two-year period referred to in the first agreement.

7. Extension of two-year period

7. For the purposes of sections 4 to 6, the Commission must extend the two-year period referred to in an agreement to become bilingual for one or more additional periods — of not more than two years in total — that the person is likely to need to attain the required level of language proficiency, if the person is not able to attain the required level of language proficiency within the two-year period referred to in the agreement because of

(a) exceptional operational requirements that were not foreseeable at the time of the appointment;

(b) exceptional personal circumstances that were not foreseeable at the time of the appointment;

(c) a physical, mental or learning impairment that hinders the learning of the other official language at the required level of proficiency; or

(d) the inability to obtain language training at public expense.

Publication of Statutes Act, RSC 1985, c S-21

11. Printing of Statutes

11. The Statutes of Canada shall be printed in the English and French languages in such form, on such paper and in such type and shall be bound in such manner as the Governor in Council may prescribe by regulation.

R.S. c. P-40, s. 11.

Quarantine Act, SC 2005, c 20

24. Interpreter

24. The Minister shall, if reasonably possible, provide a traveller with an interpreter if the traveller does not have an adequate understanding of at least one of Canada's official languages or has a speech or hearing disability.

Referendum Act, SC 1992, c 30

3. (5) Language

3. (5) The Chief Electoral Officer shall ensure that the text of a referendum question is available in such aboriginal languages and in such places in those languages, as the Chief Electoral Officer, after consultation with representatives of aboriginal groups, may determine.

Safe Containers Convention Act, RSC 1985, c S-1

3. (1) Regulations

3. (1) Subject to subsection (2), the Governor in Council may make regulations for carrying out and giving effect to the provisions of the Convention, and, without restricting the generality of the foregoing, may make regulations [...]

> **(e) requiring that the Safety Approval Plate affixed to any or all containers approved under the authority of the Government of Canada be in both English and French; […]**

1980-81-82-83, c. 9, s. 3.

SCHEDULE

(Section 2)

Article XVI

Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General, who shall communicate certified true copies to all States referred to in article VII.

Schedule I

Chapter I

2. (a) The Plate shall contain the following information in at least the English or French language: [...]

Sioux Valley Dakota Nation Governance Act, SC 2014, c 1

10. *Official Languages Act*

10. Sioux Valley Dakota Oyate Government and any entity, including a board, commission, tribunal, council or other body or office, established under a Sioux Valley Dakota Nation Law are not federal institutions as defined in subsection 3(1) of the *Official Languages Act*.

Softwood Lumber Products Export Charge Act, SC 2006, c 13

Records and Information

48. (1) Keeping records

48. (1) Every person who is required to pay an amount under this Act shall keep all records that are necessary to determine whether they have complied with this Act.

48. (2) Minister may specify information

48. (2) The Minister may specify in writing the form that a record is to take and any information that the record must contain.

48. (3) Language and location of record

48. (3) Unless otherwise authorized by the Minister, the records shall be kept in Canada, in English or French.

Statistics Act, RSC 1985, c S-19

17. (2) Exception to prohibition

17. (2) The Chief Statistician may, by order, authorize the following information to be disclosed:

> **[...]**
>
> **(f) information in the form of an index or list of individual establishments, firms or businesses, showing any, some or all of the following in relation to them:**
>
> > **[...]**
> >
> > **(iii) the official language in which they prefer to be addressed in relation to statistical matters,**
> >
> > **[…]**

R.S. 1985, c. S-19, s. 17; 1992, c. 1, s. 131.

Statutory Instruments Act, RSC 1985, c S-22

3. (1) Proposed regulations sent to Clerk of Privy Council

3. (1) Subject to any regulations made pursuant to paragraph 20(a), where a regulation-making authority proposes to make a regulation, it shall cause to be forwarded to the Clerk of the Privy Council three copies of the proposed regulation in both official languages.

R.S., 1985, c. S-22, s. 3; R.S., 1985, c. 31 (1st Supp.), s. 94, c. 51 (4th Supp.), s. 22; 2002, c. 8, s. 174; 2015, c. 33, s. 3(F).

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5. (1) Transmission of regulations to Clerk of Privy Council

5. (1) Subject to any regulations made pursuant to paragraph 20(b), every regulation-making authority shall, within seven days after making a regulation, transmit copies of the regulation in both official languages to the Clerk of the Privy Council for registration pursuant to section 6.

R.S. 1985, c. S-22, s. 5; R.S. 1985, c. 31 (4th Supp.), s. 102; 2015, c. 33, s. 3(F).

ANNOTATIONS

R. v. Saulnier, 1989 CarswellNS 305, [1989] N.S.J. No. 131, 230 A.P.R. 77, 7 W.C.B. (2d) 142, 90 N.S.R. (2d) 77

[27] I have been referred by the Crown to the *Statutory Instruments Act*, which governs the publication of statutory instruments in both languages. I do not find that variation orders, and in

particular, notices of variation orders, are statutory instruments. They are administrative measures taken in response to changing, and sometimes rapidly changing, conditions in the fishery. They take effect on short notice, or even immediately. They can change fishing quotas between the time a vessel leaves the wharf and when it returns. Fishermen or other persons affected are notified of the variation orders by broadcast. I am aware of nothing to justify notice of variation orders being broadcast in English for the benefit of English-language fishermen while significant numbers of French-language fishermen, fishing beside them, are denied notice in French.

SEE ALSO:

Doucet v. Canada, [2005] 1 FCR 671, 2004 FC 1444 (CanLII)

Rules of the Supreme Court of Canada – Supreme Court Act, SOR/2002-156

11. (1) Official languages

11. (1) A party may use either English or French in any oral or written communication with the Court.

11. (2) Subject to subrule (3), the Registrar shall provide to the parties services for simultaneous interpretation in both official languages during the hearing of every proceeding.

11. (3) In the case of a motion to be heard by a judge or the Registrar, the Registrar shall provide the services referred to in subrule (2) upon request of any party to the motion, made at least two days before the hearing of the motion.

Tobacco Act, SC 1997, c 13

17. Regulations

17. The Governor in Council may make regulations

> **(a) respecting the information that must appear on packages and in leaflets about tobacco products and their emissions and the health hazards and health effects arising from the use of the products and from their emissions;**
>
> **(b) prescribing anything that by this Part is to be prescribed; and**
>
> **(c) generally for carrying out the purposes of this Part.**

Tobacco Products Information Regulations – Tobacco Act, SOR/2000-272

3. (1) Must be legible

3. (1) Any written information that is required by these Regulations to be displayed shall be displayed

(a) in both official languages, in the same manner; and

(b) in a manner that ensures that the information is legible and prominently displayed.

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4. (1) Attribution

4. (1) If a manufacturer attributes health warnings or health information that in accordance with these Regulations must be displayed, the manufacturer shall do so by displaying only the phrase "Health Canada" under the English health warning or health information and the phrase "Santé Canada" under the French health warning or health information. The attribution, which is contained in the electronic files referred to in paragraph 3(2)(a), shall be displayed in the same colour as the text of the health warning or health information and in Universal type in a pitch that is not greater than the smallest pitch used in the attributed health warning or health information.

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5. (1) Obligation to display

5. (1) Subject to subsections (4) to (6), every manufacturer of bidis, chewing tobacco, cigarettes, cigarette tobacco, kreteks, leaf tobacco, chewing tobacco, snuff, tobacco sticks, or pipe tobacco, other than pipe tobacco described in section 6, snuff or tobacco sticks shall display the applicable health warnings for the tobacco product on every package of the tobacco product that it manufactures, in accordance with this section.

5. (2) Manner of display

5. (2) The health warnings must

(a) be displayed in English on one principal display surface and in French on the other principal display surface;

Trade-marks Act, RSC 1985, c T-13

11.14 (1) Prohibited adoption of indication for wines

11.14 (1) No person shall adopt in connection with a business, as a trade-mark or otherwise,

(a) a protected geographical indication identifying a wine in respect of a wine not originating in the territory indicated by the protected geographical indication; or

(b) a translation in any language of the geographical indication in respect of that wine.

11.14 (2) Prohibited use

11.14 (2) No person shall use in connection with a business, as a trade-mark or otherwise,

(a) a protected geographical indication identifying a wine in respect of a wine not originating in the territory indicated by the protected geographical indication or adopted contrary to subsection (1); or

(b) a translation in any language of the geographical indication in respect of that wine.

11.14 (3) Prohibited use

11.14 (3) No person shall use in connection with a business, as a trade-mark or otherwise,

(a) a protected geographical indication identifying a wine in respect of a wine that originates in the territory indicated by the protected geographical indication if that wine was not produced or manufactured in accordance with the law applicable to that territory; or

(b) a translation in any language of the geographical indication in respect of that wine.

11.14 (4) Prohibited adoption of indication for spirits

11.14 (4) No person shall adopt in connection with a business, as a trade-mark or otherwise,

(a) a protected geographical indication identifying a spirit in respect of a spirit not originating in the territory indicated by the protected geographical indication; or

(b) a translation in any language of the geographical indication in respect of that spirit.

11.14 (5) Prohibited use

11.14 (5) No person shall use in connection with a business, as a trade-mark or otherwise,

(a) a protected geographical indication identifying a spirit in respect of a spirit not originating in the territory indicated by the protected geographical indication or adopted contrary to subsection (4); or

(b) a translation in any language of the geographical indication in respect of that spirit.

11.14 (6) Prohibited use

11.14 (6) No person shall use in connection with a business, as a trade-mark or otherwise,

(a) a protected geographical indication identifying a spirit in respect of a spirit that originates in the territory indicated by the protected geographical indication if that spirit was not produced or manufactured in accordance with the law applicable to that territory; or

(b) a translation in any language of the geographical indication in respect of that spirit.

1994, c. 47, s. 192; 2014, c. 32, s. 56(F); 2017, c. 6, s. 63.

11.15 (1) Prohibited adoption of indication for spirits

11.15 (1) No person shall adopt in connection with a business, as a trade-mark or otherwise,

> **(a) a protected geographical indication identifying an agricultural product or food of a category set out in the schedule in respect of an agricultural product or food belonging to the same category that does not originate in the territory indicated by the protected geographical indication; or**
>
> **(b) a translation on the list kept under subsection 11.12(1) of the protected geographical indication in respect of that agricultural product or food.**

11.15 (2) Prohibited use

11.15 (2) No person shall use in connection with a business, as a trade-mark or otherwise,

> **(a) a protected geographical indication identifying an agricultural product or food of a category set out in the schedule in respect of an agricultural product or food belonging to the same category that does not originate in the territory indicated by the protected geographical indication or adopted contrary to subsection (1); or**
>
> **(b) a translation on the list kept under subsection 11.12(1) of the protected geographical indication in respect of that agricultural product or food.**

1994, c. 47, s. 192; 2014, c. 32, s. 56(F); 2017, c. 6, s. 64.

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12. (1) When trade-mark registrable

12. (1) Subject to section 13, a trade-mark is registrable if it is not

> **[…]**
>
> **(b) whether depicted, written or sounded, either clearly descriptive or deceptively misdescriptive in the English or French language of the character or quality of the goods or services in association with which it is used or proposed to be used or of the conditions of or the persons employed in their production or of their place of origin;**
>
> **(c) the name in any language of any of the goods or services in connection with which it is used or proposed to be used;**
>
> **[…]**

R.S., 1985, c. T-13, s. 12; 1990, c. 20, s. 81; 1993, c. 15, s. 59(F); 1994, c. 47, s. 193; 2007, c. 25, s. 14; 2014, c. 32, ss. 15(F), 53; 2017, c. 6, s. 68.

ANNOTATIONS

Canadian Dental Hygienists' Association v. Canadian Dental Association, 2011 TMOB 7 (CanLII)

[36] The way the [Trade-marks] Act is worded suggests that the s. 12(1)(b) issue is to be determined from the point of view of the average English or French speaking consumer of the wares or services, and not the average bilingual consumer of the wares or services. I also note that the Opposition Board has previously decided that Section 12(1)(b) of the Act does not preclude the registration of a trade-mark comprised of a combination of French and English words that are individually descriptive of the wares [...].

[…]

[41] My task therefore is to determine whether Parliament's intention in enacting s. 12(1)(b) of the Act was to include marks that are clearly descriptive or deceptively misdescriptive in the a) English and/or b) French language. This involves the statutory interpretation of the word "or" as it appears in s. 12(1)(b) of the Act.

[...]

[45] In my view, there is a necessity in the present case to read the word "or" inclusively (meaning "and/or") to carry out the legislative intent of s. 12(1)(b) of the Act for the following reasons.

[46] As previously noted, the issue as to whether a mark is clearly descriptive or deceptively misdescriptive of the applied for services must be considered from the point of view of the average purchaser of those services. While there is no jurisprudence under s. 12(1)(b) that specifically states that the average purchaser is bilingual, I note that in assessing the issue of confusion, the Supreme Court of Canada has agreed that the mythical consumer is assumed to be functionally bilingual.

[...]

[48] In my view, Parliament could not have intended that a mark which was clearly descriptive or deceptively misdescriptive in one of Canada's official languages could be registrable as long as its equivalent translation in Canada's other official language was also part of the mark. Further, in my view, Parliament could not have intended that only the average English purchaser or the average French purchaser be considered when assessing the issue under s. 12(1)(b), especially when the average purchaser is assumed to be functionally bilingual under other sections in the Act. Finally, I do not consider that it was the intention of Parliament to permit marks that, while perhaps not clearly descriptive or deceptively misdescriptive as a whole to a unilingual English consumer or unilingual French consumer, are clearly descriptive or deceptively misdescriptive as a whole to the average bilingual consumer.

[49] In view of the above, I consider that Parliament must have intended the word "or", as found in s. 12(1)(b) of the Act, to be inclusive, i.e. to mean "and/or" in situations such as the present case. I therefore find that the Mark NATIONAL DENTAL HEALTH MONTH/MOIS NATIONAL DE LA SANTÉ DENTAIRE, as a whole, is clearly descriptive of the character or quality of the applied for services in English and/or French. This ground is therefore successful.

Pierre Fabre Médicament v. Smithkline Beecham Corp., [2001] 2 FC 636, 2001 FCA 13 (CanLII) [judgement available in French only]

[OUR TRANSLATION]

[1] To what extent should the opinion of the average bilingual consumer be considered when determining whether there is a confusing similarity between two trademarks within the meaning of the *Trade-marks Act* (R.S.C. 1985, c. T-13) (the Act)?

[…]

[7] Joyal J., in *Boy Scouts of Canada v. Alfred Sternjakob GmbH & Co. Kg. et al.* ((1984), 2 C.P.R. (3d) 407), issued the following opinion, at page 413:

> … It could be argued that the criteria in the *Trade Marks Act* and the evidential findings thereunder as to confusion or deception should be measured not only with reference to English-speaking experience but to French-speaking experience as well. This would result in an inquiry as to the connotation or otherwise of certain words in a bilingual context, with each language having equal presence.
>
> It is a fact that the policy of the Trade Marks Office and the practice of counsel and of agents before it are to check into and analyze the descriptive, misdescriptive, misleading, distinguishing and confusing consequences which flow from a French or English adaptation of any particular word or the use of it as a registered trade mark.

[8] Strayer J., as he was then, stated in *Scott Paper Co. v. Beghin-Say S.A.* ((1985), 5 C.P.R. (3d) 225), at page 231:

> I have no doubt that the Registrar of Trade Marks and the court should be alert to the possibility of confusion between trade marks in either or both of Canada's official languages. This is not only required by the constitutional and legal status of both languages at the federal level, but is also a reflection of the fact that there are several million bilingual Canadians who may associate words in one official language with their equivalent in the other. In the present case, however, I can see no possibility of such confusion between these two trade marks in the minds of unilingual anglophones, and for those who know French or both languages I can see no real probability of such confusion.

[9] Relying on these two decisions, the Registrar found, at pages 535 and 536 in *Les Vins La Salle Inc. v. Les Vignobles Chantecler Ltée* ((1985), 6 C.P.R. (3d) 533), that one of the following two methods must be used to decide the issue of confusion:

> (i) assess the question of confusion in the context of unilingual francophones, unilingual anglophones and bilingual persons and then if two trade marks are confusing to the average member of any of these groups conclude that the trade marks are confusing, or
>
> (ii) assess the question of confusion in the context of bilingual persons only.

The latter was chosen, the context of the average bilingual person.

[10] With respect, I think the Registrar, in *Les Vins La Salle Inc*., misread what Joyal and Strayer JJ. were saying. They were simply observing that in the Canadian linguistic context the perception of the Francophone consumers warranted just as much attention as that of the Anglophone consumers, and once there was a reasonable probability of confusion among either of them, the mark could not be registered. Both judges added, in an effort to adequately cover all the bases in light of the special features of the cases before them, that neither the average French-speaking consumer nor the average English-speaking consumer might be confused but the average bilingual customer might be, in which case this risk of confusion sufficed by itself to rule out the registration. Nowhere was there any suggestion of a test that would consider only the perception of the average bilingual customer as opposed to the perceptions of the average French-speaking and English-speaking customer.

[11] Joyal J., a few months later, in *Produits Freddy Inc. v. Ferrero S.P.A.* ((1986), 20 C.P.R. (3d) 61), had the occasion himself to issue a warning after the Registrar's decision in *Les Vins La Salle Inc*. was cited to him. He stated, at page 65, that:

> It seems to me that it is not sufficient to simply apply the bilingual version test in determining the issue of confusion between one trade mark and another.

and at page 68, that:

> …I feel that caution must be exercised when applying the bilingual equivalence test to coined words.

[12] This Court, upholding Joyal J.'s decision in *Produits Freddy Inc*. ((1988) 22 C.P.R. (3d) 346), did not make the average bilingual consumer test an independent test. Quite the contrary, Marceau J.A. noted that the risk of confusion was a finding "of concrete fact to be verified in real life, and not one to be inferred from the constitutionally established bilingual nature of the country" (at page 350). Lacombe J.A., for his part, commented as follows, at page 354:

> …It is only where a mark is borrowed from everyday speech or derived from a common noun that a question arises as to the possible effect of its transposition into the other language: see *Boy Scouts of Canada v. Alfred Sternjakob GmbH & Co*. (1984), 2 C.P.R. (3d) 407, 4 C.I.P.R. 103; *101482 Canada Inc. v. Registrar of Trade Marks* (1985), 7 C.P.R. (3d) 289, 6 C.I.P.R. 222. It is a matter which must be considered as one of the tests to be applied in deciding whether such a mark creates confusion with another mark in the mind of the public. This requirement is necessary not only to safeguard the official status of both languages but also the integrity and statutory protection of trade marks in respect of those who speak or understand English and French. However, this factor should not be taken too far, obliterating the other tests mentioned in s. 6(5) of the Act or ignoring the rules laid down by the courts.

[13] The approach adopted by the Court is easily comprehensible. French and English are of equal value in Canada. The *Trade-marks Act* applies throughout Canada. Section 6 states that confusion may result from the use of a trade-mark in only one area of Canada. Paragraph 12(1)(b) provides that a trade-mark is not registrable if it is "either clearly descriptive or deceptively misdescriptive in the English or French language of the character or quality of the wares or services…" A trade-mark may be used anywhere in Canada (see, for example, section 16) and its registration, according to section 19, gives the owner "the exclusive right to the use throughout Canada of the trade-mark…" subject to the cited exceptions.

[14] It follows that once there is a risk of confusion in either of the country's two official languages, a trade-mark cannot be registered. The particular problem with which Joyal and Strayer J.J. were confronted was the possibility that a trade-mark that does not create any confusion in a Francophone or in an Anglophone might create confusion in a bilingual person through the use of usual, distinct words in French and English but, to someone who knew what it meant in both languages, referring to the same reality. For example, in *Produits Freddy Inc*., the word "*noixelle*" might mean nothing to an English-speaking person, and the word "nutella" might be meaningless to a French-speaking person, but it was not excluded that the use of either of these words would confuse a bilingual person who knew the meaning in both languages. It was solely to guard against this possibility that the test was extended to the average bilingual consumer.

[15] In short, the trial judge and, before him, the Registrar, improperly converted the third element of the single test to be applied (is there a risk of confusion on the part of the average French-speaking consumer, the average English-speaking consumer or, in special instances, the average bilingual customer?) to an independent component. Moreover, in this case, it is not even a special instance where the perception of an average bilingual customer would be relevant, in the sense referred to by Lacombe J. in *Produits Freddy Inc*.

101482 Canada Inc. v. Canada (Registrar of Trade Marks), 1985 CarswellNat 576, 1985 CarswellNat 644, [1985] 2 F.C. 501, 36 A.C.W.S. (2d) 185, 6 C.I.P.R. 222, 7 C.P.R. (3d) 289

Etymological or phonetic equivalence in either of our two official languages creates a new dimension in implementing the provisions of s 12(1) of the *Trade Marks Act*. A mark under s 12(1)(b) may be descriptive in one language and not in another. It may be descriptive because of the way it is written or the way it is pronounced. Under s 12(1)(d), a mark may create confusion in one language but not in the other. The legal rule and the "first impression" principle in one language do not necessarily affect a mark pronounced in the other. The result is that the considerations which must be applied to a particular situation are more numerous and in fact impose a double and reciprocal test. (p. 505)

SEE ALSO:

Choices Hotels International Inc. v. Hotels Confortel Inc., [1996] F.C.J. No. 330 (F.C.T.D.). [hyperlink not available]

Leroy SA v Alberta Distillers Limited, 1994 CanLII 10092 (CA TMOB)

Produits Freddy Inc. v. Ferrero SpA, [1986] F.C.J. No. 964 (F.C.T.D.), Joyal J., aff'd [1988] F.C.J. No. 1216 (F.C.A.). [hyperlink not available]

Boy Scouts of Canada v. Alfred Sternjakob GmbH & Co. KG et al., [1984] F.C.J. No. 1111 (F.C.T.D.). [hyperlink not available]

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31. (1) Applications based on registration abroad

31. (1) An applicant whose right to registration of a trade-mark is based on a registration of the trade-mark in another country of the Union shall, before the date of advertisement of his application in accordance with section 37, furnish a copy of the registration certified by the office in which it was made, together with a translation thereof into English or French if it is in any other language, and such other evidence as the Registrar may require to establish fully his right to registration under this Act.

R.S. c. T-10, s. 30.

Trust and Loan Companies Act, SC 1991, c 45

44. (1) French or English form of name

44. (1) The name of a company may be set out in its letters patent in an English form, a French form, an English form and a French form or in a combined English and French form, and the company may use and be legally designated by any such form.

44. (2) Alternate name

44. (2) A company may identify itself outside Canada by its name in any language and the company may use and be legally designated by any such form of its name outside Canada.

44. (3) Other name

44. (3) Subject to subsection (4) and section 260, a company may carry on business under or identify itself by a name other than its corporate name.

1991, c. 45, s. 44; 1996, c. 6, s. 114.

United Nations Foreign Arbitral Awards Convention Act, RSC 1985, c 16 (2nd Supp)

Schedule

(Section 2)

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for the recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

Yukon Act, SC 2002, c 7

27. (1) Official languages

27. (1) The ordinance entitled the *Languages Act* made on May 18, 1988 under the former Act and any successor to it may not be repealed, amended or otherwise rendered inoperable by the Legislature without the concurrence of Parliament by way of an amendment to this Act.

27. (2) Additional rights and services

27. (2) Nothing in subsection (1) shall be construed as preventing the Commissioner or any other public officer or the Legislature or any other institution of the Yukon Government — whether by amending the ordinance referred to in that subsection, without the concurrence of Parliament, or by any other means — from granting rights in respect

of, or providing services in, English and French or any languages of the aboriginal peoples of Canada in addition to the rights and services provided for in that ordinance.

ANNOTATIONS

Kilrich Industries Ltd. v. Halotier, 2007 YKCA 12 (CanLII)

[47] The *Languages Act* represents a historic compromise between the governments of the Yukon and Canada to ensure the official recognition of Canada's bilingualism in governmental institutions. And while Parliament has excluded the Yukon Territory from the application of the federal *Official Languages Act*, the *Yukon Act* requires Parliament's consent to any change to the *Languages Act*. This requirement creates quasi-constitutional obligations. (See the discussion of "manner and form" requirements in *Mercure*, *supra* at 276-279 and *Reference Re Canada Assistance Plan* (B.C.), [1991] 2 S.C.R. 525 at 561). Arguably, this renders the *Languages Act* more akin to a constitutional obligation than either the federal *Official Languages Act* or the New Brunswick *Official Languages Act*, (the "*New Brunswick Official Languages Act*"), both of which have been described as quasi-constitutional by the Supreme Court of Canada, despite being capable of amendment by their respective enacting body. (See *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773 at para. 23 and *Charlebois v. Saint John (City)*, [2005] 3 S.C.R. 563 at para. 30 ("*Charlebois*")).

[48] In my view, the purpose of the *Languages Act* is to commit the Yukon to official bilingualism. As well as being apparent from its legislative history, this purpose is explicit in s. 1 which states that the Yukon accepts that "English and French are the official languages of Canada" and sets down as objects the "implementation of the equality of status of English and French in the Yukon" and the "recognition of French and the provision of services in French in the Yukon". While the *Yukon Act* does not declare French an official language of the Yukon, its impact in the legislative, central government and judicial spheres is the same.

Yukon Environmental and Socio-economic Assessment Act, SC 2003, c 7

27. (3) Funding for languages and training

27. (3) The Board shall consider including in its annual budget funding in order to enable its members and employees to carry out their functions in their traditional languages and in order to provide its members and employees with training, including cross-cultural orientation and education, for the purpose of improving their ability to carry out their duties.

Yukon First Nations Self-Government Act, SC 1994, c 35

11. (1) Legislative powers

11. (1) A first nation named in Schedule II has, to the extent provided by its self-government agreement,

> **[…]**
>
> **(b) the power to enact laws applicable in Yukon in relation to the matters enumerated in Part II of Schedule III;**

Schedule III – Legislative Powers

Part II

2. Provision of programs and services for citizens of the first nation in relation to their aboriginal languages.

Patent Rules, SOR/96-423

Filing Date

27.1 (1) The documents, information and fees prescribed for the purposes of subsection 28(1) of the Act are

(a) if paragraphs (b) and (c) do not apply and one or more of the following has been received by the Commissioner on or after June 2, 2007,

(i) an indication, in English or French, that the granting of a Canadian patent is sought,

(ii) the applicant's name,

(iii) the applicant's address or that of their patent agent,

(iv) a document, in English or French, that on its face appears to describe an invention, and

(v) either

(A) a small entity declaration in accordance with section 3.01 and the small entity fee set out in item 1 of Schedule II as it read at the time of receipt, or

(B) the standard fee set out in that item;

(b) if one or more of the following has been received by the Commissioner on or after October 1, 1996 and all of the following have been received before June 2, 2007,

(i) an indication in English or French that the granting of a Canadian patent is sought,

(ii) the applicant's name,

(iii) the applicant's address or that of their patent agent,

(iv) a document, in English or French, that on its face appears to describe an invention, and

(v) the fee set out in item 1 of Schedule II as it read at the time of receipt;

SOR/2009-319, s. 5.

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29 (1) Where an examiner examining an application in accordance with section 35 of the Act or the Act as it read immediately before October 1, 1989 has reasonable grounds to believe that an application for a patent describing the same invention has been filed, in or for any country, on behalf of the applicant or on behalf of any other person claiming under an inventor named in the application being examined, the examiner may requisition from the applicant any of the following information and a copy of any related document:

[…]

> **(d) where a document is not in either English or French, a translation of the document, or a part of the document, into English or French.**

International Phase

53 An international application, in order to be filed with the Commissioner, shall be written in either English or French.

National Phase

58 (1) An applicant who designates Canada, or who designates and elects Canada, in an international application shall, within the time prescribed by subsection (3),

> **[…]**
>
> **(b) where the international application is not in English or French, provide the Commissioner with a translation of the international application into either English or French; and**
>
> **[…]**

[…]

(4) If the applicant provides a translation of the international application into either English or French in accordance with paragraph (1)(b) and the Commissioner has reasonable grounds to believe that the translation is not accurate, the Commissioner shall requisition the applicant to provide either

> **(a) a statement by the translator to the effect that, to the best of the translator's knowledge, the translation is complete and faithful, or**
>
> **(b) a new translation together with a statement by the translator to the effect that, to the best of the translator's knowledge, the new translation is complete and faithful.**

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66 Where the applicant complies with the requirements of subsection 58(1) and, where applicable, subsection 58(2) on or after the date of the publication of the application in English or French by the International Bureau of the World Intellectual Property

Organization in accordance with Article 21 of the Patent Cooperation Treaty, the application is deemed to be open to public inspection under section 10 of the Act on and after the date of that publication.

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71 (1) The Commissioner shall refuse to take cognizance of any document submitted to the Commissioner that is not in the English or French language unless the applicant submits to the Commissioner a translation of the document into one of those languages.

(2) If the applicant provides a translation of a document into either English or French in accordance with subsection (1) and the Commissioner has reasonable grounds to believe that the translation is not accurate, the Commissioner shall requisition the applicant to provide either

> **(a) a statement by the translator to the effect that, to the best of the translator's knowledge, the translation is complete and faithful, or**
>
> **(b) a new translation together with a statement by the translator to the effect that, to the best of the translator's knowledge, the new translation is complete and faithful.**
>
> **(3) The text matter of the abstract, the description, the drawings and the claims, individually and all together, shall be wholly in English or wholly in French.**

SOR/2007-90, s. 15.

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136 (1) The Commissioner shall refuse to take cognizance of any document submitted to the Commissioner that is not in the English or French language unless the applicant submits to the Commissioner a translation of the document into one of those languages.

(2) If the applicant provides a translation of a document into either English or French in accordance with subsection (1) and the Commissioner has reasonable grounds to believe that the translation is not accurate, the Commissioner shall requisition the applicant to provide either

> **(a) a statement by the translator to the effect that, to the best of the translator's knowledge, the translation is complete and faithful, or**
>
> **(b) a new translation together with a statement by the translator to the effect that, to the best of the translator's knowledge, the new translation is complete and faithful.**

(3) The text matter of the abstract, the description, the drawings and the claims, individually and all together, shall be wholly in English or wholly in French.

SOR/99-291, s. 13; SOR/2007-90, s. 25.

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172 (1) The Commissioner shall refuse to take cognizance of any document submitted to the Commissioner that is not in the English or French language unless the applicant submits to the Commissioner a translation of the document into one of those languages.

(2) If the applicant provides a translation of a document into either English or French in accordance with subsection (1) and the Commissioner has reasonable grounds to believe that the translation is not accurate, the Commissioner shall requisition the applicant to provide either

> **(a) a statement by the translator to the effect that, to the best of the translator's knowledge, the translation is complete and faithful, or**
>
> **(b) a new translation together with a statement by the translator to the effect that, to the best of the translator's knowledge, the new translation is complete and faithful.**

(3) The text matter of the abstract, the description, the drawings and the claims, individually and all together, shall be wholly in English or wholly in French.

SOR/99-291, s. 16; SOR/2007-90, s. 27.

ANNOTATIONS

Laboratoires Servier, Adir, Oril Industries, Servier Canada Inc. v. Apotex Inc., 2008 FC 825 (CanLII)

[180] As noted above, the '093 Application was filed with the Patent Office in French. The text of the '196 Patent, drawn from the '093 Application, had been prepared in French. As set out in the *Patent Rules*, S.O.R./96-423, s.172(3) (the Patent Rules), "The text matter of the abstract, the description, the drawings and the claims . . . shall be wholly in English or wholly in French". Accordingly, the claims were translated into French from the English language of the Settlement Agreement. This task was apparently carried out by Mr. Nelson Landry, as counsel and patent agent for ADIR. Once the translation was completed and the document submitted to the Patent Office, the '196 Patent was issued on March 6, 2001. […]

[181] As written, submitted and issued in the '196 Patent, this did not accord with the claim 5 of the Settlement Agreement, as approved by the Court in the Nadon Order and did not constitute a claim to perindopril. […]

[…]

[213] Mr. Landry, who acted as counsel and patent agent to ADIR during the relevant periods, appeared as a witness at this trial under subpoena to speak only on the issue of the corrections. Mr. Landry's evidence establishes that the first error arose during translation. As Mr. Landry testified, he knew that the '196 Patent had to be issued in French, whereas the Settlement Agreement and Appendix A were in English. Mr. Landry's testimony was that he worked with both the '093 Application (which was in French) and the English version of claim 5 to draft the French version of claim 5 for the '196 Patent. The result of his deliberation contained two errors: (a) an (R,S) for the ethoxycarbonyl group in the nomenclature instead of (1,S); and, (b) a displaced (S) in relation to the carboxy group. In making his first correction of the error, Mr. Landry committed the second error. Instead of asking that the (R,S) for the ethoxycarbonyl group be replaced with (1,S), Mr. Landry mistakenly requested that it be replaced with (2,S).

[214] Apotex submits that an error that is committed in the process of translating a document or a sentence therein is fundamentally different from an error which arises in the copying, writing or transcribing of information from one document to another. The latter processes are mechanical in nature and require little, if anything, in the way of original and conscious thought. Accordingly, they are accepted as the defining characteristics of a "clerical" error. On the other hand, the act of translation, both general and especially in the specific circumstances of this case, involves a thought process that is, in Apotex's view, the very antithesis of a clerical error. Translation,

particularly here, is not simply a matter of looking at equivalent words in an English-French dictionary and replacing an English term with its French literal counterpart. Apotex submits that an error arising from such a process cannot, in law, amount to a clerical error.

[215] The second correction can be easily dealt with. In my view, it is not unreasonable to consider the mistaken insertion of (2,S) in place of (1,S) to be a clerical error. Contrary to the assertion of Apotex, such a mistake is more likely than not to be mechanical in nature and made without thought. Indeed, had Mr. Landry applied any original and conscious thought to the process, he would have realized his error. The inclusion of (1,S) for the ethoxycarbonyl group is clearly set out in claim 5 in English in Appendix A to the Settlement Agreement.

[216] The first correction, arising as it did during the translation, may be more problematic. In general, translation is a difficult task. In approaching the translation of claim 5 from the English Appendix A to the French version required for the '196 Patent, Mr. Landry was required to apply some thought and analysis. As noted, he worked with the French language '093 Application as well as the appendix to the Settlement Agreement.

[…]

[219] Finally, I observe that, throughout the exercise, claim 5 of the '196 Patent was defined – albeit in English – in Appendix A to the Settlement Agreement. All parties to the Settlement Agreement were aware that a claim to perindopril was to be awarded to ADIR. In addition, the Commissioner was aware of the specific claim 5 awarded to ADIR. Before the Commissioner was the entire file wrapper of the '196 Patent. Thus, all documents and correspondence leading to the grant of the '196 Patent formed part of the record. Of particular significance, the Commissioner had the Nadon Order where the final resolution of the conflict was documented. The Commissioner was required to give effect to that document; indeed, any decision of the Commissioner to vary the Nadon Order, without further Court order, could likely have been the subject of judicial review. An explicit term of that Order was that ADIR was entitled to the claims set out in Appendix A of the Settlement Agreement, one of which was ADIR's claim to:

> 5. The compound (2S)-2-[(1S)-1-carbethoxybutylamino]-1-oxopropyl-(2S,3aS,7aS)-perhydroindole-2-carboxylic acid and its pharmaceutically acceptable salts thereof.

[220] Thus, the Commissioner, in this case, was faced with an unusual set of facts. He was not operating in a situation where a patentee was attempting to change the chemical formula of a claim based solely on the assertion of the patentee. Here, the Commissioner could read the claim from the Nadon Order and compare the requested corrections to that claim. He would be aware that the object of the corrections was to achieve the results contemplated by the Nadon Order. I acknowledge that this does not explain why the Commissioner accepted the first, incorrect request for a certificate of correction. Nevertheless, overall, I am satisfied that the existence of the Appendix A claim 5 acted as a backstop. Today, as a result of the two certificates of correction, ADIR's patent reflects accurately ADIR's claim to perindopril as described in claim 5 of the '196 Patent.

[221] In light of the unusual facts of this case and the record that was before the Commissioner, I find that the Commissioner's decisions to issue the two certificates of correction fall within a range of possible, acceptable outcomes. They are reasonable decisions and should not be overturned.

G. *Conclusion on this issue*

[222] Having considered the arguments on this issue, I conclude that the certificates of correction were not issued without legal basis (as asserted by Apotex). It follows that claim 5 of the '196 Patent is not invalid by reasons of unlawfully issued certificates of correction.